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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
13.
\+ **ITA 309/2016**

CASIO INDIA COMPANY PRIVATE LIMITED ..... Appellant
Through: Mr Deepak Chopra, Mr Harpreet Singh Ajmani and Mr Rohan Khare, Advocates.

versus

DCIT CIRCLE 3(1), ... Respondent
Through: Mr Rahul Kaushik, Senior Standing counsel with Mr Dhanesh Kumar, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **10.05.2016**

CM No.17433/2016

1. For the reasons stated in the application, the delay in filing the appeal is condoned.

2. The application stands disposed of.

CM No.17435/2016

3. Allowed, subject to all just exceptions.

ITA 309/2016 & CM No.17434/2016

4. The short question that arises for consideration in this appeal by the Assessee against the order dated 26th June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4726/DEL/2010 for the Assessment

Year ('AY') 2006-07 is whether the ITAT ought to have addressed the issue raised by the Assessee that there was in fact no international transaction entered into by it with its Associated Enterprise (AE) concerning Advertising Marketing and Promotion (AMP) expenses which required determination of Arms Length Price (ALP) for the purposes of transfer pricing (TP) adjustment.

5. It is fairly stated that for the AY 2007-08 and 2008-09, the Assessee's case was part of the batch of matters which was considered by this Court in ***Sony Ericsson Mobile Communications India Pvt. Ltd. v. Deputy Commissioner of Income Tax (2015) 374 ITR 118 (Del.)***. It is contended that notwithstanding that in para 2 of the said judgment there is a tabular column which mentions the two appeals filed by the Assessee the facts of the said appeals were not discussed. It is also stated that finding in para 52 of the said judgment regarding existence of an international transaction involving the Assessee's AE, is being contested by the Assessee in the appeal filed by it against the said judgment before the Supreme Court.

6. The present case concerns in relation to AY 2006-07. The specific plea of the Assessee before the ITAT that there was no international transaction involving the AE for AMP expenses was not decided by the ITAT in the impugned order. However, in terms of the decision of this Court in ***Sony Ericsson*** *(supra)* the ITAT has remanded the matter to the Transfer Pricing Officer (TPO) for the purposes of determination of the ALP of the said transaction.

7. In similar circumstances, in the case of Sony Ericsson Mobile Communications India Pvt. Ltd itself, this Court by an order dated 28th January, 2016 remanded the matters to the ITAT for examining the question regarding existence of an international transaction involving the said Assessee and its AE for AY 2010-11.

8. In the present case, the Court is of the view that it was incumbent upon the ITAT to have addressed the above issue since it was specifically raised before it by the Assessee. Only after satisfying itself that there was an international transaction with the AE concerning AMP expenses, should a further inquiry have been ordered for determination of the ALP of such international transaction.

9. Consequently, the impugned order dated 26th June, 2015 of the ITAT is set aside. The Assessee's appeal ITA No.4726/Del/2010 is restored to file and will be listed before the ITAT on 18th July, 2016 for first examining the question whether there was an international transaction involving the Assessee and its AE concerning AMP expenses for the AY in question. Depending on its decision on that issue, the ITAT will decide the further consequential issues. The present appeal and application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 10, 2016
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