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

+ **ITA 419/2024**

THE PR. COMMISSIONER OF INCOME TAX -7 ...Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, Mr. Pratyaksh
Gupta, Advs.

versus

SAMSUNG INDIA ELECTRONICS PVT. LTD. ..Respondent

Through: Mr. Himanshu S. Sinha, Mr.
Prashant Meharchandani & Mr.
Jainender Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **05.08.2024**

CM APPL. 44386/2024 (760 Days Delay in Refiling)

Bearing in mind the disclosures made, the delay in refiling the appeal is condoned.

The application shall stand disposed of.

CAV 360/2024

Since the respondent is duly represented by learned counsel, the caveat stands discharged.

ITA 419/2024

1. The Principal Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 14 December 2020 and posits the following questions of law for our consideration:-

“2.1 Whether, the facts and circumstances of the case and in law, the Id. ITAT was justified in its decision in holding that AMP (advertisement, market promotion) expenditure incurred during the year by the Assessee does not constitute an 'International



Transaction'?

2.2 Whether, the facts and circumstances of the case and in law, the Id. ITAT was justified in holding that the 'Brightline Test' was not mandated in law and hence impermissible without considering the facts that BLT was not used as a method to determine the price but only as an economic tool to arrive at the cost of services rendered to foreign enterprise by the Indian entity and when the TPO has the mandate to determine such cost as a primary step in ALP determination as provided under the Rules?

2.3 Whether, on the facts and circumstances of the case and in law, the Id. ITAT was justified in stating that existence of an international transaction cannot be arrived at, from the clauses of an MDF agreement and also stating that the value of international transaction cannot be expanded beyond the reimbursements received under MDF agreement and that incurred of AMP expenditure does not lead to Brand Building?

2.4 Whether, on the facts and circumstances of the case and in law, the Id. ITAT was right in law in observing that on application of TNMM as the Most Appropriate Method at segmental/entity level, then individual component of AMP cannot be segregated for benchmarking, when the TPO is fully empowered for segregation/aggregation of transactions as per the LT. Act and International guidance for Arm's Length determination?

2.5 Whether, on the facts and circumstances of the case and in law, the Id. ITAT was right in law in stating that protective adjustment to preserve the interest of the revenue cannot be made in this case when the issue of AMP is still sub-judice and is pending before the Hon'ble Apex Court.

2.6 Whether, in the facts and circumstances of the case of the Id. ITAT was right in law in excluding OTS E Solutions Pvt. Ltd. as functionally non comparable without considering the finding of the TPO w.r.t. broad level of products similarity under TNMM after conducting a detailed FAR analysis while ITAT has failed to give detailed FAR w.r.t inclusion and exclusion of comparable?

2.7 Whether, in the facts and circumstances of the case the Id. ITAT was right in law in including Rendington India Pvt. Ltd. which is functionally non comparable without considering the findings of the TPO w.r.t. product similarity. ITAT has failed to give detailed FAR w.r.t. inclusion and exclusion of comparable?

2.8 Whether, in the facts and circumstances of the case the Id. ITAT was right in law in including HCI. Infosystems Ltd. functionally



comparable without considering the findings of the TPO w.r.t. this company has different financial year data?”

2. We note that insofar as questions 2.1 to 2.5 are concerned, the Tribunal has rested its view on the decision rendered by this Court in **Sony Ericsson Mobile Communications India Pvt. Ltd. vs. Commissioner of Income-Tax**¹. The view so expressed is clearly unexceptionable.

3. That only leaves us to examine the findings which were returned in respect of three comparables. We note that the assessee company is stated to be engaged in the business of manufacturing and distributing various Samsung products falling in the consumer electronics and home appliances category. We are, however, in the present appeal concerned with the trading segment of the aforesaid operations.

4. We note that insofar as OTS E-Solutions Pvt Ltd. is concerned, the Tribunal has held as follows:-

“11.3 We have heard both the parties and perused all the relevant material available on record. From the perusal of the records it can be seen that OTS E- Solutions Pvt. Ltd. was held as not comparable in subsequent assessment year i.e. A.Y. 2014-15 by the Tribunal. The functional dissimilarity is apparent on record and there are no changes in the present assessment year. Hence, we direct the TPO to exclude this comparable from the final list of comparables.”

5. Proceeding then to examine the claim for inclusion of the Redington India Ltd., the Tribunal has come to the following conclusions:-

“12.3 We have heard both the parties and perused all the relevant material available on record. From the perusal of records it can be seen that this company is engaged in distribution of IT products such as computers, printers, software storage systems and also a leading supply chain solutions provider for global brands of IT

¹ 2015 SCC OnLine Del 8083



hardware and software product which appears to be similar to that of assessee functions. Therefore, we direct the TPO to look into the portfolio of this, company, and applying the filters, this comparable i.e. Redington India Limited may be included in the final comparable list.”

6. Insofar as HCL Infosystems Ltd. is concerned, the Tribunal has on facts ultimately observed as follows:-

“12.9 We have heard both the parties and perused all the relevant material available on record. From the perusal of records, it can be seen that this company is engaged in distribution of telecommunication and digital lifestyle products such as cellular phones, computers, printers, scanners etc. and hence functionally similar to the assessee company. Besides this fact, this company is allowed as comparable in A.Y. 2005-06 to 2011-12 by the Tribunal and there are no different facts emerging as relates to function conducted by the present assessment year to that of previous assessment years. Therefore, we direct the TPO to look into the portfolio of this company and applying the filters, this comparable i.e. HCL Infosystems. Limited may be included in the final comparable list.”

7. Bearing in mind the aforesaid conclusions, we are of the considered view that the appeal fails to raise any substantial question of law.

8. It shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 5, 2024/neha