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

+ ITA Nos. 134/2010, 135/2010, 147/2010, 148/2010, 856/2010 & 857/2010

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

versus

ITOCHU CORP

..... Respondent

Through Dr. Rakesh Gupta & Mr. Rishabh
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

09.09.2013

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By order dated 10th August, 2010, the following substantial questions of law were framed:-

“a) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal (for short ‘tribunal’) erred in law in holding that tax on tax paid by the employer on behalf of the assessee is exempted under Section 10 (10CC) of the Act and thus not taxable in the hands of the assessee?

b) Whether the tribunal erred in law on merits by holding that the tax on tax paid by the employers on behalf of the employee is not a prerequisite by way of monetary payment?”

(39)



The said questions of law have to be answered against the Revenue and in favour of the respondent-assessee in view of decision of this Court dated 31st July, 2013 in *Yoshio Kubo versus Commissioner of Income Tax*, ITA No. 441/2003 and other connected matters. As per the said decision, the tax component paid by the respondent-assessee was exempt under Section 10 (10CC) and, therefore, the respondent-assessee was not liable to deduct tax at source. Thus, there was no default or failure to deduct tax under Section 195 as the tax payable was exempt and was not taxable.

The appeals stand dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

SEPTEMBER 09, 2013

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