Unique Interprises Vs. Delhi Development Authority

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SooperKanoon Citation : sooperkanoon.com/713975

Court : Delhi

Decided On : Jan-20-2006

Reported in : 2006(1)ARBLR281(Delhi); 127(2006)DLT401; 2006(87)DRJ220

Judge : Badar Durrez Ahmed, J.

Acts : Income Tax Act, 1961 - Sections 194C; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : CS (OS) 1227A/1992 and is No. 5903/2005

Appellant : Unique Interprises

Respondent : Delhi Development Authority

Advocate for Def. : Monica Sharma, Adv.

Advocate for Pet/Ap. : R. Rajjappan, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This application has been moved under Section 151 of the CPC for withdrawal of the amount deposited in this Court pursuant to an award which has been made a rule of the Court by virtue of the order dated 27.01.2003. It is admitted by the parties that as on 19.1.2006 the amount of the decree along with interest at 10%

w.e.f 20.8.1983 to 19.01.2006 comes to Rs.2,73,185.40 which can be rounded of to Rs.2,73,185/-. The learned counsel for the judgment debtor states that an amount of Rs.2,87,791/- was deposited in this Court by the judgment debtor. That amount has been placed in a fixed deposit and interest has accrued thereon.

2. The learned counsel for the judgment debtor has raised two issues. The first issue being that any amount that is payable under the award and decree would be liable to deduction of tax at source under Section 194C of the Income Tax Act, 1961 because it would be a payment to the contractor. It is pointed out by the learned counsel for the judgment debtor that although the amount was payable under the award and decree, it is, in point of fact, a payment for the work done by the contractor and, thereforee, would be covered under the provisions of Section 194C of the Income Tax Act, 1961. thereforee, tax would have to be deducted at source and the decree holder can only get such payment after the deduction of the tax as calculated in terms of Section 194C of the Income Tax Act, 1961. The learned counsel for the decree holder, however, submitted that this is not a payment under the contract but a payment pursuant to a decree which, in turn, has been made pursuant to an award. According to him, thereforee, it would not fall within the parameters of Section 194C of the Income Tax Act, 1961. He placed before me a copy of a circular which forms part of the CPWD Manual Volume II at pages 568 and 569 thereof which reads as under:-

Arbitration Awards.

3. Section 194C of the Income-tax Act, 1961 contemplates deduction from payments to be made to resident contractors in pursuance of a contract between the contractor and and the Central Government. The underlined portion is important inasmuch as the section covers amount payable pursuant to a contract. Where a dispute has arisen between the contractor and the Government and that dispute has gone before the arbitration and the arbitrator makes an award wherein, the payment which the arbitrator directs the Government to pay the contractor by the award is not a payment made pursuant to a contract, but one made pursuant to an award. Secondly, when the award directs that a certain amount shall be payable by the Government to the contractor and that award

merges in a decree when the award is made a rule of the court, the Government have no alternative but to pay the whole amount. They will not be within their rights in making any deduction unless the statutory provision expressly authorises the Government to do so even in such cases.

(M/W&H; (Works Divn) No.21011(27)72-W4 dated 25.1.73 to CE(EZ)CPWD).

4. The learned counsel for the judgment debtor submitted that the judgment debtor (DDA) follows the CPWD Manual and, thereforee, the same principles would apply to the judgment debtor also. This being the case, it is clear that no deduction can be made in respect of payments made pursuant to an award / decree under Section 194C of the said Act.

5. The second point raised by the learned counsel for the judgment debtor was that after the decretal amount of Rs.2,73,185/- is released to the decree holder plus Rs.10,000/- by way of costs which were awarded, there would still remain a balance with the Registry inasmuch as the amount deposited was Rs.2,87,791/- and interest on that amount has also accrued till date. She submitted that the balance amount be released to the judgment debtor. There is no difficulty in allowing this contention of the judgment debtor because the decree holder is only entitled to the amount of decree.

6. Thus, the sum of Rs.2,73,185/- plus Rs.10,000/- by way of costs be released to the decree holder. The balance amount deposited with this Court is directed to be released to the judgment debtor. These directions be carried out within a week. It is made clear that by virtue of this order the judgment debtor is absolved of its liability (if any) of deducting tax at source under Section 194C of the Income Tax Act, 1961 in respect of the decretal amount.

7. This application stands disposed of.