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		% 27.04.2005 Present : Mr.Sanjiv Khanna, Adv. with Mr.Vishnu Sharma, Adv. for the petitioner. *CM No.6051/2005 + Allowed, subject to all just exceptions. Exemption prayed for is granted. Accordingly, the application stands disposed of. ITA 288/2005 Hitachi Ltd. had its liaison office in India till February, 1997. Subsequently Hitachi India Trading Pvt.Ltd. was incorporated and the liaisoning office was wound up. During the course of verification of Form 24 regarding deduction of tax from salaries, it was noticed that during the financial years 1989-90 to 1996-97, the assessee had expatriate employees working with the Company. The employees were on deputation from Hitachi Japan and being paid salaries from Japan for the service rendered to the Indian Company. The assessee Company was not taking into account the salary income they paid in Japan, for the purposes of deduction of tax from salary under section 192 of the Income-tax Act (for short `the Act'). After persistent queries and demands taxes were paid on additional salary income received in Japan from expatriate employees which were rendering services in India initially to the liaisoning office of Hitachi Ltd. Japan and subsequently to Hitachi India

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Trading Pvt. Ltd. The Assessing Officer vide letter dated 11.12. worked out the details of amount short deducted by the assessee. A sh cause notice dated 14.6.2000 was issued. The assessee made cert submissions in reply thereto vide their letter dated 5.1.2000. T assessee raised various grounds as to why the penalty under section 27 could not be enforced against assessee. It was specifically pleaded t there was no failure, as required under section 271C because no or under section 201(1) or under section 201(1A) was passed. The asses specifically took the plea that they were not the assessee in default, neither a demand was created nor raised, against them under section of the Act. The contentions raised by the assessee were not accepted the Joint Commissioner of Income-tax vide order dated 21st June, 2 imposed the penalty of Rs.4,12,49,705/- under section 271C of the Act the relevant years which was a sum, equivalent to the amount of s deduction of tax. Against this order appeal was filed by the Asse before the Commissioner of Income-tax (Appeals) who vide his o dated 13th December, 2001 aggrieved with the findings recorded by Assessing Officer and held that the penalty was leviable in terms of said provisions and consequently dismissed the appeal of the assessee.

Against the order of the First Appellate Court, the asse preferred an appeal before the Income-tax Appellate Tribunal, D Bench. The Income-tax Appellate Tribunal vide order dated

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November, 2004 found merit in the contentions raised on behalf of the assessee. While considering the contentions of the assessee, whether there was reasonable cause for failure on the part of the appellant to comply with the provisions of section 192 of the Act and as such no penalty was leviable in view of the provisions of section 273B of the Act, the Tribunal recorded the following findings :-

> 24. The appellant in the present case fully satisfies all the parameters laid down by the Honourable High Court in the case of Azadi Bachao Andolan (supra). Even on this basis, the penalty levied on the appellant deserves to be cancelled as it would amount to treating the appellant on a different footing than the other Japanese companies which are similarly placed and who have not been proceeded against by the Revenue.
>
> 25. We, therefore, hold that the appellant is not liable for penalty under s.271C for not deducting tax at source from retention/continuation pay paid outside India to its expatriate employees deputed to India since the appellant entertained a bonafide belief that retention/continuation pay paid in Japan is not taxable in India and accordingly, the provision of Chapter XVII-B are not applicable, which constitutes a reasonable cause for the failure by the Appellant."

Revenue has challenged the above findings of the Income-tax Appellate Tribunal before this Court in the present appeal under Section 260A of the Act.

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

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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 whethe the assessee acted bona fide was a finding of fact and the assessee ha paid the tax in terms of law subsequently. On such finding of fact, th Tribunal was justified in deleting the penalty and it would not give rise t a substantial question of law unless the finding recorded was patent perverse. In this very judgment while relying upon in the Division Ben judgment of this Court in the case of Woodward Governor India (P) L Vs. CIT (2002) 253 ITR 745, the Bench also noticed that whether th was reasonable cause or not for the assessee not to deduct tax at source a question of fact which has to be determined by the Tribunal normally would not give rise to a question of law. With respect, would adopt the reasoning of the Division Bench in the CIT Vs.ITOC Corpn. (supra). In the present case, the Tribunal has come to a findin fact that the reasonable cause can be reasonably said to be a cause w prevents a man of average intelligence and ordinary prudence, a under a normal circumstances without intelligence or inaction or wa bonafide. It then recorded a definite finding that the act on the part assessee was bonafide and it acted under a reasonable belief.

We find no merit in this appeal as no substantial questi

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		law arises for consideration in this appeal. Dismissed.

(SWATANTER KUMAR)

JUDGE

(MADAN B. LOKUR)
JUDGE

April 27, 2005
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