Before S. P. Goyal and G. C. Mittal, JJ.

THE COMMISSIONER OF INCOME-TAX, HARYANA AND CHANDIGARH,—*Applicant.*

versus

CHAMAN LAL,—*Respondent.*

Income Tax Reference No. 28 of 1977.

July 9, 1985.

Income tax Act (XLII of 1961) as amended by Finance Act, (XVI of 1972)—Sections 2(24)(ix), 5(1), 10(3), 56(2)(ib). 1948 and 276-B—Assessee, a resident of India—Winnings from lotteries in a foreign country—Whether to be included in the total income of such an assessee—Such winnings—Whether of a casual and non-recurring nature.

Held, that the definition of income includes winnings from lotteries as per section 2(24) (ix) of the Income Tax Act, 1961. Even if such income accrues or arises outside India, still it has to be taken notice of while calculating total income of a resident of India in view of section 5(1)(c) and such income is to be treated as income derived from other sources as provided by Section 56(2)(b). Section 10(3) of the Act was also amended by the Finance Act of 1972 and earlier to the amendment the income from lotteries even if derived in India, was being considered as "receipts of casual and non-recurring nature" and was not taxable. By the amendment of Section 10(2), winnings from lotteries were specifically taken out from the purview of being considered as receipts of a casual and non-recurring nature. If a resident of India derives income, whether from sources from within the country or from outside the country, that is to be considered while evaulating total income within the ambit of Section 5(1) and in doing so under clause (c) the income accruing or arising outside India also has to be taken notice of. Hence, income derived from lotteries outside India has to form part of the income of the assessee and it could not be considered as income of a casual and non-recurring nature in view of Section 10(3) of the Act. (Para 8)

Held, that Sections 194(b) and 276(b) would be applicable to persons or authorities carrying on lottery business in India but would not be applicable to persons or authorities carrying on such business in a foreign country. These two sections would not be applicable to such authorities in foreign countries because the provisions of the Act do not extend to their limits. But from this, it

cannot be inferred that since these sections do not extend to them, the receipts by an Indian resident in foreign countries on the basis of winning from lotteries would still continue to have the character as receipts of casual and non-recurring nature. Thus, it is held, that an assessee's winnings from lotteries in a foreign country are not of a casual and non-recurring nature and constitutes his income chargeable under Section 5(1)(c) read with section 10(3), 56(2)(ib) and 224(ix) of the Act.

(Para 9)

Reference under Section 256(1) *of the Income Tax Act,* 1961 *made by the Income tax Appellate Tribunal (Chandigarh Bench) to the High Court of Punjab and Haryana for seeking its opinion in case arising out of I.T.A.* No. 203 *of* 1975-76, *R.A. No.* 158 *of* 1976-77 *for the assessment year* 1973-74:—

"*Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee's winnings from lottery in Sikkim (foreign country at the relevant time) did not constitute his income chargeable to income-tax in India under sections* 10(2)/56(2) (*ib*)/2(24) (*ix*) *of the Income-tx Act,* EFPE *as amended by the Finance Act,* 1972, (ii) *Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the provisions of section* 5(1)(*a*) *were not applicable to the lottery winnings received by the assessee in Gangtok*?

Ashok Bhan, Senior Advocate with Ajay Mittal, Advocate, *for the Petitioner.*

Hemant Kumar Gupta, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.—

(1) Under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act), the income Tax Appellate Tribunal (Chandigarh Bench has referred the following two questions of law for the opinion of this Court:—

(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that assessee's winnings from lottery in Sikkim (foreign country at the relevant time) did not constitute his income chargeable to income-tax in India under sections 10(3)/56(2)(ib)/2(24)(ix) of the Income-tax Act, 1961 as amended by the Finance Act, 1972.

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the provisions of section 5(1)(a) were not applicable to the lottery winnings received by the assessee in Gangtok?

(2) Chaman Lal (hereinafter called the assessee), during the year 1972-73 purchased a lottery ticket of Sikkim Government from an Ambala Cantt. agent. At Gangtok, lottery draw was held on 17th September, 1972, in which the assessee was declared to be winner of lottery prize of rupees one lac. After deducting rupees ten thousand as agent's commission and Rs. 2,500 as seller's commission, besides deducting some bank commission, the assessee was paid a sum of Rs. 87,412.50 by bank draft No. 10373, dated 25th October,1972 drawn by State Bank of Sikkim, Gangtok, on the United Commercial Bank. Besides the prize of rupees one lac, there was an additional prize of air ticket for a trip to U.S.A. The assessee encashed the air ticket instead of taking a trip to U.S.A. and thus he got Rs. 7,902, after having deducted Rs. 8 as bank charges, by demand draft No. 10401, dated 30th October, 1972. The assessee ultimately credited the drafts in his account in State Bank of India, Ambala Cantt.

(3) During the assessment year 1973-74, the assessee filed a return of income and claimed that the sum of Rs. 95,412 (Rs. 87,412 +Rs. 8,000) was receipt of a casual and non-recurring nature and, therefore exempt from tax. This contention was not accepted by the Income Tax Officer on the reasoning that the assessee was a resident of India and under section 5, the income accruing or arising outside India was also taxable in his hands as the definition of income contained in section 2(24),—*vide* clause (ix) included winning from lottery and, therefore, was liable to be taxed under section 56 as income from other sources. Consequently, the aforesaid amount was included in computing the income and in assessing the tax.

(4) The assessee challenged the order in appeal before the Appellate Assistant Commissioner where the assessee remained unsuccessful. Still feeling aggrieved, he took up the matter in appeal before the Tribunal. The Tribunal,—*vide* order dated 31st July, 1976 (copy Annexure 'C') allowed the appeal in regard to the amount claimed under the lottery and held that the entire amonut of Rs. 95,412 was not taxable. In the words of the Tribunal, the following reasoning was adopted in giving the relief:—

"The effect of the insertion of sub-clause (ix) to sestion 2(24) and sub-clause (ib) to section 56(2) and the substitution of

section 10(3) is to bring to tax winnings from lotteries in India. These changes in the statute cannot change the nature of the winnings from lotteries in a foreign country. In spite of the insertion of sub-clause (ix) to section 2(24) and sub-clause (ib) to section 56(2) and the substitution of section 10(3) the winnings from lotteries in a foreign country will retain their character as receipts of a casual and non-recurring nature. The fact that these clauses would operate in respect of winnings only in India would be apparent from the operation of section 194(c) which was also inserted by Finance Act, 1972, with effect from 1st April, 1972. This section lays down that "the person responsible for paying to any person any income by way of winning from any lottery or crossword puzzle in an amount exceeding one thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force." The Sikkim Government is not bound by this section. Section 276-B lays down that "if a person without a reasonable cause fails to deduct or if fails to pay the tax as required by or under the provisions of Chapter XVII-B (section 194-B forms a part of the Chapter) he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.....". The provisions of this section cannot also be applied to a person in a foreign country who makes payment on account of winnings from lottery. In our opinion, the changes in the law by which the winnings from lotteries have been brought to tax are only in respect of lotteries in respect of which the prizes are declared in India. In spite of the changes in the law, the winnings from lotteries in foreign country will constitute receipt of a casual and non-recurring nature. On this reasoning we hold that the income accrued or arose to the assessee outside India during the previous year and, therefore, the sum of Rs. 95,412 is not taxable with reference to the provisions of section 5(1)(c)."

(5) In the alternative, a plea was raised before the Tribunal on behalf of the Revenue that the provision of section 5(1)(a) of the Act was applicable and since the lottery amount was received in India, the same had to be taken notice of as income of the assessee in computing the tax. This argument was rejected because the drafts in

question were received by the assessee in Gangok. Against the aforesaid order, reference under section 256(1) of the Act was sought in regard to the question which have been referred to this Court by order, dated 15th January, 1977, which have been reproduced in the opening part of this judgment.

(6) In order to appreciate the question of law, which arises in the first question, the following relevant provisions would be kept in view:—

"2. In this Act, unless the context otherwise requires,—

* * * *

(24) "income" includes—

* * * *

(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."

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

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

(c) accrues or arises to him outside India during such year;"

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

* * * *

(3) 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."

"56(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other sources", namely:—

* * * *

(ib) income referred to in sub-clause (ix) of clause (24) of section 2."

194-B. The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle in an amount exceeding one thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force:

Provided that no deduction shall be made under this section from any payment made before the 1st day of June, 1972."

"276-B. If a person, without reasonable cause or excuse, fails to deduct or after deducting, fails to pay the tax as required by or under the provisions of sub-section (9) of section 80-E or Chapter XVII-B, he shall be punishable,—

(i) in a case where the amount of tax which he has failed to deduct or pay exceeds one hundred thousand rupees with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case,, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

(7) Before the Finance Act, 1972, came into force, the income derived from lotteries did not come in the ambit of "income" nor within the ambit of "income from other sources". Necessary amendments were made by the Finance Act of 1972 with effect from 1st April 1972, which have been reproduced above regarding winnings from lotteries. By virtue of the definition contained in section

2(24)(ix) of the Act, winnings from lotteries have specifically been included in the definition of income. Section 4 is the charging section and section 5(1) provides how the total income of a resident has to be evaluated and while doing so all income from whatever sources derived by him under clause (a)(b) and (c) has to be taken notice of. Clause (c) specifically provides that income which accrues or arises to a resident outside India has to be included in calculating the total income. As already noticed, the definition of income includes winning from lotteries. Section 56(2)(ib) specifically declares that income received from winnings from lotteries shall be chargeable to Income-tax under the head "income from other sources". On these provisions, the Tribunal has rightly held that with effect from 1st April, 1972, if a resident of India gets lottery prize in India, that would be treated as "income from other sources" and would be liable to tax. Since in the present case the lottery belonged to the foreign country and the income accrued to the assessee outside India, it was held that such income was not taken out of the purview of "receipts of a casual and non-recurring nature" in spite of the afore-quoted amended provisions. The first reasoning given by the Tribunal is that the changes in the statute did not change the nature of the winnings from lotteries in a foreign country and secondly that the changed clauses operated in respect of winnings in India and the provisions contained in sections 194-B and 276-B did not bind the Foreign Governments and those provisions could not be applied to a person in the foreign country who makes payment on account of the winnings from lotteries.

(8) After hearing the learned counsel for the parties and on consideration of the matter, we are of the opinion that wholly wrong view of law has been taken by the Tribunal on the first question. The definition of income includes winnings from lotteries as per section 2(24)(ix). Even if such income accrues or arises outside India, still it has to be taken notice of while calculating total income of a resident of India in view of section 5(1)(c) and such income has to be treated as income derived from other sources as provided by section 56(2)(ib). Therefore, the Tribunal committed serious error of law in concluding that changes in the statute did not change the nature of winnings from lotteries in a foreign country and they retained their character as receipts of a casual and non-recurring nature. Although reference was made to section 10(3) of the Act, still the Tribunal did not understand its true import. Section 10(3) of the Act was also amended by the Finance Act of 1972

and earlier to the amendment, the income from lotteries even if derived in India, was being considered as "receipts of casual and non-recurring nature" and was not taxable. By the amendment of section 10(3), winnings from lotteries were specifically taken out from the purview of being considered as receipts of a casual and non-recurring nature. If a resident of India derives income, whether from sources from within the country or from outside the country, that has to be considered while evaluating total income within the ambit of section 5(1) and in doing so under clause (c) the income accruing or arising outside India also has to be taken notice of. Hence, one fails to understand as to how the income drawn from the lotteries outside India did not come within the purview of the afore-quoted sections and how it could be considered as income of a casual and non-recurring nature when under section 10(3) winnings from lotteries are not to be considered as income of a casual or non-recurring nature.

(9) We also find serious fault in the reasoning of the Tribunal while appreciating sections 194-B and 276-B of the Act. Section 194-B enjoins a duty on the person responsible for paying the lottery winnings to deduct income tax at the rates enforced whenever all lottery winnings exceed Rs. 1,000. Section 198 provides that such deductions shall, for the purpose of computing the income of the assessee be deemed to be the income received. Section 199 provides that when such deduction are paid to the Central Government the same shall be treated as payment of tax on behalf of the person from whose income the deductions were made and credit shall be given to him for the amounts so-deducted on the production of the certificate furnished under section 203. Section 200 enjoins a duty on the person deducting the tax, to pay the same to the Central Government within the prescribed time . Section 276-B provides that if a person without reasonable cause or excuse, fails to deduct or after deducting, fails to pay the tax as required by or under the provisions of sub-section (4) of section 80-E or Chapter XVII-B, he shall be punishable as provided in sub-section (1) and (ii). Sections 194-B and 276-B would be applicable to persons or authorities carrying on lottery business in India but would not be applicable to persons or authorities carrying on lottery business in a foreign country. These two sections would not be applicable to such authorities in foreign countries because the provisions of the Act do not extend to their limits. But from this it cannot be inferred that since section 194-B and 276-B do not extend to them, the receipts by an Indian resident in foreign countries on the basis of

winnings from lotteries, would still continue to have the character as receipts of a casual and non-recurring nature. Accordingly, we hold that the Tribunal committed error of law in holding that the assessee's winnings from lottery in Sikkim (foreign country at the relevant time) were of a casual and non-recurring nature and did not constitute his income chargeable under section 5(1)(c) read with sections 10(3), 56(2)(ib) and 2(24)(ix) of the Act. Accordingly, we answer the first question in the negative, i.e., in favour of the Revenue and against the assessee.

(10) In view of our answer to question No. 1 and because of the fact that detailed arguments were not addressed on question No. 2, question No. 2 is left unanswered.

(11) The reference stands disposed off with no order as to costs.

N.K.S.

Before M. M. Punchhi, J.

RESHIMA RANI,—*Petitioner*

versus

RAVINDER PAHWA AND OTHERS,—*Respondents.*

Criminal Revision No. 1864 of 1984.

July 16, 1985.

Dowry Prohibition Act (XXVIII of 1961)—Sections 6 and 7—Interpretation of—Complaint under section 6 when could be filed.

Held, that a joint reading of sections 6 and 7 of the Dowry Prohibition Act, 1961, makes it clear that the intention of the legislature was that for one year from the date of marriage there shall be no criminal complaint under the Act. The legislature in its wisdom thought that the post marriage period was a sensitive time for the spouses and no element of criminality should be allowed to surcharge the atmosphere. It is after the expiry of one year from the date of the marriage that a complaint is competent and within that period of one year, as is clear from section 6(1)(a), (b) and (c), the dowry, if received before marriage, is ordinarily returnable, the dowry, if received at the time or after the marriage, is returnable within one year of the date of its receipt and the dowry when received for a woman who was a minor, within the year after she attained the age of majority. The legislature thus conceived the dowry would change hands in the rightful direction within a period