

आयकर अपीलीय अधिकरण, मुंबई "एल" खंडपीठ

Income-tax Appellate Tribunal "L" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member

आयकर अपील सं./I.T.A./No.5080/Mum/2008; 4901/Mum/2017; 4672/Mum/2007; 5084/Mum/2008;4899/Mum/2007; 4927/Mum/2007; 4255/Mum/2008; 4309/Mum/2008; 5469/Mum/2008; 4675/Mum/2007; 4878/Mum/2007; 4908/Mum/2007; 5078/Mum/2008; 5079/Mum/2008 and 5477/Mum/2008

DDIT(IT) Room No.120, 1 st Floor, Scindia House, Ballard Estate, N.M. Road Mumbai-400 038.	Vs.	M/s. Reliance Communication Ltd. (Formerly known as M/s. Reliance Infocomm Limited, H Block 1 st Floor) Dhirubhai Ambani Knowledge City, Navi Mumbai-400 710. PAN:AACCR 4472 J
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A./5093 to 5096/Mum/2008

DDIT(IT) Ballard Estate, N.M. Road Mumbai-400 038.	Vs.	M/s. Reliance Telecom Ltd.(RM) Dhirubhai Ambani Knowledge City, Navi Mumbai-400 710. PAN:AAACR 2658 E
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri Parag Vyas - DR

Assessee by: S/Shri J.D. Mistry/Deepak Jain

सुनवाई की तारीख /Date of Hearing: 11/01/2018

घोषणा की तारीख / Date of Pronouncement:15/01/2018

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

खंडपीठ के अनुसार Per Bench:

Challenging the orders of the CIT(A)-XXXI, Mumbai, of various dates, the Assessing Officers (AO.s) have filed above mentioned appeals. Issue involved in all the appeals is identical. Considering the commonness of the issue, we are adjudicating these appeals together.

1. Assessee-companies are part of Reliance(ADAG) Group. The group consists many an entities including Reliance Communication Ltd.(RCL), Reliance Telecom Ltd., Reliance BPO Ltd., Reliance Communication Infrastructure Ltd. RCL is engaged in business of telecommunication. Other three entities were also connected with the business of wireless telecommunication network in India. For that purpose, they had entered into various contracts with non-resident-entities and made certain payments for purchase of softwares. The assessee made applications u/s.195 of

the Act, requesting the AO.s to allow them to make payments to non-residents without deducting tax at source. However, the AO.s held that software payments made by them, to the non residents, were payments towards royalty, that the amounts in questions were taxable in India, that the assessee should deduct tax at source before making such payments. Accordingly, they deducted the taxes before making payments to the non-resident software-suppliers.

2. Aggrieved by the orders of the AO.s passed u/s.195(2) of the Act, the assessee filed appeals before the FAA.s, who allowed the same. In the meanwhile, in the cases of some of the recipients i.e. the non-resident entities, the matters travelled up to the Tribunal and the Tribunal decided the matters in their favour and against the AO.s. In the cases of Ericsson AB Sweden and ZTE Corporation, the department challenged the orders of the Tribunal before the Hon'ble Delhi High Courts contesting that payments received by the non-residents were taxable in India. But, the Hon'ble Courts dismissed the appeals.

3. Before us, the Departmental Representative (DR) and the Authorised Representative (AR) agreed that considering the fact that in the case of recipients issue has been decided against the AO.s, there was no justification to argue the above mentioned matters. However, the DR stated that the matters have not attained finality, as the Department has approached the higher judicial forums in all the cases.

4. We have heard the rival submissions and perused the material before us. We find that in the hands of the above recipients, the Tribunal has held that payments received by them was not royalty and hence were not taxable. If the payments made by the assessee were not taxable, there would not be any liability to deduct tax at source. So, the appeal filed will have to be rejected. We are summarising the factual position of the above appeals in a tabular form:

SN.	ITA No.	Name of the assessee	Name of the Recipient	HC/Tribunal judgment/orders deciding the issue in favour of the recipient
1	5093/Mum/2008	Reliance Telecom Limited	Ericsson AB Sweden	(16 taxmann.com 371) (Del.-HC)
2	5094/Mum/2008	Reliance Telecom Limited	Ericsson AB Sweden	
3	5095/Mum/2008	Reliance Telecom Limited	Ericsson AB Sweden	
4	5096/Mum/2008	Reliance Telecom Limited	Ericsson AB Sweden	
5	5080/Mum/208	Reliance Communications Limited	Ericsson AB Sweden	(16taxmann.com371) (Del.-
6	4901/Mum/2007	Reliance Communications	Ericsson AB Sweden	

		Limited		HC)
7	4672/Mum/2007	Reliance Communications Limited	Ericsson AB Sweden	
8	5084/Mum/2008	Reliance Communications Limited	ZTE Corporation China	392 ITR 80 (Delhi) (HC) 70 taxmann.com 1
9	4899/Mum/2007	Reliance Communications Limited	Alcatel USA International Marketing Inc USA	ITA No.7299 and 7300/Mum/2010,order dated 25.05.2017 and (43 SOT 31-(Mum- Trib.) (URO)
10	4927/Mum/2007	Reliance Communications Limited	Alcatel USA International Marketing Inc USA	
11	4255/Mum/2008	Reliance Communications Limited	Alcatel USA International Marketing Inc USA	
12	4309/Mum/2008	Reliance Communications Limited	Alcatel USA International Marketing Inc USA	
13	5469/Mum/2008	Reliance Communications Limited	Alcatel USA International Marketing Inc USA	(95 ITD 269) (Del.) (SB)
14	4675/Mum/2007	Reliance Communications Limited	Motorola Inc USA	
15	4878/Mum/2007	Reliance Communications Limited	Motorola Inc USA	
16	4908/Mum/2007	Reliance Communications Limited	Motorola Inc USA	(40SOT28-Mum-Trib) (URO)
17	5078/Mum/2008	Reliance Communications Limited	Team Telecom International Ltd., Israel	
18	5079/Mum/2008	Reliance Communications Limited	Team Telecom International Ltd., Israel	
19	5477/Mum/2008	Reliance Communications Limited	Nortel Networks India International Inc. USA	ITA No.3313 to 3315/Del/2012,1087/Del/2014, Order dated 26.09.2017

In the matters of Ericsson and ZTE Corporation,China orders of the Tribunal have been confirmed by the judgments of the Hon'ble High Court of Delhi,as stated earlier.

Considering the fact that all the appeals,filed by the above referred recipients,have been allowed by the Tribunal and that the orders of the Tribunal in the two non-resident-entities have been confirmed by the Hon'ble Delhi High Court,we dismiss the above appeals,filed by the AO.s.

As a result,all the appeals(19)filed by the AO.s stand dismissed.

फलतः निर्धारिती अधिकारियों द्वारा दाखिल की गई सारी अपीलें(19)नामंजूर की जाती हैं.

Order pronounced in the open court on 15th January, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 15 जनवरी , 2018 को की गई ।

Sd/-

(रविश सूद /Ravish Sood)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated :15 .01.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

5.DR "L" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलिय अधिकरण, मुंबई /**ITAT, Mumbai.**