

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

EXECUTION APPLICATION NO. 225 OF 2020

**IN
CC/1395/2016**

1. NEW PARK ELITE WELFARE ASSOCIATIONAppellants(s)
Versus

1. BPTP LTD. & ANR.Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE BHARATKUMAR PANDYA, MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT :

Dated : 21 February 2024

ORDER

For the Complainant/DH : Mr. Chaitanya Anand Singh, Advocate
Mr. Shankar Divate, advocate
Ms. Priya, advocate

For the Opp. Parties/JDs : Mr. Manish Misra, Advocate
Mr. V. Sai Dhanush, advocate
Ms. Vaishali Mangal, A.R.
Mr. Yajur Bhalla, advocate
Ms. Akansha Gulati, advocate
Mr. Pravin Bahadur, advocate
Mr. Drouhn Garg, advocate
Mr. Prabhat Ranjan, advocate
Mr. Ankit Semalti, advocate
Mr. Ashray Bhatia, advocate
Ms. Ishita Singh, advocate

ORDER

PER BHARATKUMAR PANDYA, MEMBER

Background and issues

1. The consumer complaints filed by the allottee of a flat/plot were decreed, directing the developers to refund the amount deposited by the allottee with interest from the date of respective deposit till the date of refund. While refunding the decretal amount, the developer is deducting “TDS” under Section 194A of the Income tax Act, 1961 (IT Act) on the amount of interest, in execution proceeding, which is objected by the allottee. The issue being of larger public interest, one of the Members vide order dated 10.07.2023, requested Hon’ble President to form a larger Bench for decision on following issue:-

“Whether income tax is deductible at sources on the amount of compensation which has been awarded in the form of interest in the case of refund?”

Hon’ble the President formed this Bench to decide above issue.

Contentions

2. The DHs submitted that they had paid sale consideration for the services of building construction to the JDs. Due to deficiency in service by the JDs in not fulfilling its obligation under the contract, the consumer complaint was allowed directing the JDs to refund the amount deposited by them with interest from the date of respective deposit till the date of refund. The interest has been awarded by way of compensation for realizing and retaining the money and thereby causing damages to the DHs. The compensation is by way of remedy the actual loss, expected loss and physical, mental and emotional suffering. Section 194A of the IT Act, requires deduction of TDS on the “interest”. Section 2(28A) defines the “interest” which is payable on any money borrowed and Section 2(28B) defines “interest” on security and debenture. The JDs did not borrow any money from the DHs as such the “interest” which has been directed to be paid does not fall within the meaning of “interest” as defined above. The compensation is not the interest as such the JD is under no obligation to deduct TDS.

3. According to the JDs, the decree directs for payment of “interest” as such the JDs are under statutory obligation to deduct TDS under Section 194A of the IT Act, violation of which results in penal consequences under Section 201. If such “interest” is not taxable, the DHs can claim for refund from Income Tax Department. The JDs relied upon judgments of Supreme Court in *Prateek Infra Projects Vs. Nidhi Mittal & Anr.*, 2020 SCC Online SC 1448 and *M/s. Nexgen Infracon Pvt. Ltd. Vs. Manish Kumar Sinha*, 2021 SCC Online SC 3368, setting aside direction of this Commission to the developer not to deduct TDS.

4. Upon notice, the Central Board of Direct Taxes (CBDT) filed an affidavit dated 20/01/2020 in EA/10/2018 and submitted that Section 190 of IT Act mandates for deduction or collection of income tax at source (TDS) and its payment in advance. Chapter XVII-B (Section 192 to 196D) specifies the sources, which are under statutory obligation for TDS and its payment. Section 194A obligates every person (except an individual or a Hindu undivided family), who is responsible for paying to a resident any income by way of interest, to deduct income tax as payable thereon. The “income” is defined under Section 2(24). Chapter-III (Section 10 to Section 13A) gives a list of the receipts which do not form part of total income. “Interest” does not fall under Chapter-III. Section 56 read with Section 145B of the IT Act mandates that income of every kind, which is not to be excluded from total income, shall be chargeable to income-tax. Section 2(28A) defines “interest” as interest payable in respect of any “money borrowed” or “debt incurred” or “such other deposit or claims”. Interest in form of compensation is analogous to the interest on the compensation amount awarded by Motor Accident Claim Tribunal as mentioned under Section 194A(3)(x) of IT Act. An allottee of the unit of a housing project, who have paid unit cost is a “financial creditor” under the Insolvency and Bankruptcy Code, 2016, as held by Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. & Anr. Vs. Union of India & Ors.* (2019) 8 SCC 416, therefore, payment of “interest” under the order of the Commission by the developer to the allottee is “interest on money borrowed” within the meaning of Section 2(28A) which is taxable under Section 56 as explained in Section 145B and TDS under Section 194A has to be made by the payer at the pains of statutory consequences under the IT Act. In substance, the CBDT submits that (i) as under Section 5(8)(f) of Insolvency and Bankruptcy Code, 2016, the amount paid by the allottee of the flat/plot under a real estate project is “financial debt” as such interest paid on it is “interest” within the meaning of Section

2(28A) and is chargeable to income-tax under Section 56 of the IT Act, therefore, Section 194A is attracted. (ii) As the interest on compensation amount awarded by Motor Accident Claim Tribunal is mentioned under Section 194A(3)(x) of IT Act, as such, interest in form of compensation being analogous is also included in it.

5. In order to appreciate the controversy, relevant provisions are quoted below:-

Income Tax Act, 1961

Section 2(28A) : “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;

Section 2(28B) : “interest on securities” means-

- i. interest on any security of the Central Government or a State Government;
- ii. interest on debentures or any other security securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

Section 56 : Income from other sources.—

(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head “Income from other sources”, if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head “Income from other sources”, namely:—

(i) dividends;

[*(ia) income referred to in sub-clause (viii) of clause (24) of section 2;*]

[*(ib) income referred to in sub-clause (ix) of clause (24) of section 2;*] 4

.....

(viii) ***income by way of interest received on compensation or on enhanced compensation referred to in [sub-section (1) of section 145B];***

Section 145B : Taxability of certain income.—(1) Notwithstanding anything to the contrary contained in section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received. (2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved. (3) The income referred to in sub-clause (xviii) of clause (24) of section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

Interest other than "Interest on securities"

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 :

.....

(3) The provisions of sub-section (1) shall not apply—

[(i)

.....

.....

- [(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;
to such income **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 paid during the financial year does not exceed fifty thousand rupees;]
- [(ixa)

.....

[(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.]

[(5) The Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, from such payment to such person or class of persons, as may be specified in the said notification.]

Insolvency and Bankruptcy Code, 2016

Section 5(8).- “financial debts” means a debt along with interest, if any, which is disbursed against the consideration for the time value of the money and includes:-

(a).....

(f) any amount raised under any transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation.- For the purposes of this sub-clause-

- i. any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing and
- ii. the expressions “allottee” and “real estate project” shall have the meanings respectively assigned to them in clause (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

6. We have considered the arguments of the counsel for the parties and examined the relevant provisions. Aim and object of Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate person, partnership firm and individual in a time-bound manner for maximisation of value of assets of such person, to promote entrepreneurship, availability of credit and balance of interest of all stakeholders including alteration in the order of priority of payment of Government dues and to establish a Board of Insolvency and Bankruptcy of India and for matters connected therewith or incidental thereto. Section 5 is placed under Chapter II- Insolvency Resolution and Liquidation For Corporate Person. The definition of “financial debt” has limited application for the purposes of insolvency resolution and liquidation of the debtor. This

definition cannot be pressed into service for the purposes of “interest”, as under IT Act defines “interest” in different manner. Payment of consideration by an allottee for availing the services of building construction of flat/plot in a project of real estate cannot be termed as “money borrowed or debt incurred” under Section 2(28A) of IT Act. The developer has not borrowed money from the allottee of the flat/plot rather realized consideration.

7. Under Section 2(24)(xvii) of the IT Act, the interest received on the compensation amount is “income” and not the compensation itself. Section 56(2)(viii), Section 145B and Section 194A(3)(ix) & (ixa) refer to an income received by way of interest on the compensation amount, as held by Bombay High Court in *Rupesh Rashmikan Shah Vs. Union of India* 2019 SCC OnLine Bom 1518, Gujarat High Court in *Oriental Insurance Company Limited Vs. CCIT (TDS)*, (2022) 138 taxmann.com 88 (Guj) and Orissa High Court in *Smt. Kuni Sahoo Vs. Union of India* (2023) 457 ITR 777 (Orissa).

8. After analysing a series of available and cited decisions on the issue, and after hearing Income-tax Department at length, the Gujarat High Court answered the question in negative while making following critical observations in *Oriental Insurance Co Ltd v. CCIT(TDS)* (2022) 138 taxmann.com 88 (Guj):

■ *Section 171 of the Motor Vehicles Act, 1988 empowers the Tribunal to award interest on the claim made under the Motor Vehicles Act from the date of making the claim. Sections 28 and 34 of the Land Acquisition Act, 1894 relate to the interest on compensation for the land compulsorily acquired and the compensation received for. [Para 45]*

■ *It is very essential to bear the fine distinction between the interest awarded under the two enactments viz. the Motor Vehicles Act, 1988 and the Land Acquisition Act, 1894. There are few amendments brought under the Income-tax Act keeping a specific law (Land Acquisition Act, 1894) in mind. Various High Courts have taken the view that the treatment of all the three sections 28, 34 of the Land Acquisition Act and section 171 of the Motor Vehicles Act interest is not the same so far as taxability under the Income-tax Act is concerned. [Para 46]*

■ *The amendment in section 145A(b) only creates a deeming fiction as to the year of taxability of the interest on compensation. It does not create a deeming fiction as to the taxability of the interest on compensation. Even after the insertion of section 145A(b), the interest on compensation under the Motor Vehicles Act which is exempt does not become taxable by operation of section 145A(b). [Para 47]*

■ *The compensation received under the compulsory acquisition of land is in any case taxable under section 45 as the Capital Gains and therefore, the issue under the Land Acquisition with regard to interest under sections 28 and 34 i.e. limited to the extent that the same would be taxable under section 56(2)(viii) (section 34 interest) or section 45 the Capital Gains (section 28 interest that is part of the compensation) and therefore, only the year of its taxability is decided by section 145A(b) and not the taxability of interest on the compulsory acquisition of land. Whereas under the Motor Vehicles Act, the compensation itself is exempt. The nature of interest, therefore, would assume significance and cannot be given the same treatment as interest on compensation under the Land Acquisition Act and be taxed by operation of section 145A(b). [Para 48]*

■ *It is crucial to note that in *Rama Bai v. CIT* [1991] 54 Taxman 496/[1990] 181 ITR 400 (SC), the Supreme Court drew no distinction between the interest under section 28 and interest under section 34 of the Land Acquisition Act, 1894. Later in *CIT v. Ghanshyam (HUF)* [2009] 182 Taxman 368/315 ITR 1 (SC), the Supreme Court drew this distinction and held that the interest under section 28 of the Land Acquisition Act, 1894 would form part of the compensation itself and is taxable under the capital gain only. The amendment of section 145A(b), sections 56(2)(viii) and 194A respectively would therefore not apply to the interest under section 28 of the Land Acquisition Act, 1894, but would apply only to section 34 interest as is held in the case of *Movaliya Bhikhubhai Balabhai v. ITO-TDS* [2016] 70 taxmann.com 45/388 ITR 343 (Guj.). Therefore, the implication of section 145A(b) is not absolute even with respect to the interest awarded under section 28 of the Land Acquisition Act and cannot apply to the interest awarded by the MACT as well. [Para 49]*

■ *The term "income" is inclusively defined in section 2(24). Such definition does not include the "interest" referred to in the section 56(2)(viii) or interest received in the MACT award. [Para 50]*

■ *The words of section 194A(3) are crucial i.e. "income by way of interest" and not simply "interest". Therefore, even when interest is paid, if the same is received not in the name of "income", then section 194A(3) would not operate. [Para 51]*

■ *Therefore, the interest on compensation not being taxable at all there is no question of deducting tax on the same under section 194A. [Para 52]*

■ *In Hansaguri Prafulchandra Ladhani (supra), the Court had no occasion to examine the taxability of the interest which proceeded on the basis that it is taxable. Therefore, now if it is held to be exempt, the guidelines prescribed in Hansaguri Prafulchandra Ladhani (supra) are no longer applicable. The Insurance Company must deposit the full award before the Tribunal without deducting tax and the same is to be disbursed to the claimants. [Para 53]*

■ ***Compensation under the award of the MACT is not income. The expression "income" used in the Entry 82 of List I of Seventh Schedule to the Constitution can be given widest meaning. Under section 2(24), the definition is inclusive and not exhaustive. In the absence of any express provision to the contrary, income can be held to refer to something earned. What is received as compensation for loss in one or the other form may not be income. [Para 56]***

■ ***The upshot of the aforesaid discussion is that the 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. The award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been as the loss of life or injury would not have been suffered. [Para 73]***

■ *Final conclusion may be summarized as under :*

[a] The interest awarded by the Motor Accident Claim Tribunal under section 171 of the Motor Vehicles Act, 1988 is not taxable under the Income-tax Act, 1961.

[b] The interest awarded in the motor accident claim cases from the date of the Claim Petition till the passing of the award, or in the case of Appeal, till the judgment of the High Court in such appeal, would not be exigible to tax, not being an income. This position would not change on account of clause (b) of section 145A as it stood at the relevant time amended by Finance Act, 2009, which provision now finds place in sub-section (1) of section 145B. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of section 56 make the interest chargeable to tax, whether such interest is income of the recipient or not. Section 194A is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the said section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee.

[c] The Insurance Companies or the owners of the motor vehicles depositing the requisite amount in due compliance with the awards of the Motor Accident Claims Tribunals shall deposit the full amount with the Tribunal and shall not deduct tax under section 194A on the interest awarded by the Motor Accident Claims Tribunal. [Para 74]

■ *It is clarified that the aforesaid observations and conclusions would apply to interest granted on compensation or enhanced compensation awarded by the Motor Accident Claims Tribunal or the High Court from the date of the Claim Petition till the passing of the award or the judgment. [Para 75]*

■ *Further, the interest that may be paid for the delay in depositing the awarded amount, would not form part of the compensation and, therefore, would fall in the bracket of interest income and would be exigible to tax under the normal provisions. [Para 76]*

9. Bombay High Court was similarly required in *Sainath Rajkumar Sarode (2021) 131 taxmann.com 332 (Bom)* to consider the question whether TDS u/s 194A of the Income Tax Act is required to be made by the builder-developer while making payment of compensatory interest directed by RERA. Answering the same in negative, the Court made following critical observations:

Provision of interest by way of compensation falls outside the purview of section 194A and section 2(28A). [Para 20]

■ *In present case, that the amounts payable being in effect a refund of the amounts paid by the assessee to the builder, along with compensatory interest thereon, is in nature of a judgment debt or akin to a judgment debt, payment of which cannot establish debtor-creditor relationship nor is the payment made by the builder to the petitioners one is discharge of any pre-existing obligation, so as to attract section 2(28A). [Para 26]*

■ *In view of the above, builder was not obligated to deduct TDS and, thus, builder was directed to pay to the assessee the amount so deducted from the instalment. [Para 27]*

10. Similarly, ITAT Ahmedabad Bench in *Urvi Chirag Sheth v. ITO* [2016] 70 taxmann.com 33, [which is quoted with approval in *Oriental Insurance (supra)*], held in an appeal filed by the assessee, that the amount of interest awarded u/s 171 of the MV Act is not income u/s 2(24) of the Income Tax Act while observing as under:

5.....The payment made to the assessee, therefore, is in the nature of compensation for the loss of her mobility and physical damages. Clearly, such a receipt, in principle, is a capital receipt and beyond the ambit of taxability of income since only such capital receipts can be brought to tax as are specifically taxable under section 45. Hon'ble Supreme Court has, in the case of Padmaraje R. Kadambande v. CIT [(1992) 195 ITR 877 (SC)], observed that, ". . . we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, therefore, are not income within meaning of s. 2(24) of the Income-tax Act." [Emphasis supplied]. This clearly implies, as is the settled law, that a capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within ambit of 'income' by way of specific provisions of the Income-tax Act. The accident compensation is thus not taxable as income of the assessee. What is termed as interest also is of the same character and it seeks to compensate the time value of money on account of delay in payment. On the first principles, such an interest cannot have a standalone character of income, unless the interest itself is a kind of statutory interest at the prescribed rate of interest. Right now, however, we are dealing with a situation in which the interest is awarded by Hon'ble Supreme Court in its complete and somewhat unfettered discretion. An interest of this nature is essentially a compensation in the sense it accounts for a fall in value of money itself at the point of time when compensation became payable vis-a-vis the point of time when it was actually paid, or, for the shrinkage of, what can be termed as, a measuring rod of value of compensation....."

11. Calcutta High Court in an appeal filed by the Income-tax Department in the case of *PCIT v. West Bengal Housing Infrastructure Development Corpn.* [2018] 96 taxmann.com 610 (Calcutta), analyzed the issue of payment of interest as compensation by a builder (not under a decree but even under the agreement) and consequent obligation of deduction of tax at source thereon u/s 194A. The Income-tax Appellate Tribunal had reversed the finding of the Assessing Officer that it was obligatory for the builder to deduct TDS u/s 194A from such payment of "interest". Calcutta High Court in an appeal filed by the Income-tax Department, held in paragraph 16, that

"from the definition of interest as occurring in section 2(28A) of the IT Act, it appears that the term "interest" has been made entirely relatable to money borrowed or debt incurred and various gradations of rights and obligations arising from either of the two"

It further held in paragraph 18 that,

"We accordingly are of the view that the payment made by the assessee to the allottee was in terms of the agreement entered between them where the liability of the assessee would arise only if it failed to make the plots available within the stipulated time. Hence, the payment made under the relevant clause was purely contractual and as rightly held by the Tribunal, in the nature of compensation or damages for the loss caused to the allottee in the interregnum for being unable to utilise or possess the flat. The favour of compensation becomes evident from the words used in the particular clause. The expression 'interest' used in clause 7 (reproduced above) may be seen merely as a quantification of the liability of the assessee in terms of the percentage of interest payable by the State Bank of India. Since there is neither any borrowing of money nor incurring of debt on the part of the assessee, in the present factual scenario, interest as defined under section 2 (28A) of the Act can have no application to such payments. Consequently, there was no obligation on the part of the assessee to deduct tax at source and consequently no disallowance could have been made under section 40 (a)(ia) of the Act.

In view of the above, we confirm the decision of the Tribunal dated 2nd December 2015. I.T.A. No. 84 of 2018 is accordingly dismissed."

12. Special Leave Petition against the order of the Hon'ble Calcutta High Court was dismissed by the Hon'ble Supreme Court in *West Bengal Housing Infrastructure Development Corpn (2019) 105 taxmann.com 64 (SC)*. Similar view has also been taken by the Income Tax Appellate Tribunal in the following further recent cases:

(a) *Sawhney Builders Pvt. Ltd v. ACIT (TDS)* [2023] 151 taxmann.com 97

(Del Trib)

(b) Muthian Shivathanu v. ITO [2023] 148 taxmann.com 369 (Chennai - Trib.)

13. Inclusive definition of “income” as provided under section 2(24) of the IT Act also does not appear to include the compensation. Even statutory “interest payable on compensation” granted by Motor Accidents Claims Tribunals under Section 171 of the Motor Vehicles Act, 1988 have been held, both in proceedings under the IT Act and in writ petitions, to be neither income nor “interest” for the purposes of section 194A of the Income Tax Act. In a writ petition filed by Oriental Insurance Company, the Gujarat High Court had to decide the question whether TDS under Section 194A is required to be made when the interest granted by the Motor Accidents Claims Tribunal under section 171 of the Motor Vehicles Act is paid by the vehicle owner or insurer. Similarly interest payable under Section 28 of the Land Acquisition Act, 1894 were held as not income.

14. This Commission also in Appeal Execution No. 83 of 2018 - Estate Officer, Greater Mohali Area Development Authority (GMADA) & 2 Ors. Vs. Gaurav Mutreja has dealt with categorical issued which is involved in the present reference. The Commission was concerned with an appeal involving challenge to the order of the Punjab State Consumer Disputes Redressal Commission in E.A. No. 102 of 2017 wherein State Commission had directed the Judgment Debtor to refund the amount deducted by them towards service tax and TDS to the complainants. This Commission after placing reliance, *inter alia*, on *Himachal Pradesh High Court decision in Commissioner of Income Tax, Shimla Vs. M/s H.P. Housing (Order dated 28.11.2011)* and ITAT decision in *West Bengal Housing Infrastructure Vs. Department of Income Tax (order dated 02.12.2015)*, and after observing that interest payments in such cases does not come under the purview of Section 2(28A) of the Income Tax Act, found no error in the directions of the State Commission in holding that the TDS deducted from the award interest amount is illegal and therefore liable to be refunded to the Decree Holder. The Commission also relied on earlier order of the Commission in *Puma Realtors Pvt. Ltd. & Ors. Vs. Abha Arora & ors., IV (2018) CPJ 441 (NC)* wherein the Commission had observed as under:

“We may mention here that even though the Complainants have been granted simple interest of 12% p.a. but as the same has been awarded by way of damages the appellant who has been directed to pay the said amount shall not deduct tax (T.D.S.) under the Income Tax Act, 1961 as it is not payment of any interest but only a formula for computation of damages.”

15. Supreme Court in *LDA Vs. M.K. Gupta (1994) 1 SCC 243* and *GDA Vs. Balbir Singh (2004) 5 SCC 65* held that Section 14 of the Consumer Protection Act, 1986 (Section 38 of the Consumer Protection Act, 2019 (CP Act), enables consumer forum to award compensation which constitutes actual loss, expected loss as well as loss on account of physical and mental agony, upon establishing the such loss or damage. In **Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor (2022) SCC Online SC 416**, Supreme Court held that award of interest @9% per annum in case of refund is just compensation, which amounts to restitutory and compensatory both. The word “interest” used in the order of the Commission is for measuring the damages and the same is not “interest” as defined in section 2(28A) of IT Act as the same is neither on any “debt incurred” by the JD nor it is on any “deposit” made by the DH.

Conclusion

16. We are conscious of the fact that the deductee can approach Income-tax Authorities for certificate of lower or no TDS, and also that if the TDS gets wrongly deducted, claim refund by filing return of income. But it is unnecessary harassment of a consumer, which has already been harassed by the developer. If income-tax is not chargeable on compensation, then the developer cannot be permitted to deduct TDS. Therefore, deduction of income-tax at source under Section 194A while paying the compensation by the builder has no basis, authority or requirement in law. Therefore, we answer the question in the negative. List above cases before regular bench as per roster.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA

MEMBER

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DR. SADHNA SHANKER
MEMBER