

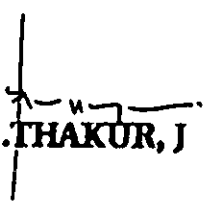
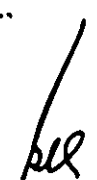


| Sr. No. | Date | Orders   |
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|         |      | <p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 780/2006</p> <p>COMMISSIONER OF INCOME TAX DEL ..... Appellant<br/>Through : Mr.R.D. Jolly, Ms.Sonia Mathur, Advs.</p> <p>versus</p> <p>M/S SANWA BANK LTD. .... Respondent<br/>Through : None</p> <p><b>CORAM:</b><br/><b>HON'BLE MR. JUSTICE T.S.THAKUR</b><br/><b>HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA</b></p> <p><b><u>ORDER</u></b><br/>% <b>24.05.2006</b></p> <p>This appeal under section 260A of the Income Tax Act, 1961 directed against an order passed by the Income Tax Appellate Tribunal whereby it has deleted the penalty levied upon the respondent assessee under Section 271C of the Act. A reading of the impugned order would show that the Tribunal has recorded a clear finding to the effect that the respondent-assessee had reasonable cause for deducting the tax payable on the salaries paid outside India to expatriate employees working in India. That opinion is based upon similar view taken by the Tribunal in <i>CIT v. Mitsui &amp; Co. Ltd.</i> 190 C 38 <i>Marubeni Corporation v. CIT</i> ITAs 3581-87, 3588-91(D)/20</p> |



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|---------|------|--|
|         |      | <p>dated 11.12.2001, <i>The Fuji Bank Ltd. v. ACITITAs 2744-2750(D)/2001</i></p> <p>dated 20.12.2001, <i>Bank of Tokyo Mistubishi Ltd. v. JCITITAs No. 40 (D)/2000 and 279-288(D)/2000</i> dated 27.11.2002. The Tribunal has on the analogy of the cases mentioned above, taken the view that there was during the relevant period a certain amount of confusion in regard to the liability of the foreign companies like the respondent herein to deduct tax on that part of the salary as was paid to the expatriate employees outside India. The Tribunal has on an appreciation of the facts and the circumstances placed on record by the parties come to the conclusion that the non-deduction of tax at source by the foreign companies was for a reasonable cause within the meaning of Section 273B of the Income Tax Act.</p> <p>It is not in dispute that the orders passed by the Tribunal in the cases relied upon by it were assailed before us in appeals and have since been upheld. Mr. Jolly, however, submits that against the said orders, the revenue has approached the Hon'ble Supreme Court where the matters are presently pending. Suffice it to say that the order passed by the Tribunal in the present appeal follows a beaten track which has met the approval of this Court also. In the circumstances no substantial question of law arises for our consideration in the present appeal which fails and is hereby dismissed. Since we are dismissing the appeal on the findings recorded by the Tribunal regarding the existence of a reasonable cause for non-production</p> |



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|         |      | <p>the payment of tax by the respondent-assessee, we consider unnecessary to go into the alternative argument which the Tribunal appears to have accepted while passing the impugned order. Nothing said in this order shall, therefore, be deemed to express any opinion about the correctness of the view taken by the Tribunal in so far as the alternative ground indicated above is concerned.</p> <p style="text-align: right;"><br/>T.S. THAKUR, J</p> <p style="text-align: right;"><br/>SHIV NARAYAN DHINGRA, J</p> <p>MAY 24, 2006<br/>pk</p> |