IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

IT(IT)A Nos.864, 865/Bang/2023
Assessment Years : 2009-10, 2010-11

The Deputy Commissioner of Income Tax, Circle -2(2), International Taxation, Bengaluru.	Vs.	M/s. Tata Communications (UK) Ltd., Vintners Place, 68 Upper Thames, Street London EC4V3BJ, United Kingdom - 999999. **PAN : AAHCT 0782 C**
APPELLANT		RESPONDENT

C.O.Nos.2, 3/Bang/2024 **(in IT(IT)A Nos. 864, 865/Bang/2023)**
Assessment Years : 2009-10, 2010-11

M/s. Tata Communictions (UK) Ltd., Vintners Place, 68 Upper Thames, Street London EC4V3BJ, United Kingdom - 999999. **PAN : AAHCT 0782 C**	Vs.	The Deputy Commissioner of Income Tax, Circle -2(2), International Taxation, Bengaluru.
CROSS OBJECTOR		RESPONDENT

Appellant by	:	Shri. Ketan Ved, CA
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	01.02.2024
Date of Pronouncement	:	01.02.2024

O R D E R

Per Bench :

These appeals at the instance of the Department and Cross-objections (CO) by the assessee are directed against two orders of CIT(A),

both dated 30.09.2023. The relevant Assessment Years are 2009-10 and 2010-11.

2. Common issues are raised in these appeals and the Cos, hence they were heard together and are being disposed off by this consolidated order.

3. Assessee is a foreign company engaged in the business of providing telecommunication services. For the Assessment Years 2009-10 and 2010-11, assessee received payment of Rs.5,48,13,709/- and Rs.14,69,97,294/- respectively. The payments were received by the assessee from M/s. Vodafone South Ltd., (VSL) towards interconnect usage charges. The proceedings under section 201 of the Act were initiated in the case of VSL for the Financial Years 2009-10 to 2011-12 in respect of non-deduction of tax at source on payments made to its Non-Resident Telecom Operators (NTOs) for provision of bandwidth capacity and provision of interconnect services. In the orders passed in the case of VSL under section 201 of the Act, the said charges were considered as Royalty / Fees for Technical Services (FTS) as per the Act and the respective Double Taxation Avoidance Agreement (DTAA).

4. Since the income was deemed to have been accrue / arise under section 9 of the Act in the hands of the assessee company amounting to Rs.5,48,13,709/- and Rs.14,68,97,294/- which has not been offered to tax, the AO issued notice under section 148 of the Act for Assessment Years 2009-10 and 2010-11. In response to the notices issued under section 142(1) of the Act, some were responded to by assessee. However, since

assessee did not respond to several notices, the assessments were completed under section 147 r.w.s. 144 of the Act, vide orders dated 26.12.2017 and 24.12.2018 for Assessment Years 2009-10 and 2010-11 respectively. In the said Assessment Orders, the AO held that payments received by the assessee company from VSL towards interconnect usage charges was in the nature of Royalty / FTS and added the same to the total income for the Assessment Years 2009-10 and 2010-11.

5. Aggrieved by the Orders of the AO, assessee filed appeals before the CIT(A). Before the CIT(A), assessee took the legal contention that reassessment order is not valid and also on the merits that the said amounts received by the assesee from VSL for the Assessment Years 2009-10 and 2010-11 were not liable to be taxed in India under section 9(1)(vi) of the Act nor under the relevant DTAA. The CIT(A) rejected the assessee's contentions on the legal grounds and held that reopening of assessment is valid. The CIT(A) on merits allowed the appeal of the assessee by following the ratio of the judgment of the Hon'ble jurisdictional High Court in the case of VSL [now known as Vodafone Idea Ltd., (VIL)] reported in (2023) 152 taxmann.com 575 (Karnataka).

6. Aggrieved by the orders of the CIT(A) for the Assessment Years 2009-10 and 2010-11, Revenue has filed the present appeals before the Tribunal. The assessee has also filed CO as against the CIT(A)'s orders rejecting the assessee's legal contention that reassessment order passed under section 144 r.w.s. 147 of the Act is bad in law. At the very outset, the learned AR submitted that the issue on merits is covered in favour of

the assessee by the judgment of the Hon'ble High Court referred supra. It was submitted by the learned AR that if the issue is decided on merits, the assessee's COs may be dismissed as infructuous.

7. The learned DR was unable to controvert learned AR's submission that issue on merits is covered in favour of the assessee by the judgment of the Hon'ble High Court in the case of VSL (supra).

8. We have heard the rival submissions and perused the material on record. In the instant case, the assessments were reopened for Assessment Years 2009-10 and 2010-11 on the basis of the orders passed under section 201 of the Act in the case of the payer viz., VSL. The Tribunal in the case of M/s. VSL (the payer) in the proceedings under section 201 of the Act, had held that the said charges paid to the non-resident is Royalty/FTS and the income is deemed to accrue or arise under section 9 of the Act. Therefore, it was concluded by the Tribunal that the assessee in that case viz., VSL ought to have deducted tax at source and having failed to do so, the proceedings under section 201 of the Act, is valid. However, the order of the Tribunal in the case of VSL was reversed by the Hon'ble jurisdictional High Court in the case relied on by the CIT(A). Since the Hon'ble jurisdictional High Court has categorically held that the payment made by the VSL is not Royalty/FTS, the same cannot be brought to tax in the hands of the assessee under section 9 of the Act and the relevant DTAA. The relevant finding of the Hon'ble jurisdictional High Court has been elaborately extracted in the impugned order of the CIT(A), therefore the same is not reiterated here. In view of the aforesaid judgment of the

Hon'ble High Court in the case of VSL (supra), we hold that CIT(A) is justified in deciding the issue on merits in favour of assessee and deleting the additions made by the AO for Assessment Years 2009-10 and 2010-11. It is ordered accordingly.

9. Since we have decided the issue on merits and dismiss the Department's appeals, the COs filed by the assessee are rendered infructuous and the same are dismissed.

10. In the result, Revenue's appeals and the COs of the assessee are dismissed.

Sd/-	**Sd/-**
(LAXMI PRASAD SAHU)	**(GEORGE GEORGE K)**
Accountant Member	**Vice President**

Bangalore,
Dated : 01.02.2024.
/NS/*

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.