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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 714/2014**

COMMISSIONER OF INCOME TAX-III ..... Appellant
Through: Mr Zoheb Hossain, Junior Standing Counsel.

versus

M/S SUMITOMO CORPORATION ..... Respondent
Through: Mr Prakash Kumar, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

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

% **29.01.2016**

<u>CM No.3223/2016</u>

1. For the reasons stated therein, this application is allowed. Paras 3 and 14 of the order dated 16th November, 2015 shall stand corrected as under:

> "3. The Respondent Assessee is a company incorporated in Japan and is being assessed to tax in Japan. The Assessee supplies equipments from Japan on the basis of the global tenders floated by Maruti Udyog Ltd. ('MUL'). The supplies were made against separate and independent purchase orders ('POs') issued by MUL. Separate POs were also raised for "supervision of installation". According to the Assessee, neither the monies received for the supplies, nor the supervision fee is taxable in India as supervision fee is integral to the provision of supplies. However, the Assessee accepted the Revenue's contention that the supervision fee is taxable in India as fee for technical services (FTS) in terms of Article 12(2) of Double Taxation Avoidance Agreement ('DTAA')

between India and Japan.

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14. By a letter dated 19th August 1996, the Assessee listed all the ten POs obtained in the AY under consideration, in terms of which it supplied machinery and equipments and also undertook supervision of installation of the plant and machinery. The Assessee contended that each contract for supply and supervision of installation was independent and separate. The technical aspects of the work involved in each of the contracts were different and varied. In other words, notwithstanding that the contracts were with MUL, the period for which the supervisory activities were carried out was less than 180 days for each contract. It was contended that there was no PE of the Assessee in India *vis-a-vis* the rendering of the supervisory services to MUL."

2. The application is disposed of.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 29, 2016
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