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

+ **ITA 336/2025**

**PR. COMMISSIONER OF INCOME TAX-1** .....Appellant

Through: Mr Sanjay Kumar, SSC with Ms  
Monica Benjamin and Ms Esha, JSCs.

versus

**CASIO INDIA COMPANY PVT. LTD.** .....Respondent

Through: Mr. Kamal Sawhney, Mr. Puru  
Medhira, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE VINOD KUMAR**

**ORDER**

% **03.09.2025**

**CM APPL. 52711/2025 (Delay in re-filing the appeal 988 days)**

1. For the reasons stated in the application, the delay of 988 days in filing the captioned appeal is condoned.
2. The application stands disposed of.

**ITA 336/2025**

3. This appeal lays a challenge to an order dated 26.05.2022 passed by the Income Tax Appellate Tribunal, Delhi, New Delhi in ITA 857/Del/2021 relating to Assessment Year 2016-17. The appeal was filed by respondent and the same has been decided by the Income Tax Appellate Tribunal (ITAT) as allowed by stating in paragraph 06 onwards as under :

*“6. We have heard the rival submission on the issue under consideration; we have also gone through the entire materials available on record and gave our thoughtful*



*consideration. It is not in dispute that, the very same issues have cropped up which have been elaborately considered by the coordinate bench of this Tribunal for Assessment Year 2011-12, 2012-13 & 2013-14 vide order dated 24/02/2020. Further, even in the latest Assessment Year 2015-16, the Tribunal vide order dated 18/05/2020 in ITA No. 9312/De1/2019 held as under:-*

*"13. We have heard the id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.*

*14. Now, it is brought to our notice by the id. AR for the taxpayer that protective adjustment using bright line approach on account of AMP expenses by the Revenue has been held to be not sustainable by the coordinate Bench of the Tribunal in taxpayer's own case in .1TiV""No-.8060/Del/2018 for AY 2014-15 vide order dated 24.01.2019.*

*15. Undisputedly, this is a case of AMP adjustment in case of pure distributor. It is also not in dispute that in case of the taxpayer, AMP adjustment has been a legacy issue and the id. DRP decided the same on the basis of earlier year order by taking defence that Revenue has already filed the Special Leave Petition before the Hon'ble Supreme Court. It is also not in dispute that the Id. DRP mentioned in para 3 of its order that during AY 2014-15, the matter as to whether routine AMP spent is an "international transaction" is pending before the Hon'bre Supreme Court for final decision and thereby upheld AMP adjustment made by the AO.*



16. We have perused the aforesaid order dated 24.02.2019 passed by the coordinate Bench of the Tribunal having identical issue, which the Id. DR for the Revenue has opposed on the sole ground that the enforcement of protective adjustment would depend on final outcome of the decision of Hon'ble Supreme Court in case of CH vs. Sony Ericsson Mobil Communication India Ltd. reported in (2015).55 taxman. com 240 decided by the Hon'ble Delhi High Court vide which bright line approach has been discarded.

17. Hon'ble Delhi High Court in Sony Ericsson India Pvt. Ltd. v. CIT (2015) 374 ITR 118 (Del.) and subsequently in Maruti Suzuki India Ltd. v. CIT (2016) 328 ITR 210 (Del.) has categorically held that BLT is not a valid basis for determining the existence of international transaction or for that matter for computing the ALP of such international transaction involving AMP expenses; the order of TPO passed by making BLT as basis of the ALP adjustment is not sustainable in the eyes of law.

18. The taxpayer has specifically come up with the proposition that there is no separate international transactions between it. and its AE qua AMP expenditure and Revenue has failed to bring on record any material whatsoever if there is any explicit arrangement between the taxpayer and its AE by incurring AMP expenses. So, in these circumstances, incurring of AMP expenses cannot be considered as international transaction. Moreover, there is no material on the file if there is any arrangement between the taxpayer and its AE to



*undertake brand building activities on behalf of the AE. Rather AMP expenses stated to have been incurred by the taxpayer in which for promoting the sales of its product in India and not to benefit in any manner its AE i.e. Casio Japan.*

*19. Hon'ble Delhi High Court in subsequent decisions viz. Bausch & Lomb Eye Care (India) Pvt. Ltd. v. Additional CIT (2016) 381 ITR 227 (Del.) and Honda Siel Power Products Ltd. v. Dy. CIT (2016) 237 Taxman 304 held that it is for the Revenue to firstly discharge the onus to prove the existence of an international transaction between the taxpayer and its AE and only thereafter ALP of international transactions involving AMP can be computed.*

*20. In the instant case, there is not an iota of material on the file apart from applying the BLT and by taking the view that the taxpayer has incurred huge AMP/ sales expenses to the tune of 6.42%, no cogent material is there to treat the incurring of AMP expenses as international transaction more particularly when basis for treating the AMP expenses as international transaction i. e. BLT is not a legally sustainable method.*

*21. Undisputedly, there is no change in the FAR of the taxpayer company since AY 2010-11 and the taxpayer is performing.' Same functions. In AY 2010-11, the coordinate Bench of the Tribunal vide order dated 22.04.2019 passed in ITA No.1764/Del/2015, available at page 484 of the paper book, held that the Revenue has failed to prove that AMP expenditure by the taxpayer is a separate international*



*transaction by returning following findings :-*

*"29. The entire finding and approach of the TPO and DRP has been purely based on hypothesis and one of the agreement entered in the earlier year for a limited period of six months and this has been stated to be a material so as to determine that there was an international transaction qua AMP expenditure in this year. Such a presumption based on said agreement cannot be inferred in this year at all as, firstly, it was for a very limited period in one of the earlier year as stated above; and secondly, each year has to be seen independently and if no such material act is permeating then presumption cannot be drawn for perpetuity. Thus, Revenue has failed to bring on record any material or any kind of arrangement existing between the AE and Assessee Company that there was separate international transaction with regard to AMP expenditure. Thus, on the facts and circumstances of the case, we hold that AMP expenditure cannot be treated as separate international transaction which needs separate benchmarking and accordingly we delete the entire AMP adjustment made by the Assessing Officer.*

*22. So, in view of what has been discussed above and following the order passed by the Tribunal in taxpayer's own case in AY 2010-11, when there is no international transaction no separate benchmarking qua AMP expenditure can be made, hence,, liable to be deleted.*

*23. In view of what has been discussed*



*above, the appeal filed by the taxpayer is allowed."*

*7. Further, similar views have also been taken in previous years by this Tribunal in ITA No. 1764/De1/2015 Assessment Year 2010-11 vide 'order dated 22/04/2019,) ITA No. 385/De1/2016, 341, 6733/De1/2017 Assessment Year 2011-12, 2012-13 86 2013-14 vide order dated 24/02/2020, wherein this Tribunal has also looked into the all the records and materials including 'memorandum of understanding for basic transaction entered into between the assessee and its AE dated 01/06/2009'. Therefore, the contention of the Ld. DR that, the Tribunal has not looked into the 'memorandum of understanding for basic transaction rules" is not correct. In view of the above binding decisions of this Tribunal mentioned supra and in the light of the discussion made above, we are of the opinion that, when there is no international transaction, no separate benchmarking qua AMP expenditure can be made; hence the adjustments are liable to be deleted. Accordingly we allow the Grounds of Appeal No. 5 to 18.3.*

*8. The Ground No. 1 to 4 are too general in nature, which requires no adjudication, the Ground No. 19 is in consequential in nature accordingly we dismiss the Ground No. 1 to 4 and 19"*

4. Ld. Counsel for revenue fairly placed before us order dated 11.12.2024 passed in ITA 211/2022 and ITA 67/2022, which are appeals filed by the Revenue against the respondent/Assessee by stating that the issue, which arises for consideration in these appeals has been decided by this court. In paragraphs 4, 5 and 6 in ITA 211/2022 and ITA 67/2022, this court has stated asunder :

*4. Identical issues were being considered in ITA 67/2022 pertaining to AY 2015-16. These appeals came to be admitted on 15 May 2024 on the following questions of law:-*



*“(a) Whether the Income Tax Appellate Tribunal [“ITAT”] was justified on facts and in law in deleting addition on account of expenses incurred by the assessee for advertisement, marketing and promotion [“AMP”] for brand-building for brand owned by the associated enterprise?”*

*“(b) Whether the ITAT was justified on facts and in law in holding that the Revenue needs to establish on the basis of tangible material or evidence that there exists an international transaction regarding brand building by way of AMP expenses despite the fact that it was held by the Delhi High Court in the case of Sony Ericsson Mobile Communications India (P.) Ltd. v. CIT [374 ITR 118] that transaction of excess AMP is an international transaction?”*

*5. We have been informed by learned counsels for parties that the issues forming subject matter of consideration in these appeals have already been considered and disposed of by this Court in the case of the respondent-assessee itself in Deputy Commissioner of Income Tax-5(2) v. Casio India Company<sup>7</sup> and where we had held as follows:-*

*“The Revenue has preferred the present appeal to assail the order dated 24.01.2019 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 8060/Del/2018 preferred by the respondent for the assessment year 2014-15.*

*A perusal of the impugned order shows that the same proceeds on the basis of the decision of this Court in CIT Vs. Sony Ericsson Mobile Communication India Pvt. Ltd., [2015] 55 taxmann.com 240. In that decision, this Court rejected the adoption of the bright line test method for making the*



*protective adjustment by the Assessing officer. In the present case as well, the Assessing Officer had adopted the bright line test method and the Tribunal by following the decision of this Court in Sony Ericson Mobile Communication India Pvt. Ltd. (supra) has rejected the said method. In view of the fact that this Court has already rendered its decision on the same issue, we dismiss this appeal.”*

*6. Bearing in mind the aforesaid, we find that no substantial questions of law survive for consideration in these appeals. The same shall stand dismissed.”*

5. In view of the submission made by the learned counsel for appellant in this appeal and in view of the conclusion drawn by this court in the aforesaid two appeals, we are of the opinion that no substantial questions of law arises for consideration in these appeals for the A.Y. in question i.e. 2016-17. The same is dismissed.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**SEPTEMBER 3, 2025**

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