

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 137 OF 2009

ASSISTANT COMMISSIONER,
COMMERCIAL TAXES & ORS. ...APPELLANT(S)

VERSUS

LIS (REGISTERED) ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.2355 OF 2008

O R D E R

1. The liability of the respondent-assessee to payment of tax under the Kerala Tax on Paper Lotteries Act, 2005 (herein after referred to as 'the Act') is the question that arises for determination in the present appeal(s).

2. While the primary authority found the respondent-assessee liable, the Writ Petition filed by the respondent-assessee, without availing of the statutory remedies, was answered by the learned Single Judge by requiring the respondent-assessee to exhaust the said remedies. In appeal, the Division

Bench of the High Court answered the question in favour of the respondent-assessee giving rise to the present appeal(s).

3. We have heard Shri V.Giri, learned senior counsel for the appellants and Shri Arshad Hidayatullah, learned senior counsel for the respondent-assessee.

4. Section 2(1) of the Act defines promoter in the following terms :

"2(1) "Promoter" means the Government of India or Government of the State or a Union Territory or any Country who had entered into a bi-lateral agreement or a treaty with the Government of India for organizing, conducting or promoting a lottery and includes, any person appointed for selling lottery tickets by the Government in the State of Kerala on its behalf, where such Government is not directly selling lottery tickets in the State."

5. Section 6 which is the charging section makes the promoter liable to pay tax under the Act, Section 7 requires every promoter selling lottery tickets to get himself registered under the Act and the proviso

thereto makes it clear that a person ordinarily selling lottery tickets in retail is not required to be registered. Section 8 deals with returns and assessment whereas Section 9 deals with reassessment. Section 10 of the Act deals with payment of tax in advance whereas Section 11 deals with payment of tax assessed and recovery thereof.

6. The respondent-assessee, which is a partnership firm, with its offices at Bangalore in Karnataka and also in Kerala is alleged to have engaged in the business of purchase of tickets in bulk in respect of the lottery conducted by the State of Kerala. Such tickets are stated to be purchased on behalf of persons referred to as the members of the respondent. No physical transfer of the tickets had taken place within Kerala though the details of the persons to whom the tickets were allotted was maintained. Eventually, on a ticket being declared as a winner in a draw, payment of prize money was made to the ticket holder as

per the record of the respondent-assessee.

7. It is on the aforesaid broad facts that we are required to decide as to whether the respondent-assessee is a promoter within the meaning of Section 2(1) of the Act so as to make it exigible to payment of tax under Section 6 and amenable to the other provisions of the Act as noticed above.

8. The definition of 'promoter', extracted above, is in two parts. 'Promoter' has been defined to mean a "Government" which is engaged in organizing, conducting or promoting a lottery and includes, any person appointed by a State Government for selling lottery tickets in the State of Kerala on behalf of a Government in a situation where that Government is not directly selling lottery tickets in the State of Kerala.

9. The definition of 'promoter' in Section 2(1) of the Act having used the expression "means and includes" must be understood to be an exhaustive definition

incapable of being expanded by a process of interpretation by reference to other provisions of the Act.

10. It will be necessary to note, at this stage, that the respondent, admittedly, is an agent of one M/s. Mysore Sales International Limited (M/s MSIL) who was appointed as sole selling agent of the lottery tickets by the State of Karnataka. For the present we will proceed on the basis that the aforesaid M/s. MSIL was so appointed for sale of tickets in other States including Kerala. The respondent who was appointed as an agent by M/s. MSIL was expressly barred by the terms of appointment from dealing with lottery tickets in the electronic form and for sale in the physical form outside the territories of the State of Karnataka. If that is so, we do not see how the respondent can be understood to be capable of being included in the definition of 'promoter'. The respondent certainly is not 'any person' appointed by the State of Karnataka to sell

lottery tickets in the State of Kerala on behalf of the State of Karnataka.

11. If the respondent is not a 'promoter' within the meaning of Section 2(1) of the Act, the charging Section i.e. Section 6 will have no application to make the respondent liable to payment of tax under the Act nor would be the respondent be liable for registration under Section 7 of the Act. In fact, the present appears to be a situation where the activities of the respondent including the terms of appointment as an agent of M/s. MSIL does not make it exigible to any of the provisions of the Act.

12. An argument has been advanced by Shri Giri on the basis of the provisions contained in Sections 19, 21, 23, 24 and 25 to contend that the expression 'any other person' appearing in said Sections after the words 'any promoter' would permit an expanded meaning to be given to the definition of 'promoter' under Section 2(1) of the Act.

13. We disagree. If under Section 6 of the Act the respondent-assessee, not being a promoter, is not liable to pay tax, we do not see how the definition of 'promoter', who alone is exigible under the Act, can be expanded by use of the expression 'any other person' appearing in other provisions of the Act. The said provisions of the Act relate to filing of returns and payment of penalty etc. which provisions can at best be relevant to a person who is otherwise amenable under the provisions of the Act.

14. Time and again, it has been emphasized that a taxing statute cannot be made applicable to a citizen by unnatural or unreasonable extensions thereof. A recent view of this Court in this regard is available in '*Shabina Abraham vs. Collector of Central Excise and Customs*'¹ wherein a judgment of the Bombay High Court which is of considerable vintage i.e. '*Commissioner of Income Tax, Bombay v. Ellis*

1 2015 (322) E.L.T. 372(S.C.)

*C.Reid*², has been referred to and, in fact, relied upon to observe that reasons of morality and fairness can have no application to bring a citizen who is not within the four corners of the taxing statute with its fold so as to make him liable to payment of tax. In this regard paragraphs 31, 32 and 33 of the opinion rendered in *Shabina Abraham* (supra) would commend to us for recapitulation and, therefore, are extracted below :

31. The impugned judgment in the present case has referred to *Ellis C. Reid's* case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore, legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the case of first

principle when it comes to taxing statutes. It is therefore, necessary to reiterate the law as it stands. In *Partington v. A.G.*, (1869) LR 4 HL 100 at 122, Lord Cairns stated :

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute."

32. In *Cape Brandy Syndicate v. IRC*, (1921) 1 KB 64 at 71, Rowlatt J. laid down :

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one

of such judgments of this Court in *Commissioner of Sales Tax, Uttar Pradesh v. Modi Surgar Mills*, 1961 (2) SCR 189 at 198 :-

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

15. In view of what has been indicated above and for the reasons assigned we find no merit in the appeal(s) filed by the State of Kerala and Assistant Commissioner, Commercial Taxes. Accordingly, the appeal(s) are dismissed and the order of the High Court is affirmed.

.....,J.
(RANJAN GOGOI)

.....,J.
(R. BANUMATHI)

NEW DELHI
DECEMBER 06, 2017

ITEM NO.101

COURT NO.3

SECTION XI -A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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VERSUS

LIS (REGISTERED)

...RESPONDENT(S)

WITH

C.A. No. 2355/2008 (XI -A)

Date : 06-12-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. V.Giri, Sr. Adv.
 Mr. Nishe Rajen Shonker, AOR
 Mr. Anu K. Joy, Adv.
 Mr. Reegan S. Bel, Adv.
 Mr. C. K. Sasi, AOR

For Respondent(s) Mr. Arshad Hidayatullah, Sr. Adv.
 Mr. Wills Mathews, Adv.
 Mr. Ginesh P., Adv.
 Mr. Shaji Sebastian, Adv.
 Mr. Shree Pal Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the
signed order.

Pending application(s), if any, shall stand
disposed of.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER

(Signed order is placed on the file.)