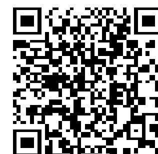


# IN THE HIGH COURT OF DELHI

\+ ITA No. 313/2005

Judgment reserved on : May 11, 2005

% Judgment delivered on : May 19, 2005

\# Commissioner of Income Tax,
Delhi-XVIII.

....Petitioners

! through: Mr. Jyoti Chaturvedi with Mr. Sanjiv Khanna, Advocates.

Versus

$ M/s. Matsushita Electric Industrial Co. Ltd.,
New Delhi Liaison Office,
C-52, Phase-II, Mayur Vihar-I,
Delhi.

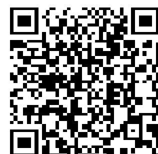
....Respondent

^ through : Mr. S.S. Mann, Advocates.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?



2. To be referred to the reporter or not? Yes.

3. Whether the judgment should be referred in the Digest? Yes

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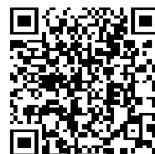
SWATANTER KUMAR, J.

1. Challenge in this appeal under Section 260A of the Income Tax Act, 1961 (in short referred as 'the Act') is to the order passed by the Income Tax Appellate Tribunal dated 5th November, 2004 deleting the penalties under Section 271(C) and by accepting the appeal preferred by the assessee against the order of the Commissioner of Income Tax dated 10th October, 2000.

2. The finding of the Income Tax Appellate Tribunal that there was reasonable cause for not deducting Tax at Source (TDS) on the payments made by the Company to its employees overseas, for services rendered by them in India, on the ground that the said finding is erroneous and is contrary to law.

3. The Assessee-Company is a non-resident company incorporated





in Japan. It has a liaison office in India as a permanent establishment. In the survey conducted by the Department under Section 133A at the liaison office at Delhi on 16th November, 1998, statement of certain persons were recorded, documents were found showing that the Company had utilised services of its expertise employees for rendering services in India, though they were paid their salary and perquisites outside India. According to the Revenue, the tax at source was not deducted and paid on the payments made by the assessee to its employees overseas in terms of Section 192 of the Act. While relying upon circular no. 685 and 686 dated 11th June, 1994 and 12th August, 1994 respectively, issued by the Central Board of Direct Taxes, a submission was made that the assessee was liable for imposition of penalties in terms of Section 271(C ) of the Act.

4. The Joint Commissioner of Income Tax vide his order dated 27th May, 1999 imposed a penalty under Section 271(C) of the Act on the above basis while rejecting the contention of the assessee that they had sufficient cause for alleged short deduction of tax at source. Appeal of the assessee against this order of the Joint commissioner was dismissed on 10th October,

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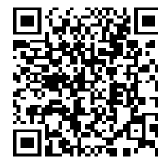
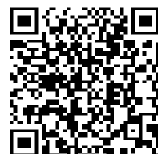




2000 by the Commissioner of Income Tax (Appeals) against which a further appeal was preferred by the assessee which was accepted by the Income Tax Appellate Tribunal, vide order dated 5th November, 2004, giving rise to the filing of the present appeal by the Revenue. In its order, the Tribunal while referring to some judgments of this Court, found that the case of the assessee was squarely covered on questions of facts and law, and as such directed deletion of the penalty imposed upon the assessee.

5. At the very outset, we may notice that a similar question in relation to the same assessee for other years came up for consideration before this Court in the case of <u>Commissioner of Income Tax vs. M/s. Matsushita Electric Industrial Company Ltd.</u> in ITA NO. 294/2005 decided on 12th May, 2005, where the Court while taking the following view, dismissed the appeal of the revenue:-

> "It is the case of the Revenue that assessee deputed certain employees to work in India. However part of salary payable to these expatriate employees was paid in Japan. This fact was concealed and not declared by the employees and the assessee had not deducted tax on these overseas



payments. On 16.11.98, survey was carried out which revealed that the employees of the assessee working in India, as afore-referred, were paid in Japan and no TDS was deducted and in fact no tax was paid. The Joint Commissioner of Income-tax vide his order dated 27th May, 1999 imposed penalty under section 271C of the Act. Against this order, the assessee filed an appeal before the Commissioner Income-tax (Appeals) which was also dismissed vide order of the First Appellate Court dated 10th October, 2000. Dissatisfied with the order of the Court Appellate Authority, the assessee filed an appeal before the Income-tax Appellate Tribunal which was allowed vide order dated 21st December, 2004. While relying upon its earlier orders and judgment of the High Court in the case of Commissioner of Income-tax vs. ITOCHU Corpn. 268 ITR 172, the Court held as under:-

> "We find that the facts leading to the impugned appeals are that a survey u/s.133 A was conducted at the Liaison Office of the assessee company on 16.11.98 whereby certain documents were found and statement of some of the expatriate employees was recorded. The said survey revealed that the assessee had been paying salaries outside India to its foreign expatriate employees and such salary payments were not being disclosed in the annual TDS returns being filed by the assessee Company. The impugned penalty proceedings were, therefore, initiated which resulted in the levy of penalty for the financial years 91-92 to 97-98. The issue regarding levy of penalty for the financial years 91-92 to 97-98. The issue regarding levy of penalty in the financial

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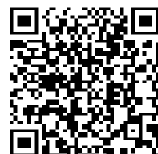
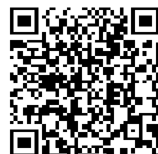


> years 92-93 to 97-98 has been considered by the Tribunal by way of its order dated 5.11.2004 (supra) wherein the said penalties have been deleted. The Tribunal, in the aforesaid order, by referring to a decision of the Hon'ble Delhi High Court in the case of ITOCHU Corporation 268 ITR 172 (Del) held that the levy of penalty was not justified. Respectfully, following the precedent, as the facts are identical, the impugned penalty is liable to be deleted."

The challenge in the present appeals is to the above order of the Income-tax Appellate Tribunal. In similar facts and circumstances, whether the Revenue had raised identical question of law in the case of CIT vs. Hitachi Ltd. Japan (ITA 284/2005) on 27th April, 2005, the Division Bench of this Court had dismissed the appeal in *limine* and held as under:-

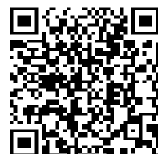
> "It is not necessary for us to notice the merit or otherwise of the contentions raised before us in any greater detail. Suffices it to note and which is fairly pointed out by the learned counsel appearing for Revenue Department that the controversy in the present case is squarely covered on finding of fact as well as on question of law by a judgment of this Court in the case of Commissioner of Income-tax Vs. ITOCHU Corpn. 268 ITR 172. In that case, the Court held that finding relation to the fact whether the assessee acted bona fide was a finding of fact and the assessee had paid the tax in terms of law subsequently. On such finding



of fact, the Tribunal was justified in deleting the penalty and it would not give rise to a substantial question of law unless the finding recorded was patently perverse. In this very judgment while relying upon in the Division Bench judgment of this Court in the case of Woodward Governor India (P) Ltd. Vs. CIT (2002) 253 ITR 745, the Bench also noticed that whether there was reasonable cause or not for the assessee not to deduct tax at source, is a question of fact which has to be determined by the Tribunal and normally would not give rise to a question of law. With respect, we would adopt the reasoning of the Division Bench in the CIT Vs.ITOCHU Corpn. (supra). In the present case, the Tribunal has come to a finding of fact that the reasonable cause can be reasonably said to be a cause which prevents a man of average negligence and ordinary prudence acting under a normal circumstances without negligence or inaction or want of bonafide. It then recorded a definite finding that the act on the part of the assessee was bonafide and it acted under a reasonable belief.

We find no merit in this appeal as no substantial question of law arises for consideration in this appeal. Dismissed."

In view of the above consistent view taken by different Benches of this Court, there is no occasion for us to take the view different than the one expressed above.



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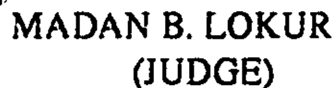
Consequently, as the present appeals do not raise a question of law much less a substantial question of law, we dismiss these appeals."

6. With respect, we are of the considered view that the reasoning given by the Court in ITA No. 294/2005 is fully applicable to the present case. *Ratio decidendi* of the judgment leaves no doubt in our mind, and while adopting the same reasoning we are of the view that no question of law, much less a substantial question of law arises in the present case.

7. Consequently, the appeal is dismissed, while leaving the parties to bear their own costs.

SWATANTER KUMAR
(JUDGE)



MADAN B. LOKUR
(JUDGE)

May 19, 2005
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Certified that the corrected copy of the judgment has been transmitted in the main Server.