* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA 1334/2006

COMMISSIONER OF INCOME TAX TDS ..... Appellant
Through Ms. P.L.Bansal & Mr. Vishnu Sharma, Advocates

versus

M/S ALCATEL INDIA LTD. ..... Respondent
Through Mr.M.S.Syali, Sr.Advocate with Mr.Saubhagya Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% 11.09.2006

The Revenue is aggrieved by an order dated 30th June, 2005 passed by the Income Tax Appellate Tribunal Bench 'F' in ITA Nos. 2845 to 2849/Del/2001 relevant for the financial years 1993-94 to 1997-98. By the impugned order, the Tribunal has deleted the penalty imposed upon the assessee under Section 271C of the Income Tax Act, 1961.

The assessee is a company incorporated in India and it employed expatriate employees who have been seconded to the assessee by its parent company i.e. CIT Alcatel, a company incorporated in France, to work in India.

The employees were receiving salary from the parent company in France and were also receiving salary from the Indian company in India.

The dispute in this case relates to three items of salary that is Hardship

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Allowance, Education Allowance and Ex gratia payment which, learned coun for the assessee has informed us is in the nature of bonus that is paid to employees.

It was submitted by learned counsel for the Assessee before the Appellate Authority that because neither the parent company nor the expatriate employees informed the assessee about the payment being made to such employees in respect of these three items, tax was not deducted at source in respect thereof and the assessee was not aware of this. It was also submitted that in so far as hardship allowance and education allowance are concerned, they were not taxable under the laws in France and that is why the parent company did not give any intimation to the asssessee in respect of these two items.

The Assessing Officer did not accept the contention of the assessee, while the Commissioner of Income Tax (Appeals) was of the view that the assessee had been able to explain its failure to deduct tax at source in respect of hardship allowance and education allowance. In respect of Ex gratia payment the CIT (A) was of the view that the assessee had not been able to show any reasonable cause for not deducting tax thereon at source.

In appeal, the Tribunal was of the view that there was reasonable cause for non-deduction of tax by the assessee on these three items. It was noted that the employees had voluntarily filed the details in their returns, indicating the salary received by them in France as well as the salary received by them in India. However, they had not included hardship allowance, education allowance and Ex gratia payment for taxation purposes.

It has come on record that these three allowances which come under t head 'Salary' constitute 15% of the total payment. It is contended by learned counsel for the assessee that there was no reason for the assessee not to deduct tax at source in respect of these 3 items when it was deducting tax at source in respect of the entire component of the salary paid in India and also in France as per the information received from the parent company.

Learned counsel for the Revenue contends that the question of bona fides of the assessee does not arise in this case inasmuch as Section 271C of the Act does not lay down any exceptions in such cases. We cannot agree since in view of Section 273B of the Act, as long as the assessee shows that there was reasonable cause for non-deduction of tax at source, penalty under Section 271C thereof cannot be imposed. The Tribunal has concluded that the assessee had reasonable cause for not deducting tax at source.

In *Commissioner of Income Tax vs. Sencma SA, France (2006) 203 CTR (Del) 96* and *Commissioner of Income Tax vs. Itochu Corporation (2004) 268 ITR 172,* this Court has already held that the question whether there was reasonable cause or not for the assessee not to deduct tax at source is a question of fact.

Under the circumstances, we are of the opinion that the order passed by the Tribunal does not call for any interference in as much as it only decides a question of fact and no substantial question of law arises.

Learned counsel for the Revenue, however, contended that the conclusion arrived at by the Tribunal is perverse and, therefore, this is a substantial question

which is to be considered by us. We find from the material on record that the conclusion arrived at by the Tribunal cannot be said to be perverse. The assessee acted on the information received from its parent company in France. Moreover, the employees of the assessee also filed their returns wherein they had disclosed the relevant facts.

There is no merit in this appeal.

Dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

SEPTEMBER 11, 2006
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