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

+ ITA 508/2013

M/S SONY INDIA PVT LTD.

..... Appellant

Through

versus

COMMISSIONER OF INCOME TAX-II

..... Respondent

Through

Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Deepak Anand, Jr.
Standing Counsel, Adv.

AND

+ ITA 509/2013

SONY INDIA PVT LTD.

..... Appellant

Through

versus

CIT III

..... Respondent

Through

Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Deepak Anand, Jr.
Standing Counsel, Adv.

AND

+ ITA 148/2014

COMMISSIONER OF INCOME TAX

..... Appellant

Through

Mr. Raghvendra Singh, Adv.

versus

SONY INDIA PVT. LTD.

..... Respondent

Through

AND

+ ITA 149/2014

COMMISSIONER OF INCOME TAX – III

..... Appellant

Through

Mr. Raghvendra Singh, Adv.

versus



SONY INDIA PVT. LTD.
Through

..... Respondent

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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23.07.2018

These cross appeals by the Sony India Private Limited and the Revenue relate to the assessment years 2007-08 and 2008-09 and arise from the order of the Tribunal dated 07.06.2013.

2. The first question raised in the appeals preferred by the assessee, it is conceded, relates to advertisement, marketing and sale promotion expenditure, and reads:-

“Whether the advertisement and marketing expenditure incurred by the appellant assessee can be treated as international transaction and made subject matter of adjustment in arms length pricing?”

3. After hearing the parties we are inclined to set aside the order passed by the Tribunal in view of decision in *Sony Ericson Mobile Communication India Private Limited v. CIT*, (2015) 374 ITR 118 (Del).

4. Accordingly, the question is answered in terms of the decision in *Sony Ericson Mobile Communication (supra)* with an order of remit to the Tribunal to decide the issue afresh in light of the direction given in the aforesaid decision.

5. We may record that counsel for the assessee has submitted that there have been subsequent decisions by this Court and other High



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Courts which the assessee would like to rely upon. It is open for assessee to rely upon the said ratios. Equally, Revenue will be entitled to defend their stand.

6. Counsel for the Revenue submits as the order of the Tribunal has been set aside, Revenue would raise all pleas and contentions when the appeals are taken up for hearing. It will be open to the Revenue to rely upon judgments and ratios which they feel are in their favour. Counsel for the assessee states that he would have no objection but would contest the contention of the Revenue on merits.

7. The second question raised by the assessee in the aforesaid appeals relates to the issue of depreciation and the following substantial question of law has been framed:-

“Whether the Income Tax Appellate Tribunal was right in holding that the appellant is not entitled to depreciation under Section 32 of the Income Tax Act, 1961, in respect of the balance written down value relating to Daru Hera unit, forming part of the block of assets?”

8. The counsel for the parties state and accept that the issue is covered in favour of the assessee and against the Revenue by decision of this Court dated 24.01.2017 in ITA Nos. 13/2012 and 14/2012, ***Sony India Pvt. Ltd. v. CIT***. In terms and following the said decision, question of law is answered in favour of the assessee and against the Revenue.

9. Question raised in ITA Nos. 148 and 149 of 2014 filed by the Revenue relates to correct rate of depreciation on UPS, Printers and Switches.



Question reads:-

“Whether the ITAT was correct in allowing the depreciation at the rate of 60% on UPS, printers and switches instead of 15% at the normal value, ignoring the fact that computer does not include UPS?”

10. The said issue is covered against the Revenue vide decision *CIT vs. BSES Yamuna Power Ltd.*, (2013) 358 ITR 47 (Del). Accordingly, this substantial question of law is answered against the revenue and in favour of the assessee.

11. In view of the above, appeals are disposed of. All the pending applications are also disposed of as being infructuous.

12. To cut short delay, the parties are directed to appear before the Tribunal on 30.08.2018 when a date of hearing would be fixed.


SANJIV KHANNA, J


CHANDER SHEKHAR, J

JULY 23, 2018/b