* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA Nos.349/2006,350/2006,351/2006,352/2006, 378/2006,379/2006,381/2006,382/2006 and 383/2006

% Date of Decision: 23rd March,2006.

COMMISSIONER OF INCOME TAX DEL ..... Appellant
Through : Mr. R.D. Jolly with Mr. Vishnu Sharma, Advs.

versus

M/S JAPAN RADIO COMPANY LTD. ..... Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE T.S.THAKUR
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be in the Digest?

T.S. THAKUR,J.(ORAL)

1. Salaries paid outside India by the respondent-assessee to expatriate employees working in India were chargeable to tax in India. A deduction of tax at source in terms

of section 192 of Income Tax Act, 1961 was also essential on such payments. The respondent did not deduct the tax at source on the salaries paid to the expatriate employees outside India and thereby committed a default of its obligation under Section 192 of the Act. Penalty proceedings under Section 271(C) of the Act were initiated against the assessee which culminated in the levy of penalties for different financial years 1989-90 to 1997-98. These orders, when challanged before the CIT (Appeals), were upheld. In a further appeal before the Tribunal, the respondent-assessee contended that it had a reasonable cause within the meaning of Section 273(b) of the Act for not making the deductions. The Tribunal has accepted that contention and deleted the penalties holding that there indeed was a reasonable cause for the non-deduction of tax at source in terms of Section 192 of the Act. The Tribunal has in this connection, inter alia, relied upon the fact that the Japanese companies having establishments in India had collectively taken up the issue with the Revenue authorities regarding the deduction of tax at source on payments made to expatriate employees working in India through the Japanese Embassy. It also held that after the issue was finally settled the companies had paid not only the amount of tax which was liable to be deducted at source but also interest

due thereon under Section 201(1) A of the Act. This voluntary payment of the amount of tax and interest and the attendant circumstances in which the deduction of tax at source was not made, constituted in the opinion of the Tribunal, a reasonable cause that would justify deletion of the penalty. The Tribunal also noticed its decisions in Mitsui Company Limited and Marobeni Corporation Vs. JCIT in which the very same circumstances were held to be constituting a reasonable cause for the non-deduction of the tax at source and consequent deletion of the penalty levied upon the assessee. The Tribunal noticed that the order passed by it in both the aforementioned cases had been upheld by this Court in appeal.

2. Mr. Jolly, learned counsel for the Revenue, all the same argued that the facts of the cases decided by the Tribunal and affirmed by this Court were different. He urged that the solitary circumstance which distinguished the present batch of cases from those cases, was the making of a voluntary disclosure by one of the employees of the respondent company in which income received by the expatriate outside India was also disclosed to the authorities for purposes of tax in India.

3. The Tribunal has noticed a similar argument advanced before it and in our opinion rightly rejected the same.

What is significant is that the rest of the circumstances including the existence of certain amount of confusion regarding liability of the companies to deduct tax at source on payments made to its expatriate employees outside India are similar to the two batch of cases. Just because one of the employees of the respondent company had made a VDIS declaration in which the income earned by him outside India was also declared for purposes of tax did not negate the effect of the other circumstances which constituted a reasonable cause for the assessee not to make the deduction. All told whether or not there was no reasonable cause within the meaning of section 271(C) is a question of fact on which the Tribunal has recorded a finding. In the absence of any perversity in the said finding, we are of the opinion that no substantial question of law arises for our consideration in these appeals.

4. The appeals accordingly fail and are hereby dismissed.

T.S.THAKUR, J

J.M. MALIK, J

MARCH 23, 2006
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