$~115 to 117

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

ITA 711/2016

HAIER APPLIANCES INDIA LTD ..... Appellant

versus

ASSISTANT COMMISSIONER OF INCOME-TAX ..... Respondent

ITA 712/2016

HAIER APPLIANCES INDIA LTD. ..... Appellant

versus

DEPUTY COMMISSIONER OF INCOME-TAX ..... Respondent

\+ ITA 713/2016

HAIER APPLIANCES INDIA LTD. ..... Appellant

versus

DEPUTY COMMISSIONER OF INCOME-TAX ..... Respondent

Present: Mr.Neeraj Jain and Mr.Aniket D.Agrawal, Advocate for the appellants in all the matters.
Mr.Asheesh Jain, Sr.Standing counsel for revenue / respondent in all the matters.

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

O R D E R

% 25.10.2016

C.M.38904/2016 in ITA711/2016
C.M.38906/2016 in ITA 712/2016
C.M.38908/2016 in ITA 713/2016
(for delay in refiling)

For the reasons mentioned in the applications delay in refiling the appeals is condoned.

The applications stand disposed of.

C.M.38905/2016 in ITA711/2016
C.M.38907/2016 in ITA 712/2016
(for exemption)

Exemption is allowed subject to just exceptions.

Applications stand disposed of.

ITA 711/2016
ITA 712/2016
ITA 713/2016

Issue notice. Mr.Asheesh Jain, accepts notice on behalf of the respondents.

The assessee has a short grievance with respect to the observations of the ITAT made in the course of an order that remanded the assessee's appeal on determining ALP in its international transactions reported for AY 2006-2007 to 2008-2009.

This court had in the judgment reported as ***Sony Ericsson Mobile Communications India P. Ltd. vs.Commissioner of Income Tax*** **(2015) 374 ITR 118 (Del)**, pronounced upon the criteria which is to be adopted for treating advertising, marketing and sales promotion (AMP) expenses in any given year. The assessee was one such appellant before this court. The observations in ***Sony Ericsson Mobile Communications India P. Ltd.'s*** case (*supra*), in this regard is contained in the decision especially in paras 164 to 168 and 193 of the judgment. Particularly, this court held that (a) AMP expenses fall within the matrix of international transactions and are necessarily to be included in ALP determination; (b) there can be no hard and fast rule as to appropriate method to be adopted– i.e. either Resale Price method (RP) or CUP method of Transactional Net Margin Method (TNMM). This is clear from paras 167 and 193 of the judgment which summarise the conclusion.

The assessee argues that the ITAT's observation to the effect that employing of the resale price method, would virtually cast the AMP outside the international transaction, in para 17 of the impugned judgment. However, in this court's opinion, it cannot be held as conclusive. Rather those observations are to be considered in the light of the ***Sony Ericsson Mobile Communications India P. Ltd.'s*** case (*supra*), especially paras 163 to 167 and 193 of this judgment having regard to what was stated in preceding para i.e. that AMP in such cases is to be included as part of the ALP determination as component of the international transaction and also that whether the most appropriate method is resale price method or CUP method left for application by the TPO, having regard to the peculiarities of the business module adopted by the assessee. The remit by the ITAT shall be therefore decided in the light of this court's observations in the preceding paragraph.

The appeals are disposed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 25, 2016
rb