

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.430 of 2015 (O&M)
Date of decision:30.11.2015

New India Assurance Company Ltd. ... Petitioner

Vs.

Sudesh Chawla and others ... Respondents

CR No.3801 of 2015 (O&M)

New India Assurance Company Ltd. ... Petitioner

Vs.

Sunita Sharma and others ... Respondents

CR No.1930 of 2015 (O&M)

National Insurance Company Ltd. ... Petitioner

Vs.

Rita Kunwar and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Rahul Pathania, Advocate, for
Mr. R.C.Kapoor, Advocate
for the petitioner (in CR Nos.430 and 1930 of 2015).

Ms. Vandanaa Malhotra, Advocate
for the petitioner (in CR No.3801 of 2015).

Mr. Pankaj Jain, Senior Advocate with
Mr. Sachin Bhardwaj, Advocate and
Mr. Divya Suri, Advocate as Amicus Curiae.

Mr. Sangram Singh, Advocate, for
Mr. Sumeet Goel, Advocate
for IRDA.

Mr. Yogesh Putney, Advocate
for Income Tax Department.

AMIT RAWAL J. (Oral)

Challenge in the present petitions is to the impugned orders passed by the Executing Court, vide which Insurance Company has been called upon to pay the amounts of T.D.S. deducted on the interest income which was deposited by the Insurance Company with the Income Tax Department, as per the provisions of Income Tax Act, 1961.

This Court had appointed Mr.Pankaj Jain, Senior Advocate as Amicus Curiae to assist the Court whether in cases where the claimants are given compensation in view of the death or injury, the TDS is liable to be deducted or not.

Mr. Pankaj Jain, learned Senior counsel assisted by Mr. Sachin Bhardwaj, Advocate in support of his contentions relied upon the judgment dated **15.10.2014 passed in CWPIl No.9 of 2014 titled as Court on its own motion vs. The H.P.State Cooperative Bank Limited and others**, to contend that in such cases, Insurance Company is not liable to impose TDS. The aforementioned judgment has been rendered after taking into consideration various judgments of the Hon'ble Supreme Court. The Insurance Company has been compelled to approach this Court owing to the orders passed by the Executing Court calling upon Insurance Company to deduct the TDS.

It is in these circumstances, the aforementioned revision petitions have been filed.

I have heard learned counsel for the parties and appraised the paper books.

Paragraphs 22 and 23 of the aforementioned judgment rendered by the Himachal Pradesh Shimla High Court read thus:-

*“22. The Apex Court in another case titled **Commissioner of Income-Tax vs. Ghanshyam (HUF)**, reported in [2009] 315 ITR 1(SC) 1, laid down similar preposition. It is apt to reproduce paragraphs 24, 25 and 27 hereunder:*

“24. To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of

interest under Section 34.

25. It is clear from reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation. It was held by the Constitution Bench of the Supreme Court in Sunder v. Union of India - (2001) 7 SCC 211, that "indeed the language of Section 28 does not even remotely refer to market value alone and in terms it talks of compensation or the sum equivalent thereto. Thus, interest awardable under Section 28, would include within its ambit both the market value and the statutory solatium. It would be thus evident that even the provisions of Section 28 authorise the grant of interest on solatium as well." Thus solatium means an integral part of compensation, interest would be payable on it. Section 34 postulates award of interest at 9% per annum from the date of taking possession only until it is paid or deposited. It is a mandatory provision. Basically Section 34 provides for payment of interest for delayed payment.

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27. In the case of Hindustan Housing (supra) certain lands belonging to the assessee-company, which was in the business of dealing in land and which maintained its account on mercantile system, were first requisitioned and then compulsorily acquired by the State Government. The Land Acquisition Officer awarded Rs.24,97,249/- as compensation. On appeal the Arbitrator made an award at Rs.30,10,873/- with interest at 5% from the date of acquisition. Thereupon, the State preferred an appeal to the High Court. Pending the appeal, the State Government deposited in the Court Rs.7,36,691/- being the additional amount payable under the award and the assessee was permitted to withdraw that additional amount on furnishing a security bond for refunding the amount in the event of the said Appeal being allowed. On receiving the amount, the assessee credited it in its suspense account on the same date. The question was : whether the additional amount of Rs.7,24,914/- could be taxed as the income on the ground that it became payable pursuant to the award of the Arbitrator. The Tribunal held that the

amount did not accrue to the assessee as its income and was, therefore, not taxable in the assessment year 1956-57. The financial year in which the additional amount came to be withdrawn ended on 31.3.56. It was held by this Court that although award was made on 29.7.1955, enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the State. Therefore, there was no absolute right to receive the amount at that stage. It was held that if the Appeal was to be allowed in its entirety, the right to payment of enhanced compensation would have fallen altogether. Therefore, according to this Court, the extra amount of compensation of Rs.7,24,914/- was not income arising or accruing to the assessee during the previous year relevant to the assessment year 1956-57.”

23. Having said so, the Circular, dated 14.10.2011, issued by the Income Tax Authorities, whereby deduction of income tax has been ordered on the award amount and interest accrued on the deposits made under the orders of the Court in Motor Accident Claims cases, is quashed and in case any such deduction has been made by

respondents, they are directed to refund the same, with interest at the rate of 12% from the date of deduction till payment, within six weeks from today.”

There is force in the contention raised on behalf of the petitioner that the claimants are liable to pay double the tax, one on receipt of compensation which would be added in the income and other where TDS would be deducted by the Insurance Company, thus, it amounts to putting an onerous liability on the tax payers as they are liable to pay tax two times. The payment of compensation on account of death and injury is not a business transaction or a receipt of any charges on account of services rendered by any other party.

Mr. Pankaj, has also passed on judgments rendered by various Courts of foreign countries, i.e., law in Australia, United States as well as, law in Ireland, wherein, similar ratio/analogy view has been expressed as has been done in the judgment rendered by the High Court of Himachal Pradesh.

Even Division Bench of this Court also in **ITA No.495 of 2009 titled as Drawing and Disbursing Officer vs. Income Tax Officer decided on 30.03.2011** held that compensation received under the Motor Vehicles Act, is either on account of loss of earning capacity on account of death or injury or on account of pain and suffering and such receipt is not by way of earning or profit. Award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been had the loss of life

or injury has not been suffered. Therefore, I am of the view that impugned orders calling upon the Insurance Company to pay the TDS/deduct TDS on the interest part, are not sustainable and are hereby set aside.

This Court while deciding the aforementioned revision petitions has appreciated the assistance rendered by Mr. Pankaj Jain, Senior Advocate, who had been appointed as Amicus Curiae.

Accordingly, the revision petitions are allowed.

(AMIT RAWAL)
JUDGE

November 30, 2015
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