

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.12.2008

+ ITA 1348/2008

COMMISSIONER OF INCOME TAX ... Appellant

- versus -

SMT. RANI SHANKAR MISHRA ... Respondent

WITH

+ ITA 1386/2008

COMMISSIONER OF INCOME TAX ... Appellant

- versus -

SMT. RANI SHANKAR MISHRA ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr J.R. Goel

For the Respondent : Mr Uday Shankar Mishra alongwith
the respondent (in person)

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

1. The revenue is in appeal being aggrieved by the common order dated 09.05.2008 passed by the Income-tax Appellate Tribunal in relation to the assessment years 2003-04 and 2004-05. The Assessing Officer had made an addition in respect of the amount of compensation and interest received by the assessee from the Government of the United States of America.

2. In January, 1982, the assessee had applied for a job in the Voice of America which was a state owned broadcasting agency. In 1984, the assessee was informed that she had cleared the competitive test. But, she was never offered the job. It is relevant to note that in 1977, a class action suit had been filed before the United States District Court for the District of Columbia, United States entitled **Carolee Brady Heartman, et al. v. Madeleine K. Albright, Secretary of State and Marc B. Nathanson, Chairman, Broadcasting Board of Governors: Civil Action No.77-2019 JR.** The said class action had been brought on behalf of the women who had been denied employment in certain professions and technical positions in the former United States Information Agency (USIA). The allegation was that the women had been denied entry into certain positions because of their sex, in violation of Title VII of the Civil Rights Act of 1964 of USA.

3. The matter had travelled right upto the United States Supreme Court and, thereafter, the claim forms filed by over 1100 women were being analysed. One claim form was also submitted by the assessee in 1989. In the course of hearing of individual claims, hearing in respect of 48 such class members had been concluded and 46 out of them had won in whole or in part. Based on this information and the knowledge acquired during the hearings, a proposal was made by the Government of United States to settle the entire class action for US\$ 508 million. The said settlement offer was accepted and a consent decree, which was approved by the United States District Court for the District of Columbia on 22.03.2000, was drawn up. As per the consent decree, each of the members of the class other than those whose cases had been individually settled by then, were entitled to the said sum of US\$ 508 million in full and final settlement of all claims for the relief, including without limitation, all claims for back pay, instatement, front pay, retirement and other employee benefits and pre-judgment interest. Post-judgment interest was also decreed from the date on which the consent decree was approved by the court upto the date of payment. Consequently, the assessee received her share out of US\$ 508 million which was given to the entire class of 1100 claimants (except those claimants whose cases had been individually decided by then).

4. The question that has arisen in the present case is whether the said amount received by the assessee in the two assessment years in question would be covered within the expression “profits in lieu of salary” as appearing in Section 17(3)(iii) of the Income-tax Act, 1961. The Commissioner of Income-tax had categorically found as a fact that there was no employer-employee relationship between the assessee and the Voice of America or the United States Government. Consequently, the Commissioner of Income-tax (Appeals) concluded that the said amount received by the assessee cannot fall within the concept of “salary”. The tribunal also noted the factual position that the assessee was, in fact, never offered the job. Consequently, the only conclusion that could be arrived at with regard to the nature of the amount received by the assessee was that it was not offered as a part of or arising out of the employment of the assessee. The amount was received by the assessee by way of compensation for not having been offered the job with the Voice of America. The allegation was, as noted above, that she alongwith about 1100 other women had been discriminated against on the ground of sex and had not been offered jobs by the Government agency.

5. Section 17(3)(iii) reads as under:-

“17. “Salary”, “perquisite” and “profits in lieu of salary” defined. –

XXXX XXXX XXXX XXXX XXXX

(3) "Profits in lieu of salary" includes –

- (i) xxxx xxxx xxxx xxxx xxxx;
- (ii) xxxx xxxx xxxx xxxx xxxx;
- (iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person –
 - (A) Before his joining any employment with that person; or
 - (B) After cessation of his employment with that person.”

The expression “profits in lieu of salary” bears reference to the provisions of Section 17 (1) which defines salary for the purposes of Sections 15, 16 and 17. Salary, *inter alia*, includes profits in lieu of salary as per Section 17(1)(iv) of the said Act. It is in this context that the expression “profits in lieu of salary” has been defined in Section 17(3) of the said Act. The case of the revenue is that the amounts received by the assessee fall under Section 17 (3)(iii) of the said Act. We have already extracted the relevant portion of Section 17(3)(iii) above. A plain reading thereof would indicate that the amount due or received whether in lump sum or otherwise by an assessee from any person must be in connection with the employment with that person. Sub-clause (A) refers to the period prior to an assessee joining such employment and sub-clause (B) refers to the period after cessation of an assessee’s employment with another person. We have already noted above that the Commissioner of Income-tax (Appeals) clearly found as a fact that there was no employer-employee relationship. The Income-

tax Appellate Tribunal has also observed that the assessee was never offered any job. We have also examined the consent decree and the background to the settlement which was offered to all the members of the class action. It is clear that the class action itself was based on the ground that the members of the class had been denied entry into certain positions because of their gender. The very basis of the class action is that they had not been given the job for which they had applied on the ground of discrimination based on their sex. This clearly implies that none of the class members, including the assessee, had ever been offered a job by the Voice of America or by any other governmental agency of the USA. In fact, the very concept of a salary is that it is regarded as a reward or recompense for the services performed. The assessee never performed any service as she was never given the job. Thus, the revenue's contention that the said amounts received by the assessee were in the nature of 'profits in lieu of salary', cannot be accepted.

6. Both the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal have also concluded that the said amounts received by the assessee were in the nature of capital receipts. We agree with that conclusion because the amount was received by way of compensation for not being offered the job on the basis of

gender discrimination. The decision of the tribunal, therefore, does not call for any interference.

7. No substantial question of law arises for our consideration.

The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

December 12, 2008

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