$~R59, 60 & 61

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

R59

\+ **ITA 345/2005**

COMMISSIONER OF INCOME TAX ..... Appellant

Through : Mr. Ashok K. Manchanda and Mr.Raghvendra Singh, Advocates for Income Tax Department.

versus

MITSUBISHI HEAVY INDUSTRIES LTD. ..... Respondent

Through : None.

WITH

R60

\+ **ITA 347/2005**

COMMISSIONER OF INCOME TAX ..... Appellant

Through : Mr. Ashok K. Manchanda and Mr.Raghvendra Singh, Advocates for Income Tax Department.

versus

MITSUBISHI HEAVY INDUSTRIES LTD. ..... Respondent

Through : None.

AND

R61

\+ **ITA 358/2005**

COMMISSIONER OF INCOME TAX ..... Appellant

Through : Mr. Ashok K. Manchanda and Mr.Raghvendra Singh, Advocates for Income Tax Department.

versus

MITSUBISHI HEAVY INDUSTRIES LTD. ..... Respondent
Through : None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% 27.07.2017

1. The two substantial questions of law which arise in all three appeals were framed by this Court by order dated 18th January, 2006 and read as follows:-

> "1. Whether the Tribunal was right in holding that Sections 201(1) & (IA) of the Income Tax Act, 1961 were penal in nature and that sufficient cause was a relevant consideration while holding the assessee as an assessee in default?
>
> 2. In case question No.1 is answered in the affirmative, whether the retrospective amendment by the Finance Act, 2001 to Section 201 of the Income Tax Act constitutes a sufficient cause for purposes of determining whether the assessee was or was not in default?"

2. Learned counsel for the Appellant/Revenue has drawn the attention of this Court to the decision of the Supreme Court in ***Commissioner***

of Income Tax v. M/s Eli Lilly & Company (India) 312 ITR 225 (2009) (SC) in which it was held that interest under Section 201 (1A) of the Income Tax Act 1961 ('Act') is a compensatory measure for withholding the tax which ought to have gone to the exchequer. It has further been observed that the object underlying Section 201(1) of the Act is to recover the tax. In the case of short deduction, the object is to recover the shortfall.

3. The impugned order of the ITAT which holds that Section 201 (1) and 201 (1A) of the Act are 'penal' in nature is plainly contrary to the above decision of the Supreme Court. Accordingly, Question (1) above is answered in negative i.e. in favour of Revenue and against the Assessee.

4. Since the Question (1) is answered in the negative, Question (2) does not arise for consideration.

5. These appeals are, accordingly, allowed. The impugned order of the ITAT is set aside.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

JULY 27, 2017

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