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

\+ W.P.(C) 4221/2016, C.M. APPL.17835/2016

BACARDI INDIA PVT. LTD. ..... Petitioner

Through : Sh. Nageswar Rao and Sh. Sandeep. S. Karhail, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through : Sh. Rahul Kaushik, Sr. 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 ₹33.65 crores. The ground urged in support of this petition is that in concluding the assessment, the Assessing Officer (AO) adopted the "Bright Line" Test favoured by the Special Bench of the Income Tax Appellate Tribunal (ITAT) in *LG Electronics v. CIT* [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 Test in *Sony Ericsson Mobile Communications India Private Limited v. CIT* 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.

This Court had categorically ruled against the adoption of the Bright Line Test while deciding host of issues, including Advertising, Marketing and Promotion expenditure (AMP) 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 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 relevant assessment year 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
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