
(1986) 04 CAL CK 0016

In the Calcutta High Court

Case No : Income-tax Reference No. 401 of 1977

Commissioner of Income Tax

APPELLANT

Vs

J. Gestin

RESPONDENT

Date of Decision : 21-04-1986

Acts Referred:

Income Tax Act, 1961 — Section 10(6)

Citation : (1986) 56 CTR 279 : (1986) 161 ITR 563 : (1986) 28 TAXMAN 215

Hon'ble Judges : Paritosh Kumar Mukherjee, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : Sunil Mukharji, for the Appellant; D. Pal and R.N. Dutt, for the Respondent

Judgement

Dipak Kumar Sen, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, the question of law referred by the Tribunal arising out of its order for the opinion of this court is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the remuneration and other perquisites received by the assessee during the relevant previous years under reference up to December 12, 1969, were exempt u/s 10(6)(vii)(a)(ii) of the Income Tax Act, 1961 ?"

2. The facts found and/or admitted which are relevant to the dispute may be noted as follows.

3. Mr. J. Gestin is a French technician who arrived in India on deputation on December 12, 1966, and was appointed by the Hindusthan Zinc Ltd., a public sector undertaking. The assessee worked with Hindusthan Zinc Ltd. up to January, 1968, and thereafter left India. The employment of the assessee with Hindusthan Zinc Ltd. was approved by the Government of India as recorded in a collaboration agreement between Hindusthan Zinc Ltd. and the French concern which deputed the assessee to work with Hindusthan Zinc Ltd.

4. The assessee came back to India, subsequently on September 23, 1968, to

work with Durgapur Chemicals Ltd., a West Bengal Government undertaking. The service of the assessee with Durgapur Chemicals Ltd. was also approved by the Government of India. The assessee worked with Durgapur Chemicals Ltd. up to October 30, 1969. He left India on December 22, 1969. He came back to India on January 15, 1970, and continued to work with Durgapur Chemicals Ltd. up to March 15, 1970, during which period the assessee was paid by Durgapur Chemicals Ltd. only a daily allowance and free furnished accommodation.

5. The assessee was assessed to Income Tax for the assessment years 1969-70 and 1970-71, the accounting years ending on March 31, 1969, and 1970. It was claimed that the assessee was entitled to the benefits u/s 10(6)(vii)(a)(ii) inasmuch as the service of the assessee was approved by the Government of India. The Income Tax Officer refused to allow the exemption provided by the said section on the ground that the assessee was not continuously employed under one employer and that his services with Hindusthan Zinc Ltd. was not approved by the Government of India.

6. Being aggrieved, the assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner considered and construed Section 10(6)(vii) of the Income Tax Act, 1961, and found, that the agreement between Hindusthan Zinc Ltd. and the French concern which had deputed the assessee to work with Hindusthan Zinc Ltd. was approved by the Government of India. The said agreement provided for payment of tax-free daily allowance to all persons deputed which included the assessee. The Appellate Assistant Commissioner also found that the assessee had arrived in India on December 12, 1966, and was not a resident in any of the four preceding financial years. The Appellate Assistant Commissioner held that in the facts for a period of three years from December 12, 1966, the remuneration received by the assessee was exempt from Income Tax u/s 10(6)(vii)(a)(ii). Such exemption was directed to be allowed to the assessee.

7. Being aggrieved by the order of the Appellate Assistant Commissioner, the Revenue went up on further appeal before the Income Tax Appellate Tribunal. It was contended before the Tribunal, on behalf of the Revenue, that the first contract of service of the assessee with Hindusthan Zinc Ltd. had not been approved by the Government of India and that the Appellate Assistant Commissioner erred in holding that there was such approval. It was contended further that in order to claim exemption u/s 10(6)(vii)(a)(ii), the assessee had to establish that he was in continuous service or employment with the same employer. In the instant case, the assessee had served two different employers during the said period of three years. It was also contended that for the assessment year 1969-70, the assessee could not claim to be a non-resident in the four preceding financial years.

8. Contentions to the contrary were made on behalf of the assessee.

9. The Accountant Member of the Tribunal agreed with the conclusions of the

Appellate Assistant Commissioner and held that the remuneration and other perquisites received by the assessee up to December 12, 1969, in India was exempt from Income Tax u/s 10(6)(vii)(a)(ii) of the Act.

10. The Judicial Member dissented from the view taken by the Accountant Member and held that the remuneration and other perquisites received by the assessee in India were not exempt from Income Tax under the said section.

11. In view of the dissent, the matter was referred to a third member of the Tribunal u/s 255(4) of the Income Tax Act, 1961. The third member agreed with the view taken by the Accountant Member. The majority view of the Tribunal was, therefore, in favour of the assessee.

12. To appreciate the controversy involved, it is necessary to consider Section 10 of the Income Tax Act, 1961, the relevant part whereof reads as follows:

"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--.....

(6) in the case of an individual who is not a citizen of India,--.....

(vii) the remuneration due to or received by him chargeable under the head "Salaries" for services rendered as a technician in the employment commencing from a date before the 1st day of April, 1971, of the Government or of a local authority or of any corporation set up under any special law or in any business carried on in India, if he was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India to the extent mentioned below-

(a) where his contract of service is approved by the Central Government before the commencement of his service or within one year of such commencement-

(ii) in the case of any other technician, such remuneration due to or received by him during the thirty-six months commencing from the date of his arrival in India, and where any such person continues with the approval of the Central Government obtained before the 1st day of October of the relevant assessment year to remain in employment in India after the expiry of the thirty-six months aforesaid and the tax on his income chargeable under the head "Salaries" is paid by the employer to the Central Government [which tax in the case of an employer being a company may be paid notwithstanding anything contained in Section 200 of the Companies Act, 1956 (1 of 1956)], the tax so paid by the employer for a period not exceeding sixty-months following the expiry of the thirty-six months aforesaid."

13. At the hearing, learned advocate for the assessee cited a decision of this court in Commissioner of Income Tax Vs. L.H. Hall, , where it was held by a Division Bench of this court that a technician was entitled to exemption from Income Tax in respect of his remuneration u/s 10(6)(vii)(b) for a period of 365

days. The Bench considered and construed Section 10(6)(vii)(b) of the Income Tax Act, 1961. The decision is of no particular relevance in the facts of the case before us.

14. Learned advocate for the assessee also cited a decision of the Bombay High Court in Commissioner of Income Tax, Bombay City-I Vs. E. Hiller, . In this case, a Division Bench of the Bombay High Court considered and construed Section 10(6)(vii)(a)(ii) and observed, inter alia, as follows (at page 499):

"..... it seems to us clear that even under the first part of Section 10(6)(vii)(a)(ii), a foreign technician would be entitled to complete concession or exemption conferred thereby even if within the initial period of 36 months he were to change his employer more than once, the only condition being that his contracts of employment with such employers during that period should have been approved by the Central Government before he commences his service with each successive employer. The object of the enactment is to attract and make available to our industry the special knowledge and experience of foreign technicians and this object is sought to be achieved by conferring the benefit of tax exemption to such foreign technicians not only during the initial period of 36 months but also for the next 24 months provided the advantage of their special knowledge and experience is continuously available here during the said periods through approved contracts of employment. It is, therefore, not possible to accept the contention of the Revenue that the assessee was not entitled to the concession conferred by the latter part of Section 10(6)(vii)(a)(ii) simply because he did not continue to remain in the same employment or under the same employer in India. "

15. With respect, we agree with the view taken by the Bombay High Court. On a reading of the said Section 10 of the Act, it appears that the relevant parts of the said section as appearing in Sub-section 10(6)(vii)(a)(ii) thereof refer to employment generally and nowhere it has been laid down that an employment within the meaning of the said section would be confined to only one employment under one employer.

16. There is no reason why exemption should not be granted to the assessee when his services with both Hindusthan Zinc Ltd. and Durgapur Chemicals Ltd. during the period of exemption was approved by the Government of India.

17. For the above reasons, we answer the question referred to us in the affirmative and in favour of the assessee.

18. There will be no order as to costs.

Paritosh Kumar Mukherjee, J.

19. I agree.