$~4

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

\+ ITA 106/2018 & CM APPL. 3710/2018

CALLAWAY GOLF INDIA PVT. LTD. ..... Appellant
Through: Mr. Percy Pardiwala, Sr. Advocate with Mr. Ravi Pratap, Advocate.

versus

PR. COMMISSIONER OF INCOME TAX-2 ..... Respondent
Through: Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel for Revenue.

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

O R D E R

% **20.04.2018**

CM APPL. 3710/2018 *(for exemption)*

Allowed, subject to all just exceptions.

ITA 106/2018

The following question of law was framed in this appeal:-

> *"Did the Income Tax Appellate Tribunal (ITAT) fall into error in remitting the issue of existence of international transaction for the purpose of arm's length price (ALP) determination under Section 92 of the Income Tax Act, 1961?"*

The assesee is a subsidiary/AE of Callaway Golf Company and is engaged in the business of golf equipments, packaged kits and accessories etc. It reported an international transaction i.e. purchase of finished goods disclosing the value of the transaction as ₹59,24,242/-. The Assessing Officer ('AO') referred the issue for determination of the Arm's Length Price ('ALP') to the Transfer Pricing Officer ('TPO') who accepted that the transaction was at ALP however, it made a transfer pricing adjustment on account of Advertising, Marketing and Promotion (AMP expenditure) on a protective basis applying "bright line test". Substantive addition too was made by treating the entire AMP expenditure leading to brand promotion. The transfer pricing adjustment thus was determined at ₹4,32,34,167/-. Upon challenge, the Dispute Resolution Panel ('DRP') upheld the substantive transfer pricing and directed the AO to make adjustment on account of AMP intensity. Ultimately, the total income determined, which was the order of the AO after this procedure, was ₹8,19,19,324/-. The assessee's appeal to the Income Tax Appellate Tribunal ('ITAT') was disposed of by the impugned order which directed the re-examination by the TPO/AO.

This Court has considered the submissions of the parties.

Both the TPO and the DRP took note and applied the reasoning of this Court in the case of *'Sony Ericsson Mobile Communication India (P.) Ltd. vs. CIT*', (2015) 374 ITR 118 and the subsequent decisions [*'Maruti Suzuki India Ltd. & Anr. vs. CIT'*, (2015) 129 DTR 25 (Del.) and *'CIT vs. Whirlpool of India Ltd.,* (2015) 94 CCH 156 (Del.)]. In the case of *'Sony Ericsson Mobile Communication India (P.) Ltd.*' (supra) the Court had overruled the Tribunal's Full Bench decision in the case of *'LG Electronics India Pvt. Ltd. Vs. ACIT'*, 2013 152 TTJ (Del)(SB) 273 with respect to the applicability of "bright line test" and dealt specifically with the AMP issue. Having regard to these circumstances, the Court is of the opinion that the remission to the TPO/AO, in the facts of this case, was unnecessary instead the ITAT itself ought to have addressed the issue, especially the Court's findings, as to whether the reasoning in the case of *'Sony Ericsson Mobile Communication India (P.) Ltd.'* (supra), was correctly applied in the facts of this case. Consequently, the impugned order is modified; the ITAT is directed to consider the matter afresh and return its findings on the merits.

The appeal is allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 20, 2018
nn