

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 2368/DEL/2016 (A.Y 2011-12)

Mahanagar Telephone Nigam Ltd. 5 th Floor, 9, CGO Complex, Lodhi Road, New Delhi AAACM0828R ((APPELLANT))	Vs	DCIT Large Taxpayer Unit New Delhi ((RESPONDENT))
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ITA No. 3299/DEL/2016 (A.Y 2011-12)

DCIT Large Taxpayer Unit Circle-1, NBCC Plaza Pushp Vihar New Delhi ((APPELLANT))	Vs	Mahanagar Telephone Nigam Ltd. 5 th Floor, 9, CGO Complex, Lodhi Road, New Delhi AAACM0828R ((RESPONDENT))
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Appellant by	Sh. Ved Jain, Adv
Respondent by	Sh. Sanjay Goyal, CIT DR

Date of Hearing	20.03.2019
Date of Pronouncement	12.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee as well as by the Revenue against the order dated 01/03/2016 passed by CIT(A)-22, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

ITA No. 2368/DEL/2016

“1. On the facts and in the circumstances of the case, the order passed by the Ld.CIT(A) is bad, both in the eyes of law and on facts.

2. (i) On the facts and in the circumstances of the case, the Ld.CIT(A) has erred, both the facts and in law, in confirming the disallowance of Rs. 2,51,04,875/- made by the A.O u/s 14A of the Act.

(ii) That the Ld.CIT(A) has erred in confirming the said disallowance made as per Rule 8D(2)(iii), despite the fact that no administrative expenses were incurred in connection with the investments made.

3. (i) On the facts and in the circumstances of the case, the Ld.CIT(A) has erred, both on facts and in law, in confirming the proportionate disallowance of interest of Rs.5,17,566/- in respect of security deposit of Rs. 47,00,872/-.

(ii) That the Ld.CIT(A) as erred, both the facts and in law, in ignoring the fact that the assessee being a Public Sector Company, the entire security deposit held by it is of the customers, and the interest thereon cannot be disallowed merely on the surmise that the security deposit is an unexplained deposit.

4. (i) On the facts and in the circumstances of the case, the Ld.CIT(A) has erred, both on facts and in law in confirming the addition of Rs. 3,36,80,000/- made by the A.O on account of prior period income.

(ii) That the Ld.CIT(A) has erred in confirming the addition despite the fact that]the said amount pertains to income or expenditure of earlier years which has been crystallized during the year under consideration.”

ITA No. 3299/DEL/2016

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) has erred in restricting the disallowance to only 0.5% of average investment income of Rs 1,33,74,000/- as against Rs 9,69,57,875/-.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) has erred in restricting the disallowance of interest on customer’s

deposit account to Rs. 5,17,566/-, as against disallowance of Rs.47,00,872/-, and in allowing relief in respect of the balance amount of Rs. 41,83,306/-.”

3. During the year under consideration, the assessee was engaged in the business of providing basic telephone and mobile services in the city of Delhi and Mumbai, as in the earlier years. The assessee company is Government of India PSU and a major player in the country in Telephone Services. Further it has also host of services like Internet Service Provider Services, IN Services, Integrated Service Digital Network Services, Multimedia Services, Paging Services and other value added services, and to carry on the business of telephone, telegraph cable and wireless company etc. MTNL is also engaged in providing Telecommunication services like internet, e-tendering, Cyber Café Services and sale of ISP Packs & Anmol Cards. There has been no change in the business activities of the assessee from the preceding year. The assessee had filed e-return declaring total loss of Rs. 14,76,94,22,781/- on 29.09.2011. The case was processed u/s 143(1) of the Income Tax Act, 1961 and subsequently selected for scrutiny. Notice u/s 143(2) dated 07.08.2012 was issued and served on the assessee. The assessee vide letter dated 14.11.2013 was asked to file the hard copy of e-filed return, profit & loss account, balance sheet with schedules and the audit reports etc. A detailed case specific questionnaire dated 20.12.2013 u/s 142(1) was issued and served on the assessee. In response to the statutory notices, DGM Cash & Tax, Dy. Manager Tax from the assessee company and FCA-authorized representatives attended the assessment proceedings from time to time and furnished requisite details and explanations which was taken on record by the Assessing Officer. The Assessing Officer made disallowance under Section 14A read with Rule 8D amounting to Rs. 9,69,57,875/- and made addition accordingly. Besides this, the Assessing Officer also made addition of Rs. 47,00,872/- regarding interest on customer's deposit accounts, addition in regard to prior period income amounting to Rs. 3,36,80,000/-, short deduction and payment of tax

amounting to 15,12,06,000/-. Thereby making total loss assessed at Rs. (1448,28,78,030/-) by the Assessing Officer.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards Ground No. 1 of Department's appeal, relating to addition u/s 14A read with Rule 8D amounting to Rs.9,69,57,875/- made by the Assessing Officer, the Ld. DR submitted that the CIT(A) erred in restricting the disallowance to only 0.5% of average investment income of Rs. 1,33,74,000/- as against Rs.9,69,57,875/-.

6. The Ld. AR submitted that during the year under consideration, assessee company has earned dividend income of Rs.3,41,50,000/- on its investment made in LIC Mutual Funds. This fact is evident from Schedule - O in respect of Other Income mentioned in the Balance Sheet. The details of investments held by the assessee company are in Schedule - F of the Balance Sheet. The Ld. AR submitted that the own funds available with the assessee are much more than the investments made during the year. This fact was before the Assessing Officer as well as before the CIT(A). The details of own funds available with the assessee company were also produced at the time of hearing by the Ld. AR. The Ld. AR submitted that the fact that the own funds available with the assessee company were sufficient for the assessee to make the investment has also been appreciated by the CIT(A) in Para 6.1 at Page 4 of its order. Therefore, the CIT(A) has deleted the impugned addition of Rs.7,18,53,000/- made by the Assessing Officer on account of interest. In this regard, the Ld. AR submitted that similar disallowance was made by the Assessing Officer in the case of assessee company for A.Y. 2008-09 and 2009-10, which has been deleted by this Tribunal vide its order dated 31.07.2017 in ITA Nos. 147, 148/Del/2014, whereby it has been categorically held that sufficient funds were available with the assessee, which were much more than the investments made during the year, and therefore, no disallowance u/s 14A was called for. The Ld. AR further

submitted that it is a settled law that when sufficient own funds are available with the assessee, no disallowance u/s 14A can be made in view of following decisions:

(a) High Court of Punjab and Haryana in the case of CIT v. Max India Ltd. in ITA No. 186 of 2013 dated 06.09.2016

(b) ITAT Delhi in the case of Sh. Gagan Goyal v. JCIT in ITA No. 1514/Del/2015 dated 02.08.2016

(c) Bombay High Court in the case of CIT v. HDFC Bank Ltd. in ITA No. 330 of 2012 dated 23.07.2014.

Therefore, in view of the above facts and considering the judicial pronouncements in this regard, the addition made by the Assessing Officer under clause (ii) of Rule 8D(2) has been rightly deleted by the CIT(A), and thus, the order of the CIT(A) be upheld.

7. We have heard both the parties and perused all the relevant material available on record. The CIT(A) held as under:

“6.1. From the schedule of investments, it is noticed that the total investments of Rs. 4946.58 million INR include an investment of Rs. 2500/- million INR in bonds besides an investment of Rs.1446.58 million INR in subsidiaries and an investment of Rs. 1000/- million INR in the preference shares of ITI limited. The above figures are the figures of closing balance of the investments. The opening balances of these investments are same except the investments in subsidiary companies which were Rs. 1245.77 million INR. As regards LIC Mutual fund, the opening investment was Rs. 349.6 million INR which reduced to nil at the end of the year. The Total investments (closing balance) of Rs. 4946.58 million INR constitute 3.5% of the closing balance of share capital, reserves & surplus and loans totaling Rs. 1,41,021.56 million INR. In view of this factual position and also

considering the fact that the assessee has interest free funds in the form of share capital and reserves & surplus of Rs. 66,464.81 million INR (being the closing balance), there is no reason why the appellant's claim that the interest bearing funds have not been used for making investment should not be accepted. Therefore, the disallowance of interest under rule 14 A r.w. rule 8D (2)(ii) of Rs. 71.853 million INR is deleted. However, as regards the disallowance under rule 8D(2)(iii), being 0.5% of the average investments (income from which is exempt), the undersigned does not agree with the order of my predecessor that no administrative expenses were incurred in connection with such investments. In a large organisation like appellant, the investments needs to be regularly monitored and man hours of staff are used apart from other administrative expenses. Therefore, the appellant's claim that no such expenditure was incurred is not correct. Once it is held that the claim of the appellant is not correct, the only way to estimate the same, is under rule 8D (2)(iii) being 0.5% of the average investments income from which, is exempt. The AO has worked out, this disallowance at Rs. 2,51,04,875/-. The value of average investments has been taken as the average of total investments mentioned in schedule F of the balance sheet. However, as discussed all the investments made, mentioned in schedule F do not yield exempt income. Therefore, the disallowance u/s 14A r.w. rule 8D(2)(iii) is restricted to only 0.5% of average investment income from which, is exempt irrespective of where the said exempt income has been received during the A.Y. 11-12 or not. Consequently, ground no. 2 of the appeal is partly allowed."

The CIT(A) has rightly held that from the investment records it can be seen that all the investments mentioned in Schedule F do not yield exempt income. Thus, the CIT(A) properly held that disallowance u/s 14A r.w. Rule 8D(2)(iii) is restricted to only 5% of average investment income from which, is exempt irrespective of where the said exempt income was received during A.Y. 2011-12 or not. There is no need to interfere with the finding of CIT(A). Ground No.

1 of the Revenue's appeal is dismissed.

8. As regards to Ground No. 2 of Assessee's appeal relating to the addition of Rs.2,51,04,875/- made by the Assessing Officer under clause (iii) of Rule 8D(2), the Ld. AR submitted that while making the impugned addition, the Assessing Officer at Page 5 of its order has computed the average investments by taking into account the total investments standing in the Balance Sheet of the assessee company. In this regard, it is pertinent to mention that a perusal of Schedule - O of Balance Sheet shows that the dividend income claimed exempt by the assessee company has been earned by the only on the investments made by the assessee company in the mutual funds. The provisions of section 14A read with Rule 8D provide for disallowance of expenses which are incurred only in relation to the exempt income earned. It is a settled law that while computing the disallowance under Rule 8D(iii), the rate of 0.5% has to be applied to only those investments which actually have resulted in exempt dividend income, rather than 0.5% of the average of total investments. This issue is squarely covered by the judgment of Hon'ble Jurisdictional High Court in the case of ACB India Ltd. v. ACIT in ITA No. 615/2014 dated 24.03.2015. Further reliance in this regard is placed on the judgment of this Hon'ble Tribunal in the case of SIL Investments Ltd. v. DCIT in ITA No. 5656/Del/2013 and 6046/Del/2013 dated 05.09.2016. The Ld. AR also relied upon the following judgments:-

(a) ITAT Hyderabad in the case of Transport Corporation of India Ltd. v. ACIT in ITA No. 117/Hyd/2016 dated 21.09.2016

(b) ITAT Kolkata in the case of DCIT v. The Diamond Co. Ltd. in ITA No. 326/Kol/2014 dated 24.08.2016

(c) ITAT Mumbai in the case of Amrit Diamond Trade Centre Pvt. Ltd. v. ACIT in ITA No. 2642/Mum/2013 dated 15.01.2016

A perusal of Schedule - F of the Balance Sheet shows that the opening amount

of Investment in LIC Mutual Funds was Rs.34,96,00,000/-, while the closing amount of Investment was Nil, as the said mutual funds were sold off by the assessee company during the year under consideration. Therefore, the average investments from which the assessee had earned the dividend income works out as under:

(a) Op. Investment - Rs.34,96,00,000/-

(b) Cl. Investment - Nil

Avg. Investments - Rs.17,48,00,000/-

Thus, the amount of disallowance under clause (iii) should be restricted to 0.5% of Rs.17,48,00,000/-, i.e. Rs.8,74,000/-

9. The Ld. DR relied upon the Assessment Order.

10. We have heard both the parties and perused the material available on record. As we have decided this issue in the earlier para while deciding Revenue's appeal. Ground No. 1 of the assessee's appeal is dismissed.

11. As regards Ground No. 2 of Department's Appeal and 3 of Assessee's Appeal relating to addition of Rs. 47,00,872/- made by the Assessing Officer on account of interest paid on customer's deposits, the Ld. DR relied upon the Assessment Order.

12. The Ld. AR submitted that as relates to Department's Ground of Appeal, the issue under consideration is squarely covered by the order of the Tribunal in assessee's own case for A.Y. 2006-07 in ITA No. 4587/Del/2013 dated 05.09.2016, whereby the Tribunal while deciding assessee's appeal on similar ground. Further, similar addition was also made by the Assessing Officer in the case of assessee company for A Y. 2008-09 and 2009-10, which has also been deleted by the Tribunal vide order dated 31.07.2017, wherein the findings of the Tribunal are in Para 11.

13. As regards to Assessee's Ground of Appeal, the Ld. AR submitted that at the very outset that the issue under consideration is squarely covered by the order of the Tribunal in assessee's own case for A.Y. 2006-07 in ITA No. 4587/Del/2013 dated 05.09.2016, whereby the Hon'ble Tribunal while deciding assessee's appeal on similar ground. Further, similar addition was also made by the Assessing Officer in the case of assessee company for A.Y. 2008-09 and 2009-10, which has also been deleted by the Tribunal vide order dated 31.07.2017, wherein the findings of the Tribunal are in Para 7 therein.

14. We have heard both the parties and perused the material available on record. As regards Revenue's appeal is concerned, Tribunal while deciding assessee's appeal on similar ground has held as under:

"21. Ground No. 1 to 4 of the appeal are against deletion of addition on account of subscriber deposit and interest thereon. These grounds of appeal are inter linked to the ground No. 6 and 7 of the appeal of the assessee. While deciding the ground Nos. 6 and 7 of the appeal of the assessee we have held that that there is no infirmity in the order of the Id CIT(A) with respect to subscriber's deposit held to be payable by the assessee to the subscriber on termination of services to the extent of reconciled amount and therefore, it cannot be added to the income of the assessee specially in view of the assessee furnishing substantial details and reconciliation of the amount outstanding. Further the amount of interest related to that deposit is also deleted by the Id CIT(A) as the interest was payable with respect to subscriber deposit which is completely reconciled. In view of this we dismiss ground No. 1 to 4 of the appeal of the revenue."

Since this issue is already decided in favour of the assessee for A.Y. 2006-07 and facts in the present Assessment Year is identical, hence Ground No. 2 of Revenue's appeal is dismissed. As regards Ground No. 3 of assessee's appeal is concerned, Tribunal in assessee's own case for A.Y. 2006-07 in ITA No. 4587/Del/2013 dated 05.09.2016, whereby the Hon'ble Tribunal while deciding assessee's appeal on similar ground has held as under :

"17. We have carefully considered the rival contentions. The brief nature of

the security deposit is that when customer demands for a connection same is collected and when it is disconnected the amount of deposit becomes refundable to the customer on production of deposit receipt and making claim thereof. As it is apparent that assessee is a public sector undertaking and operates the telephony services in select cities. It also uses CSMS system which is a programme regarding new connection refund adjustment and disconnections. Therefore, as on 31.03.2006 an amount of Rs. 11593290000/- was outstanding as net balance of security deposit. Therefore, such amount of deposit are accepted with an obligation of repayment at the time of disconnections of services. Apparently this money does not belong to the assessee company but is required to be refunded to the customers as and when claimed. Before the Id CIT(A) the assessee has submitted the details of this account with respect to outstanding balances, interest accrued thereon, telephone connection disconnected during the year, the amount of security deposit received during the year and security deposit refunded during the year for year ended March 2003 to March 2009. Regarding the live connections assessee submitted details with customer code and for security deposit refund the subscriber details. It also submitted as per annexure 3 details with regard to current status of live connections and amount of outstaying security deposit. Before him the assessee also submitted that trial balance, nature of deposits, deposit refund account and details of deposit adjustments. Such furnishing of details have been mentioned by the Id CIT(A) in para 5.2.4 to 5.2.6 in his order. On submission of this information the Id CIT(A) obtained the remand report from Assessing Officer and after obtaining rejoinder has held that the deposits held by the assessee are in the character of custodial as it has to refund it as soon as services are terminated. He further observed that the deposit outstanding is decreasing gradually and therefore held that it does not partake the character of trading liability as there is obligation to repay the same. He further held that the appellant does not enjoy complete dominion over this deposit as it does not own it. However, he confirmed the addition to the extent of Rs. 127.69 crores and deleted the addition of Rs. 1031.62 crores. The reason given by him for confirming the amount is that these could not be reconciled with the respect to the live connection as per statement in annexure 3 submitted. We do not agree with the finding of the Id CIT(A) to the extent of confirmation of the addition partly merely because reconciliation in these accounts with respect to the live connections are pending. The observation of the Id CIT(A) is also not correct that assessee submitted that this amount is under reconciliation and to that extent such credits are not fully explained. Before him assessee submitted that it is under reconciliation. Further when

the character of deposit is determined, looking to the nature of operation geographically as well as large subscriber's base , it is not correct to hold that pending reconciliation the deposit become income of the assessee. In view of this we set aside this issue back to the file of the Assessing Officer to give proper opportunity to the assessee to provide reconciliation of the same and then if the amounts are not at all identifiable with respect to the customers then to that extent addition may be restricted. However, if this amount is identifiable with the subscriber and even if it is not claimed by the subscriber despite disconnection of the services assessee is under obligation to repay whenever demanded by the customer. Therefore, Id Assessing Officer is directed to grant an opportunity to the assessee for reconciliation of the above deposit as held above and then decide the issue afresh. In view of this ground No. 6 of the assessee's appeal is allowed accordingly.

18. Ground No. 7 of the appeal of the assessee is against confirming the disallowance of an amount of Rs.2803000/- on account of interest accrued on outstanding subscriber deposit. This ground is related to ground No. 6 of the appeal of the assessee. Therefore, as we have already set aside ground No. 6 of the assessee's appeal to the file of the Assessing Officer, we also set aside ground No. 7 to the file of the Assessing Officer to determine amount of disallowance of interest after determining the amount of taxability of subscriber deposit. This ground of appeal is allowed for statistical purposes."

The issue contested in the present assessment year is identical therefore, Ground No. 3 of Assessee's appeal is partly allowed for statistical purpose.

15. As regards Ground No. 4 of Assessee's appeal relating to addition of Rs. 3,36,80,000/- made by the Assessing Officer on account of prior period income, the Ld. AR submitted that during the year under consideration, assessee has shown prior period income of Rs.3,36,80,000/- and has further shown prior period expenses amounting to Rs. 1,80,10,000/-. The details of the same are in Schedule - S of the Balance Sheet. A perusal of the Profit and Loss account of the assessee company shows that the company has neither taken the prior-period income in its taxable profit, nor has considered the prior period expenses, i.e. the prior period adjustments have been made by the assessee company on below the line profit. The Assessing Officer has made the impugned addition of Rs.3,36,80,000/- to the returned income of the assessee

alleging that the same was to be added to the income of the assessee. The Assessing Officer, however, has not allowed the assessee the prior period expenses. The Ld. AR submitted that it is a settled law that the disallowance of prior period expense has to be computed by netting off the prior period income against the prior period expenditure. The Ld. AR relied upon the judgment of Hon'ble Jurisdictional High Court in the case of CIT v. Exxon Mobil Lubricants P. Ltd. [2010] 328 ITR 17. Further, the Ld. AR also relied upon the following judgments:

- i) ITAT Delhi in the case of MTNL v. DCIT in ITA No. 3404/Del/2013
- ii) ITAT Mumbai in the case of Mazagaon Dock Ltd. v. ITO in ITA No. 5034/Mum/2011 dated 01.02.2016
- iii) ITAT Ahmedabad in the case of Shah Alloys Ltd. v. JCIT in ITA No. 2315/Ahd/2010 dated 27.03.2015

Therefore, in view of above judicial pronouncements, the addition made by the Assessing Officer and further sustained by the CIT(A) may be restricted to Rs. 1,56,70,000/-, i.e. after allowing the assessee the adjustment of prior period expenditure incurred.

16. The Ld. DR relied upon the Assessment Order and the order of the CIT(A)

17. We have heard both the parties and perused the material available on record. During the year under consideration, assessee has shown —prior period income of Rs.3,36,80,000/- and has further shown prior period expenses amounting to Rs. 1,80,10,000/-. A perusal of the Profit and Loss account of the assessee company shows that the company has neither taken the prior-period income in its taxable profit, nor has considered the prior period expenses, i.e. the prior period adjustments have been made by the assessee company on below the line profit. The disallowance of prior period expense has to be computed by netting off the prior period income against the prior period expenditure. Thus, the case laws referred by the Ld. AR are apt in the present case. The Assessing Officer as well as the CIT(A) ignored these

factual and legal aspects and were not correct in making the entire addition without netting off. We, therefore, remand back this issue with the direction to the Assessing Officer to net off prior period income and prior period expenditure and only tax the net income accordingly. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Therefore, Ground No. 4 of the assessee's appeal is partly allowed for statistical purpose.

18. In result, the appeal of the Revenue is dismissed and the appeal of the assessee is partly allowed statistical purpose.

Order pronounced in the Open Court on 12th June, 2019.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 12/06/2019
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20.03.2019
Date on which the typed draft is placed before the dictating Member	20.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	12.6.19
Date on which the fair order is placed before the Dictating Member for pronouncement	12.6.19
Date on which the fair order comes back to the Sr. PS/PS	12.6.19
Date on which the final order is uploaded on the website of ITAT	12.6.19
Date on which the file goes to the Bench Clerk	12.6.19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	