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

\+ **W.P. (C) No. 2584/2016**

MICHELIN INDIA TYRES PVT. LTD. ..... Petitioner

Through: Mr. Nageswar Rao and Mr. Sandeep S. Karhail, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr. Rahul Chaudhary, Senior Standing Counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% 06.09.2017

1. The challenge in this Petition is to the notices dated 18th March 2015, 24th March 2015 and 18th January 2016 issued by the Deputy Commissioner of Income Tax ('DCIT') (hereafter Assessing Officer- AO) under Section 148 of the Income Tax Act, 1961 ('Act') seeking to reopen the assessment for the Assessment Year ('AY') 2008-09. Challenge is also laid to the order dated 8th March 2016 passed by the DCIT disposing of the Assessee's objection against the issue of the aforementioned notice dated 18th March 2015.

2. It is not disputed that the assessment for AY 2008-09 was completed under Section 143(3) of the Act on 16th December, 2011. It is also not

disputed that the notices by which assessment is sought to be reopened have been issued more than four years after the AY in question. Consequently, the first proviso of Section 147 of the Act requires to be complied with. In other words the AO was mandatorily required to record in the reasons for reopening the assessment that there was a failure by the Assessee to make a full and true disclosure of material facts relating to the assessment for the AY in question.

3. In the reasons for reopening of the assessment in the present case, the AO recorded that the Assessee was allowed to set off brought forward losses of Rs. 5,32,18,761/- whereas, according to the AO, as per the assessment records of the AY 2007-08, “no loss was available for set off in subsequent year” as the Assessee-company was assessed at an income of Rs. 19,73,01,700/- in AY 2007-08. Without indicating the manner in which there was failure on the part of the Assessee to disclose fully and truly, material facts necessary for the assessment, the AO has simply reproduced the words to that effect as occurring in the first proviso to Section 147 (1) of the Act. This, therefore, does not fulfil the mandatory requirement of the law.

4. The fact of the matter is that for three AYs earlier to the AY in question, the assessments, after scrutiny under Section 143 (3) of the Act, were completed at a loss, although at a figure lower than that claimed by the Assessee. The assessment for AY 2005-06 was completed only on 25th November, 2008 whereas the Assessee filed its return for the AY in question on 30th September, 2008 and a revised return on 14th October, 2008.

Consequently, the Assessee did not have benefit of the assessment order passed for AY 2005-06 at the time of filing its return for the AY in question. There was therefore no failure by the Assessee to make a full and true disclosure of the material facts relevant for the assessment.

5. Since the threshold requirement for the re-opening of the assessment in terms of the proviso to Section 147 (1) of the Act is not fulfilled, the three impugned notices under Section 148 of the Act for reopening of the assessment for AY 2008-09 are hereby set aside. The Court accordingly also sets aside the order dated 18th January, 2016 passed by the DCIT rejecting the Petitioner's objections.

6. The writ petition is allowed in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 06, 2017

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