

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 5967/DEL/2019 (A.Y 2016-17)**

HCL Comnet Systems & Services Ltd. 806, Siddharth, 96, Nehru Place, New Delhi  <b>PAN No. AAACH3130M</b>  <b>(APPELLANT)</b>	Vs.	DCIT  Circle-11(1) Room No. 416, C. R. Building, New Delhi  <b>(RESPONDENT)</b>
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**I.T.A. No. 6360/DEL/2019 (A.Y 2016-17)**

DCIT  Circle-11(1) Room No. 247, 2 <sup>nd</sup> floor, , C. R. Building, I. P. Estate, New Delhi  <b>(APPELLANT)</b>	Vs.	HCL Comnet Systems & Services Ltd. A-10-11, Secdtor-3, Gautam Budh Nagar, Uttar Pradesh  <b>PAN No. AAACH3130M</b>  <b>(RESPONDENT)</b>
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**I.T.A. No. 5968/DEL/2019 (A.Y 2016-17)**

HCL Comnet Ltd. 806, Siddarth, 96, Nehru Place, New Delhi  <b>PAN No. AAACH9667H</b>  <b>(APPELLANT)</b>	Vs.	DCIT  Circle-11(1) Room No. 416, C. R. Building, New Delhi  <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Sh. Aditya Vohra, Adv &amp; Sh. Arpit Goyal, CA</b>
<b>Department by:</b>	<b>Sh. Sanjay Kumar, Sr. Ld. DR</b>

<b>Date of Hearing</b>	<b>27.06.2023</b>
<b>Date of Pronouncement</b>	<b>30.06.2023</b>

**ORDER****PER YOGESH KUMAR U.S., JM**

The appeals in ITA No. 5967/Del/2019 & 6360/Del/2019 have been filed by the assessee and the Revenue respectively for assessment year 2016-17 against the order of the Ld. Commissioner of Income Tax (Appeals) -4 ('CIT (A)' for short) New Delhi, dated 21/05/2019.

2. In ITA No. 5967/Del/2019, 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.4,08,994 related to the revenue which the appellant had deferred in the books of account, without appreciating that it was only a case of timing difference and no loss to the Revenue arose on account of said approach followed by appellant.*

*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.4,08,994 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."*

3. In ITA No. 6360/Del/2019 following grounds have been raised by the Revenue:-

*"Whether, on the facts and circumstances of case and in law, the Ld. CIT(A) was justified in deleting the addition made by the AO of disallowance of Rs. 5,78,44,487/- on account of license fee paid to Department of Telecom(DOT)?"*

4. Brief facts of the case are that, the assessee filed return of income declaring income at Rs.1,66,16,460/- under normal provision of the Act and shown book profit of Rs. 6,46,22,749/- u/s 115JB of the Act. Assessment order came to be passed by assessing the total income at Rs.7,04,07,140/- under normal provision of the Act and book profit of Rs. 6,46,22,749/- u/s 115JB of the Act, credit for TDS to the extent of Rs. 4,08,994/- has been disallowed on account of TDS claimed on deferred revenue. Aggrieved by the assessment order dated 20/12/2018, Assessee preferred an appeal before the CIT(A). The ld. CIT(A) vide order dated 21/05/2019 deleted the addition made by the A.O. of disallowing of Rs.5,78,44,487/- on account of license fee paid to Department of telecom and further upheld the disallowance of credit of TDS amounting to Rs.4,08,994/- related to Revenue which the assessee has deferred in the books of accounts. Aggrieved by the said disallowance, the assessee preferred the appeal in ITA No. 5967/Del/2019 and as against the deletion of addition of disallowance, the revenue preferred the Appeal in ITA No. 6360/Del/2019 on the grounds mentioned above.

**ITA No. 5967/Del/2019 (Assessee's Appeal) (A.Y 2016-17)**

**(Disallowance of TDS Credit)**

5. The ld. Assessee's Representative submitted that the similar issue has been considered in Assessee's own case for the Assessment Year 2015-16 in ITA No. 8168/Del/2017, wherein the Tribunal has relied on the order passed by the Co-ordinate Bench in Assessment Year 2014-15 and directed the A.O. to give proportionate credit of TDS for the income declared during the year under consideration. Therefore, prayed for deciding the issue by following the Rule of consistency.

6. The Ld. Departmental Representative did not dispute the above facts and relied on the order of the Lower Authorities.

7. We have heard both the parties and perused the material available on record. The issue involved in the present Appeal has been already dealt and decided by the Coordinate Bench of the Tribunal in Assessee's own case in AY 2015-16 in ITA No. 8068/Del/2018 in following manners:-

*"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 ld. CIT(A) confirmed the addition based on the order of the ld. 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."*

8. Considering the fact that the issue involved in the present Appeal has been considered by the Coordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2014-15 and 2015-16, wherein the Tribunal has directed the revenue to allow the proportionate credit of TDS for the income declared during the year under consideration. By respectfully following the orders of the Tribunal for A.Y 2014-15 & 2015-16, we allow the Grounds of Appeal of the assessee for statistical purposes by directing the A.O. to allow the proportionate credit of TDS for the income declared during the year under consideration.

**ITA NO. 6360/DEL/2019 (Department's Appeal) (A.Y 2016-17)****(License Fee)**

9. The Revenue has filed the present appeal challenging the deletion of addition made by the A.O. of disallowing of Rs. 5,78,44,487/- on account of license fee paid to Department of telecom. The Id. Assessee's Representative brought to our notice that the said issue has been already dealt and decided by the Tribunal in Assessee's own case for Assessment Year 2007-08 and 2015-16, therefore submitted that the Appeal of the Department is liable to be dismissed.

10. We have heard both the parties and perused the material available on record. It is found that the Co-ordinate Bench of the Tribunal while adjudicating the Appeal filed by the Revenue on the similar issue for the Assessment Year 2015-16 in ITA No. 447/Del/2019 held as under:-

*“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.”*

11. By respectfully following the order of the Coordinate Bench for A.Y 2015-16 wherein the Tribunal 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, we find no merit in the grounds of appeal of the Revenue, accordingly the Appeal filed by the Revenue in ITA No. 6360/Del/2019 is dismissed.

**ITA No. 5968/Del/2019 (Assessee's Appeal) (A.Y 2016-17)**

**(Disallowance of TDS Credit)**

12. The 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.67,78,851/- related to the revenue which the appellant had deferred in the books of account, without appreciating that it was only a case of timing difference and no loss to the Revenue arose on account of said approach followed by appellant.*

*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. 67,78,851/- 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.”*

13. The issue involved in the present Appeal of the Assessee is identical to that of the Appeal filed in ITA No. 5967/Del/2019, i.e. not allowing credit of Tax Deduction at Source amounting to Rs. 67,68,851/- related to revenue which the assessee had deferred in the books of account.

14. Since, in ITA No. 5967/Del/2019, while adjudicating the similar issue we have remanded the matter to the file of the AO for Assessment Year 2016-17 with a direction to the A.O. to allow the proportionate credit of TDS for the income declared during the year under consideration, by applying the same law, the same direction *mutatis mutandis* applies to the present Appeal in ITA No. 5968/Del/2019. Accordingly, the Grounds of Appeal of the Assessee allowed for statistical purpose.

15. In the result, Appeal filed by the Assess in ITA No. 5967/Del/2019 is allowed for statistical purpose, Appeal filed by the Revenue in ITA No. 6360/Del/2019 is dismissed and the appeal filed by the Assessee in ITA No. 5968/Del/2019 is allowed for statistical purpose.

**Order pronounced in the open court on 30<sup>th</sup> June, 2023.**

**Sd/-**  
**( PRADIP KUMAR KEDIA )**  
**ACCOUNTANT MEMBER**

Dated : 30 /06/2023

*R.N, Sr. PS\**

Copy forwarded to :

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

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 5967/DEL/2019 (A.Y 2016-17)**

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**I.T.A. No. 6360/DEL/2019 (A.Y 2016-17)**

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**CORRIGENDUM**

It is found that the cause title mentioned in ITA No. 5968/Del/2019 in the final order dated 30/06/2023, the name of the Appellant and the PAN

number have been incorrectly mentioned due to typographical error. Therefore, the cause title on the first page of the order dated 30/06/2023 in ITA No. 5968/Del/2019 is hereby corrected as under:-

**I.T.A. No. 5968/DEL/2019 (A.Y 2016-17)**

HCL Comnet Ltd. 806, Siddarth, 96, Nehru Place, New Delhi <b>PAN No. AAACH9667H</b> <b>(APPELLANT)</b>	Vs.	DCIT Circle-11(1) Room No. 416, C. R. Building, New Delhi <b>(RESPONDENT)</b>
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This corrigendum shall read with the final order dated 30<sup>th</sup> June, 2023 passed by the Bench.

Sd/-

**(Sh. PRADIP KUMAR KEDIA)**  
**Accountant Member**

Date:- 07/07/2023

Sd/-

**(YOGESH KUMAR U.S.)**  
**Judicial Member**