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

\+ **ITA 417/2017**

BACARDI INDIA PVT. LTD. ..... Appellant

Through: Mr. Nageswar Rao & Mr. Sandeep S. Karhail, Advocate

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Dileep Shivpuri, Senior Standing Counsel & Mr. Sanjay Kumar, Junior Standing Counsel

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **24.05.2017**

CM No. 19888/2017

1. Allowed, subject to all just exceptions.

ITA No. 417/2017

2. This is an appeal by the Assessee under Section 260A of the Income Tax Act, 1961 impugning the order dated 9th December, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1197/Del/2016 for the Assessment Year ('AY') 2011-12.

3. Admit.

4. The following question is framed for consideration:

> "Whether the ITAT ought to have itself dealt with the issue concerning the existence of the international transaction concerning the advertisement marketing and promotion (AMP) expenses and the determination of the arm's length price thereof instead of remandiong the issues to the Transfer Pricing Officer ('TPO') for a fresh consideration?"

5. Having heard learned counsel for the parties, the Court finds that the case before the ITAT was argued at length and the views of the TPO as well as the Dispute Resolution Panel ('DRP') were already available to the ITAT. Arguments were advanced on the strength of judgments of this Court in ***Sony Ericsson Mobile Communications India Pvt. Ltd. vs. Commissioner of Income Tax (2015) 374 ITR 118 (Del.)*** as well as a string of subsequent judgments beginning with ***Maruti Suzuki India Ltd v. CIT, (2016) 381 ITR 117***.

6. Nevertheless, the main reason that weighed with the ITAT to remand the matter to the TPO was that the TPO did not have the benefit of the above decisions of this Court when the order was initially passed by the TPO. That can hardly be a ground for remanding the entire matter to the TPO. In fact, this was anticipated by this Court in ***Sony Ericsson Mobile Communications India Pvt. Ltd.***(*supra*). In para 193 of that judgment, it cautioned that the ITAT should not simply remand the matter to the TPO but examine it itself, particularly when the facts have already been analysed and considered and no new facts have emerged in the meanwhile.

7. In the present case, all the facts necessary for the ITAT to form an opinion on the issues before it concerning the AMP expenditure were already before it. In the circumstances, the remand to the TPO of the entire matter for a decision afresh appears to be unwarranted.

8. In that view of the matter, the impugned order of the ITAT remanding the matter to the TPO is hereby set aside. The appeal before the ITAT being ITA No.1197/Del/2016 for AY 2011-12 is restored to its file for a decision on merits in accordance with law. The said appeal shall be listed before the ITAT on 19th June, 2017 for directions.

9. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 24, 2017
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