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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 562/2019**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant

Through: Mr Ruchir Bhatia, Senior Standing Counsel for the Revenue.

versus

HONDA MOTORS CO. LTD. ..... Respondent

Through: Mr Kishore Kunal and Mr Abhishek Boob, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R
% **02.07.2019**

CM 28972/2019

1. Allowed, subject to all just exceptions.

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2. In the matter involving the same Assessee on the issue of reopening of the assessment under Section 148 of the Income Tax Act, 1941 ('IT Act') for the same Assessment Year ('AY') in respect of which the present appeal arises i.e. AY 2006-07, the Allahabad High Court declined to interfere. Against the said order of the Allahabad High Court, the Assessee went in appeal before the Supreme Court and in ***Honda Motor Co. Ltd. v Assistant Director of Income-tax, Noida (2018) 301 CTR 601 (SC)***, the proceedings against the Assessee were quashed and the appeal was allowed. The Supreme Court held that the notice for reassessment was based only on "the allegations that the Appellant has permanent establishment in India", and

that the reopening could not be on such basis once the arm's length procedure had been followed.

3. Learned counsel for the Assessee appearing on advance notice points out that the said order of the Supreme Court was common to AYs 2004-05 till 2007-08. He has further placed before the Court copy of an order dated 6th February, 2019 dismissing Review Petition (C) D. No. 38162/2018 filed by the Revenue in the Supreme Court for the AY 2007-08.

4. Learned counsel for the Revenue states that the Revenue is perhaps contemplating filing a curative petition in the Supreme Court and that in any event, the said review petition did not concern AY 2006-07, with which the present appeal is concerned.

5. It must be mentioned at this stage that as far as the impugned order in the present appeal is concerned, the ITAT has gone entirely by the fact that the Supreme Court has allowed the appeal of the Assessee after finding that the arm's length procedure had been followed. Therefore, the orders of the Assessing Officer ('AO') attributing income to the Assessee's permanent establishment in India could not be sustained in law.

6. Since the impugned order of the ITAT has proceeded entirely on the basis of the order of the Supreme Court referred to above, and the said order is common to AYs 2004-05 to 2007-08, which includes AY 2006-07, this Court finds no substantial question of law arising from the impugned order of the ITAT.

7. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 02, 2019
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