IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226 **CM-6314-CII-2021 in/and**
ITA-142-2015 and
XOBJC-186-CII-2015 (O&M)
Decided on : December 09, 2021

The Commissioner of Income Tax, Faridabad ....Appellant

VS

M/s BMW India Pvt.Ltd. ....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Tajender K.Joshi, Advocate
for the appellant.(Department)

Mr. Rohan Shan, Advocate
Mr. Srisabari Rajan, Advocate and
Mr. Alankar Narula, Advocate
for the respondent.(Assessee)

****

AJAY TEWARI, J.(Oral)
CM-6314-CII-2021

1. This application has been filed for fixing an actual date of hearing in the main appeal.

2. For the reasons recorded in the application, the same is allowed and with the consent of both the parties, the main appeal is taken up on Board for hearing today itself.

ITA-142-2015 and XOBJC-186-CII-2015

3. This appeal as well as the Cross-Objections have been filed against the order dated 16.8.2013 (Annexure A-11) passed by the Income Tax Appellate Tribunal, Delhi Bench "1" New Delhi in ITA No. 5354/DEL/2012 dated 16.8.2013 for the assessment year 2008-09.

4. In the appeal, certain legal issues have been raised and those in turn are pending before the Supreme Court in CA NO. 3954 of 2017. It has been stated that that the appeal in the Supreme Court has now been listed in January, 2022. Apart from that, Cross-Objections have been filed by the respondent-assessee wherein the following questions have been raised :-

> *i Whether the ITAT erred in law by upholding the incurring of allegedly excessive expenditure on AMP is an International Transaction against the provisions under Section 92B of the Act.*
>
> *ii Whether the ITAT erred in law in upholding the application of the "Bright Line Test" as a tool for calculating the arm's length price of the alleged International Transaction without complying with the Transfer Pricing provisions contained in the Act ?*
>
> *iii That the Assessee (respondent-cross objector) herein has not filed any such or similar cross objection till date either before this Hon'ble Court or the Hon'ble Supreme Court of India."*

5. In this case, both the parties are aggrieved of the same judgment order albeit on different grounds. In these circumstances, we deem it appropriate to set aside the impugned order dated 16.8.2013 and remand the case back to the Tribunal for a fresh decision on all aspects in accordance with law. Parties through counsel are directed to appear before the Tribunal on 20.12.2021 or on any other date on which the Tribunal may require its presence.

6. Appeal as well as Cross-Objection stand disposed of.

7. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

December 09, 2021
anuradha

Whether speaking/reasoned	-	Yes
Whether reportable	-	No