

**IN THE HIGH COURT OF DELHI****ITA 330 of 2005**Date of decision ; 10th May, 2005

Commissioner of Income Tax ...Appellant
through: **Mr.Sanjiv Khanna,**
Advocate.

Versus

M/s.Fujitsu Ltd. Japan ...Respondent
through: **Mr.Manu K. Giri,**
Advocate.

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

SWATANTER KUMAR, J.

For orders see ITA 308/2005.


SWATANTER KUMAR, J.
MADAN B. LOKUR, J.**MAY 10, 2005****rds**

**IN THE HIGH COURT OF DELHI****ITA No. 308/2005****Date of decision : May 10, 2005**

Commissioner of Income Tax ...Appellant
through: **Mr. Sanjiv Khanna,**
Advocate.

Versus

M/s. I.H.I. Co. Ltd. ...Respondent
through: **Mr. Manu K. Giri,**
Advocate.

ITA No. 329/2005

Commissioner of Income Tax ...Appellant
through: **Mr. Sanjiv Khanna,**
Advocate.

Versus

M/s. Fujitsu Ltd. Japan ...Respondent
through: **Mr. Manu K. Giri,**
Advocate.

ITA 330 of 2005

Commissioner of Income Tax ...Appellant
through: **Mr. Sanjiv Khanna,**
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through: **Mr. Manu K. Giri,**
Advocate.



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ITA 331 of 2005

Commissioner of Income Tax ... Appellant
through: **Mr. Sanjiv Khanna,**
Advocate.

Versus

M/s. Fujitsu Ltd. Japan Respondent
through: **Mr. Manu K. Giri,**
Advocate.

ITA 336 of 2005

Commissioner of Income Tax ... Appellant
through: **Mr. Sanjiv Khanna,**
Advocate.

Versus

M/s. Fujitsu Ltd. Japan Respondent
through: **Mr. Manu K. Giri,**
Advocate.

ITA 339 of 2005

Commissioner of Income Tax ... Appellant
through: **Mr. Sanjiv Khanna,**
Advocate.

Versus

M/s. Fujitsu Ltd. Japan Respondent
through: **Mr. Manu K. Giri,**
Advocate.

ITA 340 of 2005

Commissioner of Income Tax ... Appellant
through: **Mr. Sanjiv Khanna,**
Advocate.

Versus



In the case of M/s.IHI Co.Ltd., which is a Company situated at Tokyo in Japan and has liaison office in India, which started on 22nd August, 1997, after seeking permission of the Reserve Bank of India, a survey operation was undertaken under section 133A of the Income-tax Act, 1961 (hereinafter referred to as the Act) at the premises of the Company on 13th November, 1998. During the course of survey operation, it was found that the Company has not deducted and not deposited tax on certain salary payments made to its expatriate employees for the services rendered in India. Since the employees were rendering services in India, the salary and allowances paid to them outside India for the services rendered in India, were chargeable to tax in India in view of the explanation to section 9(1)(iii) of the Act. Upon scrutiny, the returns of the Company were revised and the Company paid additional income-tax of Rs.8,57,388/- for the financial year 1997-98. Besides making this addition, vide his order dated 26th July, 2000 the Joint Commissioner of Income-tax also imposed penalty of the said amount under section 271C of the Act being the amount equal to the amount of tax which the assessee Company failed to deposit in time, as per the provisions of the Act. The appeal of the assessee



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M/s.Fujitsu Ltd. Japan

...Respondent

through :Mr.Manu K.Giri,
Advocate.

ITA 342 of 2005

Commissioner of Income Tax

...Appellant

through: Mr.Sanjiv Khanna,
Advocate.

Versus

M/s.Fujitsu Ltd. Japan

....Respondent

through :Mr.Manu K.Giri,
Advocate.

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

SWATANTER KUMAR, J. (ORAL)

We have heard learned counsel for the appellant at some length. By this order, we would dispose of the above referred eight Income-tax Appeals as they arise from common order of the Income-tax Appellate Tribunal based upon somewhat similar facts.



against this order was dismissed by the Commissioner of Income-tax vide order dated 28th August, 2000. The order of the Commissioner Income-tax (Appeal) was set aside by the Income-tax Appellate Tribunal by relying upon the various judgments of this Court as well as the Supreme Court and held as under :-

"8. In our opinion, the facts involved in the present case are similar to the facts involved in the aforesaid two cases decided by the Tribunal and since the period involved in the present case is financial year 1997-98 when the confusion was still prevailing about the exact obligation of the non-resident companies in the matter under consideration as narrated in the case Fuji Bank Ltd. (supra), we are of the view that the said decisions of the Tribunal have direct application in the present case. As no other contrary decision of the Tribunal or any High Court or Supreme Court has been brought to our notice by the learned DR, we respectfully follow the aforesaid decisions of the Tribunal and hold that the belief entertained by the assessee company that salary paid to its expatriate employees outside India for services rendered in India is not taxable in India and that no tax is deductible from such salary, was a bona fide belief and the same coupled with the fact that such tax was finally paid by it alongwith interest thereon constituted a reasonable cause for its failure to deduct and pay the same in time as required by Section 192. We, therefore, cancel the penalty imposed by the AO u/s.271C and confirmed by the learned CIT (A)."

Similar are the facts in relation to Fujitsu Ltd. Japan, which is again a non-resident Company. It had also deputed its



expatriates for rendering services in India. Certain payments were made to these employees overseas. According to the assessee, it bonafide believed that such payments are not liable to tax in India. However, the Assessing Officer held to the contrary and directed payment of additional tax to the extent of Rs.6,64,50,880/- vide order dated 14th December, 1998. Demands for the other years were also raised and the period in question was taken to be for the financial years, 1987-88 to 1993-94. Penalty under section 271 of the Income-tax was imposed upon the Company to the extent of Rs.97,47,256/- by the Joint Commissioner of Income-tax. The assessee preferred an appeal against the said order which was dismissed by the Commissioner of Income-tax (Appeals) vide order dated 31st July, 2001. The Income-tax Appellate Tribunal from the Second Appeal preferred by the assessee accepted the appeal and set aside the penalty imposed upon assessee under section 271C of the Act while holding as under :-

"6. During the course of hearing before us, the Ld. Counsel of the assessee argued that in so far as financial years 1987-88 and 1988-89 were concerned; no penalty could be imposed because provisions of Section 271 C were not on statute book for those assessment years. In support of these



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contentions, he placed reliance on the judgment of Hon'ble Delhi High Court in the case of CIT(TDS) Vs. M/s.Hitachi Ltd., Japan by way of judgment dated 28th August, 2003 in March in ITA No.455 of 2003. He also relied upon the order of ITAT Delhi Bench dated 26th March, 2003 in ITA No.324/Del/2002 that had been the subject matter of the aforesaid judgement of Hon'ble Delhi High Court. On merits of the case, the Ld. Counsel placed reliance on the judgment of the Hon'ble Delhi High Court. On merits of the case, the Ld. Counsel placed reliance on the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Itochu Corporation reported in 268 ITR 172 (Delhi) and the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Mitsui and Company Ltd. being the judgment dated 6th May, 2004 in ITA No.87 of 1999.

3. The Ld. DR argued that the assessee could not claim reasonable cause on the ground of having made payments of shortfall in deduction of tax at source along with interest u/s 201(1A). It was only when the survey was conducted by the Department that the assessee had made such payments.

4. We have carefully considered the rival submissions. Respectfully following the judgment of the Hon'ble Delhi High Court relied upon by the Ld. Counsel for the assessee, we order deletion of penalties u/s 271 C and allow all the appeals as mentioned above filed by the assessee."



We are of the considered view that no question of law much less a substantial question of law arises for consideration in the present appeals. The Income-tax Appellate Tribunal has relied upon various judgments of this Court and in any case similar orders passed by the Income-tax Appellate Tribunal have not been interfered by different Benches of this Court as the question is squarely answered and is well settled in law. Reference can be made to the judgment of this Court even in the case of ITA 284/2005 titled CIT Vs. Hitachi Ltd. decided on 27th April, 2005 where the Court 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 intelligence 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.

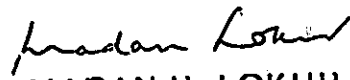
We find no merit in this appeal as no substantial question of law arises for consideration in this appeal. Dismissed."

The abovementioned reasoning is squarely applicable to the facts and circumstances of the present case and the intent of the assessee has been held to be bonafide by the Income-tax Appellate Tribunal which is a final fact finding forum and as such we see no reason to issue notice in these appeals as no question of law, much less a substantial question of law arises for



consideration in these appeals. The same are dismissed.


SWATANTER KUMAR
(JUDGE)


MADAN B. LOKUR
(JUDGE)

May 10, 2005

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has been transmitted in the main Server.