IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18558 of 2012

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National Insurance Co. Ltd., Regd. Office At 3rd Middleton Street, Kolkata-700071 Through Its Deputy Manager Posted At Its Patna Regional Office, Sone Bhawan, 4th Floor, Birchand Patel Marg, R-Block, Distt./Town-Patna

.... Petitioner/s

Versus

1. Union Of India Through Finance Secretary Deptt. Of Finance, New Delhi
2. The Commissioner Of Income Tax Ayakar Bhawan, Central Revenue Building, Birchand Patel Marg, Patna
3. Shankar Singh S/O Late Inder Singh R/O Village- Pramanpathi, P.O.- Peuli, P.S.- Mirganj, District- Gopalganj

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18844 of 2012

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1. National Insurance Co. Ltd. Regd. Office At 3rd Middleton Street, Kolkata - 700071 Through Its Deputy Manager Posted At Its Patna Regional Office, Sone Bhawan 4th Floor, Birchand Patel Marg, R-Block, Distt/Town- Patna

.... Petitioner/s

Versus

1. The Commissioner Of Income Tax, Ayakar Bhawan Central Revenue Building, Birchand Patel Marg, Patna
2. Pushpa Devi W/O Subhas Chandra Srivastava Resident Of Village - Bishunpura, P.O. - Paikakaulibado, P.S. - Phulwaria, District - Gopalganj
3. Subhas Chandra Srivastava S/O Sri Sudama Lal Srivastava Resident Of Village - Bishunpura, P.O. - Paikakaulibado, P.S. - Phulwaria, District - Gopalganj

.... Respondent/s

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Appearance :

(In CWJC No. 18558 of 2012)

For the Petitioner/s : Mr. PRAKASH KUMAR
For the Respondent/s : Mrs. Archana Sinha
Mr. Suman Kumar Sinha

(In CWJC No. 18844 of 2012)

For the Petitioner/s : Mr. PRAKASH KUMAR
For the Respondent/s : Mrs. Archana Sinha
Mr. Suman Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

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Date: 05-02-2015

Heard learned counsel for the petitioner-National Insurance Company and learned counsel for the Income Tax Department in both the cases. No one appears for the private respondents despite valid service of notices upon them.

In both the writ applications, the prayer is to quash the order dated 10.11.2011 passed by the District Judge, Gopalganj in M.V. Case No.01 of 2005 and the order dated 2.6.2012 passed by the same learned Judge in MACT Case No.08/2007, by which applying the provision of Section 194A (3) (ix) of the Income Tax Act, 1961, an amount of Rs.24,175 and Rs.17,922/- respectively in the two cases have been directed to be disbursed to the private respondents which had been deducted as Income Tax at source by the petitioner-company while paying the amount under the award of the Motor Accident Claims Tribunal.

The facts of the cases lie within a narrow compass so far as the determination of the issue involved is concerned and are precisely the same .

The facts of the first case alone may be noted. The Motor Vehicles Case No.1/2005 was filed before the District Judge under the provisions of Sections 166 and 140 of the Motor Vehicles Act against the owner and Insurer of the truck in question with regard to the death

of the son of the claimant, who was the driver of the truck and in course of his duty he was murdered by some miscreants. The petitioner was the insurer of the truck and an award of Rs.3, 70,000/- with interest at the rate of 6% per annum from the date of filing of the claim case was passed to be paid within two months of the passing of the order after deducting the amount of Rs.50,000/- already paid as ad-interim compensation under the Motor Vehicle Act, failing which the further direction was to pay interest at the rate of 9% per annum from the date of the order till the final payment. The petitioner, while making the payment of the amount of award and interest, deducted an amount of Rs.24,175/- as income tax at source under the provision of Section 194A (3) (ix) of the Income Tax Act, 1961 and the said amount was deposited in the account of the Income Tax Department. Respondent No.3 objecting to the deduction of Rs. 24,175 filed a petition on 9.2.2011 before the District Judge, Gopalganj.

By the impugned order dated 10.11.2011, it was held that the deduction of Rs. 24,175/- by way of income tax is not sustainable and directed the petitioner to disburse the said amount to the claimant. Aggrieved by the same, the petitioner is before this Court.

Learned counsel for the petitioners relies upon the relevant provisions of the Income Tax Act itself in support of the stand that the petitioners were under statutory liability under the said

Act to have made deduction of the said amount while making payment by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal. The total amount of interest component under the award came to a little over Rs. 1,20,000/- and, therefore, under the said provisions the petitioners were bound to make the deduction of tax at source while making payment and accordingly from the interest component an amount of Rs. 24,175/- was deducted as income tax at source.

In support of the aforesaid stand, learned counsel for the petitioner relies upon a decision of this Court in C.W.J.C. No.5352 of 2013: National Insurance Com. Ltd. vs. Commissioner of Income Tax and others. The relevant part of the judgment is quoted below:-

> "It appears that the Tribunal below has ignored the statutory duty conferred upon the Insurer under Section 194 (1) of the Income Tax Act. Under the said provision, the Insurer is obliged to deduct the tax at source from the amount of interest paid by the Insurer to the claimant. The said amount has to be deposited with the Government of India as the income tax deducted at source. The Tribunal below has grossly erred in directing the Insurer to pay the said sum to the claimant."

Learned counsel for the petitioners also relies upon a decision of the Madras High Court in the case of New India Assurance Co. Ltd. Vs. Mani & Ors.: (2004) 270 ITR 394 (Mad), in paragraph Nos. 6 to 10 of which it has been held as follows:

> "6. A plain reading of s. 194A of the IT Act would

indicate that the insurance company is bound to deduct the income-tax amount on interest, treating it as revenue, if the amount paid during the financial year exceeds Rs.50,000. In this case, admittedly, when the compensation amount has been deposited during the financial year, including interest, the interest amount alone exceeded Rs.50,000 and therefore, the insurance company has no other option, except to deduct the income-tax at source for the interest amount, exceeding Rs.50,000/-, failing which, they may have to face the consequences, such as prosecution, even. In this view alone, when the execution petition was filed for the realization of the award amount, deducting the income tax at source for the interest, since it exceeded Rs.50,000, on the basis of the above said provision, the balance alone had been deposited, for which, the Court cannot find fault.

7. The stand taken by the revision-petitioner and the act performed by them, are supported by the ratio laid down by the apex Court in Bikram Singh & Ors. Vs. Land Acquisition Collector & Ors. (1977) 139 CTR (SC) 475: (1997) 224 ITR 551 (SC). The apex Court in the above ruling had considered the payment of interest on delayed compensation, whether it is a revenue receipt, exigible to income-tax, and it is observed:

"Interest received on delayed payment of the compensation under the Land Acquisition Act, is a revenue receipt exigible to income-tax. The amended definition of interest in s. 2 (28A) of the IT Act, 1961, was not intended to exclude the revenue receipt of interest on delayed payment of such compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest."

8. Following the above decision, a Division Bench of the Delhi High Court has held in Bhika Ram & Ors. Vs. Union of India & Ors. (2000) 159 CTR (Del) 462: (1999) 238 ITR 113 (Del);

"the petitioner was liable to be taxed on the interest on delayed payment of compensation for compulsory

acquisition of land. However, the petitioner was at liberty to have the income on account of interest assessed by seeking spread over."

The same view was once again reiterated by another Division Bench of the Delhi High Court in Shankar & Ors. vs. Union of India & Ors. (2002) 178 CTR (Del)26: (2003) 260 ITR 284 (Del).

Thus, it is made clear that the compensation amount which earned interest, because of the delayed payment, is liable to be taxed and because of the amended provision, when the interest amount exceeding Rs. 50,000 has been paid by the insurance company, during the financial year, they are bound to deduct the income-tax at source and there is no escape.

9. The trial Court without considering the actual effect of the amendment to s. 194A of the IT Act, which came into effect from Ist June, 2003, had erroneously directed the insurance company to deposit the entire amount including the deduction made statutorily. It is not the case of anybody that the amount was deducted by the insurance company and appropriated and in fact, this shall go to the Government. If the petitioner is not liable to pay tax, his remedy is to approach the Department concerned for refund of the amount, requesting that the period of interest should be spread over, since he had filed the claim petition elsewhere in 1993, from which date, the interest was calculated and deposited in the financial year. As such, it is not within the power of the executing Court to direct the insurance company not to deduct the amount and pay the entire amount, thereby compelling the insurance company to commit an illegal act, violating the statutory provisions. For the foregoing reasons, the revision is well founded and the same deserves acceptance. The direction and the order of the trial Court dt. 19th Sept., 2003, are set aside.

10. The petitioner is at liberty to approach the concerned authority, for spreading the income over the period for which payment of interest came to be made, so that the income for the purpose of assessing tax for the relevant assessment year, could be computed and in case, the petitioner is not liable to pay the income-tax, on that score, there is possibility of the petitioner getting refund of the amount."

Learned counsel also relies upon a decision of a learned single Judge of the Gujarat High Court in the case of United India Insurance Co. Ltd. Vs. Mitaben Dharmeshbhai Shah & Ors. (2004) 269 ITR 63 (Guj).

Section 194A (1) and 3 (ix) of the Income Tax Act are as follows:

> "194A. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:
> Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of Section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this Section.
> (3) The provisions of sub-section (1) shall not apply-
> (ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.

It is evident from the aforesaid provisions that any person responsible for paying any income by way of interest other than

income by way of interest on securities is obliged to deduct income tax thereon at the rate in force at the time of payment of the said amount to the concerned payee and the only exception in case of income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal is where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.

It is, thus, evident that if the interest component of the payment to be made during the financial year on the basis of award of the Motor Accident Claims Tribunal exceeds Rs.50,000/- then the person making the payment is obliged to deduct income tax at source while making payment; this is what the petitioners have done.

In the said circumstances, it was not open to the District Judge to hold to the contrary. As a matter of fact, the District Judge was exercising his jurisdiction with regard to executing the award but while executing the same he had to be conscious of the fact that any such payment would be subject to statutory provisions. There being clear provision under the Income Tax Act with regard to deduction of tax, it was not open to the District Judge to have held to the contrary. The only remedy for the assessee under such circumstances would have been either to have approached the assessing officer under

Section 197 of the Income Tax Act before the said payment was made for issuing a certificate for deduction of income-tax at a lower rate or no deduction of income-tax as the case may be or if that had not been done then to approach the Income Tax Department for refund of the amount in case no income-tax or less amount is due and payable by the concerned respondent.

In the aforesaid view of the matter, both the writ applications are allowed and the impugned orders dated 10.11.2011 and 2.6.2012 of the District Judge in the two cases are set aside.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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