$~**S-15**

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

\+ **ITA 291/2022**

PR. COMMISSIONER OF INCOME TAX -7 ..... Appellant

Through: Mr.Puneet Rai, Sr.Standing Counsel with Ms.Adeeba Mujahid, Jr.Standing Counsel and Mr.Nikhil Jain, Advocate.

versus

RAYBAN SUN OPTICS INDIA LTD. ..... Respondent

Through:

% Date of Decision: 31st August, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present Income Tax Appeal has been filed challenging the Order dated 22nd January, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.1619/Del/2016 and 1727/Del/2016 for the Assessment Year 2007-08.

2. Learned counsel for the appellant states that the ITAT has erred in relying upon the judgment of this Court in ***Sony Ericsson Mobile Communication vs. CIT*** reported in ***374 ITR 118 (Del)***, as the Department has not accepted the decision passed in ***Sony Ericsson*** (supra) and has preferred an appeal against the said decision before the Supreme Court.

3. He also states that the ITAT has erred in holding that the Bright Line Test was not mandated in law and hence impermissible without considering the fact that the Bright Line Test was not used as a method to determine the price but only as an economic tool to arrive at the cost of services rendered to the foreign enterprise by the Indian entity and the TPO has the mandate to 'determine' such 'cost' as a primary step in ALP determination as provided under the Rules.

4. This Court in ***Sony Ericsson*** (supra) has categorically held that Bright Line Test has no statutory mandate. The relevant extract of the judgement is reproduced hereinbelow:

> *"The 'bright line test' has no statutory mandate and a broad-brush approach is not mandated or prescribed. We disagree with the Revenue and do not accept the overbearing and orotund submission that the exercise to separate 'routine' and 'non-routine' AMP or brand building exercise by applying 'bright line test' of non-comparables should be sanctioned and in all cases, costs or compensation paid for AMP expenses would be 'NIL', or at best would mean the amount or compensation expressly paid for AMP expenses. It would be conspicuously wrong and incorrect to treat the segregated transactional value as 'NIL' when in fact the two AEs had treated the international transactions as a package or a single one and contribution is attributed to the aggregate package. Unhesitatingly, we add that in a specific case this criteria and even zero attribution could be possible, but facts should so reveal and require."*

5. Further, this Court in the cases of ***Bausch & Lomb Eyecare (India) (P.) Ltd. vs. Addl. CIT [2016] 65 taxmann.com 141 (Delhi)*** following the decision in ***Sony Ericsson*** (supra) held that the question of applying the Bright Line Test to determine the existence of an international transaction involving AMP expenditure does not arise.

6. Though the judgments of this Court have been challenged and are pending adjudication before the Supreme Court, yet there is no stay of the said judgments

till date. Consequently, in view of the judgments passed by the Supreme Court in ***Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359*** and ***Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 SCC 1***, the present appeal is dismissed being covered by the judgments passed by the learned predecessor Division Bench in ***Sony Ericsson*** (supra) ***& Bausch & Lomb Eyecare India P. Ltd.*** (supra).

7. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of ***Sony Ericsson*** (supra).

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 31, 2022
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