PETITIONER:
ALL INDIA REPORTER LTD., NAGPUR

Vs.

RESPONDENT:
RAMACHANDRA DHONDO DATAR

DATE OF JUDGMENT:
29/11/1960

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
KAPUR, J.L.
HIDAYATULLAH, M.

CITATION:
1961 AIR 943 1961 SCR (2) 773

ACT:
Income-Tax--Decree for compensation for wrongful termination of service--Arrears of salary, interest and costs, if amount to salary--Power of employer to deduct income-tax from salary--Indian Income Tax Act, 1922 (11 of 1922), SS. 18(2), 46(5).

HEADNOTE:
In a civil suit the respondent obtained a decree against his employer the appellant company for a sum which included compensation for wrongful termination of his service, arrears of salary, interest and costs of the suit, and then applied for execution of the decree. The Income-tax Officer served a notice upon the respondent under s. 46 of the Indian Income-tax Act and applied to the District Judge that the appellant be permitted to deduct at source the income-tax, surcharge and super tax on the sum awarded to the respondent and pay the same in the Government Treasury. The appellant-company also moved the executing court for a declaration that they were entitled and bound to deduct the tax due on the amount. The District judge directed the appellant company to pay the income-tax and super-tax to the Income Tax Department and pay the balance in Court together with a receipt for the income tax paid. In appeal the High Court reversed the order of the District judge and directed the execution of the decree as claimed by the respondent. On appeal by the appellant company,
Held, that as no tax was assessed against the respondent the Income Tax Officer could not issue a notice under s. 46(5) requiring the appellant company to deduct tax from the decretal amount.
A substantial part of the decretal amount did not represent salary" of the respondent: it consisted of compensation for wrongful termination of the respondent's service, salary in lieu of six months' notice, interest and costs of the suit. It was a judgment-debt-and no provision for payment of income tax was made in the decree which was liable to be executed as prayed by the respondent. The appellant company was not therefore entitled or bound to deduct income tax under s. 18 sub-s. (2) of the Act.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 327 of 1959.
Appeal from the order dated June 28, 1956, of the Bombay High Court at Nagpur in Misc. First Appeal No. 15 of 1954.
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A. V. Viswanatha Sastri, Shankar Anand and A. G. Batnaparkhi, for the appellant.
K. N. Rajagopal Sastri, as amicus curiae.
1960. November 29. The Judgment of the Court was delivered by
SHAH, J.-Ramachandra Dhondo Datar-hereinafter referred to as the respondent-was employed by the appellant company in its publications branch. By agreement dated March 23, 1943, the appellant company agreed to pay to the respondent as from April 1, 1943, remuneration per annum equal to 3 1/2% of the gross sales or Rs. 12,000 whichever was greater. The agreement was to remain in operation for -ten years from April 1, 1943, in the first instance and was renewable at the option of the respondent for such period as he desired. By notice dated April 19, 1948, served on the respondent on April 22, 1948, the appellant company terminated the employment of the respondent. The respondent then filed a civil suit in the court of the Fifth Additional District Judge, Nagpur, for a decree for Rs. 1,30,000 being the amount of compensation for wrongful termination of employment, arrears of salary and interest. On July 17, 1953, the court after giving credit for the amount received by the respondent passed a decree for Rs. 42,359 (which was inclusive of Rs. 36,000 as compensation for termination of employment and Rs. 6,000 as salary in lieu of six months notice and interest) and costs and interest on judgment. The respondent then applied for execution of the decree and claimed Rs. 54,893-12-0 less Rs. 18,501-10-0 decreed against him in a cross suit filed by the appellant company. The Income Tax Officer, Nagpur, served a notice under s. 46 of the Indian Income Tax Act upon the respondent and also gave intimation to the District Judge, Nagpur, that the appellant company be permitted to deduct at source and to pay into the Government Treasury Rs. 15,95613-0 as income-tax, surcharge and super-tax due on the sum of Rs. 50,972-2-0 awarded to the respondent. The appellant company also applied that the
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executing Court do declare that the appellant company was entitled and in law bound to deduct the tax due on the amount. The learned Judge directed the appellant company to pay to the Income Tax Department Rs. 15,956-13-0 on account of income-tax and super-tax on the amount due to the respondent and directed it to pay the balance in court after filing a receipt for payment of tax from the Income Tax department. In appeal to the High Court of Judicature at Nagpur, the order passed by the District Judge was reversed and execution as claimed by the respondent was directed.
The appellant company contends that under s. 18(2) of the Income Tax Act, it was bound to deduct the tax computed at the appropriate rate on the salary payable to the respondent as the amount due under the decree represented salary. Section 18 sub-s. (2) of the Income Tax Act in so far as it is material provides that any person paying any amount chargeable under the head "salaries" shall at the time of payment deduct income-tax and super-tax at the rate representing the average of the rates applicable to the estimated total income of the assessee under the head

"salary". Sub-s. (7) declares that a person failing to deduct the taxes required by the section shall be deemed to be an assessee in default in respect of such tax. The Legislature has, it is manifest, imposed upon the employer the duty to deduct tax at the appropriate rate on salary payable to the employee and if-he fails to do so, the tax not deducted may be recovered from him. But the liability to deduct arises in law, if the amount is due and payable as salary. In this case, there has been no assessment of tax due by the Income Tax Officer on the amount payable to the respondent. Under s. 46(5), any person paying salary to an assessee may be required by the Income Tax Officer to deduct arrears of tax due from the latter and the employer is bound to comply with such a requisition and to pay the amount deducted to the credit of the Government. But this order can only be passed if income-tax has been assessed and has remained unpaid. It is undisputed that at the, material
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time, no tax was assessed against the respondent; -the Income Tax Officer had accordingly no authority to issue a notice under s. 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 by the Income Tax Officer must therefore be ignored. Undoubtedly, the employer is by s. 18 of the Act liable to deduct from the salary payable by him to his employee the amount of tax at the average rate applicable to the estimated total income; but can it be said that as between the appellant company and the respondent the decretal amount represented salary? The respondent had filed a suit for a decree for arrears of salary, compensation for wrongful termination of employment and interest. The court having passed a decree on that claim, it became a judgment-debt. It may have been open to the appellant company in the suit to apply to the court for making a provision in the decree for payment of income-tax due by the respondent, but no such provision was made.
We are not concerned to decide in this appeal whether in the hands of the respondent the amount due to him under the decree, when paid, will be liable to tax; that question does not fall to be determined in this appeal. The question to be determined is whether as between the appellant company and the respondent the amount decreed is due as salary payment of which attracts the statutory liability imposed by s. 18. The claim decreed by the civil court was for compensation, for wrongful termination of employment, arrears of salary, salary due for the period of notice and interest and costs, less withdrawals on salary account. The amount for which execution was sought to be levied was the amount decreed against which was set off the claim under the cross-decree. A substantial -part of the claim decreed represented compensation fir wrongful termination of employment and it would be difficult to predicate of the claim sought to be enforced what part thereof if any represented salary due. Granting that compensation payable to an
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employee by an employer for wrongful termination of employment be regarded as in the nature of salary, when the claim is merged in the decree of the court,' the claim assumes the character of a judgment-debt and to judgment-debts s. 18 has not been made applicable. The decree passed by the civil court must be executed subject to the deductions and adjustments permissible under the Code of

Civil Procedure. The judgment-debtor may, if he has a cross-decree for money, claim to set off the amount due thereunder. If there be any adjustment of the decree, the decree may be executed for the amount due as a result of the adjustment. A third person who has obtained a decree against the judgment-creditor may apply for attachment of the decree and such decree may be executed subject to the claim of the third person: but the judgment-debtor cannot claim to satisfy, in the absence of a direction in the decree to that effect the claim of a third person against the judgment-creditor, and pay only the balance. The rule that the decree must be executed according to its tenor may be modified by a statutory provision. But there is nothing in the Income Tax Act which supports the plea that in respect of the amount payable under a judgment-debt of the nature sought to be enforced, the debtor is entitled to deduct income-tax which may become due and payable by the judgment-creditor on the plea that the cause of action on which the decree was passed was the contract of employment and a part of the claim decreed represented amount due to the employee as salary or damages in lieu of salary.

Counsel for the appellant company strongly relied upon the decision of the House of Lords in Westminster Bank Ltd. v. Riches (1). That was a case in which in an action brought by one R against the Westminster Bank trustee of the estate of one X-R was awarded a decree for pound 36,255 principal and pound 10,028 as interest. The Bank thereafter brought an action for a declaration that it had satisfied the judg-ment in the action by R by paying him the amount

(1) 18 Tax Cases 159.

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due less pound 5,014, the latter sum representing income-tax on the interest awarded by the judgment. It was held by the House of Lords that pound 10,028 was "interest of money" within Schedule D and General Rule 21 of the Income Tax Act, 1918, and that income-tax was deductible therefrom. In that case, the only argument advanced on behalf of the Bank is set out in the speech of Viscount Simon, L. C. at p. 187:

"The appellant contends that the additional sum of pound 10,028 though awarded under a power to add interest to the amount of the debt, and though called interest in the judgment, is not really interest such as attracts Income Tax, but is damages. The short answer to this is that there is no essential incompatibility between the two conceptions. The real question, for the purposes of deciding whether the Income Tax Acts apply, is whether the added sum is capital or income, not whether the sum is damages or interest."

The House of Lords in that case by a majority held that pound 10,028 awarded under the judgment represented not capital but interest and was liable to tax. In our view,' this case has no application to the facts of the present case. In the case before us, there is a decree passed in favour of the respondent: under the scheme of the Civil Procedure Code, that decree has to be executed as it stands, subject to such deductions or adjustments as are permissible under the Code. There was no tax liability which the respondent was assessed to pay in respect of this amount till the date on which the -appellant company sought to satisfy the alleged tax liability of the respondent. As between the appellant company and the respondent, the amount did not represent salary; it represented a judgment-debt and for payment of income-tax thereon, no provision was made in the decree. The Civil Procedure Code bars an action of the nature which was filed in Westminster Bank's case (supra). The defence to the execution if any must be raised in the

execution proceeding and not by a separate action. The amount payable by the appellant company to the respondent was not salary but a judgment-debt, and before paying that debt the appellant company could not claim
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to deduct at source tax payable by the respondent. Nor could the appellant company seek to justify its plea on the ground that the judgment-creditor was indebted to a third person.

The principle of the case in Manickam Chettiar v. Income Tax Officer, Madura (1), on which reliance was also sought to be placed by the appellant company has no application to this case. In Manickam Chettiar's case (1), in execution of a money decree certain properties belonging to a judgment-debtor were attached and sold and the sale proceeds were received by the court. The Income Tax Officer who had assessed the decree-holder to tax payable by him on his other income applied to the court for an order directing payment to him out of the sale proceeds the amount of income-tax due by the decree-holder. It was held that the claim for income-tax was entitled to priority in payment and the court had inherent power to make an order on the application for payment of money due as income-tax. Tax had admittedly been assessed, and proceedings substantially for recovery of the tax so assessed were adopted by the Income Tax Officer. It was held in the circumstances that the court had jurisdiction to direct recovery of tax out of the amount standing to the credit of the decree-holder. The principle of that case can have no application to the facts of the present case.

The respondent had not appeared before us, but we have been assisted by Mr. Rajagopala Sastri and we are indebted to him for placing the evidence and the various aspects of the case on a true appreciation of which the question in issue fell to be determined.

The appeal fails and is dismissed. As there was no appearance for the respondent, there will be no order for costs.

Appeal dismissed.

(1) VI I.T. R. 180.
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