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

\+ **ITA 694/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX- 7 ..... Appellant

Through: Ms. Vibhooti Malhotra, Senior Standing Counsel with Mr. Shailendra Singh, Advocate

versus

M/S. READER'S DIGEST BOOK AND HOME ENTERTAINMENT (INDIA) PVT. LTD.

..... Respondent

Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **26.07.2019**

CM APPL. 33399/2019 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 33400/2019 (delay in re-filing the appeal)

2. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the application is allowed.

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3. This is an appeal by the Revenue against an order dated 20th December, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 1080/Del/2016 for the Assessment Year (AY) 2011-12.

4. The issue sought to be urged by the Revenue is whether the ITAT erred in remanding the issue of Advertising Marketing Promotion (AMP) expenses to the file of the Transfer Pricing Officer (TPO) for re-determination of the issue whether there is at all an international transaction involving the Assessee and its Associated Enterprise ('AE') i.e. Reader's Digest Asia Pvt. Ltd. in Singapore and if so, how the Arms Length Price (ALP) of such international transaction is required to be determined?

5. The facts of the present case need not be discussed in great detail because essentially, what the ITAT has done is to remand the matter to the TPO, and this by itself does not give rise to any substantial question of law. The ITAT has noted that the Assessee is incurring its own selling and distribution expenses and there was no advertisement in the media nor were its products available in the shops. The issues of Reader's Digest were made available only through mail orders which had to be placed separately.

6. The ITAT has pointed out that there exists a distinction between product promotion and brand promotion and that the mechanism used by the Assessee is altogether different for its product promotion. Since the 'Bright Line Test' has now been jettisoned by this Court in ***Sony Ericsson Mobile Communications India Pvt. Ltd. v. Commissioner of Income Tax-III [2015] 374 ITR 118 (Del)***, the ITAT was of the view that the entire exercise should be undertaken afresh by the TPO.

7. The Court finds absolutely no ground to interfere with the order passed by

the ITAT. No substantial question of law arises from the impugned order.

8. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 26, 2019/*PB*