IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2026

PRONOUNCED ON : 09.04.2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE SHAMIM AHMED

TC No. 955 of 2008

The Commissioner Of Income
Tax, Coimbatore.

..Petitioner(s)

Vs

M/s Martin Lottery Agencies Ltd
355, 369, 6th Street Gandhipuram Coimbatore 641
012.

..Respondent(s)

Prayer: This Tax Case is filed by the Commissioner of Income Tax, Coimbatore, against the order of the Income Tax Appellate Tribunal, D-Bench, Chennai, dated 04.08.2005, passed in ITA.No.451/Mds/2001.

For Petitioner(s): DR.B.RAMASAMY

For Respondent(s): MR. P.S RAMAN SR COUNSEL and
MR.M.GANESH KANNAN, Advocate

ORDER

(Order of the Court was made by Shamim Ahmed J.)

1. This Tax Case is filed by the Commissioner of Income Tax, Coimbatore, against the order of the Income Tax Appellate Tribunal, D-Bench, Chennai, dated 04.08.2005, passed in ITA.No.451/Mds/2001.

2. The facts of the case, in a nutshell, leading to filing of this Tax Case are that the Respondent/Assessee was carrying on the business of purchase and sale of lottery tickets, sponsored by various State Governments, during the relevant period of time. It is alleged that while the face value of the lottery tickets sold being Rs.1.00, the Assessee sold the same to their immediate Agents/Dealers, at the rate of Rs.0.76 and Rs.0.77 per ticket. The Assessing Officer had raised a demand of Rs.2,19,58,083/- along with interest of Rs.6,68,785/- for the assessment year 1999-2000, under Sections 201(1) and 201(1A) of the Income Tax Act, by the proceedings dated 25.03.1999, on the grounds that since the difference between the sale price and the face value of the lottery tickets would amount to payment of commission to the Agents/ Dealers, the Assessee is liable to deduct tax at source, under Section 194G of the Income Tax Act, which it had failed to do so. As against the same, the Assessee had preferred an appeal before the Commissioner of Income Tax (Appeals), Coimbatore, in ITA.No.1726-C/98-99, which was dismissed as not maintainable, by the order dated, 24.06.1999, on the ground that the order of demand of the Assessing Officer is not an appealable order. Thereafter, after amendment of Section 240A by the Finance Act, 2000, the Assessee had preferred an appeal before the Commissioner of Income Tax (Appeals)-X, Chennai in ITA.No.323/2000-2001, which was allowed by the order dated, 18.12.2000, holding that the Assessee was not liable under Section 194G of the said Act to deduct tax at source and the Assessee cannot be proceeded

under Sections 201(1) and 201(1A) of the Income Tax Act and cancelling the order of demand of the Assessing Officer. As against the same, the Revenue Department had filed an appeal before the Income Tax Appellate Tribunal Bench 'D" Chennai, in ITA.No.451/Mds/01, which was also dismissed, by the impugned order, dated 04.08.2005, upholding the order, dated 18.12.2000, passed by the Commissioner of Income Tax (Appeals)-X, Chennai. Aggrieved by the same, the Revenue Department has filed this Tax Case.

3. This Tax Case was admitted, by the order, dated 23.07.2008, on the following question of law:-

> *"Whether the difference between the face value and the amount to which the lotteries were given to the distributors/ stockists/ dealers in order to encourage the sale of lottery, would amount to the 'Commission or Not?"*

4. This Court heard Dr.B.Ramasamy, the learned counsel for the Petitioner and Mr.P.S.Raman, the learned senior counsel, assisted by Mr.M.Ganesh Kannan, Advocate for the Respondent.

5. The learned counsel for the Petitioner has submitted that since the difference between the sale price and the face value of the lottery tickets would amount to payment of commission made to the Agents/Dealers, the Assessee is liable to deduct tax at source, under Section 194G of the Income Tax Act, which it had failed to do so and hence, the Assessing Officer had rightly made a demand to the tune of Rs.2,12,89,298/-, along with interest of Rs.6,68,785/-

under Sections 201 and 201(1A) of the Income Tax Act.

6. The learned counsel for the Petitioner has further submitted that the relationship between the Assessee and the Dealer is not that of a 'Seller' and 'Buyer', when the Dealer returns the unsold tickets to the Assessee and pays only for the tickets sold before the draw and that when the Dealer returns the unsold tickets and pays for the sold tickets at the face value, after deducting some amount retained for him, it can be treated as only a payment of commission allowed to him by the Assessee and it is not a sale and that so called margin money is, in reality, a commission allowed to the Dealer, thereby attracting the provisions of Section 194G of the Income Tax Act and hence, this Tax Case is liable to be allowed, upholding the order of demand of the Assessing Officer.

7. Per contra, the learned senior counsel for the Respondent/Assessee has submitted that the transaction between the Assessee and the Dealer is that of Principal to Principal and that there is no relationship of employer and the employee between the Assessee and the Dealer and that since the transactions are out right sales and there is no payment of any commission, the expression “Commission” cannot be used in respect of transaction involving sale and purchase and that the rebate allowed by the Assessee on the face value of the lottery tickets would not amount to “Commission”, within the meaning of Section 194G of the Income Tax Act, 1961 and hence, the opinion of the Assessing Officer that the difference between the face value and the invoice

value can be treated as "Commission", so as to attract the provisions of Section 194G of the Income Tax Act, 1961, is erroneous.

8. We have given our anxious consideration to the rival submissions of the learned counsel on either side and also perused the entire materials placed on record, including the relevant authorities of various Courts.

9. It is not in dispute that the Respondent/Assessee had purchased the lottery tickets in bulk from the State Governments at a reduced price and sold the same in bulk to its next level of Dealers at a profit margin, during the relevant period of time. The face value of the lottery ticket was Rs.1.00 per ticket. It is also admitted that the Respondent/ Assessee had sold the lottery tickets to its immediate Dealers at the rate of Rs.0.76 and Rs.077 per ticket. Relying on Section 194G of the Income Tax Act, the Assessing Officer had made a demand of Rs.2,12,89,298/- along with interest of Rs.6,68,785/-, for the assessment year 1999-2000.

10. Be that as it may. From the averments of the parties and the submissions of the learned counsel on either side, the question of law that emerges for consideration in this Tax Case, is as to whether the difference between the face value and the amount to which the lotteries were given to the distributors/ stockists/ dealers in order to encourage the sale of lottery would amount to the 'Commission or Not?"

11. At this juncture, it is appropriate to quote the provisions of Section 194G of the Income Tax Act, based on which, the Assessing Officer had passed the

impugned order of assessment, as under:-

> *"**194G. Commission, etc., on the sale of lottery tickets:--**(1) Any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding fifteen thousand rupees shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of two per cent.*
>
> ***Explanation:-** For the purposes of this section, where any income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.*

12.In order to make an Assessee liable to deduct tax at source under Section 194G of the Income Tax Act, the Assessee should be responsible for paying Commission and the income by way of Commission should be paid by way of credit of such income to the account of the payee or by way of cash or draft or any other mode. Only on fulfilment of these ingredients, the Assessee can be made liable to deduct tax at source under Section 194G of the Income Tax Act.

13.In the **Judgement and order, dated 10.11.2000, of the High Court of Kerala, reported in 2001 (249) Income Tax Return 186 (Ker) (M.S.Hameed and another Vs. Director of State Lotteries),** the High Court of Kerala was pleased to observe as under:-

> *21. According to me, the transaction which the petitioners have*

entered into do not appear to be one in the contemplation of Section 194G. The sub-headings of the section is commission, etc., on sale of lottery tickets. The liability is for deduction at source, under Chapter XVII. The general provision by Section 190 prescribes for deduction, collection at source or advance payment. It is not disputed that if at all the first alone is applicable here. Section 192 concerns salary. Deduction at the time of payment is compulsory. Section 193 refers to the deductions made at the time of payment of interest, and Section 194 concerns with dividends payable by a company. Likewise Section 194A concerns payments of certain types of interests, Section 194B deals with winnings from lottery or crossword puzzle, Section 194C deals with payments to contractors, Section 194D deals with similar payments arising as is similar commission, Sections 194 H, I, J, K, L also refer to deduction of income-tax on payments under the respective heads.

22. Only Section 194G deals with a situation of a slightly different category. The responsibility for deduction of tax is on any person responsible for paying to any person any income by way of commission, remuneration or prize, who purchases or sells or stocks lottery tickets, on such tickets, here in this case, the State Government. The deduction is to be at the time of credit of such income to the account of the payee or at the time of payment of such income.

23. Therefore, the demand of tax is to be shown as one on the income of the person concerned. There is neither payment of cash or by cheque, and the Government never credits any income to the account of the persons like the petitioners. When the deduction is contemplated at the time of payment to the person concerned and when it is shown that there is no payment to the agent at the time of purchase of the ticket, the section automatically becomes inapplicable. If any prize or remuneration is payable by the Government, to any person, deduction at source as envisaged under the section, may arise. But when no payment is made in view of the mandate of the section, no deduction is envisaged. That the ticket is given on a discount of 28 per cent., can by no imagination be pressed into service for an interpretation that, none the less, ten per cent, of 28 paise is deductible as tax. Perhaps the intention might have been to bring the agents within the tax net, but the section as it stands, according to me, is not authority for taxation at source, as is envisaged by exhibit P-4.

25. However, as pointed out by the Supreme Court of India in CIT v. Khatau Makanji Spinning and Weaving Co. Ltd. [1960] 40 ITR 189, this also is a case where the Act could have resorted to some fiction which might conceivably have met the case, but it has failed to do so. The provision has failed to achieve the underlying objective. Reliance on Union of India v. A, Sanyusi Rao [1996] 219 ITR 330 (SC), that what could be converted to income can reasonably be regarded as giving rise to income, though a salutary principle, can have no application to the facts of the present case.

26. Reference had been made to the Finance Act, 1992, as seen published in [1992] 195 ITR (St.) 214 at page 255. Sub-sections (2) and (3) were added to Section 194G but in view of my finding that exhibit P-4 cannot be issued on the authority of Section 194G, nothing more turns on that.

27.From a consideration of the relevant aspects, the view possible, according to me, is that exhibit P-4 has proceeded on an erroneous assumption, and the petitioners were not liable to be covered under Section 194G of the Income-tax Act. Exhibit P-4 is therefore, set aside and the original petition stands allowed."

14.In the case of ***Principal CIT v. Usha Murugan*, 2021 (18) ITR-OL 502 : 2021 SCC OnLine Ker 16435:2022 (326) CTR 614,** the Division Bench of the Kerala High Court was pleased to observe as under:-

"10.2 The Assessee acts as a post-office by receiving counterfoils of prize winning tickets sold by different retailers in the organisation of lottery business presented to the State Government and the prize/incentive/bonus received from the Government is transferred to retailers. In the circumstances of the case our attention has been drawn to the flow of counterfoils into the hands of the Assessee and presentation of counterfoils to the Government and receipt of incentive by the Assessee and subsequent transfer of incentive to retailers. The person responsible for making the payment is the Government. Admittedly, the Government after effecting the tax deduction at source (TDS) has paid the amount to the Assessee towards prize incentive etc. The Assessee has collected the amount and claims to have made over the incentive to the end retailers. Section 194G, as rightly held by the Commissioner of Income-tax and the Tribunal, is not attracted to the instant payment inasmuch as

the Assessee is not under an obligation to pay towards commission etc. to any of these persons.

10.3 The substantial questions of law framed by the Revenue are examined by keeping in perspective the confirming order of the Tribunal and the findings of facts recorded by the Tribunal on which no exception is pointed out to the effect that sections 194H and 194G are not attracted. It is definitely a case for consideration of substantial questions of law, had the Revenue established the basic ingredients required for attracting any one of the sections to the controversy covered by the appeal. We are of the view that the Assessee being a wholesale dealer/stockist of lottery tickets has purchased from the Government and sold to the retailers. It is accepted as a purchase from the organizing agency of lottery and sale to retailers. The amount covered is incentive payable by the organizing department to the agent and none of the ingredients required for adding the disputed amount is established. The questions, in our view, do not arise for consideration particularly having regard to the findings appreciated by the Commissioner of Income-tax (Appeals) and the Tribunal and accordingly the questions are answered in favour of the Assessee and against the Revenue. The consideration of the issues should be understood as made in the circumstances of the case and not relied on as precedent on the applicability of any of the sections referred to above vis-a-vis lottery business and implications on tax liability. In other words, the decision is fact specific to the cases on hand.

For the very same reasons I. T. A. Nos. 13 and 29 of 2017 are dismissed."

15.In **2024 (10) SCC 733 (K.Arumugam Vs. Union of India)**, the Honourable Supreme Court was pleased to observe as under:-

"27.The definition of goods has also been noted in clause (50) of Section 65 of the Finance Act, 1994 which refers to clause (7) of Section 2 of the Sale of Goods Act, 1930. The expression "goods" under the Sale of Goods Act expressly excludes actionable claims as well as money. This Court in Sunrise Associates has held that lottery tickets are actionable claims. Therefore, as lottery tickets would not come within the meaning of the expression goods under clause (7) of Section 2 of the Sale of Goods Act, 1930, they would also not come within the scope and ambit of clause (50) of Section 65 of the

Finance Act, 1994. If that is so, they would also not come within the scope and ambit of clause (19)(i) of Section 65 of the Finance Act, 1994. Lottery tickets being actionable claims and not being goods within the meaning of sub-clause (i) of clause (19) of Section 65 of the Finance Act, 1994, would expressly get excluded from the scope of the said provision. In the circumstances, service tax on the promotion or marketing or sale of lottery tickets which are actionable claims could not have been levied under the said sub-clause.

28. In order to remove the doubt whether service tax could be levied on promotion or marketing or sale of lottery tickets under Clause 19(ii) of Section 65 of the Finance Act, 1994, an Explanation was added with effect from 16.05.2008. The Explanation has also been extracted above. Although the Explanation is for the purpose of removal of doubts, it is relevant to note that what is excluded in sub-clause (i) of clause (19) of Section 65 of the Act, namely lotteries being actionable claim and not goods, as analysed above, is sought to be mentioned as lottery per se in the Explanation. Thus, when lottery ticket is an actionable claim and not "goods" and is therefore outside the scope of sub-clause (i) of clause 19 of Section 65 of the Finance Act, 1994, it could not have been included as lottery per se in the Explanation to sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994 as "service in relation to promotion or marketing of service provided by the client" including any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo.

29. The Explanation sought to bring the activity of sale of lottery tickets within sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994, when it was excluded from sub- clause (i) on account of the lottery tickets being interpreted as actionable claims and not goods on the premise that it was a service within the meaning of said sub-clause. On a plain reading of the Explanation in light of the activity actually carried on by the appellant(s)-assessee(s) herein, it becomes clear that the outright purchase of lottery tickets from the promoters of the State or Directorate of Lotteries, as the case may be, is not a service in relation to promotion or marketing of service provided by the client, i.e., the State conducting the lottery. The conduct of lottery is a revenue generating activity by a State or any other entity in the field of

actionable claims. The client, i.e., the State is not engaging in an activity of service while dealing with the business of lottery. Explanation to sub- clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994 cannot bring within sub-clause (ii) by assuming an activity which was initially sought to be covered under sub-clause (i) thereof but could not be by virtue of the definition of goods under the very same Act read with Section 2(7) of the Sale of Goods Act, 1930. The mere insertion of an explanation cannot make an activity a taxable service when it is not covered under the main provision (which has to be read into the said sub- clause by virtue of the legislative device of express incorporation). This is because sale of lottery tickets is not a service in relation to promotion or marketing of service provided by a client, i.e., the State in the instant case. Conducting a lottery which is a game of chance is ex facie a privilege and an activity conducted by the State and not a service being rendered by the State. The said activity would have a profit motive and is for the purpose of earning additional revenue to the State exchequer. The activity is carried out by sale of lottery tickets to persons, such as the assessees herein, on an outright basis and once the lottery tickets are sold and the amount collected, there is no further relationship between the assessees herein and the State in respect of the lottery tickets sold. The burden is on the assessees herein to further sell the lottery tickets to the divisional / regional stockists for a profit as their business activity. This activity is not a promotion or a marketing service rendered by the assessees herein to the State within the meaning of sub-clause (ii) of Clause 19 of Section 65 of the Finance Act, 1994. This is because, to reiterate, the States are not rendering a service but engaged in the activity of conducting lottery to earn additional revenue. Moreover, once the lottery tickets are sold by the Directorate of Lotteries—a Department of the State, there is transfer of the title of the lottery tickets to the appellants, who, as owners of the said lottery tickets, in turn sell them to stockists and others. Thus, there is no promotion of the business of the State as its agent. Thus, there is no 'principal—agent' relationship which would normally be the case in a relationship where a business auxiliary service is rendered. The relationship between the State and the appellants is on a principal to principal basis. Thus, there is no activity of promotion or marketing of a service on behalf of the State. Neither is the State, which conducts the lottery, rendering a service within the meaning of the Finance Act, 1994.

16.In **2025 (5) SCC 601 (Union of India Vs. Future Gaming Solutions**

Private Limited), the Honourable Supreme Court was pleased to observe as under:-

"73. In M.S. Hameed vs. Director of State Lotteries, (2001) 249 ITR 186 (Ker), the facts were that the petitioner therein received in bulk quantities of lottery tickets from the State Government. They were given a discount which was on a slab system, such as for the purchase of 50,001 and above tickets, there was a 28% discount. The petitioners contended that the tickets purchased were thereafter distributed to other agents and sub- agents on commission basis. That after purchase of the tickets, it was not for the Government to look out as to how they were distributed and there was no control over the affairs thereafter. That there was only payment of the price of the ticket fixed as payable by the principal, and no commission or discount was paid to them by the Government. That Section 194G of the Income Tax Act, which imposes liability on the person responsible for paying to any person who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration, on such tickets in all amounts exceeding Rs.1000, to deduct income tax thereon at the rate of 10%, had no application. Hence, the demand of tax was without jurisdiction.

74. The Kerala High Court in M.S.Hameed considered the question whether the amount received as commission or discount or any incentive or as a margin is income or earning which was taxable at the hand of the assessee concerned, coming under the purview of Section 194G of the Income Tax Act. It was observed that if the face value of the lottery ticket was Re. 1, the petitioner therein would receive it at Rs. 0.72 paise and could sell at any price and it was not the State's business to enquire into the matter at all. It was observed that the deduction under Section 194G was on any person responsible for paying to any person any income by way of commission, etc. who purchased or sold or stocked lottery tickets, in this case, the State Government. The deduction was to be made at the time of credit of such income to the account of the payee or at the time of payment of such income. The Kerala High Court observed that when the deduction is contemplated at the time of the payment to the person concerned but it is shown that there was no payment to the agent at the time of purchase of the ticket, the section automatically becomes inapplicable. That the ticket is given on a discount of 28%, can by no imagination be pressed into service for an interpretation

that, nonetheless, 10% of 28 paise is deductible as tax. Thus, it was held that Section 194G was not applicable. The Kerala High Court held that since the lottery tickets were sold at a discounted price, the purchasers were sought to be taxed as agents which could not be the case as there was no transaction under an agency and the petitioner therein were not liable to be covered under Section 194G of the Income Tax Act.

75. Ahmedabad Stamp Vendors Association vs. Union of India, (2002) 257 ITR 202 (Guj), raised a question with regard to whether, the petitioners therein being stamp vendors were agents of the State Government who were being paid commission or brokerage or whether the sale of stamp papers by the Government to the licensed vendors was on principal to principal basis involving a contract of sale. Reference was made to Bhopal Sugar Industries Ltd. and also to the meanings of the expressions "commission" and "discount". The licensed vendors have to pay for the price of the stamp paperless the discount at the rates provided varying from 0.5% to 4%. It was not that the stamp vendor collected the stamp papers from the Government, sold them to the retail customers and then deposited the sale proceeds with the Government less the discount. The liability of the stamp vendor to pay the price less the discount was not dependent upon or contingent to sale of stamp papers by the licensed vendor. The licensed vendor was not entitled to get any compensation or refund of the price if the stamp papers were lost or destroyed. The crucial question was whether the ownership in the stamp papers passed to the stamp vendor when the Treasury Officer delivered stamp papers on payment of price less discount. Clause (b) of sub-rule (2) of Rule 24 of Gujarat Stamps Supply and Sales Rules, 1987 indicated that the discount which the licensed vendor had obtained from the Government was on purchase of the stamp papers. Consequently, it was held that the discount made available to the stamp vendors under the provisions of the aforesaid 1987 Rules did not fall within the expression "commission" or "brokerage" under Section 194H of the Income Tax Act, 1961."

17.In **2024 (2) SCR 1001:2024 INSC 148 (Bharti Cellular Limited Vs. Assistant Commissioner of Income Tax)**, the Honourable Supreme Court was pleased to observe as under:-

"41. Thus, the term 'agent' denotes a relationship that is very

different from that existing between a master and his servant, or between a principal and principal, or between an employer and his independent contractor. Although servants and independent contractors are parties to relationships in which one person acts for another, and thereby possesses the capacity to involve them in liability, yet the nature of the relationship and the kind of acts in question are sufficiently different to justify the exclusion of servants and independent contractors from the law relating to agency. In other words, the term 'agent' should be restricted to one who has the power of affecting the legal position of his principal by the making of contracts, or the disposition of the principal's property; viz. an independent contractor who may, incidentally, also affect the legal position of his principal in other ways. This can be ascertained by referring to and examining the indicia mentioned in clauses (a) to (d) in paragraph 8 of this judgment. It is in the restricted sense in which the term agent is used in Explanation (i) to Section 194-H of the Act.

42. In view of the aforesaid discussion, we hold that the assessees would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors. Section 194-H of the Act is not applicable to the facts and circumstances of this case. Accordingly, the appeals filed by the assessee – cellular mobile service providers, challenging the judgments of the High Courts of Delhi and Calcutta are allowed and these judgments are set aside. The appeals filed by the Revenue challenging the judgments of High Courts of Rajasthan, Karnataka and Bombay are dismissed. There would be no orders as to cost. Pending applications, if any, shall stand disposed of. "

18.In **1980 (123) ITR 592(MAD):*183 ITR 592 (CIT Vs. AKS.Chetty & Sons),***

the Madras High Court was pleased to observe as under:-

"9. The Tribunal has also referred to a decision of this court in Sri Rama-linga Choodambikai Mills Ltd. v. CIT [1955] 28 ITR 952. In that case it was pointed out that in the absence of evidence to show that either the sales were sham transactions or that the market prices were in fact not paid by the purchasers, the mere fact that the goods were sold at a concessional rate to benefit the purchasers at the expertse of the

company would not entitle the income-tax department to assess the difference between the market price and the price paid by the purchasers as profit of the seller. The Tribunal has pointed out that that was exactly what happened in the present case. In other words, the Tribunal's finding on the facts was that the assessee had charged only the net price and that there was no discount or rebate given to the purchasers. The bona fides of the transaction are not in dispute. In these circumstances and in view of the finding of the Tribunal as to what happened between the seller and the purchaser in the present case, it has to be held that there was no expenditure which could be disallowed by reference to Section 40A(2)(a). In this view, it is unnecessary to go into the concept of commission or rebate discussed in Harihar Cotton Pressing Factory v. CIT [1960] 39ITR 594 (Bom). The result is that the question referred to this court in each of the years is answered in the negative and against the revenue. The assessee will be entitled to its costs.

19.In **1960 (62) BOMLR 675:1960 (*39) ITR 594 (Harihar Cotton Pressing Factory Vs CIT),*** the Bombay High Court was pleased to observe as under:-

"8. It all comes to this. Can a rebate granted by a firm of cotton pressers to a customer-partner by way of reduction in pressing charges amount to "commission" within the meaning of Section 10(4)(b) ? The expression "commission" has no technical meaning but both in legal and commercial acceptation of the term it has definite signification and is understood as an allowance for service or labour in discharging certain duties such for instance of an agent, factor, broker or any other person who manages the affairs or undertakes to do some work or renders some service to another. Mostly it is a percentage on price or value or upon the amount of money involved in any transaction of sale or service or the quantum of work involved in a transaction. It can. be for a variety of services and is of the nature of recompense or reward for such services. Rebate, on the other hand, is a remission or a payment back and of the nature of a deduction from the gross amount. It is sometimes spoken of as a discount or a draw-back. The dictionary meaning of the term includes a refund to the purchaser of a thing or commodity of a portion of the price paid by him. It is not confined to a transaction of sale and includes any deduction or discount from a stipulated payment, charge or rate. It need not necessarily be taken out in advance of payment hut may be handed hack to the payer after he has paid the stipulated sum. The repayment need not be immediate. It can he made later and in case of persons who have continuous dealings with one another it is nothing

unusual to do so. In the case before us, we are concerned with charges for pressing bales of cotton by a cotton presser to a constituent who is also a partner and repayment to him of a part of those charges as a rebate and as now found by the Tribunal on grounds of commercial expediency. In our judgment, those deductions are nothing more than rebate which can be given in case of a sale or any other transaction of the nature before us. One practicable test, which may perhaps apply to a like transaction, can be this. If the amounts in dispute were commission, they would certainly he income of the constituent partners. It seems extremely difficult to us to view these pavments received by the constituent partners as income earned by them. The correct position seems to us to be that the disputed amounts touch and directly touch the amount of charges payable for pressing cotton hales and cannot be regarded as anything apart from those pressing charges. They are rebates in both the legal and commercial signification of that expression and cannot be treated as "commission". For all these reasons we are of the opinion that the disputed amounts are not hit by the provisions of Section 10(4)(b).

9. Our answer to the first question will be in the affirmative. "We have already answered the second question. The Commissioner to pay the costs of the assessee-firm. There will be no order on the notice of motion."

20. In **1983 (139) ITR 827 (MP):*139 ITR 827 (CIT Vs. Udhoji Shri Krishnadas),*** the Madhya Pradesh High Court was pleased to observe as under:-

"5. The Tribunal's finding is that in addition to the payment of 10% of commission to the firm of M/s. Lalchand Shyamsunder, the assessee sold the bidis at a rate less than the market rate to enable that firm to earn additional profit. The finding that there was a sale of bidis by the assessee to the firm of M/s. Lalchand Shyamsunder is a finding of fact. It is only by accepting this finding that we have to answer the question referred. On the finding so reached, it is clear that the amount of profit earned by M/s. Lalchand Shyamsunder on the sale of bidis cannot be taken to be an expenditure incurred by the assessee within the meaning of Section 40A(2). The expenditure incurred by the assessee was the commission. Even if the assessee sold bidis to the sole selling agents at a price less than the market

rate, the difference between the market rate and the price at which the bidis were sold cannot, in our opinion, be termed as expenditure incurred by the assessee. On the finding reached by the Tribunal, it has to be held that the ITO was not right in adding Rs. 6,81,987 under Section 40A(2).

6. As regards the purchase of tobacco from M/s. Mohanlal & Company, the finding of the Tribunal is that there is no adequate material to hold that the purchase was not made at the market rate. In view of this finding it cannot be held that the payment of price made by the assessee to this firm was either excessive or unreasonable. Section 40A(2)(a) is, therefore, clearly not attracted.

7. For the reasons given above, we answer the question referred to us in the affirmative in favour of the assessee, and against the Department. There will be no order as to costs of this reference."

21. According to the Petitioner, the difference between the face value of the lottery ticket and the amount, to which the lotteries were given to the distributors/ stockists/ dealers would amount to payment of 'Commission" and hence, the Respondent/Assessee is liable to deduct tax at source under Section 194G of the Income Tax Act, which the Respondent/Assessee had failed to do so. Hence, the Assessing Officer had rightly made the demand with interest, as stated above.

22. According to the Respondent/Assessee, since the transactions are out right sales, the question of payment of any Commission does not arise at all and hence, expression "Commission" cannot be made applicable to the transaction involving such sale and purchase. Hence, the order of demand of the Assessing Officer is illegal. Holding so, the Tribunal had passed the impugned order, cancelling the order of demand of the Assessing Officer,

which warrants no interference by this Court.

23. The transaction did not fall within the expression 'commission' for the purpose of Section 194G. In the case of a commission payment, there was no transfer of property by the seller to the commission agent.

24.A person is chargeable to tax not on the basis what he saves in his pocket, but what goes into his pocket. In this case, as stated above, the Assessee had never paid any amount to the Dealer by way of commission. Hence, the amount saved by the Dealer cannot be termed as "Commission", as the Assessee never credited any income to the account of its Dealers. When it is shown that there is no payment of commission to the Dealer by the Assessee at the time of purchase of the lottery tickets, Section 194G becomes inapplicable and no deduction of tax is envisaged.

25. In this case, the Assessee had purchased the lottery tickets at a reduced rate from the State Government and sold the same to its immediate Dealers at a profit margin. The face value of the lottery tickets is Rs.1.00 per ticket and the sale value is Rs.0.76 or Rs.0.77. The difference between the face value and the sale value is Rs.0.24 or Rs.0.23. There was only payment of the price of the lottery tickets fixed as payable by the Principal and no Commission was paid by the Assessee to its immediate Agent or Dealer. Hence, such difference cannot be termed as "Commission" and it cannot also be held that the Assessee had paid commission to the extent of Rs.0.24 or Rs.0.23 and actually, no commission was paid by way of credit to the account

of the immediate Dealer by the Assessee, by way of cash or any other mode. Hence, Section 194G of the Act has no application to the case of the Assessee.

26.In view of the above discussions, reasons and in the light of the decisions, referred to above, we are not inclined to interfere with the impugned order of the Income Tax Appellate Tribunal, D-Bench, Chennai, dated 04.08.2005, passed in ITA.No.451/Mds/2001, as there is no illegality or perversity in the same and we are of the view that the Respondent/ Assessee is not liable under Section 194G of the Income Tax Act, 1961 to deduct tax at source and consequently, the Respondent/Assessee cannot be proceeded under Sections 201(1) and 201(1A) of the Income Tax Act.

27.In the result, this Tax Case filed by the Appellant/Revenue Department is dismissed. There is no order as to costs.

(G.J.,J.) (S.S.A.,J.)
09-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
SRCM

DR.G.JAYACHANDRAN, J.
AND
SHAMIM AHMED, J.

SRCM

Pre-Delivery Order
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09-04-2026