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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 54/2015
TOSHIBA INDIA PVT LTD.

..... Appellant
Through Ms. Rashmi Chopra, Adv.

versus

COMMISSIONER OF INCOME TAX-VI

..... Respondent
Through Mr. Rohit Madan, Adv.

+ ITA 73/2015
COMMISSIONER OF INCOME TAX -9(ERSTWHILE CIT-VI
..... Appellant
Through Mr. Rohit Madan, Adv.

versus

TOSHIBA INDIA PVT.LTD.

..... Respondent
Through Ms. Rashmi Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **22.04.2015**

1. This is the appeal of the assessee directed against the ITAT's order dated 15.7.2014 in ITA No.1053/Del/2014. The ITAT had remitted the matter to the TPO to decide the question of transfer pricing adjustments on account of AMP expenses, which in this case are distributor expenses. In light of the previous special bench ruling in *LG Electronics India Pvt. Ltd. V. ACIT* (ITA No. 5140/DEL/2011 reported in (2013) 152 TTJ (Del)(SB)273) and the judgment of the Division Bench of this Court in *Sony*

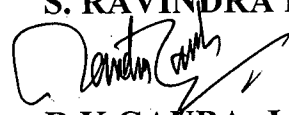
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Ericsson Mobile Communications India Pvt. Ltd. V. Commissioner of Income Tax (ITA No. 16/2014 decided on 16th March, 2015), it is held that distributor expenses are allowable. The matter is therefore remitted to the ITAT for due consideration. Parties are directed to be present before the ITAT on 21.05.2015.

2. In ITA 73/2015– which is also directed against the same order (as in ITA No.54/2015), the first question i.e. the remand now stands covered by the direction in ITA No.54/2015.

3. The second question is with respect to the ITAT's order allowing the assessee's claim based upon the Supreme Court ruling in *Rotork Controls India Pvt. Ltd. V. CIT* (2009) 314 ITR 62. This issue concerns deduction on account of provision for warranty. The ITAT had permitted the assessee to urge this additional ground. We do not discern any illegality in this approach and confirm the order of the ITAT which had merely remitted the matter for consideration to the AO. ITA No.54/2015 is accordingly disposed of in the above terms.


S. RAVINDRA BHAT, J


R.K.GAUBA, J

APRIL 22, 2015

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