

IN THE HIGH COURT OF DELHI AT NEW DELHI

22.09.2009

11#

**Present: Ms. Prem Lata Bansal, Advocate for the appellant.
Mr. Satyen Sethi with Mr. Johnson Bara, Advocates for the respondent.**

ITA No.165/2009 COMMISSIONER OF INCOME TAX
Vs. SHRI ANANT JAIN

In the return filed by the respondent/assessee for the Assessment Year

2001-02, he declared his income at Rs.92,25,860/-. The AO, however, made

additions to the tune of Rs.81,14,499/-. This amount was comprised of two

items, viz:

- i) Rs.43,70,473/- being tax borne by the employer.**
- ii) Rs.37,44,026/-, which was claimed by the assessee as severance pay.**

Insofar as the issue regarding addition of Rs.43,70,473/- is concerned,

it included amount of Rs.23,53,695/- being tax deducted by the employer and

claimed by the assessee as exempt under Section 10(5B) of the Income Tax Act.

The Assessing Officer held that the assessee was not a Technician within the

meaning of Section 10(5B) of the Act. He was merely possessing a Masters Degree

in Public Administration in International Finance, which was not good enough for

qualifying him as a foreign technician. However, the CIT(A) reversed this

finding holding that apart from the aforesaid Master Degree in Public Administration, the assessee was also having Masters Degree in Architectural

Planning, Business Administration and Public Finance . This finding is affirmed

by the ITAT. In addition, the ITAT has also found that the assessee derived

experience while working with the previous employer who floated an Indian subsidiary to be engaged in similar and identical business activity covered under item 1 below Explanation to Section 10(5B) of the Income Tax Act. It is also found as a fact that the assessee was made responsible for overall

functioning and supervision of various activities, which ultimately led to the generation of the electricity. The ITAT thus held that the assessee fulfilled all the three conditions for seeking exemption under Section 10(5B) of the Act, as is clear from the following observations:
?11. We have heard both the parties and perused the material available on record. Section 10(5B) of the Income Tax Act, 1961 grants exemption in case of an individual, who renders services as a technician in the employment of the Government or of a local authority or of any corporation set up under special law or any such institution or body established in India for carrying on scientific research as is approved by the prescribed authority or any business carried on in India. Therefore, the first condition to be satisfied by an individual is that he should be in employment as technician with either of the person/authority. The second condition to be satisfied is that the individual was not in India in any of the four financial years immediately preceding the financial year in which he arrived in India. Thirdly, the tax on his income for such services chargeable under the head ``salary`` is paid to the Central Government by the employer. If these conditions are satisfied, the tax so paid by the employer for the period not exceeding 48 months

commencing from the date of his arrival shall not form part of his total income. In the case before us as held by the learned Commissioner (Appeals) the assessee possesses bachelor and Masters Degree in Architecture and Planning. He has acquired experience in the execution, construction and operation of power plant. Therefore, the assessee fulfils the condition of being technician. The learned Authorised Representative of the assessee, during the course of hearing, relied on the decision rendered by the Authority for Advance Rulings reported in ABC, wherein the meaning of expression technician has been explained. It has been observed that the definitions given by various authorities suggest that special knowledge may be obtained either by education or by special experience. The same view has been expressed by the Honble Andhra Pradesh High Court in the case of Batta Kalyani v. CIT, while deciding a similar issue in connection with clubbing of income under Section 64 of the Act. The court held that the possession of any qualification issued by any recognised body was not necessary for "knowledge and experience". A similar view has been taken by the Hon'ble Kerala High Court in CIT v. Sorabji Dorabji, the Bombay High Court in Dr. J.M. Mokashi v. CIT and the Madhya Pradesh High Court in the case of CIT v. Madhubala Shrenik Kumar. From the authorities referred to in the decision of Authority for Advance Rulings, it is clear that for a technician for the purpose of Section 10(5B) of the Act special education imparted by an educational institution is not necessary. Therefore, the assessee having the degree in architectural planning, business

administration and public finance and experience in execution of projects of power generation and distribution of electricity will qualify him as technician for the purposes of Section 10(5B) of the Act.?

Therefore, in view of the above findings, insofar as this aspect is concerned, we are of the opinion that no substantial question of law arises for consideration and with respect to which question of law the appeal is accordingly dismissed.

On the other issue, the following substantial questions of law arise:

- a) Whether ITAT was correct in law in deleting the addition of Rs.37,44,026/- made by the Assessing Officer treating the same as profit in lieu of salary under Section 17(3)(i) of the Act?
- b) Whether proviso to Section 5(1) would apply to the amount of Rs.37,44,026/- received by the assessee so as to exclude the same from the total income of the assessee?

Paper book be filed within three months.

A.K. SIKRI, J.

VALMIKI J. MEHTA, J.

September 22, 2009

pmc