

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.135/Del./2018  
(ASSESSMENT YEAR : 2013-14)**

M/s. HCL Comnet Ltd., vs. DCIT, Circle 11 (1),  
806, Siddharth, 96, Nehru Place, New Delhi.  
New Delhi – 110 019.

**(PAN : AAACH9667H)**

**ITA No.136/Del./2018  
(ASSESSMENT YEAR : 2013-14)**

**ITA No.137/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

M/s. HCL Comnet Systems & Services Ltd., vs. DCIT,  
806, Siddharth, 96, Nehru Place, Circle 11(1),  
New Delhi – 110 019. New Delhi.

**(PAN : AAACH3130M)**

**ITA No.385/Del./2018  
(ASSESSMENT YEAR : 2013-14)**

**ITA No.100/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

DCIT, vs. M/s. HCL Comnet Systems & Services Ltd.,  
Circle 11(1), 806, Siddharth, 96, Nehru Place,  
New Delhi. New Delhi – 110 019.

**(PAN : AAACH3130M)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Aditya Vohra, Advocate  
Shri Arpit Goyal, CA  
REVENUE BY : Ms. Anima Baranwal, Senior DR

**Date of Hearing : 17.08.2021**  
**Date of Order : 25.08.2021**

## **ORDER**

### **PER KULDIP SINGH, JUDICIAL MEMBER :**

Since common questions of facts and law have been raised in the aforesaid appeals/cross appeals filed by the assessee and Revenue, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, M/s. HCL Comnet Limited (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 12.10.2017 passed by the Commissioner of Income-tax (Appeals)-35, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

**"ITA NO.135/DEL/2018 (AY 2013-14)**  
**(ASSESSEE'S APPEAL)**

1. That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) ["CIT(A)"] erred in upholding addition of Rs.38,48,495 made by the assessing officer under section 14A of the Income-tax Act, 1961 ("the Act") read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 ("the Rules"), without pointing out any error in computation of expenses incurred for earning the tax free income disallowed by the Appellant.

**1.1 That on the facts and circumstances of the case and in law, the CIT(A) erred in not holding that no disallowance could be made under section 14A of the Act, without recording satisfaction reaching finding as to nexus of any expenditure incurred during the year with investments made or exempt income earned nor pointing out an error in the computation of disallowance under section 14A of the Act made by the Appellant.**

**1.2 Without prejudice, that on the facts and circumstances of the case and in law, the CIT(A) erred in not holding that investments on which no exempt income was earned were not required to be taken into account for computing disallowance as per formula prescribed under sub-rule (2)(iii) of Rule 8D of the Rules."**

**2. That on the facts and circumstances of the case and in law, the CIT(A) erred in not allowing credit of tax deducted at source ("TDS") amounting to Rs.27,75,487, on the ground that the same pertained to deferred revenue, not offered to tax in entirety by the Appellant in the subject assessment year.**

**2.1 Without prejudice, that on the facts and circumstances of the case and in law, the CIT(A) erred in disallowing credit of entire amount of TDS amounting to Rs.27,75,487 relating to deferred revenue and in not allowing credit of TDS on proportionate basis, as specified under Rule 37BA(3)(ii) of the Income-tax Rules, 1962."**

3. Appellant, M/s. HCL Comnet Systems & Services Ltd. Limited (hereinafter referred to as 'the assessee') by filing the presents appeal sought to set aside the impugned orders both dated 12.10.2017 passed by the Commissioner of Income-tax (Appeals)-35, New Delhi qua the assessment years 2013-14 & 2014-15 on the identical grounds except the difference of amount of addition/disallowance inter alia that :-

**"ITA NOS.136/DEL/2018 & 137/DEL/2018 (AYs 2013-14 & 2014-15)  
(ASSEESSEE'S APPEALS)**

**1. That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) ["CIT(A)"]**

erred in not allowing credit of tax deducted at source ("TDS") (amounting to Rs.2,00,000/- & Rs.2,14,814/- for AYs 2013-14 & 2014-14 respectively) on deferred revenue holding hat the same would be allowed in the relevant assessment year in which corresponding revenue is offered for taxation .

1.1 Without prejudice, that on the facts and circumstances of the case and in law, the CIT(A) erred in disallowing credit of entire amount of TDS (amounting to Rs.2,00,000/- & Rs.2,14,814/- for AYs 2013-14 & 2014-14 respectively) relating to deferred revenue and in not allowing credit of TDS on proportionate basis, as per Rule 37BA(3)(ii) of the Income-tax Rules, 1962.”

4. Appellant, DCIT, Circle 11 (1), New Delhi (hereinafter referred to as ‘the Revenue’) by filing the present appeals sought to set aside the impugned order dated 12.10.2017 passed by the Commissioner of Income-tax (Appeals)-35, New Delhi qua the assessment years 2013-14 & 2014-15 on the grounds inter alia that:-

**“ITA NO.385/DEL/2018 (AY 2013-14)**  
**(REVENUE’S APPEAL)**

1. Whether on the facts and circumstances of case and in law, the Id. CIT (A) was not justified in deleting the addition made by the AO by disallowance of Rs.3,14,11,091/- on account of license fee paid to Department of Telecom (DOT).

**“ITA NO.100/DEL/2018 (AY 2014-15)**  
**(REVENUE’S APPEAL)**

1. Whether on the facts and circumstances of case and in law, the Id. CIT (A) was not justified in deleting the addition made by the AO by disallowance of Rs.3,50,95,924/- on account of license fee paid to Department of Telecom (DOT).

2. Whether on the facts and circumstances of case and in law, the Id. CIT (A) was not justified in deleting the addition of

**Rs.2,20,383/- by disallowance of this amount on account of principal portion of lease obligation.”**

5. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company was engaged in the business of trading of networking equipment, installation and maintenance of such equipment and creation, maintenance and operation of networks. Assessing Officer (AO) by invoking the provisions contained under section 14A of the Income-tax Act, 1961 (for short ‘the Act’) read with Rule 8D of the Income-tax Rules, 1962 (for short ‘the Rules’) made addition of Rs.38,48,495/- in addition to the suo motu disallowance of Rs.1,12,136/- made by the assessee on the ground that exempt income has been earned but disallowance has not been made correctly in ITA No.135/Del/2018 for AY 2013-14 in case of HCL Comnet Ltd.

6. AO also disallowed credit of tax deducted at source amounting to Rs.27,75,487/-, Rs.2,00,000/- & Rs.2,14,814/- on the ground that the same pertained to deferred revenue and was liable to tax in entirety in ITA No.135/Del/2018 for AY 2013-14 in case of HCL Comnet Ltd., in ITA No.136/Del/2018 for AY 2013-14 & in ITA No.137/Del/2018 for AY 2014-15 in case of HCL Comnet Systems & Services Ltd. respectively.

7. AO also made addition of Rs.3,14,11,091/- & Rs.3,50,95,924/- by way of disallowance on account of licence fee paid to the Department of Telecommunication (DOT) in ITA Nos.385/Del/2018 & 100/Del/2018 for AYs 2013-14 & 2014-15 respectively in case of HCL Comnet Systems & Services Ltd..

8. AO also made disallowance of Rs.2,20,383/- on account of principal portion of lease obligation in ITA No.100/Del/2018 for AY 2014-15 in case of HCL Comnet Systems & Services Ltd..

9. AO thereby framed the assessment u/s 143(3) of the Act at the total income of Rs.70,66,57,990/- for AY 2013-14 in case of HCL Comnet Ltd. and Rs.9,84,54,930/- & Rs.3,64,24,300/- for AYs 2013-14 & 2014-15 respectively in case of HCL Comnet Systems & Services Ltd..

10. Assessee carried the matter before the Id. CIT (A) by way of filing appeals in AYs 2013-14 & 2014-15 in case of both the assessment order who has partly allowed the same. Feeling aggrieved by the order passed by the Id. CIT (A), both the assessee and Revenue have come up before the Tribunal by way of filing the present appeals.

11. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1, 1.1 & 1.2 OF**  
**ITA NO.135/DEL/2018 for AY 2013-14**  
**(ASSEESSEE'S APPEAL)**

12. AO by invoking the provisions contained u/s 14A read with Rule 8D made the disallowance of Rs.38,48,495/-, computed as under :-

Clause	Particulars			Amount
i.	Expenditure directly related to Exempt income			
	Disallowance of interest expenditure	0		
ii.				
A.	Interest expenditure incurred during the year			
B.	Average value of investment	$(1038658620+545593586)/2$	792126103	0
C.	Average of Total assets	$(8579578136+9034092663)/2$	8806835400	
	Disallowance = A*B/C			
iii.	Aggregate of Opening and Closing Value of Investment (Average Value of Investment) ½% of above as per Rule 8D	Value of investment total for 31.03.2012 & 31.03.2011  Average value of Investment 0.5% of above 792126103		39,60,631
	Total disallowance (Aggregate of (i), (ii) & (iii))			39,60,631
	Less : Already disallowed by the assessee			1,12,136
	Amount to be disallowed			38,48,497

13. Undisputedly, the assessee has earned exempt dividend income of Rs.4,23,49,389/- from investment made in debt oriented

mutual fund during the year under assessment and made suo motu disallowance of Rs.1,12,136/- by allocating proportionate expenses and has given complete computation allocating proportionate expenses in the ratio of exempt income to the taxable income, available at page 34 of the paper book.

14. Ld. AR for the assessee challenging the impugned disallowance contended that AO without recording his satisfaction as to why suo motu disallowance made by the assessee is not justified, mechanically applied Rule 8D of the Rules and section 14(2) of the Act.

15. We have perused the computation made by the assessee for the purpose of disallowance, available at page 34 of the paper book, which is by way of allocating proportionate expenses in the ratio of exempt income to taxable income received from fixed deposits and income from other group companies. However, ld. AO has mechanically invoked the provisions contained under Rule 8D of the Rules without recording his satisfaction that suo motu disallowance of Rs.1,12,136/- made by the assessee is not correct.

16. It is settled principle of law that generic dissatisfaction as to the correctness of the claim of the assessee without assigning any reason is not a valid satisfaction which is mandatory under section 14A(2) of the Act, as has been held by Hon'ble Supreme Court in

case of **Maxopp Investments Ltd. vs. CIT (2018) 402 ITR 640 (SC) and Hon'ble Delhi High Court in case of HT Media Ltd. vs. Pr.CIT 199 ITR 576 (Del.)**. So, when audited financials of the assessee company have otherwise been accepted by the AO, mechanical application of Rule 8D to reject the suo motu disallowance u/s 14A of the Act by the assessee is not sustainable in the eyes of law.

17. Identical issue has been decided by the coordinate Bench of the Tribunal in favour of the assessee in **ITA No.1113/Del/2017 for AY 2012-13 order dated 04.09.2020 in assessee's own case** by returning following findings :-

*“6. Undisputedly, assessee company has made investment of Rs.54,55,93,586/- in the shares and mutual funds and earned dividend income of Rs.6,07,08,212/- on the same. It is also not in dispute that the assessee company has suo moto made disallowance of Rs.3,46,466/- in order to earn the dividend income. It is also not in dispute that no interest cost has been attributed to the investment in question as the same has been funded out of interest free loans received from its holding company. It is also not in dispute that the entire investments in question were made in debt oriented mutual funds.*

*7. When we examine the impugned order passed by the AO as well as ld. CIT (A), they have harped upon inbuilt cost incurred on the investment in question viz. incidental expenditure of collection, telephone, follow-up, etc. but assessee company has come up with specific working that on the specific investment, it has incurred expenses to the tune of Rs.3,46,466/-. AO as well as ld. CIT (A) without calling detail and explanation of the working for making suo moto disallowances proceeded to invoke the provisions contained under section 14A read with Rule 8D. There is no valid satisfaction recorded by the AO that working for making suo moto disallowance made by the assessee company is faulty rather proceeded to make disallowance under Rule 8D 3 @ 0.5% of average value of investment.*

8. *Hon'ble Delhi High Court in the identical situation in the case of HT Media Ltd. vs. Pr. CIT 199 ITR 576 (Del.) held that recording of satisfaction by the AO before invoking provisions contained under section 14A read with Rule 8D is a sine qua non. Operative part of the aforesaid judgment is extracted for ready proposal as under :-*

*“30. Rule 8 D (1) states more or less what Section 14 A (2) of the Act states. It requires the AO to first examine the accounts of the Assessee and then record that he is not satisfied with (a) the correctness of the Assessee's claim of expenditure or (b) the claim made by the assessee that no expenditure has been incurred. Unless this stage is crossed i.e. the stage of the AO recording that he is not satisfied with the clam of the Assessee in the manner indicated i.e. after examining the Assessee's accounts, the question of applying the formula under Rule 8D (2) does not arise. That this is a mandatory pre-requisite for applying Rule 8D (2) is fairly well-settled.”*

9. *Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT 347 ITR 272 also held that satisfaction of the AO is mandatory that suo moto disallowance made under section 14A was not correct by returning following findings :-*

*“41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

10. *Following the aforesaid decisions rendered by the Hon'ble Supreme Court and Hon'ble High Court of Delhi, we are of the considered view that when the assessee company, with its audited accounts, have come up with specific computation that in order to earn the dividend income of Rs.6,07,08,212/- they have incurred amount of Rs.3,46,466/- and suo moto disallowed the same, AO was not empowered to invoke the provisions contained under section 14A read with Rule 8D in a mechanical manner without recording his satisfaction that working given by assessee company is not correct.*

*11. AO has merely recorded that, "I am not satisfied with the correctness of the claim of the assessee". No reasons as to how and why he has not got satisfied with the correctness of the claim of the assessee. So, we are of the considered view that AO as well as ld. CIT (A) have erred in making/confirming further disallowance under section 14A read with Rule 8D over and above the disallowance of Rs.3,46,466/- made by the assessee, hence disallowance of Rs.21,23,629/- made by the AO and confirmed by the ld. CIT (A) is hereby ordered to be deleted. So, Grounds No.1, 1.1 & 1.2 are allowed."*

18. So, we are of the considered view that the disallowance made by the AO and confirmed by the ld. CIT (A) on the basis of invalid satisfaction as to the correctness of the claim of the assessee is not sustainable, hence ordered to be deleted. Consequently, Grounds No.1, 1.1 & 1.2 of ITA No.135/DEL/2018 for AY 2013-14 in case of HCL Comnet Ltd. are determined in its favour.

**GROUND NO.2 & 2.1 OF**

**ITA NO.135/DEL/2018 For AY 2013-14**  
**(ASSEESSEE'S APPEAL – HCL COMNET LTD.)**

**GROUND NO.1 & 1.1 OF**

**ITA NO.136/DEL/2018 For AY 2013-14**  
**ITA NO.137/DEL/2018 For AY 2014-15**  
**(ASSEESSEE'S APPEAL – HCL COMNET**  
**SYSTEMS & SERVICES LTD.)**

19. Assessee company being engaged in the business of trading of networking equipment, installation and maintenance of such equipments and creation, maintenance & operation of networks has deferred some part of its revenue to the subsequent financials years

and revenue being deferred in earlier financial years is booked as revenue in the relevant financial year for the purpose of Annual Maintenance Contracts (AMCs) on percentage completion method. Customers of the assessee deducted and deposited tax at source on the entire amount of AMCs in the first year itself for which the assessee has also claimed credit of the entire amount of TDS in the first year also and corresponding income is offered to tax over the period of the AMCs for 3 – 4years.

20. However, AO/CIT (A) have not allowed the credit of TDS amount to the tune of Rs.27,75,487/- for AY 2013-14 in case of HCL Comnet Ltd. and Rs.2,00,000/- & Rs.2,14,814/- for AYs 2013-14 & 2014-15 respectively in case of HCL Comnet Systems & Services Ltd. on the ground that corresponding income has not been offered for tax by the assessee in the said years.

21. Ld. AR for the assessee challenging the impugned disallowance contended that TDS credit is to be allowed proportionately across those years in which income was assessable to tax and this issue has already been decided by the **coordinate Bench of the Tribunal in assessee's own case for AY 2011-12 bearing ITA No.3221/Del/2017 order dated 31.12.2019.**

22. We have perused the order passed by the Tribunal in **assessee's own case for AY 2012-13** (supra) wherein the identical

issue has been decided in favour of the assessee by returning following findings :-

*“23. We have given thoughtful consideration to the orders of the authorities below. We -find that section 199(3) of the Act gives power to the Board to make such rules for the purposes of giving credit in respect of tax deducted or tax paid in terms of provisions of the Act and also A. Y for which such credit may be given. Rule 37BA(3)(ii) provides that where tax has been deducted at source and paid to Central Government and income is sustainable over a number of years, credit for tax deducted at source shall be allowed across those years in same proportion in which income is assessable to tax. We, accordingly, direct the Assessing Officer to give proportionate credit of TDS for the income declared during the year under consideration. With these directions, Ground no. 3 is allowed.”*

23. So, following the decision rendered by the coordinate Bench of the Tribunal in **assessee’s own case** (supra), we are of the considered view that assessee is entitled for credit of tax deducted at source on proportionate basis for the income declared during the year under consideration as per Rule 37BA(3)(ii) of the Rules. Consequently, Grounds No.2 & 2.1 of ITA No.135/Del/2018 for AY 2013-14 in case of HCL Comnet Ltd. and Grounds No.1 & 1.1 of ITA Nos.136/DEL/2018 & 137/DEL/2018 for AYs 2013-14 in case of HCL Comnet Systems & Services Ltd. are determined in favour of the assessee.

**GROUND NO.1 OF****ITA NO.385/DEL/2018 (REVENUE'S APPEAL)****ITA NO.100/DEL/2018 (REVENUE'S APPEAL)**

24. Assessee company claimed to have paid licence fee of Rs.6.36 crores & Rs.3,50,95,924/- for AYs 2013-14 & 2014-15 respectively to the Department of Telecommunication (DOT) for grant of licence to operate and provide services which has been disallowed by the AO on the ground that the said licence fee paid by the assessee during the years is to be amortized in accordance with section 35ABB of the Act and after amortization disallowed an amount of Rs.3,14,11,091/- & Rs.3,50,95,924/- in AYs 2013-14 & 2014-15 respectively.

25. However, Id. CIT (A) by relying upon the **decision rendered by the Tribunal in AYs 2006-07 to 2008-09 passed in assessee's own case** deleted the disallowance, which is under challenge before the Tribunal.

26. We have perused the orders passed by the coordinate Bench of the Tribunal in **assessee's own case for AYs 2006-07 to 2011-12** wherein identical issue has been consistently decided in favour of the assessee by directing the AO to delete the addition made on account of capitalization of licence fee paid to the DOT.

27. It is also brought on record by the Id. AR for the assessee that the appeal filed by the Revenue for AYs 2009-10 & 2010-11 on this issue in Hon'ble Delhi High Court has also been dismissed by following the decision rendered by **Hon'ble Delhi High Court in case of CIT vs. Bharti Hexacom Ltd. 221 taxman 323 (Delhi)** wherein it is held that, "*licence fee paid as per NTP 1999 policy on a periodic basis was held to be revenue expenditure*".

28. So, following the decision rendered by **coordinate Bench of the Tribunal in assessee's own case for AYs 2006-07 to 2011-12** and decision rendered by **Hon'ble Delhi High Court in assessee's own case for AYs 2009-10 & 2010-11**, we are of the considered view that Id. CIT (A) has rightly deleted the addition, hence finding no infirmity or illegality in the impugned findings, Ground No.1 of ITA Nos.385/DEL/2018 & 100/DEL/2018 for AYs 2013-14 & 2014-15 respectively are determined against the Revenue.

**GROUND NO.2 OF**  
**ITA NO.100/DEL/2018 (REVENUE'S APPEAL)**

29. Assessee company claimed to have taken certain vehicles on finance lease and lease rental paid by the assessee company comprised to interest portion and principal portion out of which principal portion of lease rental amounted to Rs.2,20,383/-. AO disallowed the deduction claimed by the assessee rather allowed

depreciation @ 15% on the principal portion of the lease rental during the year under consideration.

30. However, Id. CIT (A) by relying upon the decision rendered by Id. CIT(A) in the preceding years i.e. AYs 2008-909 to 2010-11, which has been accepted by the Revenue having not been further challenged, deleted the addition made by the AO.

31. Perusal of the order passed by the AO shows that the AO proceeded on the basis of surmise that the vehicles are owned by the assessee company which is factually incorrect as is evident from registration certificate, available at page 127 of the paper book. In the registration certificate, assessee company is referred as the lessee and Orix Auto is referred as the lessor. Merely mentioning the name of the assessee company as the lessee does not construe ownership in favour of the assessee as has been held by **Hon'ble Supreme Court in case of ICDS Ltd. vs. CIT 350 ITR 527 (SC)**. It is a basic principle of law that only lessor is the owner of the leased property in case of finances and depreciation is allowable to the lessor only and not the lessee.

32. Furthermore, lease agreement entered into between the assessee company and lessor of the vehicles itself provides that ownership of the vehicles will not be transferred to the lessee during the subsistence of the lease as is evident from Lease

Agreement dated 24.04.2008, available at pages 128 to 141 of the paper book.

33. In view of the afore-discussed undisputed facts, we are of the considered view that Id. CIT (A) has rightly decided the issue in favour of the assessee. So, finding no infirmity or illegality in the impugned findings, ground no.2 of ITA No.100/Del/2018 for AY 2014-15 is determined against the Revenue.

34. Resultantly, all the appeals bearing ITA Nos.135/Del/2018, 136/Del/2018 & 137/Del/2018 filed by the assessee are allowed and the appeals bearing ITA Nos.385/Del/2018 & 100/Del/2018 filed by the Revenue are dismissed.

**Order pronounced in open court on this 25<sup>th</sup> day of August, 2021.**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 25<sup>th</sup> day of August, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-35, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**