



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 251/2002</p> <p>DIRECTOR OF INCOME TAX Petitioner Through Ms Prem Lata Bansal</p> <p>versus</p> <p>M/S HCL INFOSYSTEMS LTD Respondent Through Mr Anil Dewan, Sr Advocate with Ms Beena Gupta</p> <p>CORAM: HON'BLE MR. JUSTICE THE CHIEF JUSTICE HON'BLE MR. JUSTICE BADAR DURREZ AHMED</p> <p><u>ORDER</u> % 06.01.2004</p> <p>1. As pointed out by the Income Tax Appellate Tribunal, the Income-tax Department after a lapse of six years issued notices requiring the assessee to show cause why the remittances made by it to Hewlett Packard (USA) in respect of salaries paid by HP (USA) on behalf of the assessee to four "foreign technicians"/ expatriates, be not treated as 'fee for technical services' and why the assessee should not be treated as an assessee in default for not deducting tax from the said payment under Section 195 of the Income-tax Act. Considering the documents placed on record and various other documents, the Income Tax Appellate Tribunal has arrived at a conclusion that the remittances were by way of 'salaries' and were not 'fee for technical services' as claimed by the Revenue. It is</p>



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		<p>specifically observed by the Tribunal that the presumption raised by the learned CIT (Appeals) cannot be sustained in view of the fact that insofar as HP (USA) is concerned, the fee for technology transfer and for the transfer of know-how by HP (USA) to HP (India) <u>has already been quantified and separately received</u>. The technicians were deputed and the services were placed at the disposal of the assessee during the deputation period. The assessee is not only liable to pay the salary but to pay the tax thereon. The Tribunal expressed the opinion on the facts that the payment has rightly been treated as salary borne by the assessee on which tax had been correctly deducted at source under Section 192 of the Income Tax Act, 1961. Reliance is also placed on the letter of CBDT and a letter addressed by Assistant Commissioner of Income Tax (Special), Circle 30 (1), New Delhi. Our attention was drawn to various documents at pages 127, 130, 138, 144, 145, 162, 163, 169 and 175. The Tribunal relying on material evidence, has held that the assessee has rightly considered the payment as salary and has rightly deducted tax at source under Section 192 of the Income Tax Act.</p> <p>2. Learned counsel for the Revenue relied on the judgment delivered by the Kerala High Court in the case of Cochin Refineries Ltd v. Commissioner of Income-Tax: 222 ITR 354 to contend that the remittance was in the nature of 'fees' and would not be covered under the head 'salaries'. As such, she contended that the tax deduction ought to</p>



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		<p>have been made under section 195 of the Income Tax Act, 1961 and not under Section 192 as was done by the assessee. The Kerala High Court decision considered the ambit of the expression 'fees for technical services' under the Explanation to Section 9(i) (vii) of the said Act. That provision itself makes it clear that salaries would not fall within the expression 'fees for technical services'. Moreover, the said decision was delivered on its peculiar facts. In fact, in the said decision it is observed that :-</p> <p style="padding-left: 40px;">“There appears to be no dispute that the services rendered by the foreign company, Foster Wheeler Energy Corporation, would be in the nature of technical services and would, therefore, consequently be covered fully by the above explanation”.</p> <p>3. In our opinion, it cannot be said that the Tribunal has committed an error. In any event, there is no substantial question of law which requires consideration as the Tribunal has arrived at a finding on the material placed on record. Hence, the appeal is dismissed.</p> <p style="text-align: right;"><i>Belant</i> CHIEF JUSTICE</p> <p style="text-align: right;"><i>Badar Durrez Ahmed</i> BADAR DURREZ AHMED, J</p> <p>JANUARY 06, 2004 sd</p>