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

\+ ITA 674/2014

RAYBAN SUN OPTICS INDIA LTD ..... Appellant
Through: Mr. Deepak Chopra with Ms. Rashi Khanna and Mr. Anmol Anand, Advocates.

versus

COMMISSIONER OF INCOME TAX V ..... Respondent
Through: Mr. Ashok K. Manchanda, Sr. Standing Counsel with Ms. Lakshmi Gurung, Jr. Standing Counsel.

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

O R D E R

% 14.09.2016

The matter is listed today as 13.09.2016 was declared holiday on account of 'Id-ul-Zuha'.

The question of law sought to be urged is: -

"whether in the circumstances of the case the ITAT acted correctly in upholding the transfer pricing adjustment made in respect of the assessee's declared income in the light of the then prevailing ruling of the Special Bench of the Tribunal in *L.G. Electronics India Pvt. Ltd. v. ACIT*, (2013) 152 TTJ (Del.) 273"

The assessee urges that the ruling in *L.G. Electronics (supra)* has been preceded by the *Sony Ericsson Mobile Communications India Pvt. Ltd. v. CIT* (2015) 374 ITR 118. It urges more pointedly

that the activity to which transfer pricing adjustments were ordered in this case for the relevant assessment years related to AMP expenses towards manufacturing activities. It relies upon subsequent ruling of this Court in *Maruti Suzuki India Ltd. v. CIT* (ITA 110/2014, decided on 11.12.2015).

Counsel for the Revenue urges that as to whether the ruling in *Maruti Suzuki (supra)* applies or whether the AMP expenses are to be treated on an application of the rule enunciated in *Sony Ericsson (supra)* would have to be decided by the concerned TPO.

Having regard to the facts of the case - as discernable from the ITAT's order specially paragraph 3 & 4, we are of the opinion that the matter should be remitted for proper investigation in the first instance to the ITAT. It is so directed.

The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 14, 2016
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