

**IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, PUNE**

**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**ITA No. 1938/PUN/2018 & 2038/PUN/2018  
A.Y. 2014-15 & 2015-16  
ITA No. 476/PUN/2017 & 2442/PUN/2017  
A.Y. 2012-13 & 2013-14**

BMC Software India Pvt. Ltd.  
Business Bay, Wing 1, Tower B  
9<sup>th</sup> floor, Survey No. 103,  
Hissa No. 2, Airport Road,  
Yerawada, Pune-411 06  
PAN; AABCB 6110 E

Appellant

Vs.

The Dy. CIT Cir. 1(1), Pune

Respondent

Appellant by : Shri Madhur Agarwal (through virtual)  
Respondent by : Shri Subhakanta Sahu CIT (through virtual)

Date of Hearing : 06-06-2022  
Date of Pronouncement : 07-06-2022

**ORDER**

**PER BENCH**

These appeals preferred by the assessee emanates from separate orders of the Disputes Resolution Panel-3, WZ dated 27-08-2018 for A.Y. 2014-15, dated 23-09-2019 for A.Y. 2015-16, dated 03-10-2016 for A.Y. 2012-13 and dated 27-06-2017 for A.Y. 2013-14, passed u/s 144C(5) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") as per the grounds of appeal on record.

2. At the time of hearing, the parties agreed that the facts and circumstances of the issues involved in all these appeals are absolutely identical and similar. These cases are therefore, heard together and are disposed of by this consolidated order.

3. **ITA No. 2038/PUN/2019 for A.Y. 2015016**

The assessee has submitted revised/modified grounds of appeal and at the time of hearing, the Id. Counsel submitted that broadly there are three

issues for adjudication in the present appeal. The first issue is addition in respect of disallowance of Primary Rate Interface (PRI) Line charges paid to Telecom Companies amounting to Rs. 60,45,238/- on account of non-withholding of taxes. The submission of the assessee is that the subordinate authorities have erred in disallowing the charges paid to Telecom Companies such as Bharati Airtel, Tata Communications and Vodafone Cellular u/s 40(a)(ia) of the Act by treating the same as leased line charges and not appreciating the fact that the above charges were for standard PRI line charges which require no human intervention and consequently does not qualify as fees for technical services. In this regard, at the very outset, the Id. Counsel submitted that the issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court in favour of the assessee in the case of *Pr. CIT-2 Vs. Lee & Murihead (P) Ltd. [2020] 119 taxmann.com 499 (Bombay)*. It was held by the Hon'ble Bombay High Court as follows:

*"The last question (i.e. question No. (d) pertains to the disallowance u/s 40(a)(ia) of the Act on account of non-deduction of tax at source by the assessee while making payment to Vi9desh Sanchar Nigam Ltd. Towards leased line charges. On merits, the Revenue had placed reliance on a decision of this Court in case of CIT Vs. Kotak Securities Ltd. [2012] 20 taxmann.com 846/340 ITR 333 (Bom). The Tribunal however, held that the amount in question was below Rs. 10 lakhs which was a minimum monetary limit enabling the Revenue to prefer appeal against the Commissioner's Appellate orders before the Tribunal. Revenue argues before us that the Tribunal should have seen the monetary limit of the combined appeals of the assessee as well as the Revenue arising out of the common judgment of the CIT(A) pertaining to the assessee for the same assessment year. In our opinion, this question is not required to be examined in view of the fact that the decision of this Court in case of Kotak Securities (supra) has been revised by the Supreme Court in the case of CIT Vs. Kotak Securities Ltd. [2016] 67 taxmann.com 356/239 Taxman 139/383 ITR 1 (SC). Resultantly, on the merits also, the Revenue would have no ground to succeed."*

4. Respectfully following the aforesaid decision, we direct the A.O/T.P.O to delete the addition on lease line charges from the hands of the assessee. Accordingly, this ground of appeal of the assessee is allowed.

5. The Id. Counsel thereafter submitted that the other issue in the present appeal relates to additions with respect to transfer pricing adjustments which they are not pressing. The Id. D.R raised no objection in this regard.

6. After hearing the parties, we dismiss the grounds relating to transfer pricing adjustment additions as not pressed.

7. The Id. Counsel further submitted that there is a ground of education cess which again they are not pressing. The Id. D.R raised no objection.

8. Having heard the parties, this ground of education cess is dismissed as not pressed.

9. In the result, this appeal of the assessee is partly allowed in above terms.

10. **ITA No. 1938/PUN/2018 for A.Y. 2014-15.**

The Id. Counsel for the assessee submitted that the only dispute in this regard is in respect of addition on account of lease line charges. We have decided the said issue in ITA No. 2038/PUN/2019 for A.Y. 2015-16. The parties agreed that the facts and circumstances are absolutely identical and similar for this year also. Therefore, our decision in ITA No. 2038/PUN/2019 shall apply *mutatis mutandis* to ITA No. 1938/PUN/2018. Accordingly we direct the Id. A.O/TPO to delete the addition on account of lease line charges. The ground of appeal is allowed. In the result, this appeal is allowed.

11. **ITA No. 476/PUN/2017 for A.Y. 2012-13 and 2442/PUN/2017 for A.Y. 2013-14**

The Id. Counsel for the assessee submitted that the first issue in both these appeals is in respect of addition on account of lease line charges. We have decided the said issue in ITA No.; 2038/PUN/2019 for A.Y. 2015-16. The parties agreed that the facts and circumstances are absolutely identical and similar for this year also. Therefore, our decision in ITA No. 2038/PUN/2019 shall apply *mutatis mutandis* to ITA No. 476/PUN/2017 and 2442/PUN/2017.

Accordingly we direct the Id. A.O/TPO to delete the addition on account of lease line charges. The ground of appeal is allowed.

12. The Id. Counsel thereafter submitted that the other issue in both these appeals relates to additions with respect to transfer pricing adjustments which they are not pressing. The Id. D.R raised no objection in this regard.

13. After hearing the parties, we dismiss the ground relating to transfer pricing adjustment additions as not pressed.

14. In the result, both these appeals are partly allowed in above terms.

15. In the combined result, **appeal in ITA No. 1938/PUN/2018 is allowed whereas appeals in ITA No. 2038/PUN/2018, ITA No. 476/PUN/2017 and 2442/PUN/2017 are partly allowed.**

Order pronounced in the open Court on this 07<sup>th</sup> day of June 2022

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Pune; Dated, the 7<sup>th</sup> day of June 2022  
Ankam

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT IT & TP Pune.
4. The DRP Panel 3, Bombay
5. D.R. ITAT 'C' Bench
5. Guard File

BY ORDER,

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Sr. Private Secretary  
ITAT, Pune.

1	Draft dictated on	06-06-2022	Sr.PS/PS
2	Draft placed before author	06-06-2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	07-06-2022	Sr.PS/PS
7	Date of uploading of order	07-06-2022	Sr.PS/PS
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10	Date on which file goes to the A.R		
11	Date of dispatch of order		