



Sr. No.	Date	Orders
		<p>• IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 259/2006</p> <p>COMMISSIONER OF INCOME TAX DEL Appellant Through: Mr.R.D. Jolly, Adv.</p> <p>versus</p> <p>M/S OWENS BROCKKWHY INDIA LTD. Respondent Through: Mr.V.P. Gupta, Adv.</p> <p>CORAM: HON'BLE MR. JUSTICE T.S.THAKUR HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA</p> <p style="text-align: center;"><u>ORDER</u> 19.04.2006</p> <p>%</p> <p>The Commissioner of Income Tax and the Income Tax Appellate Tribunal have concurrently held that the respondent-assessee had reasonable cause for not deducting the tax at source and that the non-deduction was for bona fide reasons. They have, relying upon the judgments of this Court in <i>Woodward Governors India Pvt. Ltd. Vs. CIT</i> 253 ITR 745 and <i>CIT Vs. Itochu Corpn.</i>, 268 ITR 172, deleted the penalty levied upon the respondent. The Tribunal has observed:</p> <p>"We have heard the parties with reference to material on record. The findings reached by the Id. CIT(A) have not shown as perverse on facts. The two expatriate employees had paid tax in their individual returns filed much prior to the date of survey carried on the assessee's company and by including the salary received abroad from their parent company. Short deduction cannot be determined in the light of Board's Circular available on the subject. Besides this assessee was justified in not deducting tax at source on the</p>



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		<p>benefits granted to the employees on account of LTA as he had acted on the declaration given by such employees and also as the vehicle did not belong to the assessee the lease rentals also could not be taken as perquisite for deducting tax at source thereon. The assessee, therefore acted bonafidely which constitutes a reasonable cause in accordance with provisions of Section 273B of the IT Act. Penalty under Section 271C of the Income Tax Act 1961 for failure to deduct tax at source is not automatic since the assessee had discharged the initial burden to show that there exists reasonable cause which was the reason for the failure to deduct tax at source. Penalty under Section 271C could not have thus been imposed. This view stands fortified by the decision of jurisdictional High Court in the case of <i>Woodward Governors India Pvt. Ltd. Vs. CIT</i>, 253 ITR 745 (Delhi) and also in the case of <i>CIT Vs. Itochu Corpn.</i>, 268 ITR 172 (Del.). We, therefore, do not find any error in the decision reached by Id. CIT(A) in canceling the penalty and finding no merit in the ground raised by the revenue in this appeal, the same stands rejected."</p> <p>In the light of the above findings of fact recorded by the authorities below, no substantial question of law arises for our consideration in this appeal, which falls and is hereby dismissed.</p> <p style="text-align: right;">T.S. THAKUR, J</p> <p style="text-align: right;">SHIV NARAYAN DHINGRA, J</p> <p>APRIL 19, 2006 ga</p>