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

\+ **ITA 563/2017**

HAIER APPLIANCES (INDIA) P. LTD ..... Appellant

Through: Mr. Ajay Vohra, Senior Advocate with Mr. Neeraj Jain and Mr. Aniket D. Agarwal, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME-TAX ..... Respondent

Through: Mr. Asheesh Jain, Senior Standing Counsel with Mr. Vikrant A. Maheshwari, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 01.09.2017

1. This is an appeal by the Assessee under Section 260A of the Income Tax Act, 1961 ('the Act') against an order dated 8th September, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1515/Del/2014 for the Assessment Year ('AY') 2009-10.

2. Notice. Mr. Asheesh Jain, Senior Standing counsel for the Revenue accepts notice.

3. The issue raised in this appeal concerns the transfer pricing (TP) adjustment made by the Transfer Pricing Officer ('TPO') on account of alleged Advertisement, Marketing, Promotion ('AMP') expenses incurred by the assessee for its associated Enterprise (AE).

4. In para 4 of the impugned order, the ITAT has recorded as under:

> "At the time of hearing both the parties agreed that in view of the decision of Hon'ble Delhi High Court in the case of *Sony Ericsson Mobile Communications Vs. CIT (2015) 374 ITR 118 (Del)*, the matter needs to be restored back to the file of ld. AO/TPO for de novo consideration."

5. Immediately thereafter, in para 5, the ITAT notes as under:

> "We have considered the submissions of both the parties and have perused the record of the case. The assessee is a distributor of various products of its AE. The Hon'ble Delhi High Court the case of Sony Ericsson Mobile Communications (supra), has, inter alia, observed as under:.."

6. Mr. Ajay Vohra, learned Senior counsel for the Assessee, points out that the ITAT committed a factual error in recording that the Assessee is a distributor of various consumable durable products of its AE. He points out that the Assessee is in fact a manufacturer which gets its products manufactured through other entities. Secondly, it is pointed out that at the time the ITAT passed the order, it did not have the benefit of order subsequently passed by this Court in ***Sony Ericsson Mobile Communications v. CIT*** (order dated 28th January 2016 in ITA 638 of 2015) and ***Daikin Airconditioning India Pvt. Ltd.*** (order dated 27th July 2016 in ITA 269/2016) wherein this Court had emphasised that prior to commencing

a TP exercise, the existence of an international transaction involving the Assessee and its AE has to first be established. This Court has in the above cases remanded the matter to the ITAT for that purpose.

7. Mr. Asheesh Jain learned counsel for the revenue has been unable to dispute that the ITAT has failed to examine in the first place whether there does exist an international transaction involving the assessee and its AE.

8. In the absence of such a finding, there would be no purpose in remanding, as the ITAT has done by the impugned order, the issue concerning TP adjustment to the TRPO for a fresh determination.

9. For the aforesaid reasons, the Court sets aside the impugned order of the ITAT and restores the assessee's appeal, ITA No.1515/Del/2014 for AY 2009-10, to the file of ITAT.

10. Mr. Vohra submitted a chart indicating that the subsidy/grant received by the Assessee from its AE during the AY in question exceeded the net AMP expense incurred by the Assessee thereby obviating any TP adjustment on that score as proposed by the TPO. The said details will be taken into consideration by the ITAT while dealing with the appeal on merits. This Court is not inclined to express any opinion on the merits one way or the other.

11. The ITAT will decide the Assessee's appeal afresh without being influenced by anything said in this order on merits or in the previous order

of the ITAT that has been set aside by this order. The Assessee's aforementioned appeal shall be listed before the ITAT on 18th September, 2017 for directions.

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

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 01, 2017
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