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

Decided on: 11th February, 2015

+ ITA 80/2015

COMMISSIONER OF INCOME TAX-8 (ERSTWHILE CIT-III)

..... Appellant

Through Ms. Suruchi Aggarwal, sr. standing
counsel with Ms. Sonia Dhamija and
Mr. Aamir Aziz, Advs.

versus

SUZUKI MOTORCYCLE INDIA LTD.

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The revenue is aggrieved by the order of the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") in ITA No.6487/Del/2013.

It urges that the deletion of the penalty amounts, as a consequence of the impugned order, is based upon erroneous reasons.

2. The assessee's claim in respect of assessment year (AY) 2006-07 under two heads i.e. re-imbursement of expenses (₹8,68,81,641/-) and claim for long term capital loss were rejected. This rejection was upheld by the CIT(Appeals) and the ITAT. The AO however proceeded to initiate penalty proceedings on the opinion that material particulars had been

concealed and were not disclosed rendering the assessee's particulars of income suspect and liable to penal action under Section 271(1)(c). This resulted in a penalty of ₹3,04,62,300/-. By the impugned order the ITAT accepted the assessee's contention and affirmed the CIT(Appeals)'s findings that the assessee's returns did not withhold any relevant particulars and could not be said to have disclosed inaccurate facts. It is contended that the ITAT fell into error on both counts. It is firstly submitted that inasmuch as reimbursement of expenses is concerned the ITAT in its quantum proceedings upheld the revenue's position that such reimbursement ought to have been claimed at the relevant time instead of 2007-08 when it was actually done. The learned counsel secondly argued that the claim for long term capital loss was also suspect in the background of circumstances given that the previous transaction with Mr. Rana Iqbal Singh Jolly – which is alleged to have fallen through, was under suspicious circumstance. [The learned counsel highlighted the fact that the said purchase amount was suddenly infused with substantial funds which were disbursed but were later reversed in the books on the ground that the transaction was not complete.] The learned counsel further highlighted that on this score the quantum proceedings resulted in addition and consequently penal action is warranted.

3. This Court has considered the submissions. As far as the first issue of reimbursement is concerned, the ITAT noticed that the above was based only on account of letter dated 28.10.2009 addressed to the assessee by AO. After noticing the materials on record the ITAT held that the amount had in fact been disclosed in AY 2007-08 and they were directed to be deleted in appellate proceedings. Given these set of facts the ITAT felt that at least penal

action was not warranted even though in quantum proceedings the assessee might have failed. We see no infirmity in the findings which are based upon pure appreciation of facts. So far as the penalty imposed on account of the quantum of capital loss made by the assessee goes, this Court noticed that all that the assessee did was to say that the transaction was reversed inasmuch as the amount received from Mr. Rana Iqbal Singh Jolly was returned to him. Whether that transaction was shrouded or suspicious or not, the fact remains that the capital loss was claimed on account of the subsequent sale to M/s Patel Estate (P) Ltd. Having regard to these facts, the ITAT noticed -and rightly so – that the assessee could not be accused of having furnished inaccurate particulars or concealed income or amounts which were liable to be taxed in its return so as to call for penal action under Section 271(1)(c). In the given circumstances the ITAT's decision – based upon binding rules of the Supreme Court including *CIT V. Reliance Petroproducts Pvt. Ltd.* 322 ITR 158 (SC) was justified and warranted. No substantial question of law arises. Appeal is therefore dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

FEBRUARY 11, 2015

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