HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 22025/2018

Satya Narayan Son of Shri Kharbuja and Ors.

----Petitioner

Versus

The H.D.F.C. Irgo General Insurance Company Limited & Ors.

----Respondent

For Petitioner(s) : Mr. Sandeep Mathur
Mr. Prabhansh Sharma

For Respondent(s) : Mr. Prakhar Agarwal on behalf of
Mr. Virendra Agarwal
Mr. Nikhil Simlote on behalf of
Mr. R.B. Mathur (Senior Advocate)
through VC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE UMA SHANKER VYAS

Order

18/02/2022

The petitioners are claimants of motor accident compensation. Their claim petition was allowed by the Motor Accident Claims Tribunal awarding compensation with interest. At the time of payment of such compensation the insurance company had deducted tax at source on the interest component. The petitioners contend that the interest is not taxable and insurance company ought not to have deducted tax at source thereon.

Number of decisions have been brought to our notice by the counsel for the petitioners in support of this contention. However we notice that a Division Bench of this Court in case of **Sharda Pareek and Ors. Vs. Astt. Commissioner of I.T. and Ors. reported in (2019)416 ITR 441 (Raj.)** has dealt with this issue in following manner:-

> "9.On plain reading of Section 2(28A), it is very clear that originally compensation was received by the claimant was not income but once the amount received, it has become capital and interest on capital is liable to be taxable. In that view of the matter, the issue is required to be answered in favour of the department and against the assessee.
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> 10. The contention of Mr. Kasliwal is that revenue income of compensation interest is also compensation, in our considered opinion, the contention is misconceived inasmuch as they are entitled benefits only for the compensation, the rest of the amount of interest is deferred amount of compensation, therefore, the interest income is to be calculated from the date of application which was preferred and they are entitled for the interest from the date of application as directed by all courts but subject to income liable to be taxed every year."

We notice divergent views amongst different High Courts on the point. In **writ petition No.2902/2016-Shri Rupesh Rashmikant Shah Vs. Union of India and Ors.** decided on 08.08.2019, a Division Bench of Bombay High Court has dealt with this issue at length and come to the conclusion that interest on the compensation awarded for motor accident claim cases upto the date of award is not exigible to tax. Madras High Court in case of **Cholamandalam General Insurance Co. Ltd Vs. M. Ashok Kumar and Ors. reported in 2020 (4) CTC 53** has referred the issue to Larger Bench.

In the decision of this Court in case of **Sharda Pareek (supra)** the only discussion on the point is what we have reproduced earlier. Several statutory provisions and judgments of various courts were not brought to the notice of the Bench.

In view of this position and also considering the importance of the issue as also the fact that the issue is a recurring one arising in large number of motor accident claim cases, it is desirable that there is an authoritative pronouncement on this question by Larger Bench.

Under the circumstances reference may be made to the Larger Bench on following question:-

> "Whether the interest payable on motor accident claim compensation is exigible to tax and resultantly is the insurance company required to deduct tax at source while making such payment to the claimants?"

(UMA SHANKER VYAS),J (AKIL KURESHI),CJ

Kamlesh Kumar/12