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

+ W.P.(C) 9018/2018 & CM APPL. 34693/2018

THE COMMISSIONER OF INCOME TAX, INTERNATIONAL  
TAXATION - 3 ..... Petitioner

Through: Mr. Sanampreet Singh, Advocate for  
Mr. Puneet Rai, Advocate.

versus

HONDA MOTOR COMPANY LIMITED ..... Respondent

Through: Mr. Tarun Gulati, Mr. Prashant  
Tahilyani and Mr. Kishore Kunal,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

% **28.08.2018**

The petitioner challenges the order of the Authority for Advance Ruling (AAR) which held, *inter-alia*, that tax payable by the applicant (i.e. the respondent) on long term capital gains on the sale of equity shares of Hero Honda Motors Limited would be 10% plus surcharge and cess in terms of the proviso to Section 112(1) of the Income Tax Act (hereinafter 'the Act') and that furthermore the applicant would be eligible to claim deduction for expenses incurred in connection with transfer of shares under proviso to Section 48 of the Act. On this aspect, the Revenue did not contest the application made by the respondent in this case.

The assessee/applicant's claims were examined by the AAR which relied upon the judgment of this Court in *Kairn UK Holdings Ltd. v. Director of Income Tax*, (2013) 359 ITR 268 (Del). Similar issue had arisen in ITA No.741/2016 ('*Commissioner of Income Tax v. Mitsubishi Motors Corporation*' decided on 22.11.2016).

The Court disposed of the Revenue's appeal, observing as follows:

*"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. 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”*

In the light of these developments and having regard to the authority in this case relied upon i.e. *Kairn UK Holdings Ltd. (supra)*, no different view can be taken.

The writ petition is accordingly dismissed along with pending application.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**AUGUST 28, 2018**

**ssc**