

AFR

Reserved on 16.8.2012

Delivered on 13.9.2012

1. Income Tax Appeal No.441 of 2006
Commissioner Of Income Tax Vs. The Oriental Insurance Co. Ltd.
2. Income Tax Appeal Defective No.279 of 2006
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6. Income Tax Appeal Defective No.285 of 2006
Commissioner Of Income Tax Vs. The Oriental Insurance Co. Ltd.

Petitioner Counsel :- C.S.C., Shambhu Chopra

Respondent Counsel :- R.R. Agrawal

Hon'ble Sunil Ambwani,J.

Hon'ble Aditya Nath Mittal,J.

(Delivered by Hon'ble Aditya Nath Mittal, J.)

1. These Income Tax Appeals have been admitted on the following substantial questions of law:-

"1. Whether on the facts and circumstances of the case, the Tribunal is legally correct in allowing relief to the tax deductor by cancelling the TDS liability imposed by the ITO (TDS) on the amount of interest paid on delayed payment of compensation for all the assessment years 1998-99 to 2002-03?"

"2. Whether on the facts and circumstances of the case the Hon'ble Tribunal is legally correct in holding that the interest paid on delayed payment of compensation under MACT does not come within the ambit of section 2(28A) of the Income-tax Act, 1961 and therefore, the tax deductor was not under any legal obligation to deduct Income-tax at source (TDS) on the amount of decree which is known as interest on delayed payment of compensation?"

2. The brief facts of the case are that the respondent Insurance Company paid compensation and interest thereon under the Motor Vehicle Act to the claimants without complying with the provision of Section 194A of the Income Tax Act, 1961. It was the legal obligation of the respondent to deduct tax on the amount of interest under Section 194A of the Income Tax Act, 1961. The Assessing Authority established that the respondent has failed to deduct the income tax on the amount of interest and accordingly they were liable to deposit the amount of short deduction of tax (TDS) under Section 201(1) along with interest under Section 201(1)A of the Act.

3. The respondent preferred an appeal being Appeal No.223 to 227/ CIT (A)-1/ ITO (TDS)/ Agra/ 2002-2003/ 187 before the Commissioner, Income Tax (Appeals)-1, Agra, who vide order dated 28.3.2003 confirmed the action of the Assessing Authority for all the five assessment years.

4. The Insurance Company filed second appeals before the I.T.A.T., Agra, who decided the appeals in favour of the respondent and the issue was decided against the revenue and in favour of assessee. The decision of the I.T.A.T. has been challenged before us by the revenue.

5. Heard Sri Shambhu Chopra, learned counsel for the appellant and Sri R.R. Agarwal for the respondent.

6. Learned counsel for the revenue has submitted that it was the responsibility of the payer of interest to deduct the tax on such payment of interest because Section 2(28A) clearly envisages that interest means interest payable at any manner in respect of money borrowed or debts incurred (including a deposit, claim or other similar right or obligation) and includes any services fee or other charges in respect of the money borrowed or debt incurred or in respect of any credit facility which has not been utilized. The Tribunal has not gone through the citation in ***Bikram Singh and others. vs. Land Acquisition Collector and others*** reported in ***224 ITR 551(SC)***, in which it was held that “*interest paid on the delayed payment of the compensation is a revenue receipt eligible to tax under Section 4 of the Income Tax Act, 1961*”. It has further been submitted that the decisions of

the I.T.A.T. in the cases of New India Assurance Company Limited and the Oriental Insurance Company Limited have not been accepted by the revenue thus the I.T.A.T. is not legally correct in allowing relief to the tax deduction and holding that the interest paid on delayed payment of compensation under M.A.C.T. does not come within the ambit of Section 2 (28A) of the Income Tax Act, 1961.

7. Sri R.R. Agarwal, learned counsel for the respondent has submitted that sufficient explanation was submitted before the Assessing Authority. The explanation offered by the respondent Insurance Company was as under:-

“That at the end we request your honour that for the following reasons provisions of section 194 A are not applicable:-

i) Interest being paid on the award of compensation is not interest as understood in general parlance and it is not an income of the claimant.

ii) The compensation award by the M.A.C.T. Courts to the claimants is a capital receipt in the hands of recipients and not taxable under any provisions of the Income Tax Act. Since when the award is not taxable in the hands of recipient, it is not an income but it is a capital receipt.

iii) Interest paid by insurance company as per provisions of section 171 of the Motor Vehicle act is not the interest as contemplated u/s 194A of the I.T. Act, 1961 because interest contemplated u/s 194A is income taxable in the hands of the recipients whereas interest received by the recipients u/s 171 of Motor Vehicle Act is a capital receipt in the hands of recipients because it is nothing but an enhanced compensation on account of delay in the payment of compensation.”

8. The Assessing Authority held that debt incurred includes claims (in this case insurance claims) and interest on such claims is clearly covered under Section 2(28A) of the Act and further held as follows:-

“4.1) Interest paid under Motor Vehicle Act is a revenue receipt like interest received on delayed payment on compensation under Land Acquisition Act. Provisions of sec. 194A of the I.T. Act are applicable in respect of interest on compensation under Land Acquisition Act. Similarly, these provisions are also applicable in respect of interest on compensation under Motor Vehicle Act.

4.2) Interest element in total award is different than compensation. However, interest on such compensation is on account of delayed payment of such compensation and therefore it is clearly an income in the hands of recipients and taxable under the I.T. Act, 1961 as such.

4.3) Interest element is different than compensation as provided in section 171 of the Motor Vehicle Act, 1988 that “Where any Claims Tribunals allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

4.4) The provisions of sec. 194A are very clear and there is no such exemption of TDS on interest payment by the insurance companies on MACT awards.

4.5) The actual payer of interest is the insurance company and the responsibility to deduct tax lies squarely on it and the person making payment i.e. the Divisional Manager of the company. The provisions of sec. 204(iii) are very clear that person responsible for paying means 'in the case of credit or as the case may be, payment of any other sum chargeable under the provisions of this act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

4.6) Payment award under the Motor Vehicle Act, 1988 is identical to the award under Land Acquisition Act. Deduction of tax at source is made under section 194A of the I.T. Act, 1961 out of interest paid or credited for delayed payment of compensation. Therefore, provisions of sec. 194A are also applicable in respect of interest paid or credited on delayed payment of compensation under the Motor Vehicle Act, 1988.

4.7) The interest under Motor Vehicle Act, 1988 is similar to interest paid under I.T. Act, 1961 as both arise by operation of law. The nature of payment will remain as mentioned in these Acts i.e. “Interest”. T.D.S. on interest payment under I.T. Act is not deducted in view of specific exemption u/s 194A(3)(viii). However, no such exemption is there for interest payment under Motor Vehicle Act, 1988. Hence, provisions of section 194A will apply on these payments.

Thus, it is clear that the company including the principal officer (Divisional Manager of the company at Agra) has failed to deduct tax at source out of interest paid on compensation awards u/s. 194A of the I.T Act, 1961 without obtaining certificate u/s. 197 or form No.15H from the

recipient of the interest and therefore he is an assessee in default and liable to pay the demand equal to the amount of TDS u/s. 201(1) of the I.T. Act, 1961.”

9. The above findings of the Assessing Authority was approved by the CIT (Appeals)-1, Agra vide order dated 28.3.2003 and held that the interest payment awarded under Section 171 of the Motor Vehicle Act was nothing but interest and, therefore, subjected to the provisions of section 194A.

10. The I.T.A.T., Agra Bench, Agra, allowing the appeals filed by the assessee held as under:-

“3. We have heard the rival submissions and have also perused the records. We find that the issue involved in these appeals is squarely covered by the order dated 24.01.2006 of this Bench in ITA No.317 to 321/Agra/2003 for the assessment years 1998-99 to 2002-2003 in the case of the Divisional Manager, New India Insurance Co. Ltd. Agra vs. ITO, wherein the issue was decided against the Revenue and in favour of the assessee by following the findings of ITAT Delhi Bench 'D' given in the order dated 27.09.2004 in the case of Oriental Insurance Company Ltd. And also the order dated 31.01.2005 of Agra Bench in ITA No.276 & 280/Agra/2003 in the case of Oriental Insurance Company Ltd. vs. ITO. Respectfully following the order of this Bench in the case of Divisional Manager, New Insurance Company Ltd. (supra) for the A. Yrs. 1998-99 to 2002-2003 and also keeping in view that the facts of the present cases are similar, the appeals of the assessee deserve to be allowed.

4. In the result, the appeals, filed by the assessee are allowed.”

11. The word “Interest” has been defined under Section 2 (28A) as follows:-

“ 'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.”

12. Section 194A (as stood before amendment w.e.f. 1.6.2003) provides as under:-

“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.

Explanation- For the purposes of this section, where any income by way of interests as aforesaid is credited to any account, whether called 'interest payable account' or 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.”

13. The Central Board of Direct Taxes has also issued a circular (reported in 105 ITR 24 of 1976) explaining the concept of “interest” as follows:-

“The Term interest' has been defined in new clause (28A) inserted in section 2 of the Income Tax Act with a view to removing doubts about the true character of fees or other charges paid in respect of moneys borrowed or in respect of the credit facilities which have not been utilised. The definition is very wide and covers interest payable in any manner in respect of loans, debts, deposits, claims and other similar rights or obligations. It also includes any service fees or other charges in respect of such loans, debts, deposits, etc. as also fees in the nature of commitment charges on unutilised portion of credit facilities. This definition will be applicable for all purposes of the Income Tax Act.”

14. It is relevant to mention that by Finance Act, 2003, Section 194A has been amended and following clause in sub section (3) has been inserted with effect from 1st day of June, 2003:-

“(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.”

15. Under the Motor Vehicle Act, 1988, a liability has been casted on the owner of the motor vehicle or the authorized insurer to pay compensation in the case of death or permanent disablement due to accident arising out of

use of motor vehicle. This compensation is payable to the legal heirs in case of death and to the victim in case of permanent disablement. For the purposes of adjudicating upon claims for compensation in respect of motor accident, the Motor Accident Claims Tribunals have been established. The Motor Vehicle Act, 1988 further provides that in case of death, the claim may be preferred by all or any of the legal representatives of the deceased. The quantum of compensation is decided taking into consideration the nature of injury in case of injured person and the age, monthly income and dependency in case of death cases. The Motor Vehicle Act, 1988 contains the 2nd Schedule for compensation in fatal accidents and injury cases claims. While awarding general damages in case of death, the funeral expenses, loss of consortium, loss of estate and medical expenses are also considered. Undoubtedly the claims under Motor Vehicle Act are awarded with some delay which may be due to filing of the compensation claim, investigation, adjudication of claim and various other factors. Invariably the interest is also awarded on delayed payments because such claims are also challenged before the superior courts. Hence the main point for consideration is whether interest paid on such claims is covered and attracts the provision of Section 2(28A) of the Income Tax Act, 1961 or not.

16. It is also relevant to mention that in the motor accident claims compensation, there are various legal heirs who are entitled to receive the amount of claim and the interest so accrued may relate to more than one financial year.

17. Sri R.R. Agrawal, learned counsel for the assessee has relied upon following case laws:-

18. In **All India Reporter Ltd. Vs. Ramchandra D. Datar, (1961) 041 ITR 0446**, hon'ble the Apex Court, while considering the decree of a civil court in relation to wrongful termination of employment has held as under:-

“(i) That as there was no assessment by the Income-tax Officer of the tax due on the amount payable to the respondent under the decree, and an order under section 46(5) of the Income-tax Act could be passed only if income-tax had been assessed and remained unpaid, the Income-tax Officer had no

authority to issue a notice under section 46(5). Nor could the Income-tax Officer claim to recover tax due by a proceeding in the nature of a garnishee proceeding by applying to the civil court to attach the judgment debt payable by the company. The application submitted to the court by the Income-tax Officer had, therefore, to be ignored.

(ii) That under the scheme of the Civil Procedure Code, the decree had to be executed as it stood, subject to such deductions or adjustments as were permissible under the Code. There was no tax liability which the respondent was assessed to pay in respect of the amount of the decree. As between the company and the respondent the amount did not represent salary: it represented a judgment debt, and on payment of income-tax thereon no provision was made in the decree. Before paying that debt, the appellant company could not claim to deduct at source the tax payable by the respondent.”

19. In ***Commissioner of Income Tax Vs. Chiranji Lal Multani Mal Rai Bahadur (P) Ltd., (1989) 179 ITR 0157***, the Punjab and Haryana High Court while considering the matter of interest awarded by court for loss suffered on account of deprivation of property, has held that it amounts to compensation and is not taxable. It has been further held that the amount of interest received by the assessee by way of compensation was a casual receipt and could not be included in the income of the assessee in the relevant assessment year. It has been further held that if interest is received on the basis of a contract or under a statute, the same is taxable, but if interest is awarded by the court for loss suffered on account of deprivation of property, it amounts to compensation, though called interest, and would not be taxable.

20. In ***Ghaziabad Development Authority Vs. Dr. N.K. Gupta, (2002) 258 ITR 0337***, the National Consumer Disputes Redressal Commission interpreting Section 194A of the Income Tax Act, 1961 has held that if proper infrastructure facilities have not been provided to a person who was provided with a flat, is entitled to the refund of amount paid by him along with the interest at the rate of 18% and the paying authority was not entitled to deduct income tax on the said amount of interest. The Commission further held as follows:-

“The word used in the order of the State Commission was not “interest” as defined in section 2(28A). Interest, in the order of the Commission, meant compensation or damages for delay in construction or handling over possession of the same causing consequential loss to the complainant by way of escalation in the price of the property and also on account of distress and disappointment faced by him. Interest, in the order, had been used merely as a convenient method to calculate the amount of compensation in order to standardise it. Otherwise, each case of an allottee would have to be dealt with differently. Nomenclature did not decide the issue. In view of the definition of “interest” in section 2(28A), the provisions of section 194A were not applicable and the petitioner Authority was wrong in deducting tax at source from the interest payable to the respondent(complainant).”

21. In ***Commissioner of Income-tax Vs. H.P. Housing Board, (2012) 340 ITR 0388***, the Himachal Pradesh High Court, interpreting Section 2(28A) and 194A of the Income Tax Act has held as follows:-

“In case the houses were ready within the stipulated period the assessee would not be liable to pay interest. When construction of a house was delayed there could be escalation in the cost of construction. The allottee does not get the right to use the house and was deprived of the rental income from such house. He was also deprived of the right of living in his own house. In these circumstances, the amount which was paid by the assessee was not payment of interest but was payment of damages to compensate the allottee for the delay in the construction of his house/flat and the harassment caused to him. Though compensation had been calculated in terms of interest this was because the parties by mutual agreement agreed to find out a suitable and convenient system of calculating the damages which would be uniform for all the allottees. The allottees had not given the money to the assessee by way of deposit nor had the assessee borrowed the amount from the allottees. The amount was paid under a self-financing scheme for construction of the flats and the interest was paid on account of damages suffered by the claimant for delay in completion of the flats.”

22. In ***Commissioner of Income-tax Vs. Cargill Global Trading P. Ltd., (2011) 335 ITR 0094***, the Delhi High Court while interpreting Section 2(28A) of the Income Tax Act, 1961 has held that before any amount paid is construed as interest, it has to be established that the same is payable in respect of any money borrowed or debt incurred. In this case the bills of

exchange were discounted by the assessee. The discount charges paid by the assessee were treated as interest within the meaning of Section 2(28A) of the Income Tax Act by the Assessing Officer but it was held by the Delhi High Court that the discount charges paid were not in respect of any debt incurred or money borrowed. Hence the tax was not taxable at source on the amount.

23. In ***Commissioner of Income-tax Vs. Sahib Chits (Delhi) (Pvt.) Ltd., (2010) 328 ITR 0342***, the Delhi High Court interpreting Section 2(28A) of the Income Tax Act, 1961 has held that the contribution given by the subscribers/members, every month in a chit fund scheme is not a deposit with the chit fund company and the amount of bid disbursed equally among the members is not to be treated as interest payable on money borrowed, therefore, the chit fund company is not required to deduct the tax at source within the meaning of Section 194A of the Income Tax Act.

24. In ***Commissioner of Income-tax Vs. Govinda Choudhury and Sons, (1993) 203 ITR 0881***, hon'ble the Supreme Court has held that when there were disputes with the State Government with regard to payments under the contracts, receipt of certain amount under the award of the arbitrators and the interest for delay in payment of amounts due to it, such interests were only an accretion to the respondent's receipts from the contract and was attributable to and incidental to the business carried on by it. It was further held that the interest awarded could not be separated from the other amounts granted to the respondent under the awards and treated as "Income from other sources".

25. In ***Islamic Investment Co. Vs. Union of India and another, (2004) 265 ITR 254***, the Bombay High Court has held as follows:-

"That there was no provision under the Income-tax Act or under the Code of Civil Procedure to show that from the amount of interest payable under a decree tax was deductible from the decretal amount on the ground that it was an interest component on which tax was liable to be deducted at source. The amount of Rs.10,31,344 paid on account of interest could not retain its character as interest. Hence, the FCI was not entitled to withdraw the amount of Rs.2,06,269 towards tax deducted at source on the interest accrued to the petitioner on the decretal amount of Rs.18,65,419.82."

26. Sri Shambhu Chopra, learned counsel for the revenue has relied upon the following judgments:-

27. In ***Commissioner of Income-tax and another Vs. United Insurance Co. Ltd., (2010) 325 ITR 231 (Karn)***, the Karnataka High Court following the provisions of Section 194A(3)(ix) has held that the Tribunal had rightly directed that the interest paid above Rs.50,000/- was to be split and spread over the period from the date interest was directed to be paid till its payment. This judgment relates to the period after insertion of new sub clause (ix) to Section 194A(3). Present appeals are for the period relating to pre-amendment by the Finance Act, 2003 hence this law is not applicable to the present set of appeals.

28. In ***Commissioner of Income-tax and another Vs. Wipro Systems, (2010) 325 ITR 234 (Karn)***, the Karnataka High Court has held that if the assessee had provided money to an officer to purchase the club membership and if the subscription and the amount incurred by the officers for his personal benefit was reimbursed by the assessee such amount sent by the officers of the assessee could not be considered as business promotion and this would fall under section 17(2)(iv). This judgment do not cover any question of law in the present appeals.

29. In ***Registrar University of Agricultural Science Vs. Fakiragowda and others, (2010) 325 ITR 239 (Karn)***, the Karnataka High Court in the matter of payment of compensation for acquisition of land has held that the interest received on belated payment of compensation is a revenue receipt exigible to income-tax and it is income and the claimants are liable to pay the tax as provided under the relevant provisions of the Income-tax Act, 1961. Tax has to be deducted at source on such interest.

30. In ***Lt. Col. K.D. Gupta Vs. Union of India and another, (1990) 181 ITR 530***, hon'ble the Supreme Court directed to pay an amount of Rs.4,00,000/- to the petitioner who was a member of the Armed Forces but Rs.1,20,000/- was withheld from this amount on the plea that the Union of India had the obligation to deduct the tax at source on it. Hon'ble the Apex

Court directed the petitioner to file his income tax return for decision of the question of liability to tax.

31. In ***T.N.K. Govindaraju Chetty Vs. Commissioner of Income Tax, Madras, (1967) 66 ITR 465***, hon'ble the Supreme Court regarding interest on compensation awarded for acquisition of land, has held that if the source of the obligation imposed by the statute to pay interest arises because the claimant is kept out of his money, the interest received is chargeable to tax as income, will apply if interest is payable under the terms of an agreement, express or implied, and the court or the arbitrator gives effect to the terms of the agreement and awards interest which has been agreed to be paid.

32. In ***K.S. Krishna Rao Vs. Commissioner of Income-tax, Andhra Pradesh, (1990) 181 ITR 408***, hon'ble the Supreme Court has held that interest paid on compensation awarded for compulsory acquisition of land under section 28 of the Land Acquisition Act, 1894 is of the nature of income and not capital.

33. Similarly in ***Bikram Singh and others Vs. Land Acquisition Collector and others, (1997) 224 ITR 551***, hon'ble the Apex Court has held that 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 section 2(28A) of the Income-tax 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.

34. In ***Dr. Shamlal Narula Vs. Commissioner of Income-tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, (1964) 53 ITR 151***, hon'ble the Supreme Court has held as under:-

“Under the scheme of the Land Acquisition Act, 1894, land acquired compulsorily vests absolutely in the Government after the Collector has taken possession of the land, whether before or after making his award determining

the compensation. A statutory liability has been imposed upon the Collector to pay interest on the compensation awarded from the time of his taking possession until it is paid or deposited. This amount is not compensation for the land acquired or for depriving the claimant of his right to possession but is paid to the claimant for the use of his money by the State.

The statutory interest paid under section 34 of the Land Acquisition Act, 1894, on the amount of compensation awarded for the period from the date the Collector has taken possession of land compulsorily acquired is interest paid for the delayed payment of the compensation and is therefore a revenue receipt liable to tax under the Income-tax Act.”

35. Most of the rulings cited by learned counsel for the revenue relates to interest paid on the delayed payment of compensation awarded under Land Acquisition Act. The award under Land Acquisition Act and the award under Motor Vehicle Act cannot be equated for the simple reason that in land acquisition cases, the payment is made regarding the price of the land and on such price, the provisions of Capital Gain Tax are attracted, while in the motor accidents claims, the payment is made to the legal representatives of the deceased for loss of life of their bread earner. In most of the cases under motor vehicle accidents claims, the recipients of awards are poor and illiterate persons who even do not come within the ambit of Income Tax Act. The amount of compensation under Motor Vehicle Act, also do not come within the definition of “income”. Therefore, the analogy of compensation under land acquisition cannot be applied to the motor vehicle accidents claims.

36. The word “interest” as defined under Section 2(28A) has to be construed strictly. We may refer to ***Polestar Electronic (Pvt.) Ltd. Vs. Addl. CST (1978) 41 STC 409***, in which hon'ble the Apex Court has held as under:-

“if there is one principle of interpretation more well settled than any other, it is that statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.”

37. The necessary ingredients of such interest are that it should be in respect of any money borrowed or debt incurred. The award under the Motor Vehicle Act is neither the money borrowed by the insurance company nor the debt incurred upon the insurance company. As far as the word “claim” is concerned, it should also be regarding a deposit or other similar right or obligation. The definition of Section 2(28A) of the Income Tax Act again repeats the words “monies borrowed or debt incurred” which clearly shows the intention of the legislature is that if the assessee has received any interest in respect of monies borrowed or debt incurred including a deposit, claim or other similar right or obligation, or any service fee or other charge in respect of monies borrowed or debt incurred has been received then certainly it shall come within the definition of interest.

38. The word “claim” used in the definition may relate to claims under contractual liability but certainly do not cover the claims under the statutory liability. The claim under the Motor Vehicle Act regarding compensation for death or injury is a statutory liability.

39. Insertion of clause (ix) to Section 194A(3) by the Finance Act 2003 with effect from 1.6.2003 also goes to show that prior to 1.6.2003, the legislature had no intention to charge any tax on the interest received as compensation under the Motor Vehicle Act. Even under the amended Act, interest received in excess of Rs.50,000/- has been subjected to tax liability. Certainly such interest exceeding Rs.50,000/- has further to be split amongst all the claimants and has to be spread over for each of the assessment years. Accordingly there appears to be no justification to cast liability to deduct the tax at source on the amount of interest paid on compensation under Motor Vehicle Act prior to 1.6.2003.

40. Further more the definition as provided under Section 194A(1) is also relevant which provides that if any person is responsible for paying to a resident any income by way of interest on securities, shall at the time of credit of such income to the account of the payee deduct income tax thereon at the rates in force.

41. To our opinion, the award of compensation under motor accidents claims cannot be regarded as income. The award is in the form of compensation to the legal heirs for the loss of life of their bread earner. Hence the interest on such award also cannot be termed as income to the legal heirs of the deceased or the victim himself.

42. Learned Commissioner of Income Tax (Appeals)-I, Agra in his order dated 28.3.2003 has discussed most of the cases relating to interest on land acquisition cases which have also been cited by learned counsel for the revenue before us. But as mentioned above, the award under land acquisition can not be equated in any way with the award under motor accidents claims.

43. The award under the Motor Vehicle Act is like a decree of the court. It do not come within the definition of income as mentioned in Section 194A(1) read with Section 2(28A) of the Income Tax Act. Proceedings regarding claim under Motor Vehicle Act are in the nature of a garnishee proceedings under which the MACT has a right to attach the judgment debt payable by the insurance company. Even in the MAC award, there is no direction of any court that before paying the award, the insurance company is required to deduct the tax at source. In view of *All India Reporter Ltd. Vs. Ramchandra D. Datar (supra)*, if no provision has been made in the decree for deduction of tax, before paying that debt, the insurance company cannot deduct the tax at source from the amount payable to the legal heirs of the deceased.

44. In *Commissioner of Income Tax Vs. Chiranji Lal Multani Mal Rai Bahadur (P.) Ltd. (supra)*, *Ghaziabad Development Authority Vs. Dr. N.K. Gupta (supra)*, *Commissioner of Income-tax Vs. H.P. Housing Board (supra)*, *Commissioner of Income-tax Vs. Sahib Chits (Delhi) (Pvt.) Ltd. (supra)*, it has been clearly held that if interest is awarded by the court for loss suffered on account of deprivation of property or paid for breach of contract by means of damages or were not paid in respect of any debt incurred or money borrowed, shall not attract the provisions of Section 2(28A) read with Section 194A(1) of the Income Tax Act.

45. In view of the above discussion, we hold that the interest paid on compensation under motor accident claims awards prior to 1.6.2003 cannot be treated as income from the interest.

46. In the result, both the substantial questions of law are answered against the revenue and in favour of the assessee.

47. All the appeals are dismissed.

Order Date :- 13.9.2012

Kpy