

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 7576/Del/2018
(Assessment Year : 2014-15)

BT Global Communication India Pvt. Ltd. 11 th Floor, Eros Corporate Tower, Opp. International Trade Tower, Nehru Place, New Delhi PAN No. AAACG 1534 A (APPELLANT)	Vs.	ACIT Special Range – 2 New Delhi (RESPONDENT)
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Assessee by	Shri Vishal Kalra, Adv.
Revenue by	Shri Satpal Gulati, CIT-D.R.

Date of hearing:	18.11.2021
Date of Pronouncement:	25.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order of the Addl. Commissioner of Income Tax – Special Range-2, New Delhi under section 143(3) r.w.s. 144C(13) of the Act pursuant to the direction of Dispute Resolution Panel (DRP) – 1, New Delhi order dated 27.08.2018 for Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a wholly owned subsidiary of BT Telecom India Private Ltd. and is stated to be engaged in the business of providing network connectivity services. Assessee is also stated to have obtained International Long Distance, National Long Distance and Internet Service Provider license from the Department of Telecommunication. Assessee filed return of income for A.Y. 2014-15 on 28.11.2014 declaring total income of Rs.55,42,04,040/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 144C(13) of the Act vide order dated 26.09.2018 and the total income was determined at Rs.1,07,05,94,010/-. Aggrieved by the order passed by AO consequent to the DRP direction, assessee is now before us and has raised the following grounds:

“The Appellant respectfully submits :-

- 1. That on the facts and in the circumstances of the case and in law, the Assessing Officer ("Ld. AO") has erred in determining the income of Rs 1,070,594,010 as against the income of Rs 554,204,040 returned by the Appellant and charging interest thereon amounting to Rs. 245,268 under section 234B of the Income Tax Act 1961 ("the Act").*
- 2. That on the facts and circumstances of the case and in law, the Ld. AO and the DRP have erred in making a disallowa'nce of annual license fee amounting to Rs. 516,389,972 paid by the Appellant holding the same to be a capital expenditure not allowable under section 37 of the Act.*
- 3. Without prejudice to the above, that on facts and circumstances of the case, and in law, the Ld. AO ought to*

have allowed the deduction under section 35ABB of the Act in respect of the annual license fee paid by the Appellant to the DoT, despite holding the same to be an expenditure of capital nature.

4. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in charging interest under section 234B of the Act.*
5. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in, initiating penalty under section 271(1)(c) read with section 274 of the Act.*

The above grounds of appeal are all independent and without prejudice to each other.

The Appellant craves leave to supplement, to cancel, to amend, to add and/or otherwise to alter/ modify any or all the ground(s) of appeal stated herein above on or before its hearing before your honor.”

4. Before us, at the outset, Learned AR submitted that **Ground No.1** is general and needs no adjudication. **Ground No.4** is consequential in nature therefore same does not require adjudication. **Ground No.5** is pre-mature and **Ground No.3** would be become academic if the **Ground No.2** is decided in assessee's favour.

We thus proceed with Ground No.2 :-

5. During the course of assessment proceedings, AO noticed that assessee debited Rs.51,63,89,972/- on account of payment of annual license fee and had claimed it as revenue expenditure. Assessee was asked to justify the claim to which assessee made

the submissions which were not found acceptable to AO. AO was of the view that though the assessee has paid annual license fees to DOT @ 8% of adjusted gross turnover (amounting to Rs.51,63,59,972/-), the fee paid by the assessee was capital in nature, as it gives advantage of enduring nature to the assessee. AO also noted that Department had filed SLPs in the cases of **CIT vs. Bharti Hexacom Limited [(2013)] 40 taxmann.com 40 (Delhi)** and **Vodafone Mobile Services Ltd. vs. Delhi High Court in ITA No.730 of 2016**. AO therefore, in view of the stand of the Department, treated the amount of Rs.51,63,89,972/- to be capital expenditure and not allowable u/s 37 of the Act. When the matter was carried before DRP by the assessee, DRP declined to interfere with the order of AO/TPO. Aggrieved by the consequential order passed by AO, assessee is now before us.

6. Before us, Learned AR submitted that the agreement pursuant to which license fee has been paid by the assessee was entered by the assessee in the year 2006 and the payments made by the assessee have been held to be allowable in earlier years as no addition was made in earlier years. In support of his aforesaid contention, he pointed to the assessment orders passed for earlier years which are placed in paper book. He submitted that the only reason for disallowance in the year under consideration is for the reason that Revenue has filed SLP on identical issue in the case of **Bharti Hexacom Ltd. (supra) & Vodafone Mobile Services Ltd. (supra)**. Learned AR therefore submitted that in the absence of any change in facts in the year under consideration and that of

earlier years, no disallowance is warranted only for the reason that SLP has been filed. He therefore submitted that addition be deleted.

7. Learned DR on the other hand did not controvert the submissions made by Learned AR but however supported the order of lower authorities.

8. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the disallowance of license fee paid by the assessee. It is an undisputed fact that agreement pursuant to which the impugned license fee has been paid was entered by the assessee in the year 2006 and assessee has been paying the license fee and in the past the payment of license fee has been accepted by Revenue as no addition by disallowing the same has been made. The addition has been made only in the year under consideration for the reason that Department has filed SLP in the case of Bharti Hexacom Ltd. (supra) & Vodafone Mobile Services Ltd. (supra). Hon'ble Bombay High Court in the case of CIT vs. Forest Development of Maharashtra Ltd. (2017) 84 Taxmann.com 294 (Bom) has observed that even if the principle of res judicata does not apply in tax matters yet consistency and certainty of law would require the State to take uniform position and not change their stand in the absence of change in facts and /or law. In the present case, admittedly there is no change in the facts and/or law. In such a situation, merely because on SLP has been filed by

Revenue in some other case on identical facts, cannot be justification for the disallowance of expenditure. We thus find no justification in the order of AO for disallowing the expenditure. We therefore direct the deletion of addition made by AO. **Thus the ground of assessee is allowed**

9. Since we have allowed the ground of assessee, therefore as per the submission of Learned AR Ground No.3 has been rendered academic and therefore not adjudicated.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 25.11.2021

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

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

Date:- 25.11.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI