IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NO. 75/2013.
The Commissioner of Income Tax, Nagpur.
-**VERSUS-**
M/s. Shree Ramdeobaba Steel Private Limited, Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B.P.DHARMADHIKARI & S.B.SHUKRE, JJ.

DATE : APRIL 20, 2015.

Heard Shri Anand Parchure, learned Counsel for the appellant and Shri K.P. Dewani, learned Counsel for respondent - assessee.

2. Question sought to be raised is -

"*Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in not appreciating the fact that the assessee had maintained records of transactions that were not disclosed in the regular books of account and these were found out only after search operations and also, Special*

Audit of Books enhanced the income further, hence, it cannot be held that the income was disclosed by the assessee voluntarily?"

3. After hearing the respective Counsel we find that after search and seizure operations on 27.09.2005 and notice under Section 153A of the Income Tax Act, the assessee submitted return which also accounted for the transactions on loose papers found during said operations. ITAT has found that against the surrendered income the assessee brought forward losses of earlier years and income for Assessment Year 2005-06 was shown as 'NIL'. The assessment was completed at Nil income.

4. The CIT Appeals has found that the transactions noted on loose papers were outside the books of accounts and hence, in absence of search and seizure, the assessee might not have disclosed the same while filing the regular return. ITAT as a matter of fact has found that in regular return filed within stipulated time, that income was disclosed. It has therefore, set aside the orders of Assessing officer as also CIT (Appeals).

5. It is apparent that the findings of CIT

proceeds on hypothesis, while the ITAT has proceeded on correct facts. If the income is reflected in return, it cannot be said that it was not disclosed. Setting aside of penalty by ITAT is therefore, not erroneous. No substantial questions of law as sought to be urged arise in the matter. Appeal is, therefore, rejected. No costs.

JUDGE **JUDGE**

Rgd.