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

% ***Date of decision:18.10.2023***

\+ **ITA 592/2019**

PR. COMMISSIONER OF INCOME TAX -9 ..... Appellant

Through: Mr Sanjeev Menon, Standing Counsel with Mr Zoheb Hossain, Sr Standing Counsel.

versus

M/S WRIGLEY INDIA PVT. LTD. ..... Respondent

Through: Mr Ajay Vohra, Sr. Advocate with Mr Divyanshu Agrawal and Mr Vaibhav Niti, Advocates.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year ("AY") 2010-11.

2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 25.09.2018 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]

3. Mr Sanjeev Menon, standing counsel, who appears on behalf of the appellant/revenue, says that the short issue which arises for consideration is whether the respondent/assessee, which is a wholly owned subsidiary of its Associated Enterprise ("AE"), is required to be compensated for Advertising, Marketing and Promotion ("AMP") expenses incurred by it on

behalf of its AE?

4. To be noted, the Transfer Pricing Officer ("TPO") has made an adjustment of Rs.73,23,49,876/- on account of Arm's Length Price for what was construed as an international transaction concerning AMP expenditure.

5. The Tribunal, relying upon the decision rendered in the respondent's/ assessee's case for AY 2007-08 to AY 2009-10, ruled in favour of the respondent/assessee.

5.1 To be noted, in the aforementioned AYs, the Tribunal had concluded that the AMP expenses incurred by the respondent/assessee did not amount to an international transaction. In this context, the Tribunal also notes (something which came up even in the aforementioned AYs) the decision of this court passed in ***Maruti Suzuki India Ltd. v CIT*** (2016) 381 ITR 117.

6. We may note that on the previous date i.e., 11.09.2023, we had asked Mr Menon to seek instructions with regard to the Miscellaneous Applications (MAs) that the appellant/revenue had filed with the Tribunal concerning AY 2007-08 to AY 2009-10.

6.1 This direction had been issued as Mr Ajay Vohra, learned senior advocate, who appears on behalf of the respondent/assessee, had placed before us a copy of the order dated 11.03.2020, which indicated that MAs preferred by the appellant/revenue with the Tribunal had been dismissed.

7. Mr Menon affirms that the MAs have been dismissed. On being queried further, Mr Menon also affirms that appellant/revenue has not taken recourse to any legal remedy up until today.

8. Given the aforesaid position and the fact that there has been no change in the circumstances concerning the respondent/assessee (something which has been noted by the Tribunal) according to us, in this matter, the

principle of consistency would apply. Therefore, we are not inclined to interfere with the impugned order passed by the Tribunal.

9. According to us, no substantial question of law arises for our consideration.

10. The appeal is accordingly, closed.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

OCTOBER 18, 2023/v

Click here to check corrigendum, if any