

\$~1 & 2

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

% Decided on 12.01.2017

+ ITA 368/2016

LE PASSAGE TO INDIA TOUR & TRAVELS (P) LTD.... Appellant

Through: Mr. Ajay Vohra, Senior Adv. with Mr.  
Neeraj Jain and Mr. Aniket D. Agrawal, Advs.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX.... Respondent

Through: Mr. Ashok Manchanda and Mr.  
Raghvendra Singhj, Advs.

+ ITA 369/2016

LE PASSAGE TO INDIA TOUR & TRAVELS (P) LTD.... Appellant

Through: Mr. Ajay Vohra, Senior Adv. with Mr.  
Neeraj Jain and Mr. Aniket D. Agrawal, Advs.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX.... Respondent

Through: Mr. Ashok Manchanda and Mr.  
Raghvendra Singhj, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

S. RAVINDRA BHAT (Oral)

1. The questions of law that arose for consideration in these appeals were framed on 27.07.2016. The facts of the case pertain to Assessment Year (A.Y.) 2009-10 and A.Y. 2010-11. The Transfer

Pricing Officer

(“T.P.O.”) and the Assessing Officer (“A.O.”) were of the opinion that the Assessee’s returns for AYs 2009-10 and 2010-11 which reported international transactions (with respect to inbound business) also showed the existence of outbound travel business. This decision *inter alia* was based upon the substantial AMP expenditure to the tune of ₹1.22 crores reported by the Assessee in respect of the outbound business for the A.Y.s 2009-10 and 2010-11. The Dispute Resolution Panel (“D.R.P.”) also concurred with the views of the A.O., both with respect to the existence of the outbound business as well as applicability of the AMP determination method, i.e., Advertisement, Marketing and Promotion expenditure (“AMP expenditure”). The Income Tax Appellate Tribunal (“I.T.A.T.”), after considering the submissions of the parties, remitted the issue with respect to the determination of AMP in the outbound segment, to the A.O. The Assessee, therefore, is aggrieved and contends that the I.T.A.T.’s decision, based upon an assumption of existence of outbound business being an international transaction, is erroneous.

2. The Court notices that all the tax authorities consistently applied the “bright line method” which was applicable at that time enunciated by I.T.A.T.’s Special Bench in *L.G. Electronics (India) Pvt. Ltd. vs. ACIT* [2013] 22 ITR 1 (SB) (Del) (Trib.). That decision was, however, overturned by a Division Bench of this Court in *Sony Ericsson Mobile Communications India Pvt. Ltd. v. CIT* [2015] 374 ITR 118 (Del).

3. The Revenue had contended that the question of law was

answered by referring to the discussion of the I.T.A.T. in the impugned judgment. The learned counsel for the Assessee, however, had resisted this submission and contended that the question was squarely raised in the grounds of the appeal both, before the D.R.P. and the I.T.A.T. but the I.T.A.T. acceded to assume the existence of an international transaction.

4. This Court is of the view that whilst *L.G. Electronics India Pvt. Ltd.* (supra) indicated that AMPs were or did constitute the basis for an inquiry into the international transaction and indicated a “bright line” test for it, *Sony Ericsson Mobile Communications India Pvt. Ltd.*(supra) overruled that decision. This *per se* does not mean that every endeavour will be to conclude that all transactions reporting AMPs are to be treated as international transactions, the facts of each case would have to be examined for some deliberations. Whilst the TPO and the DRP undoubtedly held that the international transactions existed - that understanding apparently was passed upon the pre-existing regime, propounded in *L.G. Electronics India Pvt. Ltd.* (supra) with greater clarity on account of this Court’s decision in *Sony Ericsson Mobile Communications India Pvt. Ltd.*(supra). The I.T.A.T. in our opinion, should have first decided whether in the circumstances of this case, the nature of the AMP reported, could lead to the conclusion that there was an international transaction. When doing so, it should have remitted the matter back for examination to the A.O. in this case. Accordingly, following the decision of *Sony Ericsson Mobile Communications India Pvt. Ltd.*(supra) and a subsequent decision in *Daikin Airconditioning India Pvt. Limited v.*

*Assistant Commissioner of Income Tax in* ITA 269/2016, decided on 27.07.2016, this Court hereby remits the matter for a comprehensive decision by the I.T.A.T. In other words, the I.T.A.T. will decide whether the reporting of the AMP in regard to the outbound business constitutes an international transaction for which ALP determination was necessary and if so, the effect thereof. The parties are directed to appear before the I.T.A.T. on 01.02.2017. The appeal is partly allowed in the above terms.

**S. RAVINDRA BHAT, J**

**NAJMI WAZIRI, J**

**JANUARY 12, 2017/acm**