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

\+ ITA 1405/2018 and 1423/2018

THE PR. COMMISSIONER OFINCOME TAX -3 . ..... Appellant
Through: Ms. Vibhoti Malhotra, Jr. Standing Counsel with Mr. Sanampreet Singh, Advocate.

versus

ERICSSON INDIA PVT. LTD. ..... Respondent
Through: Mr. Vishal Kalra, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 20.12.2018

CM No. 51378/2018 in ITA No. 1405/2018
CM No.52022/2018 and 52023 /2018 in ITA No. 1423/2018

Learned counsel for the respondent-assessee does not oppose these applications for condonation of delay. Accordingly, the applications for condonation of delay are allowed.

ITA 1405/2018 and 1423/2018

These appeals by the Revenue in the case of Ericsson India Private Limited relate to the Assessment Years 2008-09 and 2009-10.

2. The common issue raised in the two appeals relates to "adding provision for gratuity and leave encashment" for the purpose of computation of income under Section 115JB of the Income Tax Act, 1961. This issue is covered against the Revenue by earlier decision of this Court in ITA Nos. 543/2011, 544/2011 and 728/2008.

3. However, Learned counsel for the Revenue has submitted that the Assessing Officer in the present case had also observed that the respondent-assessee had not given proof that the provision for gratuity and leave encashment was on actuarial basis. Learned counsel for the respondent-

assessee, on the other hand, has drawn our attention to the balance sheet of the company wherein the auditor has specifically stated that the provision for gratuity and leave encashment was on actuarial basis. He has also submitted that the Dispute Resolution Panel had observed that the addition would not be made unless the Revenue had filed an appeal against the decision of the Delhi High Court. Admittedly, no appeals have been preferred against the decisions of the Delhi High Court. In these circumstances, we do not think any substantial question of law arises on the first aspect.

4. The second issue raised by the Revenue in ITA No. 1423/2018 (Assessment Year 2008-09) relates to disallowance of 10% of the sales promotion expenses which were treated as capital in nature. This issue is also covered against the Revenue vide judgement of this Court in the case of ITA No. 1285/2009, ***The Commissioner of Income Tax versus Sony India Private Limited*** dated 22nd February, 2012 and other judgements following this decision. SLP against the said decision, it is stated, has been dismissed.

5 On the second issue also, therefore, we are not inclined to frame any substantial question of law.

6. Accordingly, we do not find any reason to issue notice in these appeals, which are dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 20, 2018/MR