

DINESH KUMAR LAKHANPAL v. TATA HOUSING DEVELOPMENT COMPANY LIMITED

DINESH KUMAR LAKHANPAL

...Appellant

TATA HOUSING DEVELOPMENT COMPANY LIMITED

...Respondent

Case No: EXECUTION APPLICATION NO. 731 OF 2023

Date of Judgement: 01 November 2023

Judges:

DR. INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MR. SHUBHAM S. DAYMA, ADVOCATE

For Respondent: MR. SAIFUR RAHMAN FARIDI, MS. TANYA GUPTA, ADVOCATES

Facts:

This is an Execution Application filed by Dinesh Kumar Lakhanpal (Appellant/Decree Holder) seeking refund of TDS amount of Rs. 5,20,806 deducted by Tata Housing Development Company Limited (Respondent/Judgement Debtor) on the interest awarded to the Appellant in the judgement. The TDS was deducted in two installments – Rs. 5,18,956 on 06.07.2023 and Rs. 1,850 on 07.08.2023 before the date of last order. The decree holder wants the TDS refunded while the Judgement debtor argues that the decree holder can claim it as refund from income tax authorities in his tax returns.

Court's Elaborate Opinions:

The Court agrees with the decree holder's contention that claiming refund of wrongly deducted TDS from income tax authorities is a

cumbersome process causing inconvenience and delays. The Court relies on its previous judgements which have held that interest awarded as compensation for delayed refunds/payments is not income and hence not subject to TDS deduction. Hence, the Court holds that since the JD has wrongly deducted TDS, they should take steps under Income Tax Act/Rules to get refund of this TDS themselves instead of asking the DH to claim it.

Arguments by Parties:

Arguments by Decree Holder:

Claiming refund of wrongly deducted TDS involves longer delays and there is possibility of entire interest being treated as income by IT dept and more scrutiny. There are provisions under which the deductor can themselves get refund of wrongly deducted TDS u/s 200A and related rules of Income Tax Act. Cites judgements of NCDRC where interest awarded as compensation is held to be not income and not subject to TDS.

Arguments by Judgement Debtor:

They concede TDS deduction was not mandatory but was done as per builder's practice. TDS already deducted has been deposited with IT authorities before last order date. Decree Holder can claim refund in his returns and JD will provide assistance. Relies on judgement in Rita Bakshi case where same was held regarding interest awarded.

Sections:

The Execution Application has been filed under Section 27 of the Consumer Protection Act, 1986. The parties have cited/relied upon Section 200A of Income Tax Act regarding refund of wrongly deducted TDS.

Cases Referred/Cited:

Cases cited by Decree Holder:

Sharad Tyagi and Ors. Vs. Merino Shelters Pvt. Ltd. & Ors.

G.D.A. vs. N.K.Gupta

Rita Bakshi Vs. M3M India Limited and Ors.

Parsvnath Developers Ltd. Vs. Anuradha Uppal

Puma Realtors Pvt. Ltd. and Ors. Vs. Abha Arora and Ors.

Case relied upon by Judgement Debtor:

Rita Bakshi Vs. M3M India Limited and Others

Referred Laws:

Income Tax Act, 1961. Income Tax Rules. Consumer Protection Act, 1986 and Rules.

Conclusion/Order by Court:

JD granted 4 months to complete process of claiming refund of TDS from IT authorities failing which they will have to refund it from own sources. If delay beyond 4 months by IT dept, still JD to refund TDS amount within 2 weeks after end of 4 months. Early refund receipt from IT dept to be paid to DH within 2 weeks. TDS refund to carry interest @9% if delay by JD.

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Court

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Full Text of Judgment:

1. Heard counsel for both sides. Counsel for JD fairly concedes that deduction of TDS was not mandatory in accordance with the Income Tax Rules but same has been done in accordance with the prevalent practice of the builder-Company. He further states that TDS of Rs.5,20,806/- has already been deducted before the date of last order and was deposited with the concerned authorities in two instalments i.e. Rs.5,18,956/- and Rs.1850/- on 06.07.2023 and 07.08.2023 i.e. before the date of last order. He states that decree holder may claim refund of the TDS in his return for which JD will render necessary assistance. However, counsel for DH states that claiming refund is cumbersome procedure involving longer time frame and possibility of income Tax department treating the entire interest payment as their income and subjecting their return to a detailed examination cannot be ruled out. He further states that there are provisions in the Income Tax Act / Rules, under which, if any party wrongly deducts the TDS, they can get the same refunded by following the laid down process and cites Section 200 (A) of Income Tax Act and related rules etc. and form 26 (b) etc. He has also relied upon following judgments of this

Commission, in which it is held that if the interest on refund of principal amount is payable by way of compensation, it is not to be treated as income and hence not subject to TDS.

a. Sharad Tyagi and Ors. Vs. Merino Shelters Pvt. Ltd. & Ors.

– EA No. 68 of 2021 in CC No 1378 of 2015 decided on 04.11.2022.

b. G.D.A. vs. N.K.Gupta, RP No. 2244 of 1999, decided on 18.09.2002

c. Rita Bakshi Vs. M3M India Limited and Ors.

– EA No. 122 of 2019 in CC No. 2123 of 2016, decided on 02.03.2022

d. Parsvnath Developers Ltd. Vs. Anuradha Uppal

– EA No. 56 of 2018 in FA No. 765 of 2017 decided on 13.01.2020

e. Puma Realtors Pvt. Ltd. and Ors. Vs. Abha Arora and Ors.

FA No. 531 of 2016 and other connected First Appeals decided on 11.10.2018

2. Counsel for JD on the other hand relied upon the judgment of this Commission in Rita Bakshi Vs. M3M India Limited and Others

– EA No. 122 of 2019 in CC No. 2123 of 2016 decided on 02.03.2022, stating that in this case, although Commission found that TDS was not deductible, this having been deducted asked the DH to claim refund from the Income Tax Department.

3. After hearing both sides, we tend to agree with the contention of DH that claiming wrongly deducted TDS is a cumbersome procedure, putting the complainant / DH to lot of inconvenience and time delays. Hence, the JD having deducted it wrongly, should themselves take necessary steps available under the Income Tax Act / rules to get the refund of wrongly deducted TDS. JD is granted four months time to complete this process and get claim from Income Tax Department. If there is any delay beyond four months in getting their fund from the Income Tax Department by JD due to any reason, whatsoever, including that of delay on the part of the Income Tax Department, notwithstanding the JD submitting the claim with all requisite documents, JD shall refund the amount of Rs.5,20,806/- deducted towards TDS from its own resources within two weeks of end of four months from the date of today's order, failing which it will carry interest @ 9% p.a. till the date of actual payment.

4. It is clarified that if the refund from Income Tax Department is

received early i.e. before the end of four months period, refund to DH shall take place within two weeks of the receipt of refund from Income Tax Department.

5. EA stands disposed off accordingly.