$~4

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

\+ W.P.(C) 4083/2016 & C.M.No17149/2016

SONY MOBILE COMMUNICATIONS INDIA PRIVATE LIMITED (NOW MERGED WITH SONY INDIA PVT. LTD.)

..... Petitioner

Through: Mr.Nageswar Rao and Mr.Sandeep S. Karhail, Advs.

versus

JOINT COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr. Sanjay Kumar, Adv. and Mr.Dileep Shivpuri, Standing counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **02.11.2016**

The petitioner seeks a direction for quashing of a demand by the revenue to the tune of over Rs.37.97 crores. The ground urged in support of this petition is that in concluding the assessment, the Assessing Officer (AO) adopted the "Bright Line" method favoured by the Special Bench of the Income Tax Appellate Tribunal (ITAT) in ***LG Electronics v. ACIT [ITA No.5140/Del/2011]***. The assessee urges that the demand is *per se* unenforceable by reason of the later decision of this Court disapproving the Bright Line method in ***Sony Ericsson Mobile Communications India Private Limited v. CIT (2015) 374 ITR 118***.

Learned counsel for the revenue, on the other hand, urges that the ITAT's order requiring pre-deposit to the extent of 20% cannot be faulted.

In ***Sony Ericsson (supra),*** this Court had categorically ruled against the adoption of the Bright Line method while deciding host of issues, including advertising, marketing and promotional expenses (AMP expenses) in the context of benchmarking international transactions while determining the Arm's Length Price (ALP). In the circumstances, the assessment and the order to the extent it resulted in substantial additions and the demand in question could not have been enforced pending the assessee's appeal before the ITAT. The respondents are, therefore, directed to keep the demand in abeyance and not to take any coercive measures till the final decision by the ITAT in the assessee's appeal. The final order of the ITAT shall be given due tax effect. Nothing in this order shall preclude the contentions of the parties on the merits of the pending appeal.

ITAT is requested to dispose of the pending appeal for the two assessment years at its earliest convenience, preferably by the end of December 2016.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 02, 2016

mr