

TR 221**Facts**

B was employed as Chief Executive Officer of C by virtue of a contract of employment for a period of five years with effect as from 27th March 2003.

On 15th September 2005, C terminated the contract of employment of B without giving any reasons for the termination relying on clause 14.1 of the contract of employment, which provides that "your employment may be terminated by you or by C by giving 6 month notice to the other party".

B lodged a claim for severance allowance before the Industrial Court of Mauritius, which on 12th June 2007, found that B was not entitled to claim severance allowance on the ground of unjustified dismissal. The Ruling also made mention that B could seek redress before the ordinary court under the provisions of the Civil Code.

B lodged a plaint with summons before the Supreme Court claiming damages and prejudice that he has suffered as a result of a breach of contract. The Court, having found that B failed to establish his case for breach of contract or for unfair dismissal, dismissed the said plaint on 1st July 2015.

Subsequently, B lodged an appeal against judgment dated 1st July 2015. On 25th March 2019, the Court of Appeal:-

- (i) reversed the judgment of the learned trial judge dismissing the plaint;
- (ii) directed the latter to find B's case proved; and
- (iii) remitted the case to him to decide on the quantum of damages to be awarded

On 25th October 2019, the Supreme Court delivered a judgment in terms of the settlement reached between B and C, which is as follows:- *"The Defendant in this matter, C, has pursuant to the present action agreed to pay to the plaintiff, B the sum of Rs.9,080,009 rupees in full and final settlement of all claims arising out of his former employment with C as a result of this amount being paid. The parties confirm and acknowledge that they have no further claim of whatsoever nature against each other be it past, present or future, actual or contingent, arisen or yet to arise, out of the*

employment of B at C under its former name. B also acknowledges and undertakes that any data information or documents which came to his knowledge or are to his knowledge pursuant to his employment to the bank shall be kept confidential at all times. In the light of the settlement reached, they have also agreed that each party shall bear their own costs of the present matter.”

B received payment of a net amount of Rs.8,275,000/- in November 2019, after payment of Rs.805,000/- to ENS Africa , as Counsel professional fees.

Point at issue:-

Whether B will be entitled to the exemption amounting to Rs.2,500,000/- provided under item 6 of Sub-Part A of Part II of the Second Schedule to the Income Tax Act?

Ruling

On the basis of above-mentioned facts, it is noted that B and C reached an out-of court settlement following a claim for damages and prejudice suffered as a result of a breach of his contract of employment and such payment does not fall within the ambit of **item 6 of Sub-Part A of Part II of the Second Schedule to the Income Tax Act.**

Therefore, B will not qualify for exemption on the first Rs.2,500,000/- of the aggregate amount received.

Furthermore, B will not be allowed to claim deduction in respect of the Counsel professional fees amounting to Rs.805,000/- as this expenditure has not been wholly, exclusively and necessarily incurred in the performance of the duties of his office or employment.