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

\+ ITA 889/2017

M/S BOSE CORPORATION INDIA PVT. LTD ..... Appellant
Through: Mr. Percy Pardiwala, Sr. Advocate with Mr. Ravi Pratap, Advs.

versus

PR. COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Deepak Anand, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **31.01.2019**

The assessee's appeal under Section 260A of the Income Tax Act, complaining that the ITAT did not decide the issue – is principally concerned with the Armed Length Price (ALP) determination, which the Transfer Pricing Officer (TPO) in this case can apply, to the Advertising, Marketing and Promotion (AMP) expenditure by benchmarking on the basis of the pre-existing norm i.e. "the bright line test" method, propounded by the Tribunal itself in its ruling in *LG Electronics India Pvt. Ltd. v. Assistant Commissioner of Income Tax,* [TS-11-ITAT-2013 (Del)-TP]. The ITAT was of the opinion that the "bright line test" was displaced as it was not approved by the Division Bench of this Court in *Sony Ericsson Mobile Communications (India) Pvt. Ltd vs. CIT, (2015) 374 ITR 118 (Del.)* which was also followed and explained in *Maruti Suzuki India Ltd. & Anr. Vs. CIT, (2015) 129*

DTR 25 (Del.). The ITAT therefore, followed two of its previous rulings in *Rayban Sun Optics India Ltd. vs. CIT (dated 14.09.2015)* and *Pr. CIT v. Bose Corporation (India) Pvt. Ltd (dated 23.08.2016).* Consequently, the ITAT has remitted the matter for fresh consideration by the TPO. Besides this issue, the assessee is also aggrieved by the fact that the ITAT has not adjudicated other questions as well.

This Court has considered the submissions of the parties. *Sony Ericsson* (supra) was decided almost four years ago; so was *Maruti Suzuki* (supra). As the principles applicable are now quite clear and the "bright line test" not in use, the ITAT should first apply its mind and decide the respective contentions of the parties on the facts discernible from the TPO's findings, as confirmed by the DRP rather than remitting the matters mechanically altogether. In these circumstances, the Court is of the opinion that the impugned order cannot be sustained which is hereby set aside. The ITAT is directed to examine the merits of the contentions as well as all the grounds urged before it as to the ALP determination exercise, in the light of the ruling in *Sony Ericsson* (supra), as explained in *Maruti Suzuki* (supra).

The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 31, 2019/akv