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

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Date of Decision: 15th November, 2016

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ITA 721/2016 & CM No.39118/2016

PR. COMMISSIONER OF INCOME TAX-06 Appellant
Through: Mr. Rahul Choudhary, Senior
Standing Counsel and Mr. Udit Jain,
Advocate.

Versus

MODERATE LEASING AND CAPITAL SERVICES PVT. LTD.
..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J. (Oral)

1. The question of law urged by the Revenue is whether in the circumstances of the case the direction to delete the penalty imposed was justified?
2. The assessee had claimed business loss for Assessment Year ('AY') 2004-05 in respect of a transaction i.e., sale of shares., which was disallowed by the Assessing Officer ('AO'), who observed that the stocks were held as investments, therefore, it should have been treated as capital loss. The Commissioner of Income Tax (Appeals) ['CIT (Appeals)'] by order dated

02.01.2009 set aside the AO's order dated 31.03.2008; the Income Tax Appellate Tribunal ('ITAT') confirmed the same by the impugned order dated 04.01.2016.

3. This Court entertained an appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') and remanded the matter for fresh adjudication to the Tribunal, which then held that the loss had to be treated in the capital side and claim for its being business loss was unwarranted. The penalty proceedings were, therefore, drawn and the adjudication notice was confirmed by the AO. The CIT (Appeals) was of the opinion that assessment proceedings, since the assessee had originally succeeded, it was only upon fresh consideration by the High Court that the assessee had faced the adverse finding, which resulted in penalty, which was not justified.

4. The Revenue urges that the impugned order is contrary to the Explanation 1 to Section 271(1) (c) of the Act. It is stated that since the assessee was aware all along about the true nature of the account and investment which had been treated as part of the capital assets, the loss report as of 'business loss' amounted to projection of false facts.

5. This Court has considered the materials carefully. It is evident that in the quantification proceedings, both the Appellate Commissioner and the ITAT granted relief to the assessee. It is only at the intercession of this Court that the matter was remitted for reconsideration and it was held that loss was capital in nature and could not be treated as having occurred in trade. The ITAT noticed that since the assessee had succeeded both before the CIT (Appeals) and ITAT in the quantification proceedings, penalty was not justified.

6. We do not find any substantial error in its reasoning warranting any

intervention by this Court.

7. The appeal alongwith pending application is, therefore, dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

NOVEMBER 15, 2016

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