



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA No.205/2006

Date of Decision: January 30,2006

COMMISSIONER OF INCOME-TAX Appellant.
Through : Mr. J.R. Goel & Mr. S.C. Sharma,
Advocates.

versus

M/S. PAUL LEIGHTON Respondent
Through : NEMO.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

: **T.S. THAKUR, J. (ORAL)**

The respondent-assessee was an employee of Motorola Ltd., U.K. He was deputed to India to work for Motorola India Ltd. in the year 1995. According to the assessee, the tax payable on the salary received by him was to be borne by the employer, who was, in addition, required to provide other facilities to him like accommodation, utilities,



security, car, etc. all assessed as perquisites.

2. In the return for the assessment year 1997-98, the respondent-assessee claimed that the tax liability borne by the employer was exempt under Section 10(5B) of the Income-tax Act, 1961 (for short "the Act"). The Assessing Officer did not find favour with that submission and grossed up a sum of Rs.30,84,596/- for addition in the taxable income of the respondent-assessee. The Assessing Officer held that the respondent-assessee was not a technician eligible for exemption under Section 10(5B). Aggrieved by the said disallowance, the assessee went up in appeal to the Commissioner of Income-tax (Appeals), who reversed the finding recorded by the Assessing Officer and held that the assessee was indeed a technician eligible for exemption under Section 10(5B) of the Act. The Commissioner noted that the assessee was a B.Tech National Diploma in Electronics and Communication and that he had undertaken apprenticeship of two years and acquired field experience of four years in his field of specialisation. The Commissioner also found that the assessee had served in the Royal Signals, the telecommunication arm of the British Army for about 16 years



and working with Motorola Ltd. for nearly nine years. He further held that the assessee had the experience and expertise to start cellular system in India. The Commissioner, accordingly, allowed the appeal filed by the assessee with appropriate direction. A further appeal taken by the Revenue to the Tribunal has failed and has been dismissed. The Tribunal has affirmed the finding recorded by the Commissioner that the assessee was qualified to be a technician within the contemplation of Section 10(5B) of the Act. The present appeal assails the correctness of the above orders.

3. Appearing for the Revenue, Mr. Goel strenuously argued that the Commissioner of Income-tax (Appeals) and the Tribunal had both fallen in an error in holding that the assessee was a technician. Alternatively he submitted that the other requirement, namely, whether the Income-tax payable on the salary drawn by the assessee was actually paid by the employer had not been examined by the Commissioner or the Tribunal before granting the deduction prayed for by the assessee. There is, in our opinion, no merit in either one of these submissions. As noticed earlier the Commissioner of



upon a proper appraisal of the material before them that the respondent-assessee was a technician within the meaning of Section 10(5B) of the Act. The Commissioner and the Tribunal have while doing so taken note of the academic and technical qualifications of the assessee, his expertise in the field of cellular systems of communication and his long experience with Motorola and other agencies where he had worked. There is, in our view, no error, leave alone any perversity in that conclusion to warrant interference. Whether or not a person is a technician within the meaning of Section 10(5B) is a pure question of fact or at best a mixed question of law and fact. The Commissioner and the Tribunal having answered the said question appropriately on the basis of the material before them no substantial question of law arises for consideration on that finding.

4. Equally untenable is the alternative submission made by Mr.Goel that the authorities below have failed to apply other requirements or parameters necessary for conceding a deduction in favour of the assessee. The assessee had as seen earlier claimed a deduction to the extent of the income-tax paid/payable by his employer under the terms of



that no such payments were actually made or required to be made by the employer in terms of the contract of employment. The question in fact was whether payments whether made by the employer or liable to be made by him would be exempt from levy of tax under Section 10(5B). To that the Assessing Officer gave an answer in the negative. What is noteworthy is that apart from the issue whether the assessee was a technician, nothing else really fell for consideration before the authorities below. The answer to that question being in the affirmative, there is no failure on the part of either the Commissioner or the Tribunal in applying the provisions of Section 10(5B) as they stood in the Statute Book at the relevant time. No substantial question of law arises for our consideration in this appeal. Dismissed.



T.S. THAKUR, J



B.N. CHATURVEDI, J.

January 30, 2006

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