

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 2346/DEL/2014 [A.Y 2008-09]  
ITA No. 4550/DEL/2018 [A.Y 2009-10]**

M/s Hughes Communications India Ltd  
1, Shivaji Marg, West End Greens NH-18  
New Delhi

Vs.

The D.C.I.T  
Circle 12(1)  
New Delhi

PAN : AAACH 0765 L

**ITA No. 2273/DEL/2014 [A.Y 2008-09]  
ITA No. 3906/DEL/2015 [A.Y 2009-10]**

The I.T.O  
Circle 12(1)  
New Delhi

Vs.

M/s Hughes Communications India Ltd  
1, Shivaji Marg, West End Greens NH-18  
New Delhi -

PAN : AAACH 0765 L

[Appellant]

[Respondent]

Date of Hearing : 08.09.2021  
Date of Pronouncement : 14.09.2021

Assessee by : Shri Ajay Vohra, Sr. Adv  
Shri Saksham Singhal, Adv  
Shri Anshul, Adv

Revenue by : Shri Rocktim Saikia, Sr. DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above captioned cross appeals by the assessee preferred against order of the Commissioner of Income Tax [Appeals] - 11, New Delhi dated 29.01.2014 and by the Revenue preferred against order of the Commissioner of Income Tax [Appeals] - 15, New Delhi dated 03.03.2015 pertaining to A.Ys 2008-09 and 2009-10 respectively.

2. Since common issues are involved in the captioned appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in assessee's appeal relates to the disallowance of deduction made by the Assessing Officer under section 80-IA of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] at Rs. 5,61,69,752/- as against Rs. 10,48,65,690/- in Assessment Year 2008-09 and upholding disallowance of deduction under section 80-IA of the Act to the extent of Rs. 3,27,57,034/- in A.Y. 2009-10.

4. Since the underlying facts in issue are identical in both the Assessment Years under appeal, we have decided to proceed with the facts of Assessment Year 2008-09.
  
5. Briefly stated, the facts of the case are that the assessee is engaged in the business of providing telecommunication services, which inter-alia, provide broadband and internet services. The assessee claimed income from the said services as eligible for deduction under section 80IA(4)(ii) of the Act and accordingly, in Assessment Year 2008-09 claimed deduction of Rs. 10,48,65,690/- u/s 80-IA of the Act.
  
6. During the course of scrutiny assessment proceedings, the Assessing Officer was not convinced with the claim of deduction mainly for the following reasons:
  - (i) The assessee has not maintained separate books of accounts for 80IA eligible unit and non 80IA unit.
  
  - (ii) Books of accounts were maintained at corporate office level and the assessee failed to produce actual bills and vouchers and separate accounts for 80IA and non 80IA units.

(iii) According to the Assessing Officer, apportionment of the expenses are not based on the revenue ratio of eligible and non eligible units resulting into higher profit in eligible units than the profits in non eligible units.

(iv) The Assessing Officer was of the opinion that the assessee has not apportioned other income between the eligible and non eligible units. The claim of deduction of Rs. 10,48,65,690/- was restricted to Rs. 5,61,69,752/- thereby disallowing Rs. 4,86,95,938/-.

7. The assessee agitated the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee vehemently stated that the findings of the Assessing Officer that the assessee is not maintaining separate books of account is not correct as the assessee has maintained ERP based account having separate code for each head of expenditure. The ld. counsel for the assessee further stated that the allocation of expenses are based on actual scientific principles and drew our attention to the chart of allocation of expenses and pointed out the basis for

allocation of each expenditure.

9. It is the say of the ld. counsel for the assessee that as per the provisions of section 80IA(7) of the Act, there is no requirement to maintain separate books of account and further stated that in the initial Assessment Year i.e. 2007-08, the Assessing Officer had allowed the claim of deduction u/s 80IA of the Act and following the settled principles of consistency, no adverse view should have been taken by the Assessing Officer in the impugned Assessment Year.

10. The ld. counsel for the assessee vehemently stated that as per the provisions of section 80IA(5) of the Act, for the purposes of determining the quantum of deduction u/s 80IA of the Act, under the said section, the deduction shall be computed as if such 80IA unit is the only source of income of the assessee during the previous year. The ld. counsel for the assessee also pointed out that the Assessing Officer has incorrectly held that other income to the extent of Rs. 1,70,48,316/- has not been properly allocated between eligible and non eligible unit.

11. Per contra, the ld. DR strongly supported the findings of the lower authorities and read the relevant portion of the assessment order and the order of the ld. CIT(A).

12. We have given thoughtful consideration to the orders of the authorities below. It is true that the assessee is maintaining ERP based account which have separate code for each head of expenses and this has been accepted by this Tribunal in the case of DCIT Vs. N.I.I.T in ITA No. 1112/DEL/2012 wherein this Tribunal has held that ERP software accounting system was sufficient compliance for the purpose of claiming deduction u/s 10B of the Act.

13. Appeal by the Revenue against this order of the Tribunal was not admitted by the Hon'ble High Court of Delhi vide order dated 01.03.2016 in ITA no. 897/2015. Similar view was taken by this Tribunal in the case of Ranbaxy Laboratories Ltd in ITA No. 196/DEL/2013 wherein this Tribunal has held that maintaining accounts on SAP basis ERP system of accounting tantamounts to maintenance of separate books of account and accordingly, deduction u/s 80IB and 80IC of the Act cannot be denied on the said ground.

14. In so far as the allocation of expenses are concerned, the same can be seen from the following chart:

Expense	Allocation basis as per AO	Allocation basis as per appellant and certified by the CA in Form 10CCB
Advertisement	Revenue Ratio	On actual basis. The expenses not identifiable are allocated in revenue ratio
Provision for doubtful advances		On actual basis. The advances not identifiable are allocated in revenue ratio
Other fees		On basis of revenue of respective unit
Consumables		Consumables related to repair cost centre (ARC) , customer support centre (CS) have been allocated on basis of AMC revenue of respective units. Other consumables not realistically identifiable are allocated on basis of revenue
Travelling & conveyance		Allocated on the basis of revenue of respective unit
Installation charges		Have been allocated on the basis of Annual Maintenance Contract (AMC) revenue earned by the respective unit
Bad debts		On actual basis
Printing and stationary		Allocated on the basis of revenue of respective unit
Legal and professional		On actual basis. The expenses not identifiable are allocated in revenue ratio
Bank charges		On basis of revenue of respective unit
Auditor remuneration	On basis of revenue of respective unit	
Reimbursement of expenses	On basis of revenue of respective unit	
Repair and maintenance		Repair and maintenance of buildings have been allocated on the basis of head count ratio of respective unit

15. In our considered opinion, the AO has simply disbelieved the allocation made by the assessee on the ground that the expenses must have been allocated on revenue ratio of eligible and non eligible units whereas the allocation of expenses exhibited hereinabove clearly shows that either they are on actual basis or on revenue ratio basis and some of the expenses are directly attributable to the units. In our considered opinion, allocation is based on actual scientific basis duly certified by the

CA in Form No. 10CCB and therefore, the same cannot be faulted with.

16. We further find that this claim is not for the first time but initial Assessment Year of claim is 2007-08 wherein the Assessing Officer has accepted the claim of deduction. In our considered view, unless the claim is disturbed in the initial Assessment Year, the same cannot be disturbed in the subsequent Assessment Years of the block.

17. Interestingly, the Assessing Officer had allowed claim of deduction in Assessment Year 2011-12 onwards also. Therefore, the Rule of Consistency squarely applies on the facts of the case.

18. In so far as the allocation of other income of Rs. 1,70,48,316/- is concerned, we find that the same was never claimed as eligible for deduction u/s 80IA of the Act. Therefore, the action of the Assessing Officer is without any basis. Considering the facts of the case in totality, as discussed hereinabove, we direct the Assessing Officer to allow the claim of deduction u/s 80IA of the Act as claimed by the assessee.

19. Ground No. 1 with all its sub-grounds is allowed.

20. Ground Nos. 2 and 3 were not pressed. The same are dismissed as

not pressed.

21. The common grievance in Revenue's appeal relates to the non confirming of the addition of Rs. 5,44,15,806/- on account of licence fee which was held as capital in nature by the Assessing Officer.

22. Briefly stated, the facts of the case are that the assessee has paid a sum of Rs. 7,25,54,408/- by way of licence fee in Assessment Year 2008-09 to the Department of Telecommunication. The Assessing Officer was of the firm belief that the said payment was towards capital expenditure and after allowing depreciation of 25% disallowed balance amount of Rs. 5,44,15,806/- in Assessment Year 2008-09.

23. On appeal, the first appellate authority directed the Assessing Officer to verify whether the amount of licence fee so claimed contains any element of capital expenditure in terms of decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Bharti Hexacom 221 Taxman 323.

24. Against such direction, the Revenue is before us.

25. At the very outset, we have to state that pursuant to the directions of the Id. CIT(A), the Assessing Officer, vide order dated 08.03,.2015 passed u/s 250 r.w.s 143(3) of the Act, deleted the addition made on account of licence fee paid to DOT by following the decision of the Hon'ble Delhi High Court in the case of Bharti Hexacom [supra]. Since the quarrel has now been settled, we do not find any merits in the appeals of the Revenue. The same are accordingly, dismissed.

13. In the result, the captioned appeals of the assessee in ITA Nos. 2346/DEL/14 and ITA No. 4550/DEL/2018 are partly allowed whereas the appeals of the Revenue in ITA Nos. 2273/DEL/2014 and 3906/DEL/2015 are dismissed.

The order is pronounced in the open court on 14.09.2021 in the presence of both the rival representatives.

Sd/-

Sd/-

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 14<sup>th</sup> September, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	
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