



§~41 & 26

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

+ **ITA 432/2017**

PR. COMMISSIONER OF INCOME TAX-6,
NEW DELHI

..... Appellant

Through : Mr. Asheesh Jain, Senior Standing
Counsel.

versus

MSD PHARMACEUTICALS PVT. LTD. Respondent

Through : Ms. Rashmi Chopra, Advocate.

With

+ **ITA 524/2017**

MSD PHARMACEUTICALS PVT LTD

..... Appellant

Through : Ms. Rashmi Chopra, Advocate.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX,
RANGE-6 NEW DELHI & ANR.

..... Respondents

Through: Mr. Asheesh Jain, Senior Standing
Counsel.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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19.07.2017

CM No.25169/2017 (delay in filing) in ITA No.524/2017

1. For the reasons as stated in the application, the delay in filing is

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condoned. The application stands disposed of.

CM No.25168/2017 (exemption) in ITA No.524/2017

2. Allowed, subject to all just exceptions.

ITA No.524/2017 and ITA No.432/2017

3. These appeals by the Revenue and Assessee are directed against the same order dated 22nd November, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1423/Del/2015 for the Assessment Year ('AY') 2010-11. ITA No.524/2017 has been preferred by the Revenue and ITA No.432/2017 has been preferred by the Assessee.

4. The dispute before the Tribunal concerns the addition of transfer pricing adjustment on account of Advertisement, Marketing and Promotion (AMP) Expenditure purportedly incurred by the Assessee. The ITAT in the impugned order has referred to the decision of this Court in *Sony Ericson Mobile Communications (India) Pvt. Ltd. v. CIT (2015) 374 ITR 118 (Del)* and also some of the subsequent judgments where the Court has held that in matters of transfer pricing the first exercise that is to be undertaken is to determine if in fact there existed an international transaction between the Assessee at its Associated Enterprise. Only if the said question is answered in the affirmative, the further question of determining its arm's length price would arise. Counsel on both sides state that all the necessary documents and information for determining the above question already form part of the record of the case in the ITAT.

5. In view of the above submissions, the Court sets aside the order dated 22nd



November, 2016 and restore the aforementioned appeal to the file of the ITAT for a fresh *de novo* adjudication on merits without reference to the order of the ITAT that has been set aside by this judgment.

6. It will be open to both sides to urge their respective contentions on merits before the ITAT which will be decided afresh without reference to the order of the ITAT that has been set aside by this judgment.

7. Ms. Rashmi Chopra, learned counsel for the Assessee, states that in view of this order the Assessee will withdraw the miscellaneous application filed by it before the ITAT.

8. The appeal ITA No. 1423/Del/2015 be listed before the ITAT on 28th August, 2017 for directions. The appeals are disposed of in the above terms.

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S.MURALIDHAR, J

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh', written in a cursive style.

PRATHIBA M. SINGH, J

JULY 19, 2017

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