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

\+ ITA 741/2016

THE COMMISSIONER OF INCOME TAX-2 ..... Appellant
Through Mr. Ruchir Bhatia, Sr. St. Counsel.

Versus

MITSUBISHI MOTORS CORPORATION ..... Respondent
Through Mr Rupesh Jain and Mr. Anshul Sachar, Advs.

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

<u>O R D E R</u>
% 22.11.2016

The question of law urged in this appeal under Section 260A of the Act is as to whether in the circumstances of the case, invocation of proviso to Section 112(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) by the Income Tax Appellate Tribunal (ITAT) in applying the lower tax @ 10% was justified.

The assessee was incorporated under the laws of Japan with its head office in Tokyo and engaged in the business of development, design, manufacture, assembly, sales and purchase, importing and other transactions relating to automobiles and its component parts. It has reported various streams of income. Only income under the head "Capital gains" was, however, offered for tax. The assessee has sold the shares of Eicher Motors Ltd. in a buy back arrangement for a consideration of Rs.27.96 crore. The cost of acquisition of those shares was worked out to Rs.9.94 crore resulting in the long term capital gains of ₹ 18.01 crore. The assessee offered these to tax under the head “Capital gains” in terms of the proviso to Section 112(1) of the Act. The AO turned down the assessee’s claim and imposed a higher rate of tax @ 20%. The Dispute Resolution Panel (DRP) held that the ruling of this Court in ***Kairn UK Holdings Ltd. v. Director of Income-tax*** (2013) 359 ITR 268 (Del) was applicable and accordingly reduced the assessee’s liability by applying the proviso to Section 112(1) of the Act. The ITAT confirmed that ruling.

The learned counsel urged that the proviso to Section 112(1) of the Act applies and the lower rate of taxation is attracted if and only if the assessee does not secure any advantage on account of foreign exchange fluctuations under first proviso to Section 48. It is submitted that in this case, the assessee did benefit from the foreign exchange fluctuations and was therefore barred from claiming benefit under Section 112(1).

This Court notices that the assessee’s claim was examined by the ITAT which based its decision entirely on the judgement in ***Kairn UK Holdings Ltd.*** (supra). This Court examined the interface between Section 48 and Section 112(1) of the Act and concluded the case in favour of the assessee that, like in the case of ***Kairn UK Holdings Ltd.*** that despite deriving foreign exchange benefits, the main benefit under Section 112(1) of the Act could not be denied. Since there is a previous ruling by this Court which we have disinclined to disagree with the impugned order, no question of law arises. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 22, 2016/acm