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

Date of Order: 07.01.2019

\+ W.P.(C) 3174/2018, C.M. Appl. No. 12596/2018
SONY MOBILE COMMUNICATIONS INDIA PVT. LTD.
..... Petitioner

versus

ADDITIONAL COMMISSIONER OF INCOME TAX & ORS.
..... Respondent

\+ W.P.(C) 3175/2018, C.M. Appl. No. 12598/2018
SONY INDIA PVT. LTD.
..... Petitioner

versus

ADDITIONAL COMMISSIONER OF INCOME TAX & ORS.
..... Respondent

Counsel for the petitioner:
Mr. Nageshwar Rao, Mr. Sandeep S. Karnail, Mr. Parth, Advocates

Counsel for the respondent:
Mr. Ashok K. Manchanda, Senior Standing Counsel for Income Tax Department.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

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S. RAVINDRA BHAT, J. (ORAL)

It is stated that the petitioner's counsel that the rejoinder was filed; apparently, the respondent has not received copy of the same.

Let the same be supplied.

The petitioner's grievance is with respect to the demand made by the Assessing Officer for the Assessment Year 2013-2014. It is contended that the petitioner is entitled to refund, on the basis of TPO's recommendation that the Assessing Officer made intensity adjustments, which are the subject matter of an appeal, given that the draft assessment report was finalised after hearing the Assessee/Petitioner. It is submitted that during the pendency of the appeals before the Income Tax Appellate Tribunal [ITAT], the request for grant of stay was not fully acceded to. In these circumstances, the petitioners, in these proceedings, have sought the appropriate orders for interdicting the demands and subsequent adjustments of refunds due to them.

On the very first date of hearing, i.e. on 04.04.2018, this court while issuing notice, recorded as follows: -

> *"Learned counsel for the petitioner submits that the intensity test is not one of the recognized methods for computing arm's length pricing. He submits that the said method is nothing but another form or method to apply Bright Line test. He submits that in the case of Sony Mobile Communications India Pvt. Ltd., assessee had paid Rs.29.31 Crores towards advertisement expenditure, which aspect was overlooked by the TPO in the transfer pricing order. The rectification application filed by the petitioner was dismissed by the TPO without examining the said mistake on the ground that it was beyond the scope of rectification as it was not clear whether the amount was received or paid. Counsel for the petitioner submits that this reasoning of the TPO would reflect and indicate complete non-application of mind by the said officer while passing the transfer*

pricing order.

3. In the case of Sony India Pvt. Ltd., it is submitted that the petitioner had received Rs.l27 Crores as reimbursement towards advertisement and warranty charges but this factor was overlooked by the TPO who had added this figure to the AMP charges already declared. Rectification application filed to correct the said error has been rejected on the ground that it was beyond the scope of rectification. Learned counsel for the petitioner submits that this would show that the first order passed by the TPO was without application of mind for this aspect should have been examined before computing the AMP figures. Either the TPO was correct or incorrect. It cannot be left undecided.

4. Learned counsel for the respondent states that he would obtain instructions on merits and has to examine the merits. He relies upon the order passed by the tribunal.

5. On being asked, learned counsel for the petitioner submits that in case of Sony Mobile Communications India Pvt. Ltd., the net profit declared Rs.31 Crores on which tax of Rs.18 Crore has been paid. In the case of Sony India Pvt. Ltd., net profit of Rs.l84 Crores was declared on which tax of Rs.61 Crores was paid. The turnover in the two cases was Rs.l360 Crores and Rs.8258 Crores, respectively.

6. On the petitioner depositing a sum of Rs.2.5 Crores in the case of Sony Mobile Communications India Pvt. Ltd. and Rs.5 Crores in the case of Sony India Pvt. Ltd. with the respondents within a period of two weeks, there would be stay of recovery of demand pursuant to the assessment orders relating to Assessment Year 2013-14 in the case of two petitioners. The interim order passed herein would not bar and prohibit the respondent from

processing cases of refund, if any, due and payable to the petitioner. Pendency of the present writ petitions would not be a ground for either party to take adjournment before the tribunal."

We note that the interim orders have been continued during the pendency of these two petitions, on various subsequent dates i.e. 23.07.2018 and 10.10.2018.

Having heard the counsel for the parties, it is apparent that on the one hand, the appellant is aggrieved by the additions sought to be made on account of the recommendations of the TPO which were finalised by the Assessing Officer after hearing the Assessee. The subsequent demand was a natural corollary to the assessment finalised for the concerned years (AY 2013-2014); on the other hand, the petitioner claims to be entitled to refund of certain amounts, which are pending and payable on its account for previous and other assessment years. The petitioners' appeals are pending before the Income Tax Appellate Tribunal [ITAT]. In these circumstances, the most appropriate course left to this court would be to direct that the existing status quo be maintained, (which means that, on the one hand, demands arising out of the assessment years for the concerned AY are not enforced for a limited time and at the same time, the Assessing Officer does not, as a consequence, adjust the refund, available to the credit of the Assessee/Petitioner). Accordingly, the respondents are hereby directed not to enforce the demands, under the relevant provisions of the Income Tax Act, and also not to adjust refund amounts due and payable to the petitioners, if any, during the

pendency of the appeals before the ITAT. At the same time, in order to ensure that there is no undue delay, the ITAT is directed to complete the hearings and render its final orders as expeditiously as possible and under no circumstance beyond 31.03.20109.

The writ petitions are disposed of in terms of the above directions.

A copy of this order be given dasti to the parties.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 07, 2019
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