Commissioner Of Income Tax, Madras vs G.R. Karthikeyan, Coimbatore on 22 April, 1993

Equivalent citations: 1993 AIR 1671, 1993 SCR (3) 328, AIR 1993 SUPREME COURT 1671, 1993 AIR SCW 2154, 1993 TAX. L. R. 637, 1993 (3) SCC(SUPP) 222, (1993) 3 SCR 328 (SC), (1993) 68 TAXMAN 145, (1993) 3 JT 174 (SC), (1993) 201 ITR 866, (1993) 116 TAXATION 21, (1993) 112 CURTAXREP 302, (1993) 2 MAD LJ 82

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, N Venkatachala

PETITIONER:
COMMISSIONER OF INCOME TAX, MADRAS

Vs.

RESPONDENT:
G.R. KARTHIKEYAN, COIMBATORE

DATE OF JUDGMENT22/04/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
1993 AIR 1671 1993 SCR (3) 328
1993 SCC Supl. (3) 222 JT 1993 (3) 174
1993 SCALE (2)588

ACT:
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Income Tax Act 1961:
Sections2(24)and 10(3)-For Assessment-What constitutes Income-Prize Money-From All India Motor Car Rally-Whether constitutes Income.

HEADNOTE:
The assessee participated in an All India Highway Motor Car Rally and on being declared a winner, received an amount of Rs. 22,000 as prize money. The Income-tax officer included

the prize money in his income for the relevant assessment year relying upon the definition of 'income'in clause (24) of Section 2 of Income Tax Act.

On an appeal preferred by the respondent-assessee the Appellate Assistant Commissioner held that as the Rally was not a race, the prize money cannot be treated as income within the meaning of section 2(24) (ix). The Tribunal on an appeal by the Revenue, held that the Rally was not a race and as it was a test of skill and endurance, it was not a 'game' within the meaning of Sec. 2 (24) (ix). As the prize money received was casual in nature it fell outside Sec. 10(3) of the Act.

The High Court on a reference at the instance of the Revenue,upholding the findings of the Tribunal,observed that the expression 'winnings' cannotes money won by betting or gambling and therefore the prize money not represent 'winnings'. Inasmuch as the amount in question was obtained by participating in a rally which involved skill in driving the vehicle, it held, it cannot he included in the assessee's income, also because it fell outside the preview of s.10 (3).

Allowing the Appeal, the Court,

HELD:1. The expression 'income' must be construed in its widest sense. The definition of 'income' is an inclusive one. Even if a receipt does not fall within sub-clause (ix) or any of the sub-clauses of Sec.2(24) of the Act it may yet constitute income. Hence the prize-money received by the respondent

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assessee constitutes 'income' -as defined in clause (24) of Section 2 of the Act. (335-C)

2.The High Court erred in reading several sub-clauses in Sec. 2(24) as exhaustive when the statute expressly says that the definition is inclusive. Even if a receipt does not fall within the ambit of any of the sub-clauses in Sec. 2(24) it may still he income if it partakes of the nature of income. The idea behind providing inclusive definition in Sec. 2(24) is not to limit its meaning but to widen its net. This Court has repeatedly said that the word 'income' is of widest amplitude and that it must he given its natural and grammatical meaning. (335-D)

Kamakshya Narayan Singh v. C.LT 11 ITR 513 P.C., Navin Chandra Mafatlal v. C.I.T, Bombay 26 ITR (SC)and Bhagwan Das Jain v. Union of India 128 ITR 315 SC, followed.

Gopal SaranNarain Singh v. Commissioner of Income Tax, 3ITR237 P.C., referred to.

3.If the monies which are not earned in the true sense of the word Constitute income, it is difficult to appreciate why do monies earned by skill and to not constitute income? The Rally was a contest, if not a race. The Respondent-assessee entered the contest to win it. The Prize-money which he got in return for winning the contest was a reward for his skill and endurance. It does constitute his income-

which expression must be construed in its widest sense. (335-B)
4.The sub-clause (ix) of Sec. 2(24), is not confined to games of gambling nature alone. Some of them are games of skill.
State of Bombay v. R.M. D. Chamarbaugwala AIR 1957 SC 699; and Stale of Andhra Pradesh v. K. Satyanarayan [1968] 2 SCR 515, followed.
5.As the definition of income in Sec. 2(24) is an inclusive one, its ambit should be the same as that of the word 'income' occurring in Entry 82 of list 1 of the Seventh Schedule of the Constitution of India. (334-B)
6.Even casual income is 'income'as is evident from Sec. 10(3). A casual receipt which should mean in the context, casual income-is liable to be included in the total income, if it is in excess of Rs. 1,000 by virtue of clause (3)
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of Sec. 10. The Tribunal erred in its finding that the prize money fell outside the purview of Sec. 10 (3) inspite of holding that the receipt in question was casual in nature. (335-E)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3908 (NT)/ 1983.

From the Judgment and Order dated 20.11.1979 of the Madras High Court in Tax Case No. 330 of 1976.

A. Raghuvir and Ms. A. Subhashini for the Appellant. T.A. Ramachandran and Mrs. Janaki Ramachandran for the Respondent.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. This appeal is preferred against the Judgment of the Madras High Court answering the question referred to it in the affirmative i.e., in favour of the assessee and against the Revenue. The question referred under section 256 (1) of the Income-tax Act reads as follows:

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the total sum of Rs. 22.000 received by the assessee from the Indian Oil Corporation and All India Highway Motor Rally should not be brought to tax?"

The assessment year concerned is 1974-75. The assessee, G.R. Karthikeyan, assessed as an individual, was having income from various sources including salary and business income. During the accounting year relevant to the said assessment year, he participated in the All India Highway Motor Rally. He was awarded the first prize of Rs. 20,000 by the Indian Oil Corporation and

another Sum of Rs. 2,000 by the All India Highway Motor Rally. The Rally was organised jointly by the Automobile Association of Eastern India and the Indian Oil Corporation and was supported by several Regional Automobile Associations as well as Federation of Indian Motor Sports Clubs and the Federation of Indian Automobile Associations. The rally was restricted to private motorcars, the length of the rally route was approximately 6,956 kms. One could start either from Delhi, Calcutta, Madras or Bombay, proceed anti-clock wise and arrive at the starting point. The rally was designed to test endurance driving and the reliability of the automobiles. One had to drive his vehicle observing the traffic regulations at different places as also the regulations prescribed by the Rally Committee. Prizes were awarded on the basis of overall classification. The method of ascertaining the first prize was based on a system of penalty points for various violations. The competitor with the least penalty points was adjudged the first-prize winner. On the above basis, the assessee won the first prize and received a total sum of Rs. 22,000. The Income Tax Officer included the same in the income of the respon- dent-assessee relying upon the definition of 'income' in clause (24) of section 2. On appeal, the Appellate Assistant Commissioner held that inasmuch as the rally was not a race, the amount received cannot be treated as income within the meaning of section 2 (24) (ix). An appeal preferred by the Revenue was dismissed by the Tribunal. The Tribunal recorded the following findings:

> (a)That the said rally was not a race. It was predominantly a test of skill and endurance as well as of reliability of the vehicle.
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> (b) That the rally was also not a 'game' within the meaning of section 2(24)
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> (ix).
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> (c) That the receipt in question was casual in nature. It was nevertheless not an income receipt and hence fell outside the provisions of section 10 (3) of the Act.

3. At the instance of the Revenue, the question aforementioned was stated for the opinion of the Madras High Court. The High Court held in favour of the assessee on the following reasoning:

> (a) The expression 'winnings' occuring at the inception of sub-clause (ix) in section 2(24) is distinct and different from the expression 'winning'. The expression 'winnings' has acquired a connotation of its own. It means money won by gambling or betting. The expression 'winnings' controls the meaning of several expressions occurring in the sub-

clause. In this view of the matter, the sub-clause cannot take in the receipt concerned herein which was received by the assessee by participating in a race which involved skill in driving the vehicle. The rally was not a race. In other words the said receipt does not represent 'winnings'.

(b) A perusal of the memorandum explaining the provisions of the Finance Bill,. 1 972, which inserted the said sub- clause in section 2(24), also shows that the idea behind the sub-clause was to rope in windfalls from lotteries, races and card games etc.

(c) Section 74 (A) which too was introduced by the Finance Act, 1972 supports the said view. Section 74 (A) provides that any loss resulting from any of the sources mentioned therein can be set off against the income received from that source alone. The sources referred to in the said section are the very same sources mentioned in sub-clause (ix) of section 2(24) namely lotteries, crossword puzzles, races including horse races, card games etc. The correctness of the view taken by the High Court is questioned herein.

The definition of 'income' in section 2(24) is an inclusive definition. The Parliament has been adding to the definition by adding sub-clause (s) from time to time. Sub- clause (ix) which was inserted by the Finance Act, 1972 reads as follows:

> "(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;"

We may notice at this stage a provision in section IO. Section 10 occurs in chapter HI which carries the heading "Incomes which do not form part of total income". Section 10 in so far as is relevant reads thus:

> " 10, Incomes not included in total income: In computing the total income of a previous year of any person, any income failing within any of the following clauses shall not be included:
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> (d) any receipts which are of a casual and non recurring nature, not being winnings from lotteries, to the extent such receipts do not exceed one thousand rupees in the aggregate". (The clause has been amended by Finance Act, 1986 but we are not concerned with it. Similarly it is not necessary to notice the proviso to the said clause.) It is not easy to define income. The definition in the Act is an inclusive one. As said by Lord Wright in Kamakshya Narayan Singh v. C.I.T. 11 I.TR. 513 P. C. "income..... is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation".

In Gopal Saran Narain Singh v. Commissioner of Income Tax 3.I.T.R. 237 P.C., the Privy Council pointed out that "anything than can properly be described as income is taxable under the Act unless expressly exempted." This Court had to deal with the ambit of the expression 'income'in Navin Chandra Mafatlal v. C.I T.Bombay 26 I.T.R. (S.C.) The Indian Income-tax and Excess Profits Tax (Amendment) Act, 1947 had inserted section 12 (B) in the Indian Income- tax Act, 1922. Section 12(B) imposed a tax on capital gains. The validity of the said Amendment was questioned on the ground that tax on capital gains is not a tax on 'income'within the meaning of entry 54 of list-1, nor is it a tax on the capital value of the assets of individuals and companies within the meaning of entry-55, of list- 1 of the seventh schedule to the Government of India Act, 1935. The Bombay High Court repelled the attack. The matter was brought to this Court. After rejecting the argument on behalf of the assessee that the word 'income' has acquired, by legislative practice, a restricted meaning-and after affirming that the entries in the seventh schedule should receive the most liberal

construction-the Court observed thus:

> "What. then, is the ordinary, natural and grammatical meaning of the word "income"? According to the dictionary it means "a thing that comes in." (See Oxford Dictionary, Vol. V,p. 162; Stroud, vol.II, pp. 14-16). In the United States of America and, in Australia both of which also are English speaking countries the word "income is understood in a wide sense so as to include a capital gain. Reference may be made to-
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> 'Eisner v. Macomber', [1919] 252 US 189 (K);
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> -'Merchants' Loan and Trust Co. v.
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> 'Smietanka'[1920] 255 US 509 (L) and -'United States of America v. Stewart', [1940] 311 US 60(M) and-'Resch v. Federal Commissioner of Taxation', [1943] 66 CLR 198 (N). In each of these cases very wide meaning was ascribed to the word "income" as its natural meaning. The relevant observations of learned Judges deciding those cases which have been quoted in the judgment of Tendolkar J. quite clearly indicate that such wide meaning was put upon the word "income" not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word "income". Its natural meaning embraces any profit or gain which is actually received. This is in consonance with the observations of Lord Wright to which reference has already been made.
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> The argument founded on an assumed legislative practice being thus out of the way, there can be no difficulty in applying its natural and grammatical meaning to the ordinary English word "income'. As already observed, the word should be given its widest connota-
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> tion in view of the fact that it occurs in a legislative head conferring legislative power.
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> 8. Since the definition of income in section 2(24) is an inclusive one, its ambit, in our opinion, should be the same as that of the word income occurring in entry 82 of list 1 of the Seventh Schedule to the Constitution (corresponding to entry 54 of list 1 of the Seventh Schedule to the Government of India Act).
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> 9. In Bhagwandas Jain v. Union of India 128 I.T.R. 315 S.C. The challenge was to the validity of section 23(2) of the Act which provided that where the property consists of house in the occupation of the owner for the purpose of his own residence, the annual value of such house shall first be determined in the same manner as if the property had been let and further be reduced by one half of the amount so determined or Rs. 1,800 whichever is less. The contention of the assessee was that he was not deriving any monetary benefit by residing in his own house and, therefore, no tax can be

levied on him on the ground that he is deriving income from that house. It was contended that the word income means realisation of monetary benefit and that in the absence of any such realisation by the assessee, the conclusion of any amount by way of notional income under section 23(2) of the Act in the chargeable income was impermissible and outside the scope of entry 82 of list-1 of the Seventh Schedule to the Constitution. The said contention was rejected affirming that the expression income is of the widest amplitude and that it includes not merely what is received or what comes in by exploiting the use of the property but also that which can be converted into income.

10. Sub-clause (ix) of section 2(24) refers to lotteries, crossword puzzles, races including horse races, card games, other games of any sort and gambling or' betting of any form or nature whatsoever. All crossword puzzles are not of a gambling nature. Some are; some are not. See State of Bombay v. R.M.D. Chamarbaugwala A.I.R. 1957 S.C.699.Even in card games there are some games which are games of skill without an element of gamble (See State of Andhra Pradesh v.K. Satyanarayan[1968] 2 S.C.R. 515. The words other games of any sort" are of wide amplitude. Their meaning is not confined to games of a gambling nature alone. It thus appears that sub-clause (ix) is not confined to mere gambling or betting activities. But, says the High Court, the meaning of all. the aforesaid words is controlled by the word 'winnings' occurring at the inception of the subclause. The High Court says, relying upon certain material, that the expression winnings' has come to acquire a particular meaning viz, receipts from activities of a gambling or betting nature alone. Assuming that the High Court is right in its interpretation of the expression 'winnings', does it follow that merely because winnings from gambling/betting activities are included within the ambit of income,the monies received from non- gambling and non-betting activities are not so included? What is the implication flowing from insertion of clause

(ix)? If the monies which are not earned-in the true sense of the word-constitute income why do moneies earned by skill and toil not constitute income? Would it not look odd. if one is to say that monies received from games and races of gambling nature represent income but not those received from games and races of non-gambling nature? The rally in question was a contest, if not a race. The respondent-

assessee entered the contest to win it and to win the first prize. What he got was a return' for his skill and endurance. Then why is it not income-which expression must be construed in its widest sense. Further, even if a receipt does not fall within subclause (ix), or for that matter, any of the sub-clauses in section 2(24), it may yet constitute income. To say otherwise, would mean reading the several clauses in section 2(24) as exhaustive of the meaning of 'income' when the Statute expressly says that it is inclusive. It would be a wrong approach to try to place a given receipt under one or the other sub-clauses in section 2(24) and if it does not fall under any of the sub- clauses, to say that it does not constitute income. Even if a receipt does not fall within the ambit of any of the sub- clauses in section 2(24), it may still be income if it partakes of the nature of the income. The

idea behind providing inclusive definition in section 2(24) is not to limit its meaning but to widen its net. This Court has repeatedly said that the word 'income' is of widest amplitude, and that it must be given its natural and grammatical meaning. Judging from the above standpoint, the receipt concerned herein is also income. May be it is causal in nature but it is income nevertheless. That even the casual income is 'income' is evident from section 10 (3). Section 10 seeks to exempt certain 'incomes' from being included in the total income'. A casual receipt which should mean, in the context, casual income is liable to be included in the total income if it is in excess of Rs. 1,000, by virtue of clause (3) of section 10. Even though it is a clause exempting a particular receipt/income to a limited extent, it is yet relevant on the meaning of the expression 'income'. In our respectful opinion, the High Court, having found that the receipt in question does not fall within sub-clause (ix) of section 2(24), erred in concluding that it does not constitute income. The High Court has read the several sub-clauses in section 2(24) as exhaustive of the definition of income when in fact it is not so. In this connection it is relevant to notice the finding of the Tribunal. It found that the receipt in question was casual in nature but-it opined-it was nevertheless not an income receipt and fell outside the provision of section 10 (3) of the Act. We have found it difficult to follow the logic behind the argument.

11. For the above reasons we hold that the receipt in question herein does constitute 'income' as defined in clause (24) of section 2 of the Act. The appeal is accordingly allowed and the question referred by the Tribunal under section 256(1) of the Act is answered in the negative i.e., in favour of the Revenue and against the assessee. There shall be no order as to costs.

RSK.

Appeal allowed.