IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21ST DAY OF JANUARY 2008

PRESENT

THE HON'BLE MR. JUSTICE DEEPAK VERMA

AND

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

I.T.A. No.99 OF 2004

BETWEEN:

B.K.SURESH,
Professor & HOD
Mechanical Engineering,
JNN College of Engineering,
SHIMOGA. .. **APPELLANT**.

(By Sri.A.Shankar, Adv.)

AND:

The Income Tax Officer,
Ward - 3,
No.75, 100 Feet Road,
Gopala Gowda Extn.,
SHIMOGA. .. **RESPONDENT**.

(By Sri. Aravind, for
Sri. M.V.Seshachala, Adv.)

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This I.T.A. filed under Section 260-A of the Income Tax Act, 1961 arising out of order dated 22.10.2003 passed in ITA No.184/BANG/2001 for the assessment year 1994-95 praying to allow the appeal and set aside the order passed by the Income Tax Appellate Tribunal, Bangalore in ITA No.184/BANG/2001 dated 22.10.2003 by holding that the disallowance made by the Assessing Officer is not prima facie for charging tax under Section 4 of the Income Tax Act, and consequently delete the tax levied thereon for the Assessment Year 1994-95 and etc.

This I.T.A. coming on for Final Hearing this day, **Deepak Verma, J.**, delivered the following:

JUDGMENT

Heard Sri.A.Shankar, learned counsel appearing for the appellant and Sri. Aravind, learned counsel appearing for the respondent.

2. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter shall be referred to in short as "the Act") has been preferred by the assessee against the order passed by the Assessing Officer, confirmed in appeal by the Commissioner of Income Tax (Appeals) and further confirmed in further appeal by the Income Tax Appellate Tribunal, Bangalore Bench. All the aforesaid orders are subject matter of challenge in this appeal.

3. Facts, in short, are as under:

"Appellant – assessee was a Professor and was the Head of Department in Mechanical Engineering Section of JNN College of Engineering, Shimoga and was assessed to tax with the Income Tax Officer, Ward(3), Shimoga. The assessee had purchased National Savings Certificates (in short "NSC") during the financial year 1992-93. The Directorate of Small Savings, Government of Karnataka, as a measure to encourage small savings, amongst the public framed a scheme under which it offered different prizes to the persons who had made investment in a small savings scheme through a lucky draw. By virtue of the purchase of NSCs, the assessee had become entitled for a coupon. Accordingly a coupon was issued to him. In a lucky draw held by the Directorate of Small Savings, he was adjudged as prizewinner, having bagged third prize.

The said third prize was a commercial flat at Bangalore of the value of Rs.5,00,000/-. However at the request of the assessee, he was awarded Indira Vikas Patra of the value of Rs.3.5 lakhs in lieu of commercial flat. The assessee filed the return of income for the assessment year 1994-95 and claimed exemption under section 10(3) of the Act of Rs.3.50,000/-, being the then market value of the said Indira Vikas Patra, even though the face value of the same was Rs.5,00,000/-.

The Assessing Officer in the order of assessment under Section 143(1)(a) of the Act negatived the exemption claimed by the assessee. The assessee contested the issue before the Commissioner of Income Tax (Appeals) by preferring an appeal before him. However the said appeal also met the fate of dismissal.

4. Feeling aggrieved thereby the assessee preferred further appeal before the Income Tax Appellate Tribunal, challenging the orders passed by both the aforesaid authorities. The Income Tax Appellate Tribunal considering the matter from all angles, proceeded to decide the assessee's appeal against him. Hence this appeal under Section 260 of the Act.

5. The following substantial questions of law arise in the aforesaid appeal:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that incentive award received by the appellant/assessee constitutes lottery income on the facts and in the circumstances of the case?

2. Whether the Tribunal was right in law in holding that purchase of National Savings Certificates by the appellant/assessee constitutes payment of consideration to participate in the lottery?

6. Even though more substantial questions of law have been formulated by the appellant in the memo of appeal, however after having heard the learned counsel for the parties and after perusal of the record, we are of the considered opinion that only the aforesaid two questions of law as formulated above would arise for our consideration.

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7. The aforesaid questions of law which have been projected hereinabove stand squarely answered by the Division Bench Judgment of the Madras High Court in the case of Commissioner of Income Tax Vs. Deputy Director of Small Savings [266 ITR 27], wherein the question was with regard to the meaning of the word "lottery" and prizes awarded under Savings Schemes operated by the Government. In the said judgment after considering the meaning of the word "lottery" as has been found in various legal dictionaries of English and other text books, it has been held that giving of coupon against purchase of National Savings Certificates would not fall within the definition of lottery.

8. Section 194-B of the Act was amended with effect from 01.04.1972 by the Finance Act, 1972. It introduced Section 194-B, a new sub-clause (ix) was introduced in the definition of "income" in Section 2(24) of the Act, which reads thus:

> "2(24) ... ...
>
> (ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

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Thus, winnings from lotteries on and after April 1, 1972 were included within the scope of the definition of "income" and the person responsible for paying to any person any income in excess of rupees five thousand by way of winnings from lottery, was required to deduct income tax on the amount so paid at the rates in force.

Prior to April 1, 2002, the Act did not contain a definition of "lottery". In the Finance Act, 2001, an explanation was added below Section 2(24)(ix), which explanation reads thus:

> "Explanation.- For the purposes of this sub-clause,-
>
> (i) 'lottery' includes winnings, from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
>
> (ii) 'card game and other game of any sort' includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;"

The aforesaid amendment would show that it does not have any retrospective effect. It has been made applicable prospectively. Thus these amendments have no application to the facts of the instance case, as it pertain to the assessment year 1994-95 and the amendments are subsequent.

9. Infact, in view of the judgment of the Madras High Court in the matter of Deputy Director of Small Savings supra, this appeal has to be allowed. The orders passed by the Income Tax Appellate Tribunal, Commissioner of Income Tax (Appeals) and the Assessing Officer are to be set aside and quashed. There remains nodoubt in our mind that the incentive prize received by the assessee on account of the coupon given to him on the strength of the National Savings Certificates, would not fall within the definition of lottery.

10. However, learned counsel appearing for the respondent has strenuously tried to argue before us that even if the aforesaid judgment is taken into consideration, this appeal has to be dismissed. He has tried to refer to the judgment of Madras High Court in which reference has been made to the case of Imperial Tobacco Ltd. Vs. Attorney General **[(1980) 1 ALL ER 866]**.

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However, despite giving our serious consideration to the whole issue, we are neither convinced nor impressed by the line of argument advanced by the learned counsel for the respondent – Revenue.

11. In the light of the aforesaid discussions, we have no hesitation to hold that all the authorities below committed an error in adding the prize money awarded to the assessee on coupon and draw thereof to the income of the assessee. Thus the said orders deserve to be set aside and quashed and are hereby set aside and quashed.

12. The appeal stands allowed. The questions of law are accordingly answered in favour of the assessee and against the Revenue.

Sd/-
Judge

Sd/-
Judge

AGV.