CENTRAL BOARD OF DIRECT TAXES AND OTHERS

v.

ADITYA V. BIRLA

NOVEMBER 27, 1987

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Income Tax Act, 1961—Construction of Section 80 RRA thereof.

The respondent, Aditya V. Birla, described to be a technician with experience in the business of manufacturing and selling Stapple Fibres, and the Thai Rayon Company, Thailand, engaged in the business of manufacturing and selling Stapple Fibres, entered into an agreement wherein the respondent was stated to be approached by the Thai Company to make his services available to the Company as his 'employer', in Bangkok, on certain terms and conditions, for which the Company would pay him remuneration receivable at Bangkok. The agreement was for a period of three years and was subject to the approval of the Governments of India and Thailand, etc. The respondent applied to the Government of India for its approval of his employment with the Thai Company under the agreement; for the purpose of securing the benefits conferred by section 80 RRA of the Income Tax Act, 1961. The Government declined to accord its approval to the respondent's employment with the Thai Company on the terms and conditions contained in the agreement, for the purpose of section 80 RRA, on the ground that the section, according to its view, contemplates rendering service outside India in the status of an 'employee', whereas the status of the respondent under the foreign employer was that of a 'consultant' and not an 'employee', and that, therefore, the remuneration contemplated under section 80 RRA would be applicable to the case of the respondent and the benefit of the section could not be given to him.

The respondent moved the High Court for relief against the decision of the Government. A learned Single Judge of the High Court quashed the order of the Government and directed it to reconsider the case of the respondent. The Letters Patent Appeal against the order of the Single Judge was dismissed by the Division Bench of the High Court. The appellant then moved this Court against the order of the High Court by Special Leave.

Dismissing the appeal, the Court,

A **HELD: An analysis of section 80 RRA reveals that, in the case of the respondent, in order to be entitled to the deductions at the rate enumerated in the section, the sum must be (i) remuneration, (ii) received by him in the foreign currency, (iii) from any employer (being a foreign employer or an Indian Concern) for any service rendered by him outside India. Further the terms and conditions of his** B **service outside India must be approved by the Government of India. Furthermore, in his case the deduction of the section would not be allowed in respect of the remuneration if the service related to any period after the expiry of 36 months. He was not employed beyond the period of 36 months. Indisputably, the sum concerned in the case, fee, was remuneration, being the amount paid in lieu of 'services' ren-** C **dered. The sum in question was received in foreign currency for services rendered outside India. [120D-F]**

In the context of the Income Tax Act, the expression 'employee' will include a consultant or a technician employed by a foreign company. The amplitude of the expressions 'employee' and 'employer' D **covers the case of the consultant or the technician. There is nothing in the scheme of the section to warrant any exception, as contended for by the revenue. [122E; 121B]**

The High Court was right in dismissing the appeal. [123E]

E **Aiyar 'The Lexicon, 1940 Ed. at page 387, *Shri Chintaman Rao and Anr.* v. *The State of Madhya Pradesh*, [1958] S.C.R. 1340 at 1346; *Ellis* v. *Ellis and Co.*, [1905] 1 K.B. 324; Stroud's Judicial Dictionary, 4th Edition, Vol. 2 at page 893 and *Morren* v. *Swinton and Pendlebury B.C.*, [1965] 1 W.L.R. 576, referred to.**

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3947 (NT) of 1987.

From the Judgment and Order dated 27.8.1986 of the Bombay High Court in Appeal No. 676 of 1986.

G B.B. Ahuja, C.V. Subba Rao and Ms. A Subhashini, for the Appellants.

N.A. Palkhiwala, S.P. Mehta, Ms. A. Vasantji and Praveen Kumar for the Respondent.

H The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave granted. A

This is an appeal from the judgment and order of the Division Bench of the High Court of Bombay whereby the Division Bench concurred with the judgment and order of the learned Single Judge of the Court. The respondent herein had entered into an agreement on or about 5th May, 1978 with Thai Rayon Company Limited at B Thailand (hereinafter called the foreign company). It was engaged in the business of manufacturing and selling Stapple Fibres at Bangkok in Thailand. The agreement recited that the respondent as he was described was a technician holding a Bachelor's degree from the Massachusetts Institute of Technology, U.S.A. and has had several years of experience in the business of manufacturing and selling C Stapple Fibres through his association with companies engaged in similar business and the foreign Company as referred to in the agreement aforesaid as the 'employer' had approached him, i.e. the technician to make available to the 'employer' his services in Bangkok on certain terms and conditions, *inter alia*, that the Thai Company would pay to the respondent remuneration of $12,000 per D annum in quarterly instalments and it would be receivable at Bangkok. The agreement was for a period of three years with liberty to either party to terminate it after six months' notice. It was subject to the approval of the Governments of Thailand and India and other authorities, if any.

E

The respondent applied to the Central Government in India for its approval of his employment with the Thai Company under the agreement for the purpose of securing the benefit conferred by section 80 RRA of the Income Tax Act, 1961 (hereinafter called 'the Act'). On June 8, 1979 the Government informed the respondent that it was unable to approve the employment with the Thai Rayon F Company Limited, Bangkok, as per the terms and conditions contained in the agreement dated 5th May, 1978 for the purpose of section 80 RRA of the Act as the section, according to Government contemplated rendering of service outside India in the status of an 'employee'. It was further stated that it was seen that the status of the respondent under the foreign employer was that of a 'consultant' and G not of an 'employee'. Therefore, the remuneration contemplated under section 80 RRA was from an employer and would not be applicable to the instant case of the respondent, according to the Government.

Thereafter it appears, after hearing the respondent, the H

A Government by its letter dated 17th February, 1981 observed that the benefit of section 80 RRA of the Act could not be given to the respondent for the reason stated in that letter.

Was the Government right in the view it took, is the question here?

B

The learned Single Judge of the High Court quashed the communication refusing to accord approval and directed the Government to reconsider the application of the respondent.

There was a Letters Patent Appeal before the Division Bench of the High Court. The Division Bench found no reason to interfere C with the view expressed by the learned Single Judge and accordingly the appeal was dismissed. Aggrieved thereby the appellant who was the respondent before the trial court has come up to this Court.

We are concerned in this appeal with the construction of section D 80 RRA of the Act. The said section is as follows:

> "80 RRA. (1) Where the gross total income of an individual who is a citizen of India includes any remuneration received by him in foreign currency from any employer (being a foreign employer or an Indian concern) for any E service rendered by him outside India, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the individual, a deduction from such remuneration of an amount equal to fifty per cent thereof:
>
> F Provided that where the individual renders continuous service outside India under or for such employer for a period exceeding thirty-six months, no deduction under this section shall be allowed in respect of the remuneration for such service relating to any period after the expiry of the thirty-six months aforesaid.
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> G
>
> (2) The deduction under this section shall be allowed—
>
> (i) in the case of an individual who is or was, immediately before undertaking such service, in the H employment of the Central Government or any State

Government, only if such service is sponsored by the Central Government; A

(ii) in the case of any other individual, only if he is a technician and the terms and conditions of his service outside India are approved in this behalf by the Central Government or the prescribed authority. B

Explanation: For the purposes of this section—

(a) "foreign currency" shall have the meaning assigned to it in the Foreign Exchange Regulation Act, 1973 (46 of 1973): C

(b) "foreign employer" means,—

(i) the Government of a foreign State; or

(ii) a foreign enterprise' or D

(iii) any association or body established outside India;

(c) "technician" means a person having specialised knowledge and experience in— E

(i) constructional or manufacturing operations or mining or the generation or distribution of electricity or any other form of power; or

(ii) agriculture, animal husbandry, dairy farming, deep sea fishing or ship building; or F

(iii) public administration or industrial or business management; or

(iv) accountancy; or

G

(v) any field of natural or applied science including medical science or social science; or

(vi) any other field which the Board may prescribe in this behalf, who is employed in a capacity in which such specialised knowledge and experience H are actually utilised."

A The only question involved in this appeal is whether any remuneration was received by the respondent in foreign currency from his employer, being a foreign employer for service rendered by him outside India. Mr. Ahuja counsel for the revenue contended that the remuneration received by a part-time consultant from a foreign employer or an Indian concern abroad cannot include remuneration B paid to a person. Mr. Ahuja further submitted that this section was really a counter part of section 10(6)(vii) of the Act. He further submitted that it should be construed to be confined to deduction to be given only in the case of remuneration given to an employee and not the fees paid to a consultant or a technician. We are unable to accept this contention. It has been specifically made clear that C remuneration due should be chargeable under the head "Salaries" for the services rendered as a technician in section 10(6)(via). Section 80 RRA does not use these phrases. Apparently, advisedly therefore, it must follow that it did not cover fees received by the consultant for the services rendered outside India.

D An analysis of section 80 RRA reveals that in order to be entitled to deductions at the rate enumerated in the section by the respondent, the sum must be (i) remuneration (ii) received by him in foreign currency (iii) from any employer (being a foreign employer or an Indian concern) for any service rendered by him outside India. Furthermore, the terms and conditions of his service outside India E must be approved by the Central Government. Further in the case of the respondent the deduction of the section would not be allowed in respect of the remuneration if such services related to any period after the expiry of the 36 months. The respondent was not employed beyond a period of 36 months. Indisputably, the sum concerned in this appeal, being fee, was remuneration in the sense being 'amount F paid in lieu of services rendered'. The sum in question was received in foreign currency. There is no dispute as to that. The only question is whether the sum was received from 'any employer'. The other requirement is that the sum should be received for the services rendered outside India. There is no dispute as to that. The only question that requires consideration in the background of indisput- G able facts in this case is whether the sum received by the respondent was from 'an employer'. In other words, whether Thai Company was the employer of the respondent. On behalf of the revenue it was submitted by Mr. Ahuja that it was only as a counter part of section 10(6)(via) and that the section should be so considered properly. Mr. Palkhiwala appearing for the respondent pointed out the object of H section 80 RRA of the Act was manifest to encourage, firstly earning

of foreign exchange by India, secondly, bringing that currency by Indian nationals from abroad to India and thirdly, to improve the status of the Indians abroad and increasing the market of Indian technician. It appears to us to be plausible object in the present socio-economic context. We find that the amplitude of the expressions "employee" and "employer" covers the cases of consultant or technician. We find in the scheme of the section nothing to warrant any exception as contended for by the revenue. If we read the section with the object of the section in view as suggested by Mr. Palkhiwala then there is no warrant to restrict the meaning in the manner canvassed by the revenue before us. Mr. Ahuja, however, drew our attention to the objects appearing in clause 31 of the Finance Bill 1975 which later on became the Act. We find nothing in clause 31 to suggest a restricted meaning as canvassed by Shri Ahuja. The relevant portion of clause 31 reads as follows:

> "31. Tax relief in respect of remuneration received from foreign employees by Indian technicians, etc.—At present, Indian technicians, etc., who work for a short period during a financial year with a foreign Government or a foreign enterprise are liable to Indian tax if they remain "resident in India" for tax purposes in that year, on the whole of the remuneration received by them from the foreign employer, without any allowance in respect of expenditure incurred by them out of such remuneration for meeting higher living costs and other essential expenditure in foreign countries. To relieve this hardship, the Bill seeks to make a provision in the Income-tax Act for allowing a deduction in the computation of the taxable income, of 50 per cent of the remuneration received by them from a foreign Government or a foreign enterprise or any association or body established outside India".

We find nothing to warrant a restricted construction as canvassed by Mr. Ahuja. We were also referred to the speech of the Hon'ble Minister introducing the Bill before the Parliament, where the Hon'ble Minister, *inter alia* stated as follows:

> "There are at present certain income-tax exemption limits applying to salaried assessees relating to house rent allowance and leave travel concessions. These are being liberalised. Indian technicians employed abroad are also proposed to be given some tax relief."

A Shri Ahuja contended that it was only to encourage salaried employees who were going abroad and the cost of living was so high abroad to encourage them to get an exemption from tax on the salary earned abroad working as a technician that this provision was introduced. But this does not indicate that any limitation was intended to be confined only to the salaried employee and not extended to any B technician or consultant employed abroad for the period stipulated in the section. We find that there is no warrant in the section to restrain the expression "remuneration" received from a foreign employee only to the salary received by an employee. In our opinion, employment as a technician for the purpose indicated by Shri Palkhiwala could also be an object of the Act and in such a case the C fee received by consultant or technician would also come within the purview of the section concerned. In *Aiyar 'The Lexicon. 1940 Ed. at page 387* it has been stated that an employer is one who employs, one who engages or keeps men in service, one who uses or enjoys the service of other persons for pay or salary. The words 'employer' or 'employee' are used not in any technical sense.

D

In *Shri Chintaman Rao & Another* v. *The State of Madhya Pradesh*, [1958] S.C.R. 1340 at page 1346 of the report, it was observed that the concept of employment involved three ingredients: (1) employer (2) employee and (3) the contract of employment. The employee is one who works for other for hire. The employer is one E who employs the services of other persons. In the context of this act, therefore, the expression 'employee' will include a consultant or a technician employed by the foreign Company because he would be working for other for hire, It is true that the respondent may serve more than one master. A man may in certain circumstances serve two masters; very often he does serve many. The expression "to F employ" has been considered in *Ellis* v. *Ellis & Co.*, [1905] 1 K.B. 324 and does not mean generally to find actual employment; it rather means to retain and pay a person whether employed or not but if employed then to be employed in the work only in respect of which contract is made. "Medical advisers may be employed at a salary to be ready in case of illness; members of theatrical establishments in G case their labour should be needed; household servants in performance of their duty when their masters wish; in these and other similar cases the requirement of actual service is distinct from the employment by the party employing". In an agreement to "retain and employ", "employ" means ony to 'retain' in the service 'and is mere tautology'. See in this connection, *Stroud's Judicial Dictionary,* H *4th Edition, Vol. 2 at page 893.* The expression, however, must

depend upon the context of the particular provision in which the expression appears. It was held in England that an engineer appointed by a local authority to supervise the execution of works, but not subject to the local authority's supervision, is nevertheless an 'employee' within the meaning of section 40(1) of the Local Government Superannuation Act 1937, in *Morren* v. *Swinton and Pendlebury B.C.*, [1965] 1 W.L.R. 576. In Chambers 20th Century Dictionary "employ" has been indicated to mean to occupy the time or attention of. "employment" means an act of employing. In the Concise Oxford Dictionary "employee" means a person employed for wages. "Employ" means use of services of person. It follows, therefore, that it comprehends whole time servant or part time engagee. It is significant that section 80 RRA of the Act uses the expression "remuneration" and not salary to be entitled to deduction. In the aforesaid view of the matter we see no warrant to restrict the meaning of the expression "remuneration" to only salary received by an employee abroad. The literal meaning is clear, we need not bother any more for the intention or the purpose. The intention, in our opinion, is writ large. In principle also we are unable to find any rationale or the reason for the distinction sought to be made on behalf of the revenue.

In the aforesaid view of the matter, we are of the opinion that the High Court was right in dismissing the appeal and we find no reason to interfere with the order of the High Court. The appeal, therefore, fails and is accordingly, dismissed without any order as to costs.

S.L. Appeal dismissed.