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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 305/2017

PRINCIPAL COMMISSIONER OF INCOME TAX,
DELHI-8

..... Appellant

Through: Mr. Rahul Kaushik, Senior Standing
Counsel.

versus

SAMSUNG ELECTRONICS INDIA INFORMATION &
TELECOMMUNICATIONS LTD.

..... Respondent

Through: Mr. Himanshu Sinha with Ms. Vrinda
Tulshan, Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI**

ORDER

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18.04.2017

CM No. 14469/2017 (for exemption)

1. Allowed, subject to all just exceptions.

CM No. 14470/2017 (for condonation of delay of 2 days in filing the appeal)

2. For the reasons stated in the application, the delay of 2 days in filing the appeal is condoned.

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3. This appeal, under Section 260A of the Income Tax Act, 1961 ('Act'), by the Revenue is against the order dated 30th September, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 930/Del/2010 for the

Assessment Year ('AY') 2002-03.

4. One of the questions of law sought to be raised by the Revenue stems from the order of the Transfer Pricing Officer ('TPO'). Disagreeing with the said order, the ITAT directed that the entire reimbursement received by the Assessee should be treated as its operating income. In so directing, the ITAT followed its earlier order dated 30th April, 2013 in ITA No. 1842/Del/2009 (*Samsung India Electronics Pvt. Ltd. v. Department of Income Tax*) with which company the Assessee has since merged. That order dated for the Assessment Year ('AY') 2002-03 was affirmed by this Court by its order dated 21st October, 2016 in ITA No. 642/2016 (*Commissioner of Income Tax-III v. Samsung India Electronics Pvt. Ltd.*).

5. In the impugned order, the ITAT has extracted the relevant portions of the order passed by the ITAT in the above case and has reiterated the view taken thereunder. Although learned counsel for the Revenue has sought to persuade the Court to revisit the issue, the Court is not inclined to do so. The ITAT's view in the above matter is plausible. It does not give rise to any substantial question of law warranting interference with the impugned order of the ITAT.

6. The other issues raised by the Revenue concern the treatment of the advertisement and sales promotion expenses both on brand promotion and capital nature of the advertisements and sales promotion expenses; expenses on computer software and on recruitment and training. What the ITAT has done is to affirm the order of the CIT (A) in deleting the additions made of the above expenses by treating them as not resulting in benefits of an

enduring nature.

7. In the considered view of the Court, both the CIT (A) and the ITAT are justified in the view taken by them that the additions on these grounds require to be deleted.

8. Yet another issue concerns the issue of deemed income where again the order of the CIT (A) deleting the addition has been affirmed by the ITAT. In doing so, the ITAT has again relied on its earlier order dated 30th April, 2013 in the case of *Samsung India Electronics Pvt. Ltd. v. Department of Income Tax* (*supra*).

9. No substantial question of law arises.

10. The appeal is, accordingly, dismissed.

S. MURALIDHAR, J

NAJMI WAZIRI, J

APRIL 18, 2017/dn