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

+ **ITA 304/2023**

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

Through: Mr Puneet Rai, Sr. Standing Counsel  
with Ms Madhavi Shukla and Mr  
Ashnini Kumar, Jr. Standing Counsel.

*versus*

TUPPERWARE INDIA PVT. LTD. .... Respondent

Through: Mr Rohit Tiwari and Ms Tanya,  
Advocates.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MR JUSTICE GIRISH KATHPALIA**

**ORDER**

% **25.05.2023**

**[Physical Hearing/Hybrid Hearing (as per request)]**

**CAV 278/2023**

1. Since appearance has been entered on behalf of the respondent/assessee, the caveat is discharged.

**CM APPL.28276/2023**

2. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

**CM APPL.28278/2023**

3. This is an application filed on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

4. Given the period of delay involved, we are inclined to condone the delay in re-filing the appeal.

4.1 It is ordered accordingly.

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5. The application is disposed of in the aforesaid terms.

**ITA 304/2023 and CM APPL.28277/2023***[Application filed on behalf of the appellant seeking condonation of delay of 93 days in filing the appeal]*

6. This appeal concerns Assessment Year (AY) 2013-2014.

7. The appellant/revenue seeks to challenge the order dated 01.08.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

8. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, submits that there are two broad issues which arise for consideration.

(i) First, whether in determining the Arm’s Length Price concerning advertisement, marketing and promotion expenses, the Tribunal misdirected itself in holding that the bright line test would not apply.

(ii) Second, whether the Tribunal was right in remanding the issue concerning royalty paid by the respondent/assessee to its Associated Enterprises.

9. Insofar as the first issue is concerned, it is not disputed by Mr Rai, that the view taken by the Tribunal is in consonance with the judgment of this Court in *Sony Ericsson Mobile Communications India Pvt. Ltd. v. Commissioner of Income Tax - III*, (2015) 374 ITR 118 (Del.).

10. Mr Rai, however, says that the aforementioned decision of this Court has been challenged by the appellant/revenue, by way of an SLP. We are informed, that the said SLP is pending adjudication.



11. Accordingly, insofar as the first issue is concerned, and as far as this Court is concerned, no substantial question of law arises.

11.1 However, it is made clear, that the parties will abide by the final decision taken in the SLP filed by the appellant/revenue.

12. As regards the other issue referred to hereinabove, issue notice.

12.1 Mr Rohit Tiwari accepts notice on behalf of the respondent/assessee.

13. The respondent/assessee will file a reply to the application filed on behalf of the appellant/revenue seeking condonation of delay in filing the appeal.

14. The reply would be filed within the next four weeks.

14.1 Rejoinder thereto, if any, will be filed at least five days before the next date of hearing.

15. List the matter on 08.11.2023.

16. Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**MAY 25, 2023 / tr**

[Click here to check corrigendum, if any](#)