

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

Before Sh. A.D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No.8168/Del/2018 : Asstt. Year: 2015-16

HCL Comnet Systems & Services Ltd., 806, Sidharth, 96, Nehru Place, New Delhi-110019	Vs	DCIT, Circle-11(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACH3130M		

ITA No.447/Del/2019 : Asstt. Year: 2015-16

DCIT, Circle-11(1), New Delhi	Vs	HCL Comnet Systems & Services Ltd., 806, Sidharth, 96, Nehru Place, New Delhi-110019
(APPELLANT)		(RESPONDENT)
PAN No. AAACH3130M		

Assessee by : Sh. Aditya Vohra, Adv.

Revenue by : Sh. R. J. Pradip Kumar, Sr. DR

Date of Hearing: 12.04.2022

Date of Pronouncement: 11.05.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee as well the Revenue against the orders of the Id. CIT(A)-4, New Delhi dated 22.10.2018.

2. In ITA No. 447/Del/2019, following grounds have been raised by the Revenue:

"1. Whether on the facts and circumstances of case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,98,09,161/- on account of license fee paid by the

assessee to the Department of Telecommunication ('DOT') by holding that the license fee was revenue in nature and allowable u/s 37 of the Income Tax Act, 1961 ('the Act').

1.a) Whether the Ld CIT(A) has erred in not appreciating the fact the license fee paid by the assessee fee paid by the assessee is in the nature of capital expenditure for acquiring the right to operate telecommunication services and therefore, the expenses on account of license fee have to be amortized in terms of section 35-ABB of the Act, which is a special provision dealing with expenditure for obtaining license to operate telecom services.

1.b) Whether the LD. CIT(A) has erred in not appreciating the fact that the shift from the fixed license fee regime to a revenue sharing regime only changed the methodology of calculating the license fee and does not alter the character of the license fee, which is payment for acquisition of right to operate the telecommunication services.

2. In ITA No. 8168/Del/2018, following grounds have been raised by the assessee:

"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.4,51,895/- on deferred revenue holding that 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.4,51,895/- relating to deferred revenue and in not allowing credit of TDS on proportionate basis as per rules 37BA(3)(ii) of the Income Tax Act, 1962."

3. The assessee company is engaged in business of Remote Infrastructure Management Services & Telecommunication Services.

ITA No. 447/Del/2019 (Departmental Appeal)**License Fee:**

4. The assessee company has paid an amount of Rs.5,34,03,339/- to the Government of India, Department of Telecommunication in consideration for grant of license to operate and provide the services which has been disallowed by the Revenue considering the same as capital expenditure. The issue has been consistently held as revenue expenditure by the Id. CITs(A) in earlier assessment years starting from 2006-07 to 2014-15. Further, this disallowance has been deleted by the Co-ordinate Bench of ITAT in the assessee's case for A.Y. 2007-08 vide order dated 15.01.2015 in ITA Nos. 4546 & 5106/Del/2013 wherein the ITAT held that license fee paid under the new revenue sharing regime effective from 01.08.1999 under the New Telecom Policy would be allowed as revenue expenditure. Since, the decision of the Id. CIT(A) is based on the order of the Tribunal, we hereby decline to interfere with the order of the Id. CIT(A) on this issue.

5. In the result, the appeal of the Revenue is dismissed.

ITA No. 8168/Del/2018 (Assessee's Appeal)**Disallowance of TDS Credit:**

6. During the course of assessment proceedings, the AO asked for details of TDS on deferred revenue and justification on its allowability.

7. The assessee submitted that having regard to the nature of the business, it is a common practice on the part of the assessee that during any financial year, some part of the revenue is deferred to subsequent financial year(s) and the revenue being deferred in earlier financial year(s) is booked as revenue in the relevant financial year.

8. The AO disregarded the contentions of the assessee and added the TDS credit of Rs. 4,51,895/- being TDS credit claimed on current year's deferred revenue.

9. The assessee submitted that, the company, is recognizing revenue on percentage completion method. It was submitted that the assessee company has also adopted the said method in case of all of AMC contracts, the assessee company has equally recognized the revenue over the tenure of the concerned AMC contract. For example, if the assessee has entered into an AMC contract with a particular customer for a period of 4 years, it has recognized revenue equivalent to 25% of total amount involved in each of 4 years based on the relevant corresponding period in which the services shall be performed by the assessee company. However, if the customer is making upfront payment for all 4 years on the signing of the AMC, he would deduct tax on the entire payment, being statutorily bound to deduct tax at the time of credit or payment, whichever is earlier. As result, it becomes difficult for the assessee to keep exact correlation between the revenue booked in any financial year and the TDS deducted by the end user customers. In view of aforesaid, the assessee claimed TDS credit for the tax deducted by customers in the previous year relevant to the captioned assessment year even if a part of the related revenue has been booked in subsequent financial year(s). Further, it was submitted that this is purely a case of timing difference only and there has been no loss to Revenue. The assessee relied on the decision of the Mumbai Bench of the Tribunal in the case of *Toyo Engg. India Ltd vs. JCIT: [2006] 5 SOT 616 (Mum)*.

10. The AO disallowed TDS on deferred revenue by holding that if corresponding income is not taxable in a particular year, then

corresponding credit for tax deducted may not be granted in view of section 199 of the Act, in that year. Further, the AO held that merely because credit was claimed for tax deducted at source, it does not mean that the corresponding income is chargeable to tax.

11. The assessee company has been offering its income in a consistent method in terms of the provision contained in section 145 of the Income-tax Act, 1961 and therefore, the credit for the TDS amount from year to year needs to be given continuously for these assessment years. Income is earned by the assessee company simultaneously with the progress in the project execution in a contemporaneous manner.

12. Reliance was further placed on the following decisions wherein it has been held that once TDS is deducted, credit of the same should be given to the assessee, irrespective of year to which it relates:

- ACIT vs. Peddu Srinivasa Rao (ITA No. 324/Vizag/2Q09 dated March 03, 2011)
- Supreme Renewable Energy Limited vs. ITO 32 DTR 140 (Chennai)
- Escort Ltd. vs. ACIT (15 SOT 368 DEL)
- Sadbhav Engineering Ltd. vs. DOT 45 taxmann.com 333 (Ahmadabad- Trib.)
- Zelan Projects Pvt. Ltd. vs. DOT ITA No. 1361/Hyd./2013 (Hyderabad - Trib)
- Chander Shekhar Aggarwal vs. ACIT, Circle 37(1), New Delhi (Delhi-ITAT)

13. The Id. CIT(A) confirmed the addition based on the order of the Id. CIT(A)-35 for Asstt. Year 2014- 15 in the case of assessee by observing as under:

"4.5.3 The submissions of the appellant, case laws cited and relevant order have been considered. In the present case, the AO has correctly held that the TDS of Rs.2,14,814/- on deferred revenue will be allowed in the relevant assessment year in which corresponding revenue has been offered for taxation. The AO has distinguished the facts and circumstances of the case of M/s Toyo Engineering India Ltd. [5 SOT 616], which has been relied upon by the appellant I find no reason to interfere with the AO's order on this issue; Appeal on this ground is dismissed."

14. We find that this issue has been considered by the Co-ordinate Bench of ITAT in assessee's own for the A.Y. 2014-15 directing the revenue to allow the proportionate credit of TDS for the income declared during the year under consideration. The relevant part of the order of the ITAT in assessee's own case in ITA No. 135/Del/2018 is as under:

"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. Rules 37BA(3)(ii) provides that where tax has been deducted at source and paid to Central government and income is sustainable over 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."

15. In the result, the appeal of the assessee on this ground is allowed for statistical purpose.

16. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 11/05/2022.

Sd/-

(A.D. Jain)
Vice President

Dated: 11/05/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR