$~74.

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

\+ W.P.(C) 13241/2019

PR. COMMISSIONER OF INCOME TAX, DELHI-6..... Petitioner

Through: Mr. G.C. Srivastava, Mr. Ruchir Bhatia and Mr. Suvinay K. Dash, Advocates.

versus

MARUTI SUZUKI INDIA LTD. ..... Respondent

Through: Mr. Ajay Vohra, Sr. Advocate with Mr. Neeraj Jain, Mr. Aniket D. Agrawal and Ms. Kannopriya Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% **16.12.2019**

<u>C.M. No. 53832/2019</u>

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

<u>W.P.(C) 13241/2019 and C.M. No. 53831/2019</u>

The Revenue has preferred the present writ petition to assail the interim order dated 31.10.2019 passed by the Income Tax Appellate Tribunal (ITAT), whereby the said Tribunal has allowed the application moved by the respondent assessee to raise additional grounds. The additional ground sought to be raised by the respondent assessee reads as follows:

> *"On the facts and circumstances of the case and in law, the assessing officer/CIT(A) ought to have restricted the levy of the dividend distribution tax, on the dividend distributed / paid to Suzuki Motor Company, Japan and other the nonresident shareholder(s), to 10% in terms of Article 10 of the double taxation avoidance agreement (DTAA) between India and Japan, in case of dividend paid to Suzuki Motor Do., Japan and the DTAAs with the respective countries in case of other non-resident shareholders instead of 16.60875% charged in terms of section 115-0 of the Act."*

Learned counsel for the petitioner submits that the impugned order is without jurisdiction inasmuch as the said issue – which was raised as an additional ground, was never raised before the Assessing Officer, and it could not have been so raised for the reason that the respondent assessee is a resident Indian company and not the recipient of the dividend declared by the respondent assessee company. The issue sought to be raised by the respondent, therefore, could not have been raised by the respondent and, if at all, by the recipient of the dividend income.

Learned counsel has drawn our attention to the written submissions filed by the Revenue before the ITAT (placed on record from pages 948 onwards). He submits that the Tribunal while passing the impugned order has not adverted to those written submissions.

The impugned order is an interlocutory order passed by the Tribunal in the course of the proceedings. It is not an order determining any rights of the parties on merits. All that the Tribunal has done is to permit the respondent to raise the additional ground. The same does not tantamount to acceptance of the additional ground on its merits. The petitioner would have the right to assail the interlocutory order, whereby additional ground has been admitted as well as the finding that the Tribunal may return on the said additional ground, in case the petitioner is aggrieved by the final order that the Tribunal may pass in the pending appeal while preferring an appeal under Section 268 of the Income Tax Act. We are, therefore, not inclined to entertain the present writ petition to assail the impugned order.

We dispose of the writ petition while directing the Tribunal to advert to the written submissions filed by the petitioner at the time of final adjudication of the pending appeal, including additional ground permitted to be raised before it.

Dasti under the signatures of the Court Master.

VIPIN SANGHI, J

SANJEEV NARULA, J

DECEMBER 16, 2019
B.S.Rohella