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

\+ ITA 213/2018

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel for Revenue.

versus

MARY KAY COSMETICS PVT. LTD. ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **20.02.2018**

1. The question of law urged by the Revenue is whether the direction to delete the disallowance, towards sales promotion expenditure claimed by the assessee, in the circumstances, was justified.

2. The relevant facts are that the assessee is engaged in the business of marketing, distribution and administration of Mary Kay products in India. It is a wholly owned subsidiary of Mary Kay Inc. and is distributor of its products to beauty consultants in India. It declared a loss to the extent of ₹9,81,15,974/- for A.Y. 2009-10. The AO referred the returns to the TPO, in view of the international transactions reported. The assessee had claimed a total expenditure towards advertisement expenses and sales promotion at ₹3,99,61,063/-. Its total turnover in respect of the

revenue business was ₹6,34,30,470/-. The TPO indicated a transfer pricing adjustment of 12.95% which resulted in a disallowance to the tune of ₹4,16,97,074/-. According to the AO, the expenditure towards advertisement and sales promotion was additionally not permissible under Section 37(1) of the Income Tax Act, 1961 (hereafter referred to as "the Act"). The CIT(A) to whom the assessee appealed, granted relief to the extent of excluding the expenditure towards sales promotion but sustained the advertisement expenditure disallowance to the tune of ₹2,04,48,472/-. The CIT(A) also disapproved the AO's findings with respect to Section 37(1) of the Act. The ITAT confirmed the Appellate Commissioner's findings and rejected the cross appeals of the Revenue and the assessee.

3. After considering the circumstances of the case and given that the assessee had reported losses and subsequently closed the business as well, the Court is of the opinion that the deletion of the sum, towards sales promotion, does not call for interference in the facts of this case. The question of law does not, therefore, arise in this appeal. It is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 20, 2018
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