

MAHAVEER KUMAR JAIN

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v.

COMMISSIONER OF INCOME TAX, JAIPUR

(Civil Appeal No. 4166 of 2006)

APRIL 19, 2018

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[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Income Tax Act, 1961:

s.5 – Taxability under – Of income from lottery – When such income was already taxed under Sikkim State Income Tax Rules, 1948 – Held: A taxing statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for payment of tax unless language of statute is so compelling that court has no alternative than to accept it – In case of reasonable doubt, construction most beneficial to the tax payer is to be adopted – As such there is no prohibition on double taxation unless the legislature contains a special provision in that regard – In the present case since the IT Act does not provide for including income from lottery, the assessee cannot be subjected to double taxation – Since Sikkim is part of India for the relevant accounting year, once the assessee has paid income tax as per the law applicable at the relevant time in Sikkim, the same income was not taxable under IT Act – In view of clause (k) of Art. 371F of Constitution also, only the Sikkim regulations on income-tax would be applicable – Sikkim State Income Tax Rules, 1948 – Constitution of India – Art. 371F (k) – Interpretation of Statutes.

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Allowing the appeal, the Court

HELD: 1. In the present case, the amount has been earned by the appellant-assessee in the State of Sikkim and the amount of lottery prize was sent by the Government of Sikkim to Jaipur on the request made by the appellant. Therefore, while Section 5 of the Income Tax Act would not be applicable, the existing Sikkim State Income Tax Rules, 1948 would be applicable. Since Sikkim is a part of India for the accounting year, there would appear to be, on the same income, two types of income-taxes cannot be applied. [Para 9, 10][882-C-E]

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A **2. There is no prohibition as such on double taxation, provided that the legislature contains a special provision in this regard. There is no provision in the IT Act wherein a specific provision has been made by the legislature for including such an income by an assessee from lottery ticket. In the absence of any such provision, the assessee in the present case cannot be**
 B **subjected to double taxation. [Para 13][883-A-C]**

Jain Brothers and Others v. Union of India and Others
 (1970) 77 ITR 107 (SC) – relied on.

Laxmipat Singhania v. Commissioner of Income Tax, U.P.
 (1969) 72 ITR 291 – referred to.

C **3. A taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. Therefore, the income in the present case is taxable only under one law. [Para 13][883-C]**

D **4. By virtue of clause (k) to Article 371F of the Constitution which starts with a non-*obstante* clause, it would be clear that only the Sikkim Regulations on Income-tax would be applicable in the present case. Therefore, the income cannot be brought to tax any further by applying the rates of the IT Act. [Para 13][883-D]**
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F **5. Once the assessee has paid the income tax at source in the State of Sikkim as per the law applicable at the relevant time in Sikkim, the same income was not taxable under the IT Act, 1961. [Para 14][883-E]**

Case Law Reference

(1969) 72 ITR 291 referred to Para 11

(1970) 77 ITR 107 (SC) relied on Para 11

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4166 of 2006.

From the Judgment and Order dated 10.09.2004 by the High Court of Judicature for Rajasthan, Jaipur, Bench at Jaipur in DB Income Tax Reference No. 40/1995.

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Sanjay Jhanwar, Tanuj Agrawal, Tarun Gupta, Advs. for the Appellant. A

Yashank P. Adhiyaru, Sr. Adv., Ms. Purnima Bhat Kak, Ms. Sadhana Sandhu (For Mrs. Anil Katiyar), Advs. for the Respondent.

The Judgment of the Court was delivered by B

R. K. AGRAWAL, J. 1. The present appeal has been preferred against the final judgment and order dated 10.09.2004 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in D.B.I.T. Reference No. 40 of 1995 whereby the Division Bench of the High Court answered the questions referred to under Section 256(1) of the Income Tax Act, 1961 (in short 'the I.T. Act') in favour of the Revenue and against the appellant-assessee. C

2. Before proceeding further, it is pertinent to set out the facts in a summarized way to appreciate properly the issue involved in this instant appeal:- D

a) The appellant herein, a resident of Jaipur, Rajasthan, having income from business and property, won the first prize of Rs. 20 lakhs in the 287th Bumper Draw of the Sikkim State Lottery held on 20.02.1986 at Gangtok organized by the Director, State Lottery, Government of Sikkim, Gangtok. Out of Rs. 20 lakhs, the appellant herein received Rs. 16,20,912/- through two Demand Drafts for Rs. 8,10,000/- and Rs. 8,10,912/- each, after deduction of Rs. 2 lacs being agent's/seller's commission and Rs. 1,79,088/- being Income Tax under the Sikkim State Income Tax Rules, 1948. E

b) The appellant herein filed Income Tax Return for the Assessment Year (AY) 1986-87 disclosing the income from lottery at Rs. 20 lakhs and deducting the agent/seller commission of Rs. 2 lakhs out of the same. He claimed deduction under Sec. 80 TT of the IT Act on Rs 20,00,000/- i.e the gross amount of the prize money won in the lottery in accordance with the provisions of the charging Section. F

c) On scrutiny, the Assessing Officer (AO), vide order dated 08.01.1988, allowed the deduction under Section 80TT of the IT Act on Rs. 18 lakhs instead of Rs. 20 lakhs while holding that the Government of Sikkim, had deducted the tax at source from the lottery amount of G

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A Rs. 18 lakhs as Rs. 2 lakhs have been paid to the agent directly. In other words, under the relevant provisions of Section 80TT of the IT Act, the deduction can be claimed only on net income out of lottery and not on the gross income. The said order was further confirmed by the Commissioner of Income Tax, (Appeals), Rajasthan-II, Jaipur, vide order dated 31.10.1988

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D d) Being aggrieved, the present appellant preferred an appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal'), Jaipur Bench challenging the computation by the Assessing Officer (AO) of the deduction under Section 80TT of the IT Act. The appellant herein – the assessee raised an additional ground before the Tribunal claiming that the authorities below have grossly erred in law in treating the lottery income of Sikkim Government as income under the IT Act. Though the Tribunal allowed the appeal partly vide order dated 26.02.1993 but it dismissed the objections raised by the appellant herein as to legality of assessment order and held that the lottery amount is taxable under the provisions of IT Act.

e) However, at the instance of the appellant herein – the assessee, the Tribunal framed certain questions under IT Act and referred the same to the High Court for opinion, considering them the questions of law fit for reference which are as under:

E “1. Whether on the facts and in the circumstance of the case, the Hon’ble Tribunal was justified in holding that income from Sikkim State Lottery is taxable under the Income Tax Act, 1961?

F 2. Whether in the facts and circumstances of the case the Tribunal was justified in holding that deduction u/s 80TT is applicable on the net winning amount received by the assessee and not on the gross amount of the winning prize?”

f) A Division Bench of the High Court, vide judgment and order dated 10.09.2004, answered the questions raised in affirmative.

G g) Aggrieved by the judgment and order dated 10.09.2004, the appellant-assessee has preferred this appeal by way of special leave before this court.

H 3. Heard Mr. Sanjay Jhanwar, learned counsel for the appellant-the assessee and Mr. Yashank P. Adhiyaru, learned senior counsel for the respondent and perused the records.

Point(s) for consideration

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4. The issue that arises for consideration in the present case is whether income from lottery earned is taxable under the IT Act especially when such income was already taxed under the provisions of Sikkim State Income Tax Rules, 1948. If so, whether the deduction that is to be allowed on such income under Sec 80 TT of the IT Act is on 'gross income' or on the 'net income'.

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Rival contentions:

5. Learned counsel appearing for the appellant contended that the High Court has grossly erred in holding that the provisions of the IT Act are applicable to the present case as the provisions of the said Act are extended to the State of Sikkim only with effect from 01.04.1989 and, therefore, income accrued in the State of Sikkim prior to this date could not be charged to tax under the IT Act and was taxable under the Sikkim State Income Tax Rules, 1948. Learned counsel further contended that the order in question passed by the High Court is not lawful as the provisions of Article 371F of the Constitution of India, particularly, clauses (k) and (n) thereof, operate in relation to all the laws prevailing in the territories of Sikkim which prevents the application of the IT Act in the State of Sikkim up till 31.03.1989. Learned counsel further contended that the order passed by the High Court is not just and lawful as the levy of taxes on the same income both by the Union of India and the State of Sikkim is contrary to the principle of double taxation. Further, the High Court grossly erred in holding that the deduction under Section 80TT of the IT Act is applicable on the net winning amount received by the assessee after deducting the agent/seller commission and not on the gross amount of the winning prize.

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6. On the other hand, learned senior counsel appearing for the Respondent submitted that the High Court has rightly held that the Tribunal was right in holding that income from winning of lotteries from Sikkim during the assessment year in question was liable to be included in the hands of the assessee as resident of India within the State of Rajasthan where IT Act was in force notwithstanding that the same had accrued or arisen to him at a place where the Act of 1961, was not in force even in respect of income accruing to him outside taxable territory. Learned senior counsel further submitted that on the question as to "whether the Tribunal was justified in holding that deduction under Section

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A 80 TT of the IT Act was applicable on the net winning amount received by the assessee and not on the gross amount of the winning prize”, the High Court answered the same in the affirmative in favour of Revenue and against the appellant herein – the assessee observing that deduction under Section 80 TT of the IT Act is not referable to gross total income but is referable to net income.

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Discussion:-

7. Before we go into the issues raised in this appeal, it would be necessary to have an idea of the position of Sikkim under the Indian Constitution. Prior to 26.04.1975, Sikkim was not considered to be a part of India. Any income accruing or arising there from would be treated as income accruing or arising in any foreign country. However, by the 36th amendment to the Indian Constitution in 1975, Sikkim became part of the Indian Union. This, amendment was effected by introducing Article 371F in the Constitution. In the backdrop of the brief history that led to the insertion of Article 371F in the Constitution of India with effect from April 26, 1975, we may now refer to Article 371F to the extent it is relevant:-

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“371F. Special Provisions with respect to the State of Sikkim- Notwithstanding anything in this Constitution.—

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(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority ;

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(n) “The President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim, any enactment which is in force in a State in India at the date of the notification.”

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On a plain reading of this provision, it becomes clear that all laws which were in force prior to April 26, 1975, in the territories now falling within the State of Sikkim or any part thereof were intended to continue to be in force until altered or repealed. Therefore, the law in force prior to the merger, continued to be applicable. As a matter of fact, the IT Act was made applicable only by Notification made in 1989 and the first assessment year would be 1990-91 and by the application of this Act,

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the Sikkim State Income Tax Manual, 1948 stood repealed. However in the present case, we are concerned with the assessment year 1986-87, and, during this time, the IT Act had not been made applicable to the territories of Sikkim. The law corresponding to the IT Act, which immediately was in force in the relevant State was Sikkim State Income Tax Rules, 1948. Hence, there can be two situations, first is that the person was a resident of Sikkim during the time period of 1975-1990 and the income accrues and received by him there only. In such a case, no question of applicability of the IT Act arises. However, the problem arises where the income accrues to a person from the State of Sikkim who was not a resident of Sikkim but of some other part of India. The question that arises is whether the provisions of the IT Act are applicable to such income and whether the same can be subjected to tax under the said Act especially in light of the fact that the income has already been subjected to tax under the Sikkim State Income Tax Rules, 1948.

8. The case of the assessee is that irrespective of the place of residence, income accruing or arising in Sikkim, would not be taxable in India, as per clause (k) of Article 371F of the Constitution and is taxable only under the Sikkim State Income Tax Rules, 1948. The contention seems to be based on erroneous assumption and the simple answer to the said contention is that though the IT Act is not applicable to various other countries but still the income accruing and arising in foreign countries can be brought to tax provided the assessee is resident and ordinarily resident and further the income accrued or received in any territory which is considered to be a part of India is within the net of IT Act.

9. The appellant, being a resident of Rajasthan, received the income arising from winning of lotteries from Sikkim during the Assessment Year in question was liable to be included in the hands of the Assessee as resident of India within the State of Rajasthan where IT Act was in force notwithstanding that the same had accrued or arisen to him at a place where the IT Act was not in force even in respect of income accruing to him without taxable territory. In the above backdrop, it would be apposite to refer Section 5 of the IT Act which reads as under:-

“5-Scope of total Income:-(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-

(a) is received or deemed to be received in India in such a year by or on behalf of such person; or

A (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

x x x x x”

B The very wordings of Section 5 of the IT Act show that it casts a very wide net and all incomes accruing anywhere in the world would be brought within its ambit. A combined reading of both the clauses makes it clear that any income accrued or received in India would be included in his total income for taxing purposes under the IT Act. However, in the present case, we find that the amount has been earned by the appellant-assessee in the State of Sikkim and the amount of lottery prize was sent
C by the Government of Sikkim to Jaipur on the request made by the appellant.

D 10. The result, therefore, is that, while Section 5 of the IT Act would not be applicable, the existing Sikkim State Income Tax Rules, 1948 would be applicable. Thus, on the income, it would appear that Income-tax would be payable, under Sikkim State Income Tax Rules, 1948 and not under the IT Act. Since Sikkim is a part of India for the accounting year, there would appear to be, on the same income, two types of income-taxes cannot be applied.

E 11. In the above backdrop, it would be appropriate to refer the decision of this Court in the case of *Laxmipat Singhania vs. Commissioner of Income Tax, U.P.* (1969) 72 ITR 291 at 294 wherein this Court has observed that “It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice”.

F 12. Further, in a decision of this Court in *Jain Brothers and Others vs. Union of India and Others* (1970) 77 ITR 107 (SC), it has been held as under:-

G “6 It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted, they cannot be so interpreted as to tax the subject twice over to the same tax..... If any double taxation is involved, the Legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over.”

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13. The above referred cases make it clear that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. Now, the only question remains to be decided is whether in fact there is a specific provision for including the income earned from the Sikkim lottery ticket prior to 01.04.1990 and after 1975, in the income-tax return or not. We have gone through the relevant provisions but there seems to be no such provision in the IT Act wherein a specific provision has been made by the legislature for including such an income by an assessee from lottery ticket. In the absence of any such provision, the assessee in the present case cannot be subjected to double taxation. Furthermore, a taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. So, it is clear enough that the income in the present case is taxable only under one law. By virtue of clause (k) to Article 371F of the Constitution which starts with a non-*obstante* clause, it would be clear that only the Sikkim Regulations on Income-tax would be applicable in the present case. Therefore, the income cannot be brought to tax any further by applying the rates of the IT Act.

14. In view of the aforementioned discussions, we are of the considered view that once the assessee has paid the income tax at source in the State of Sikkim as per the law applicable at the relevant time in Sikkim, the same income was not taxable under the IT Act, 1961. Having decided so, the other issue whether the income that is to be allowed deduction under section 80 TT of the IT Act is on 'Net Income' or 'Gross Income', becomes academic.

15. In view of the above, the appeal is allowed.