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

% ***Date of decision: 07.08.2023***

+ **ITA 431/2023**

PR. COMMISSIONER OF INCOME TAX-7, DELHI Appellant
Through: Mr Puneet Rai, Sr.
Standing Counsel with Mr Ashvini
Kumar, Ms Madhavi Shukla and Mr
Nikhil Jain, Advs.

versus

XEROX INDIA LTD. (PREVIOUSLY KNOWN AS XEROX
MODICORP LTD.) Respondent
Through: Mr Mayank Nagi, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 39891/2023

1. Allowed, subject to just exceptions.

CM APPL.39892/2023*[Application filed on behalf of the appellant/revenue seeking condonation of delay of 14 days in filing the appeal]*

CM APPL.39893/2023*[Application filed on behalf of the appellant/revenue seeking condonation of delay of 34 days in re-filing the appeal]*

2. These are applications filed on behalf of the appellant seeking condonation of delay in filing and re-filing the appeal.



3. According to the appellant/revenue, there is a delay of 14 days in filing the appeal and 34 days in re-filing the appeal.
4. Counsel for the respondent/assessee says that he would have no objection if the delay is condoned.
5. Having regard to the period of delay and the stand taken by the counsel for the respondent/assessee, we are inclined to condone the delay.
- 5.1 It is ordered accordingly.
6. The applications shall stand disposed of, in the aforesaid terms.

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7. This appeal concerns Assessment Year (AY) 2009-10.
8. *Via*, this appeal the appellant/revenue seeks to assail the order dated 19.10.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal].
9. The following questions of law are proposed for consideration by this Court:

“A. Whether on the facts and circumstances of the case, the Hon’ble ITAT is justified in its decision to reject AMP adjustment using BLT method by placing reliance on the assessee’s own case for AY 2008-09 when the matter is pending before Apex Court on the issue of AMP?”

B. Whether on the facts and circumstances of the case, the Hon’ble ITAT is perverse in holding that AMP does not constitute an “international transaction” when the issue of AMP has been ruled as an international transaction in the case of M/s Sony Ericsson Mobile Communication Pvt. Ltd. by Hon’ble Delhi High Court [(2015) 374 ITR 118 (Del)]?”

C. Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT was justified in holding that the Bright Line Test was not mandated in law and hence impermissible without considering the fact that the BLT 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?

D. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in holding that the AMP cannot be inferred to be international transaction in the absence of any agreement, arrangement or understanding between the taxpayer and its AE ignoring Section 92F(v) of the Act?

E. Whether on the facts and circumstances of the case, the ITAT was justified in holding that AMP does not constitute an "international transaction" without appreciating that the jurisdictional High Court in the case of Sony Ericsson(supra) has held that AMP is an international transaction?

F. Whether on the facts and circumstances of this case, Hon'ble ITAT was justified to adjudicate on the issues involved in the instant case relying upon the decisions of Hon'ble Delhi High Court in the case of Sony Ericsson (supra), CIT Vs Whirlpool of India Ltd. (2016) 381 ITR 154 (Delhi) and Maruti Suzuki India Ltd. Vs CIT(2015) taxamnn.com 150 (Delhi) when the matter is still sub-judice before the Hon'ble Apex Court?

G. Whether on the facts and circumstances of the present case the ITAT was justified in deleting the disallowance of depreciation amounting to Rs. 37,54,845/- on de-capitalized assets?"

10. It is not disputed by Mr Puneet Rai, learned senior standing counsel, who appears on behalf of appellant/revenue, that the questions of law i.e., A to F, as proposed, are covered against the appellant/revenue by the decision of the coordinate bench in ***Bausch & Lomb Eyecare (India) Pvt. Ltd. vs Addl. CIT*** 2015 SCC Online Del 14382.

11. This decision has been followed by another coordinate bench in ITA 487/2022, titled ***Pr. Commissioner of Income Tax-7, Delhi Vs. Xerox India Ltd*** which is dated 25.11.2022.

12. As would be evident, the said judgement concerns the respondent/assessee.



13. Likewise, we are informed that insofar as proposed question no. G is concerned, it is covered by the decision of the coordinate bench dated 18.01.2016, passed in ITA No.771/2015, titled *The Principal Commissioner of Income Tax-08 vs M/s Xerox India Ltd.*

14. Having regard to the aforesaid, we are of the view that no substantial question of law is arises for our consideration in the instant appeal.

15. Accordingly, the appeal is closed.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

AUGUST 7, 2023/RV

Click here to check corrigendum, if any