
(2005) 04 DEL CK 0094
In the Delhi High Court
Case No : IT Appeal No. 284 of 2005

Commissioner of Income Tax	Vs	APPELLANT
Hitachi Ltd.		RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 156, 192, 201(1), 201(1A), 260A

Citation : (2006) 154 TAXMAN 271

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Sanjiv Khanna and Vishnu Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

CM No. 6023 of 2005

1. Allowed, subject to all just exceptions.
2. Exemption prayed for is granted.
3. Accordingly, the application stands disposed of,

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4. Hitachi Ltd. had its liaison office in India till February, 1997. Subsequently, Hitachi India Trading (P) Ltd. was incorporated and the liaising office was wound up. During the course of verification of Form 24 regarding deduction of tax from salaries, it was noticed that during the financial years 1989-90 to 1996-97, the assessed had expatriate employees working with the company. The employees were on deputation from Hitachi Japan and being paid salaries from Japan for the service rendered to the Indian company. The assessed-company was not taking into account the salary income they paid in Japan, for the purposes of deduction of tax from salary u/s 271C of the IT Act (for short "the Act"). After persistent queries and demands, taxes were paid on additional salary income received in Japan from expatriate employees which were rendering

services in India initially to the liaisoning office of Hitachi Ltd., Japan and subsequently to Hitachi India Trading (P) Ltd. The AO vide letter dt. 11th Dec., 1998, worked out the details of amount short deducted by the assessed. A show-cause notice dt. 14th June, 2000 was issued. The assessed made certain submissions in reply thereto vide their letter dt. 5th Jan., 2000. The assessed raised various grounds as to why the penalty u/s 271C could not be enforced against assessed. It was specifically pleaded that there was no failure, as required u/s 271C because no order u/s 201(1) or u/s 201(1A) was passed. The assessed specifically took the plea that they were not the assessed-in-default, as neither a demand was created nor raised against them u/s 156 of the Act. The contentions raised by the assessed were not accepted and the Jt. CIT vide order dt. 21st June, 2000, imposed the penalty of Rs. 4,12,49,705 u/s 271C of the Act for the relevant years which was a sum, equivalent to the amount of short deduction of tax. Against this order, appeal was filed by the assessed before the CIT(A) who vide his order dt. 13th Dec., 2001, agreed with the findings recorded by the AO and held that the penalty was livable in terms of the said provisions and consequently, dismissed the appeal of the assessed.

5. Against the order of the first appellate Court, the assessed preferred an appeal before the Tribunal, Delhi Bench. The Tribunal vide order dt. 22nd Nov., 2004, found merit in the contentions raised on behalf of the assessed. While considering the contentions of the assessed, whether there was reasonable cause for failure on the part of the appellant to comply with the provisions of Section 192 of the Act and as such no penalty was livable in view of the provisions of Section 273B of the Act, the Tribunal recorded the following findings :

"24. The appellant in the present case fully satisfies all the parameters laid down by the Hon'ble High Court in the case of Azadi Bachao Andolan (supra). Even on this basis, the penalty levied on the appellant deserves to be cancelled as it would amount to treating the appellant on a different footing than the other Japanese companies which are similarly placed and who have not been proceeded against by the Revenue.

25. We, Therefore, hold that the appellant is not liable for penalty u/s 271C for not deducting tax at source from retention/continuation pay paid outside India to its expatriate employees deputed to India since the appellant entertained a bona fide belief that retention/continuation pay paid in Japan is not taxable in India and accordingly, the provisions of Chapter XVII-B are not applicable, which constitutes a reasonable cause for the failure by the appellant."

6. Revenue has challenged the above findings of the Tribunal before this Court in the present appeal u/s 260A of the Act. .

7. It is not necessary for us to notice the merit or otherwise of the contentions raised before us in any greater detail. Suffices it to note and which is fairly pointed out by the learned counsel appearing for revenue Department that the controversy in the present case is squarely covered on finding of fact as well as

on question of law by a judgment of this Court in the case of Commissioner of Income Tax Vs. Itochu Corporation, . In that case, the Court held that finding relation to the fact whether the assessed acted bona fide was a finding of fact and the assessed had paid the tax in terms of law subsequently. On such finding of fact, the Tribunal was justified in deleting the penalty and it would not give rise to a substantial question of law unless the finding recorded was patently perverse. In this very judgment while relying upon the Division Bench judgment of this Court in the case of Woodward Governor India P. Ltd. Vs. Commissioner of Income Tax and Others, , the Bench also noticed that whether there was reasonable cause or not for the assessed not to deduct tax at source, is a question of fact which has to be determined by the Tribunal and normally would not give rise to a question of law. With respect, we would adopt the reasoning of the Division Bench in CIT v. Itochu Corporation (supra). In the present case, the Tribunal has come to a finding of fact that the reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances without negligence or inaction or want of bona fides. It then recorded a definite finding that the act on the part of the assessed was bona fide and it acted under a reasonable belief.

8. We find no merit in this appeal as no substantial question of law arises for consideration in this appeal. Dismissed.