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

+ **ITA 292/2022**

PR. COMMISSIONER OF INCOME TAX -7

..... Appellant

Through: Mr.Puneet Rai, Sr.Standing Counsel with
Ms.Adeeba Mujahid, Jr.Standing Counsel
and Mr.Nikhil Jain, Advocate.

versus

SHARP BUSINESS SYSTEMS (INDIA) PVT. LTD.

..... Respondent

Through: Mr.Himanshu S.Sinha, Advocate with
Mr.Bhuwan Dhoopar, Advocate.

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Date of Decision: 31st August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present Income Tax Appeal has been filed challenging the Order dated 10th December, 2020 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1114/Del/2016 for the Assessment Year 2011-12.

2. Learned counsel for the appellant states that the ITAT has erred in rejecting the bright line test which is in substance a mere methodology of determining the quantum of AMP expense by solely taking recourse to the decision of this Court in *Sony Ericsson Mobile Communication vs. CIT, 374 ITR 118 (Del)* and ignoring the larger issue of reimbursement of AMP expenses by the AE to the assessee. He states that the ITAT has erred in directing the



exclusion of routine sales and distribution expenses when the TPO has explicitly highlighted that the assessee in this case necessarily trades the branded products manufactured by the AE and hence the benefit of any intangible created in the process is directly accruing to the AE.

3. He also states that the ITAT has erred in not appreciating the finding of the TPO where the AMP expense incurred on various advertisements and marketing/sales promotion activities by the assessee was under the brand name 'SHARP' and not 'SHARP India'.

4. He further states that the ITAT has erred in its order to reject the AMP adjustment using the Bright line method by relying on the judgment in the case of *Sony Ericsson* (supra) when an appeal in this case is pending adjudication before the Supreme Court of India.

5. This Court in *Sony Ericsson* (supra) has categorically held that Bright Line Test has no statutory mandate. The relevant extract of the judgement is reproduced hereinbelow:

“The 'bright line test' has no statutory mandate and a broad-brush approach is not mandated or prescribed. We disagree with the Revenue and do not accept the overbearing and orotund submission that the exercise to separate 'routine' and 'non-routine' AMP or brand building exercise by applying 'bright line test' of non-comparables should be sanctioned and in all cases, costs or compensation paid for AMP expenses would be 'NIL', or at best would mean the amount or compensation expressly paid for AMP expenses. It would be conspicuously wrong and incorrect to treat the segregated transactional value as 'NIL' when in fact the two AEs had treated the international transactions as a package or a single one and contribution is attributed to the aggregate package. Unhesitatingly, we add that in a specific case this criteria and even zero attribution could be possible, but facts should so reveal and require.”



6. Further, this Court in the cases of *Bausch & Lomb Eyecare (India) (P.) Ltd. vs. Addl. CIT [2016] 65 taxmann.com 141 (Delhi)* following the decision in *Sony Ericsson* (supra) held that the question of applying the Bright Line Test to determine the existence of an international transaction involving AMP expenditure does not arise.

7. Though the judgments of this Court have been challenged and are pending adjudication before the Supreme Court, yet there is no stay of the said judgments till date. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359* and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 SCC 1*, the present appeal is dismissed being covered by the judgments passed by the learned predecessor Division Bench in *Sony Ericsson* (supra) & *Bausch & Lomb Eyecare India P. Ltd.* (supra). However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of *Sony Ericsson* (supra).



MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 31, 2022
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