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

\+ ITA Nos.355/2006, 356/2006, 374/2006, 375/2006, 380/2006, 385/2006, 388/2006, 389/2006, 391/2006, 392/2006, 394/2006, 395/2006, 396/2006, 397/2006, 398/2006, 401/2006, 403/2006, 404/2006, 407/2006, 409/2006

COMMISSIONER OF INCOME TAX DEL ..... Appellant

Through : Mr. R.D. Jolly and Ms. Sonia Mathur, Advs.

versus

M/S SENCMA SA,FRANCE ..... Respondent

Through: None.

AND

ITA Nos.360/2006, 362/2006, 363/2006, 376/2006, 377/2006, 384/2006, 386/2006, 387/2006, 390/2006, 393/2006, 399/2006, 400/2006, 402/2006, 405/2006, 406/2006, 408/2006,

COMMISSIONER OF INCOME TAX DEL ..... Appellant

Through : Mr. R.D. Jolly and Ms. Sonia Mathur, Advs.

versus

M/S SNECMA INDIA LIASION OFFICE ..... Respondent

Through: None.

Date of Decision: 22nd March,2006

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. In the course of survey operations, it was noticed that the respondent-assessee had not deducted tax at source on the amount of salaries paid by it to its expatriate employees working in India. The Assessing Officer was of the view that the salaries paid outside India for services rendered in India were chargeable to tax and that since no deduction of tax at source in regard to the said salaries had been made, the assessee was liable to suffer a penalty in terms of section 271(C) of the Income Tax Act, 1961. Penalties for the financial years 1991-92 to 1998-99 were accordingly imposed upon the respondent-assessee, SENCMA, India. Similarly, penalties for the financial years 1989-90 to 1998-99 were imposed upon the respondent-assessee, SENCMA, France.

2. Aggrieved by the said orders, the respondents-assessees appealed to the Commissioner of Income Tax (Appeals), inter alia, contending that the assessees were under a bonafide belief that salaries paid to expatriate employees outside India was not taxable and

that no deduction at source was required to be made by the office that was making the said payment. It is also urged that non-deduction of tax from hardship allowance and educational allowance was also justified especially when such allowances were not taxable in France where the companies were registered. The Commissioner of Income Tax partly allowed the appeals filed by the assessees and held that the levy of penalties qua the hardship and educational allowance was not warranted. In so far as the non-deduction of tax at source from the salaries paid to the expatriate employees outside India was concerned, the Commissioner upheld the order passed by the Assessing Officer holding that the explanation offered by the assessees was not acceptable.

3. Aggrieved by the said orders, the Revenue as also the assessees preferred appeals before the Appellate Tribunal, Delhi which have been disposed of by the said Tribunal in terms of a common order dated 11th August, 2005. The Tribunal was of the view that the explanation offered by the assessees for the non-deduction of tax at source from out of the salaries paid to the expatriate employees in France was acceptable and that the failure to make the deduction was for bonafide reasons. The Tribunal held that there was certain amount of confusion in regard to the applicability of the provisions regarding deduction at source from out of salaries paid to expatriate employees in their countries of origin. It referred to four different batch of cases

which were decided by the Tribunal involving similar questions and held that the fact situation in those cases was similar to the cases at hand. Following the view taken in the said cases, the Tribunal held that the levy of penalty was not justified. It, accordingly, dismissed the appeals filed with the Revenue, while allowing those filed by the respondents-assesees. The present appeals filed by the Revenue assail the correctness of the said order.

4. We have heard at considerable length Mr. Jolly, counsel appearing for the Revenue and perused the record. The Tribunal has on consideration of the facts and circumstances of the cases and relying upon the decisions rendered by it earlier, some of which have even met the approval of this Court in appeal, held that the non-deduction of tax at source by the assesses from out of the salaries paid to the expatriate employees in the country of their origin was bonafide and arose out of the certain confusion that existed in relation to the obligations to make such deductions. That finding is, in our view, a mixed finding of fact and law if not, a pure finding of fact. The Tribunal has while arriving at the said finding, inter alia, taken into consideration the fact that the short fall in the deduction was made up by the assessees no sooner the same was pointed out by the authorities including the interest leviable on the same without any contest on merits.

5. Mr. Jolly strenuously argued that the facts of the present case are different from those of the cases relied upon by the Tribunal. He urged that the Tribunal has not meticulously examined the factual aspect attendant upon the present batch of cases while holding that the assessees had a reasonable cause not to make deductions.

6. We regret our inability to accept that submission. The Tribunal has as already seen earlier, recorded in clear terms a finding that a certain amount of confusion was prevalent among foreign companies working in India regarding their obligations to deduct tax at source from out of the component of the salary paid by the companies outside India. It had, in similar other cases, referred to by it in para 7 of its order , similarly concluded that the said state of confusion provided a reasonable justification for the companies not to make the deduction. The fact that the respondent-assessee company is a foreign company with its employees working in India, who are paid salaries in India as also in France is not in dispute. That being so, there was no real or material difference in the fact situation in which companies from Japan were held not liable to penalty for non-deduction of tax at source. The respondent company in the present batch of cases had for identical reasons failed to make the deduction which would call for a similar treatment to them also. In as much as the Tribunal has adopted the same yardstick and standard for determining the liability to pay penalty to the companies from Japan as those from France, it

committed no error to warrant our interference. No substantial question of law arises for our consideration. The appeals fail and are hereby dismissed.

T.S.THAKUR, J

J.M. MALIK, J

MARCH 22, 2006
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