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

\+ ITA 418/2016, CM APPL.25577/2016

PR.COMMISSIONER OF INCOME TAX-09 ..... Appellant
Through: Mr. Dileep Shivpuri with Mr. Sanjay Kumar, Advocates.

versus

TOSHIBA INDIA PVT. LTD. ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **16.08.2016**

The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal ("ITAT") whereby the assessee's appeal against addition to the tune of ₹40,14,26,892/- made by the Assessing Officer on account of transfer pricing adjustment towards AMP (Advertisement, Marketing and Promotion) expenses was accepted and consequently the AO's order was rejected.

The brief relevant facts in view of the order proposed to be made are that the assessee had during the relevant time employed Transactional Net Margin Method (TNMM) as the most appropriate mode for reflecting its international transactions and determining its arms length price vis-à-vis business/transactions with the Associated Enterprise (AE). The TPO (Transfer Pricing Officer) and subsequently the AO accepted the other parts of the exercise but observed that AMP expenses to the tune of ₹45,27,63,518/- including discounts were incurred. The AO by the final order added ₹40.14 Crores on this aspect. The assessee had relied upon the prevailing views of the Special Bench of the Tribunal in *LG Electronics India Pvt. Ltd. v. ACIT 2013 152 TTJ (Del) (SB) 273*.

After considering the submissions of the parties, the ITAT in this case noticed the subsequent discussion of the relevant principles applicable to deal with AMP expenses in ALP determination by a Bench of this Court in *Sony Ericsson Mobile Communications India Pvt. Ltd. v. Commissioner of Income Tax - III,* (2015) 218 DLT 449 (DB), and held that the bright line test espoused by the Revenue was inapplicable. As a result, the ITAT set aside the additions made by the lower authorities.

Having considered the submissions, this Court is of the opinion that there is no reason to differ with the reasoning in *Sony Ericsson (supra)* which is the sole basis for the impugned order.

Consequently, it is held that no question of law arises for consideration. The appeal is dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

AUGUST 16, 2016
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