



\$~33 & 34

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

+ **ITA 330/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX-4, DELHI

..... Appellant

Through: Mr.Abhishek Maratha, Sr.Standing  
Counsel for the Revenue.

versus

HAIER APPLIANCES INDIA PVT LTD ..... Respondent

Through: Mr.Aniket D.Agrawal with  
Mr.Saksham Singhal, Advocates.

+ **ITA 331/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX-4 DELHI

..... Appellant

Through: Mr.Abhishek Maratha, Sr.Standing  
Counsel for the Revenue.

versus

HAIER APPLIANCES INDIA PVT LTD ..... Respondent

Through: Mr.Aniket D.Agrawal with  
Mr.Saksham Singhal, Advocates.

%

Date of Decision: 14<sup>th</sup> September, 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 appeals have been filed challenging the common impugned order dated 16<sup>th</sup> August, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2968/Del./2016 and ITA 1594/Del./2016 for the Assessment Year 2011-12.



2. Learned counsel for the Appellant states that the ITAT has erred in holding that routine selling and distribution expenses would not form part of Advertising, Marketing and Promotion (AMP) expenses disregarding the fact that these expenses contribute to the creation of marketing intangible, even when the same is a factor for comparability analysis, as different entries account for such expenditure under different heads.

3. Learned counsel for the Respondent, who appears on advance notice, states that the aforesaid submission does not arise for consideration in the appeal being ITA No.330/2022 arising out of ITA No. 2968/Del./2016.

4. Admittedly, the issue raised in the present appeals is covered by the judgment passed by this Court dated 31<sup>st</sup> July, 2019 in assessee's own case for the Assessment Year 2009-10 in ITA No.709/2019 and in *Sony Ericsson Mobile Communications (India) Pvt. Ltd. vs. Commissioner of Income Tax; (2015) 374 ITR 118 (Del)*.

5. Learned counsel for the Appellant states that the Revenue has not accepted the said judgement and has challenged the same before the Supreme Court.

6. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date.

7. 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 appeal being ITA No.331/2022 challenging the ITAT Order in ITA 1594/Del./2016 is dismissed being covered by the judgment passed by the



learned predecessor Division Bench in *Sony Ericsson Mobile Communication* (supra). It is clarified that the order passed in ITA No.331/2022 shall abide by the final decision of the Supreme Court in the Civil Appeal No.132/2016 titled '*Canon India Pvt. Ltd. vs. Deputy Commissioner of Income Tax*'. However, the appeal being ITA No.330/2022 arising out of ITA No. 2968/Del./2016 is dismissed as not maintainable.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**SEPTEMBER 14, 2022**  
**KA**

सत्यमेव जयते