$~79

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

\+ **W.P.(C) 16608/2024 & CM APPL. 70200-01/2024**

SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED .....Petitioner

Through: Mr Himanshu S Sinha, Mr Prashant Meharchandani, Mr Vibhu Jain and Mr Jainener Singh Kataria, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 22.2 DELHI .....Respondent

Through: Mr Puneet Rai, SSC, Mr Ashvini Kumar and Mr Rishabh Nangia, SCs and Mr Nikhil Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **02.12.2024**

1. Issue notice. The learned counsel for the Revenue accepts notice.

2. The petitioner has filed the present petition, *inter alia,* impugning an order dated 22.11.2024 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in the stay application no.451/Del/2024 in ITA No.5256/Del/2024.

3. The petitioner had filed the stay application seeking that the demand raised in respect of the assessment year (AY) 2021-22 be kept in abeyance. The said application was filed in the following context: -

3.1 The petitioner had filed its return of income for the AY 2021-22, on 12.03.2022 declaring a total come of ₹5941.47 Crores. The return was selected for scrutiny and the Assessing Officer (AO) made a reference to the learned Transfer Pricing Officer (TPO) for determination of the arm's length price (ALP) of the international transactions. The learned TPO proposed an upward adjustment on several heads of ₹37,53,32,72,723/- including adjustment of ₹1028,65,26,387/- as protective assessment. Thereafter, the Faceless Assessment Unit (FAO) passed the assessment order dated 24.12.2023 determining the petitioner's total income as ₹1,00,20,85,81,432/-

3.2 The petitioner preferred objections before the Dispute Resolution Panel (DRP) which were disposed of on 30.09.2024.

3.3 The final assessment order was passed by FAO on 29.10.2024 confirming the tax disallowance of ₹33,26,37,47,251/- including ₹30,00,32,13,852/- on account of transfer pricing additions.

3.4 The petitioner appealed the final assessment order before the ITAT.

3.5 The petitioner has filed the stay application on 18.11.2024 before the learned ITAT seeking stay of the outstanding demand, which was dismissed by the learned ITAT by the impugned order on the ground that said application was premature.

4. Concededly, the reasoning of the learned ITAT rejecting the petitioner's stay application is unsustainable. There is no dispute that the demand was raised as outstanding and therefore, the petitioner's application cannot be considered as premature on the basis that no coercive or precipitative steps had been taken by the Revenue.

5. In view of the above, the impugned order is set aside and the petitioner's stay application no.451/Del/2024 in ITA No.5256/Del/2024 is restored before the learned ITAT for consideration on merits. We request the learned ITAT to dispose of the petitioner's application as expeditiously as

possible.

6. The petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

7. Copy of this order be given *dasti* under the signature of the Court Master.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

DECEMBER 02, 2024

M

Click here to check corrigendum, if any