THE HIGH COURT OF DELHI AT NEW DELHI

ITA.No.17/2003, ITA.205/2004, ITA 206/2004, IT004, ITA 208/2004, ITA 209/2004, ITA 210/2004, ITA 211/2004, ITA 212/20A 207/204, ITA 213/2004

Judgment delivered on: 13.05.2004

COMMISSIONER OF INCOME TAX ...Appellant

- versus -

M/S ITOCHU CORPORATION ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr R.C. Pandey with Mr Ajay Jha.
For Respondents : Mr M.S. Syali, Sr. Advocate with Mr M.K.Giri and Mr Satish Khosla.

CORAM:-

HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

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 Digest?

CHIEF JUSTICE (ORAL)

1. Against the order made by Income-tax Appellate Tribunal in appeal Nos. 769-778/Del/2001 for assessment years 1989-90 to 1998-99, the present appeals have been preferred. We are disposing these appeals by a common judgment as the impugned judgment of Tribunal is common and for all the years same question

is raised. We have heard these matters together and at length.

2. At the initial stage when the appeals were heard the following common question was raised by the Revenue:

> "Whether the Tribunal was right in law in cancelling the penalty imposed under Section 271 C of the Income-tax Act, 1961."

3. We shall consider this in the light of facts in ITA No.17/2003. The respondent M/s Itochu Corporation is a company incorporated in Japan having its liaison office in Delhi for the business activities. Japanees employees were deputed to work in India. The remuneration was paid to these employees on the basis of the respondent's world-wide compensation policies for rendering services in India. It transpires that the Assessee filed its annual return of salary in Form No.24 and the salary paid in India to its expatriate employees were shown. The company used to make payment to these employees outside India. However, the same was not reflected in the return nor the taxes were deducted at source. On notice being issued, the Assessee filed revised computation for different periods showing the amount paid to the employees in Japan. The Assessee also paid short deduction of taxation. It is,

thereafter, that proceedings under Section 271 C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") came to be initiated and the Assessing officer imposed a penalty for failure to deduct the tax at source. Against this order, an appeal was preferred which was dismissed and ultimately the Assessee moved the Income-tax Appellate Tribunal.

4. Before the Tribunal the relevant record was placed by the Assessee as well as by the Revenue and on appreciation of evidence, the Tribunal arrived at a conclusion which is as under:

> " If we examine the standards of cooperation as laid down by the jurisdictional High Court to the facts of the case and the cooperation extended by the appellant, we would unhesitatingly hold that the assessee has cooperated in regard to the TDS matters with the Department. It also fulfills the criteria laid down by the jurisdictional High Court in this regard. Since the assessee had paid the tax alongwith interest voluntarily and there existed a bona fide belief which has been discussed above, we feel that there existed a reasonable cause which is covered by the provisions of sec 273-B."

The Tribunal also held in para 27 as under:

> " After examining the ratios of the various case laws, referred to above and the facts of this case, we are of the opinion that there was a reasonable cause for not deducting the tax at source on account of emoluments paid to the expatriate employees

outside India and-hence no penalty under sec. 271-C is exigible by the alleged default."

5. The CIT (Appeals) in its order dated 21.12.2000 in para 8 has recorded in detail the submissions made by the learned counsel which have been considered by the Appellate Tribunal whereupon the conclusion has been arrived at which we have referred to hereinabove.

6. Whether these appeals raise a substantial question of law or not is required to be determined first. In case of ***Azadi Bachao Andolan v. Unon of India:*** **252 ITR 471** this court had occasion to examine a similar question. In that case the Revenue's stand was as under:-

> "In the counter-affidavit filed by the income-tax authorities, allegations of illegal pressure have been denied. It is, on the other hand, stated that action was *bona fide* and in many cases penalty has been levied and in those cases where voluntary and *bona fide* action was taken by the assessee to deposit the tax and interest, it was decided not to levy penalties. Each case was considered on the merits and after being satisfied that reasonable cause existed for non-compliance, penalty has not been levied/ proceedings have been dropped."

The court, thereafter, examined the question and pointed out as under:

"In a hypothetical case, penalty under section 271C is levied, and the matter is carried to the Tribunal in appeal. The Tribunal applied the parameters applicable to section 273A and cancels the penalty levied holding that reasonable cause existed. In that event, a case for reference under Section 256(1) or (2) of the Act would not arise. What would constitute reasonable cause cannot be laid down with precision. It would depend upon factual background and the scope for interference in a reference application, or much less in a writ petition, is extremely limited and unless the conclusions are perverse based on conjectures or surmises and/or have been arrived at without consideration of relevant material and/or taking into account irrelevant material, there is no scope for interference. Reasonable cause, as applied to human action, is that which would constrain a person of average intelligence and ordinary prudence. The expression "reasonable" is not susceptible of a clear and precise definition; for an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate. The word "reasonable" has in law the *prima facie* meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know - *Re.A Solicitor* [1945] KB 368. Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of *bona fides*.

Above being the position, the action of the authorities in not levying the penalty/dropping proceedings cannot be said to be unreasonable.

> Considering the limited jurisdiction as well as limited scope for interference in a writ petition, we do not find any justification to interfere with orders holding that penalty was not leviable/dropping the proceedings."

7. The Division Bench again reiterated what constitutes "reasonable cause" in the case of **Woodward Governors India (P) Ltd v. CIT & Ors.: 253 ITR 745.** In view of what is stated hereinabove, we are of the view that the issue, whether there was reasonable cause or not for the Assessee not to deduct tax at source is a question of fact which has been determined by the Tribunal. As such, no substantial question of law arises.

Accordingly, all the appeals are dismissed.

Bepatel.
CHIEF JUSTICE

BADAR DURREZ AHMED, J

May 13, 2004
m

ITA.No.17/2003.sxw//final//.