
(2006) 09 DEL CK 0196
In the Delhi High Court
Case No : IT Appeal No. 1334 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Alcatel India Ltd.

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Income Tax Act, 1961 — Section 271C, 273B

Citation : (2007) 207 CTR 574 : (2007) 159 TAXMAN 332

Hon'ble Judges : Vipin Sanghi, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : P.L. Bansal and Vishnu Sharma, for the Appellant; M.S. Syali and Saubhagya Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dt. 30th June, 2005 passed by the Tribunal Bench T 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 assessed u/s 271C of the IT Act, 1961.

2. The assessed is a company incorporated in India and it employed expatriate employees who have been seconded to the assessed 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.

3. The dispute in this case relates to three items of salary that is hardship allowance, education allowance and ex gratia payment which, learned Counsel for the assessed has informed us, is in the nature of bonus that is paid to employees. It was submitted by learned Counsel for the assessed before the appellate authority that because neither the parent company nor the expatriate employees informed the assessed 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 assessed was not aware of this. It was also submitted that insofar 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 assessed in respect of these two items.

4. The AO did not accept the contention of the assessed, while the CIT(A) was of the view that the assessed 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 assessed had not been able to show any reasonable cause for not deducting tax thereon at source.

5. In appeal, the Tribunal was of the view that there was reasonable cause for non-deduction of tax by the assessed 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.

6. It has come on record that these three allowances which come under the head "Salary" constitute 15 per cent of the total payment. It is contended by learned Counsel for the assessed that there was no reason for the assessed 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.

7. Learned Counsel for the Revenue contends that the question of bona fides of the assessed 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 assessed shows that there was reasonable cause for non-deduction of tax at source, penalty u/s 271C thereof cannot be imposed. The Tribunal has concluded that the assessed had reasonable cause for not deducting tax at source.

8. In Commissioner of Income Tax Vs. Sencma Sa, France, and Commissioner of Income Tax Vs. Itochu Corporation, this Court has already held that the question whether there was reasonable cause or not for the assessed not to deduct tax at source is a question of fact.

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

10. 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 assessed acted on the information received from its parent company in France. Moreover, the employees of the assessed also filed their returns wherein they

had disclosed the relevant facts.

There is no merit in this appeal. Dismissed.