



\$~1 and 13 to 16

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

+ ITA 56/2015
 + ITA 167/2015
 + ITA 168/2015
 + ITA 169/2015
 + ITA 170/2015

DIRECTOR OF INCOME TAX-II

..... Appellant

Through Mr. Rohit Madan and Mr. Ruchir
 Bhatia, Advs.

versus

M/S PIONEER OVERSEAS CORPORATION

..... Respondent

Through Mr. R R Maurya, Mr. Pravesh Sharma
 and Mr. Sanjay Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

%

03.03.2015

C.M. Nos.1787/2015, 3936/2015, 3938/2015 and 3942/2015

Exemption is allowed subject to all just exceptions.

The applications are disposed of.

C.M. Nos.1788/2015, 3937/2015, 3939/2015, 3940/2015 and 3942/2015

For the reasons stated in the applications the delay in re-filing the
 appeals is condoned.

The applications are disposed of.

ITA 56/2015

ITA 167/2015

ITA 168/2015

ITA 169/2015

ITA 170/2015

1. In these five appeals, the revenue is aggrieved by an order dated



09.11.2012 of the ITAT. Though there is a delay it is stated that it was due to delay in re-filing the appeal.

2. The question sought to be urged is with respect to the correctness of the ITAT's order deleting the penalty proposed by the assessing officer (AO) and upheld by the CIT(Appeals).

3. At the outset, it is pointed out that pursuant to the mutually agreed procedure (MAP) under the Indo-US Double Taxation Avoidance Convention, read with Rule 44-H of Income Tax Rules, there is a reduction in the quantum of total tax determined by the CIT(Appeals) – and upheld by the ITAT in this case. A copy of the MAP agreement dated 10.09.2012 inter alia for years 1997-98 to 2006-07 communicated to the assessee has been produced – which has not been disputed by the revenue; the same is hereby taken on record. As against the addition made on account of business income (as opposed to agricultural income claimed by the assessee) and the income arising out of attribution, it is stated that as a result of MAP agreement there is a quantum reduction in regard to the second issue i.e. income arising from attribution of PE.

4. Apart from the above development, the Court notices that the finding with respect to the closure of the penalty proceedings recorded by the AO in the order sheet is a factual one based on the appreciation of the record. In the above circumstances, no substantial question of law arises for consideration. The appeals are accordingly dismissed.


S. RAVINDRA BHAT, J


R.K. GAUBA, J

MARCH 03, 2015/vld