आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखासदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.587/Chny/2017
निर्धारण वर्ष /Assessment Year: 2010-11

M/s. Vodafone Mobile Services Ltd., (formerly known as Vodafone Cellular Ltd which now stands amalgamated with Vodafone Mobile Services Ltd.) C-48, Okhla Industrial Area, Phase-II, New Delhi – 110 020. [PAN: AAACB-8614-L]	**Vs.**	The Dy. Commissioner of Income Tax, Corporate Circle-1, Coimbatore.
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri Ketan K. Ved, C.A
प्रत्यर्थी की ओर से /Respondent by	:	Shri A. Sasikumar, CIT
सुनवाई की तारीख/Date of Hearing	:	06.11.2024
घोषणा की तारीख /Date of Pronouncement	:	29.01.2025

आदेश / **O R D E R**

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2010-11 arises out of the order of Learned Commissioner of Income Tax (Appeals)-1, Coimbatore [hereinafter "CIT(A)"] dated 23.12.2016 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 144C(1) r.w.s 143(3) of the Income-tax Act, 1961 (hereinafter "the Act") on 23.12.2016.

2. The assessee has raised the grounds of appeal as under:

"The Appellant respectfully submits that:

On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) 1, Coimbatore ['CIT(A)'] has erred in passing the order under section ('u/s') 250 of the Income Tax Act, 1961 ('Act'), partly confirming the adjustments made by the learned Deputy Commissioner of Income Tax, Company Circle I(1), Coimbatore ('AO') in the assessment order passed u/s 143(3) read with section 144C of the Act.

Each of the ground is referred to separately, which may kindly be considered independent of each other.

1. Ground No. 1 Assessment order is bad in law and hence, void-ab-initio.

1.1 On the facts and circumstances of the case and in law, the learned CIT(A) has failed to adjudicate the following ground taken by the Appellant in the appeal filed before the learned CIT(A):

> *"On the facts and circumstances of the case and in law, the impugned assessment order is bad in law since it has been passed after the limitation period prescribed under section 153(2) of the Act."*

2. Ground No. 2 Disallowance u/s 40(a)(ia) of the Act on account of non-deduction of tax at source from discount extended to prepaid distributors.

2.1 On the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in proposing to make an addition under section 40(a)(ia) of the Act on account of alleged non-deduction of tax on the discount extended to prepaid distributors, amounting to INR 1,633,352,748.

2.2 On the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in concluding that the relationship between the Appellant and its pre-paid distributors is that of a 'Principal and Agent'.

2.3 Without prejudice to the above grounds, on the facts and circumstances of the case and in law, the learned CIT(AVAO has erred in not holding that no disallowance can be made under section 40(a)(ia) of the Act since the Appellant is of a bonafide belief that no tax was required to be deducted at source on discount extended to pre-paid distributors;

2.4 Without prejudice to the above grounds, on the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in not restricting the disallowance urider section 40(a)(ia) of the Act to the amount which remains payable at the end of the year, which stands at 'NIL".

2.5 Without prejudice to the above grounds, on the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in not adjudicating and holding that the insertion of second proviso to section 40(a)(ia) of the Act vide Finance Act, 2012 is curative in nature and its benefit should be extended to the past years and accordingly the learned AO be directed:

2.5.1 to allow deduction in respect of the disallowance of INR 1,633,352,748 made u/s 40(a)(ia) of the Act for the subject AY in the subsequent year's, basis the conditions prescribed in the second proviso to section 40(a)(ia) of the Act;

2.5.2 to allow deduction in the subject AY (i.e. AY 2010-11) for similar disallowance made in prior years basis the conditions prescribed in the second proviso to section 40(a)(ia) of the Act.

2.6 Without prejudice to the above grounds, on the fact and circumstances of the case and in law, the learned AO be directed:

2.6.1 to allow deduction in respect of the disallowance made in the subject AY under section 40(a)(ia) of the Act of INR 1,633,352,748 in the subject AY or in subsequent AYs, to the extent of demand paid under section 201(1) of the Act by the Appellant in accordance with first proviso to section 40(a)(ia) of the Act;

2.6.2 to allow deduction in the subject AY for similar disallowance made in prior year's to the extent of demand paid under section 201(1) of the Act during the subject AY in accordance with first proviso to section 40(a)(ia) of the Act.

3. Ground No. 3 Disallowance of year-end accruals under section 40(a)(ia) of the Act.

3.1 On the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in making a disallowance of INR 158,186,618 under section 40(a)(ia) of the Act towards year-end accruals.

3.2 On the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in concluding that the year-end accruals, created on a best estimate basis to ascertain the financial results for the year, are subject to tax deduction at source under Chapter XVII-B of the Act.

3.3 Without prejudice to the above, on the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in not allowing deduction for year-end accruals disallowed in the assessment order passed for AY 2009-10, which were reversed in the beginning of the financial year relevant to the subject assessment year.

4. Ground No. 4-Disallowance of club entrance fee/subscription charges.

4.1 On the facts and circumstances of the case and in law, the learned CIT(A)/AO has erred in making an addition of INR 58,337 towards club entrance fees/ subscription charges paid by the Appellant by holding the same as expenditure of capital nature.

The Appellant craves leave to add, alter, amend or withdraw any of the above grounds at or before the hearing of the appeal."

3. Ground No.1 is general in nature hence, no adjudication is required for the same.

4. Ground No.2 is against disallowance of discount extended to prepaid distributors of Rs. 1,633,352,748/- u/s. 40(a)(ia) of the Act.

4.1 The assessee has paid Rs 163,33,52,748 to its various distributors of prepaid SIM cards/recharge coupons. This amount represents the difference between MRP of the talk time and prepaid connections and the price at which these are transferred to pre-paid distributors and discount in nature. A.O has made disallowances of discount extended by the assessee company to various distributors of prepaid SIM Card/Recharge coupon u/s 40(a)(ia) of the Act on the ground that assessee was required to deduct TDS under section 194H

on such discount. The Ld. CIT(A) has confirmed the disallowances relying on the order of ITAT, Chennai in assessee's own case decided in ITA Nos.1415 & 1416/Mds/2009 dated 01.04.2011.

4.2 The Ld. Authorized Representative (A.R) of the assessee at the outset has submitted that the issue whether TDS is to be deducted by the cellular mobile services company on the discount given to distributor has now been settled by the decision of Hon'ble Supreme Court in the case of Bharti Cellular Ltd., v. ACIT [2024] 160 taxmann.com 12 (SC), wherein the Hon'ble Supreme Court has held that Section 194H of the Act is not applicable in respect of payment made by the distributor/franchise. The Ld. AR further submitted that Hon'ble ITAT, Delhi Benches in the case of Vodafone Idea Ltd. (successor to Vodafone Mobile Services Ltd.) for A.Y 2012-13 dated 05.06.2024 in ITA No.37/Del/2023 relying the decision of Hon'ble Supreme Court has deleted such disallowances. The Ld DR could not controvert Ld. AR's argument. As the issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court, supra, the disallowances made by AO is not sustainable. The ground of appeal is accordingly allowed.

5. Ground No.3 is against disallowance of year-end accruals u/s. 40(a)(ia) of the Act.

5.1 The A.O has made the disallowance of Rs.15,81,86,618 on year-end provisions for expenses u/s 40(a)(ia) of the Act on the ground that TDS has not been deducted at the time of credit. The assessee has followed mercantile system of accounting and in order to arrive at the correct profit for the year all expenses pertaining to year in accordance with the matching principle is accounted for. The assessee has accounted for all the expenses for the bills/invoices might not have received after closure of Financial Year subject to the A.Y by year-end provisions and after closure of financial year such year-end provisions were fully reversed and credited to profit and loss account. Subsequently, as and when invoices were received in the subsequent year, the same were charged as an expenses and debited to profit and loss account and wherever applicable, tax on such expenses were deducted. The A.O has made the disallowances citing the TDS provisions that TDS is to be deducted whenever any sum credited to any account, even in the case of suspense account. The A.O held that the assessee was required to deduct TDS on year end provision

debited and disallowed year-end accruals u/s. 40(a)(ia) of the Act . The Ld CIT(A) confirmed the disallowances.

5.2 The Ld. AR before us has submitted that the TDS is not deductible on the year end provision as it is just accounting entry for matching principle to arrive at correct profit of the year as per accounting principle. The AR argued that the provision has been reversed on the next day at the beginning of financial year. The Ld AR has submitted that this issue is covered in favour of the assessee by the decision of Hon'ble Karnataka High Court in the case of Subex Ltd. vs. DCIT [2023] 148 taxmann.com 271 (Karnataka) and the order of Hon'ble ITAT, Mumbai Bench in the case of Mahindra & Mahindra Ltd. v. DCIT [2012] 24 taxmann.com 267 (Mumbai-Trib.).

5.3 The Ld. Departmental Representative (DR), on the other hand, has relied on the order of Ld. CIT(A).

5.4 We have heard the rival submissions, and perused the materials available on record. The A.O has disallowed the year end provision debited on the last day of accounting u/s 40(a)(ia). The provision has been reversed and credited back on the next day and such

expenditure has been debited on the basis of actual bill and TDS deducted, wherever applicable in the next financial year. We find that the issue whether TDS is to be deducted on year-end provisions which is reversed on the first day of the subsequent year has been decided by the Hon'ble Karnataka High Court in the case of Subex Ltd. v. DCIT, supra, as under:

> *"9. It is not in dispute that the provisions made at the end of the accounting year were reversed in the beginning of the next year and no payees were identified nor the exact amount payable.*
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> *10. In Karnataka Power Transmission Corporation Ltd. (supra), relied upon by the assessee, this Court has held that if no income is attributable to the payee there is no liability to deduct tax at source in the hands of the tax deductor. After quoting a passage from Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC). this Court has held that the existence or absence of entries in the books of accounts is not decisive or conclusive factor in deciding the right of the assessee claiming deduction.*
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> *11. In Volvo India (P) Ltd. v. ITO [IT Appeal No. 369 of 2018, dated 15-11-2021], this Court has observed that:*
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> > *"It is ex facie apparent that the contention of the assessee inasmuch as non-identification of the payees în the provisions and the disallowance of deduction expenditure under section 40(a)(ia) of the Act has not been rightly appreciated by the Tribunal... If the deduction is not claimed for the expenditures made in the provision even in the return submitted and the same is offered to tax in the subsequent year after reversing the entries pursuant to the receipt of the bills/invoices by the payees, the matter has to be analysed having regard to, whether income has accrued to the payees to deduct tax at source."*
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> *12. We may record that it was argued by Shri. Chaithnaya that assessee had deducted tax at source in subsequent year in accordance with the provisions of Chapter XVII-B and remitted within the due date and the same was not refuted.*
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> *13. So far as the authority in Palam Gas Service (supra), it is relevant to note that the payees were identified in that case as recorded in*

para 5 of that judgment. In contradistinction, in the case on hand the payees were not identified. Therefore, the said authority does not lend any support in the contentions urged on behalf of the Revenue."

5.5 As the issue is covered by the decision of Hon'ble Karnataka High Court, supra, the addition made by A.O is not sustainable. The ground of appeal is accordingly allowed.

6. Ground No.4 is against the disallowance of club expenses.

6.1 The A.O has made disallowance of entry fee/subscription charges paid by the assessee of Rs. 58,337/- on the ground that the said expenditure is capital expenditure. On appeal, the Ld. CIT(A) relying on the decision of Hon'ble Kerala High Court in the case of Framatone Connector OEN Ltd. v. DCIT 294 ITR 559 (Kerala) has confirmed the above addition.

6.2 The Ld. AR before us has submitted that the issue is covered in assessee's favour by the decision of Punjab & Haryana High Court in the case of CIT v. Groz Beckert Asis Ltd. [2013] 351 ITR 196 (P & H) and the decision of Hon'ble Karnataka High Court in the case of Ingersoll-Rand India Ltd. v. CIT [2020] 427 ITR 158 (Kar.). The Ld. AR has submitted that the Hon'ble Karnataka High Court has considered

the decision of Hon'ble Kerala High Court and decided the issue in favour of the assessee.

6.3. The Ld. DR, on the other hand, has relied on the order of Ld. CIT(A).

6.4 We have heard the rival submissions, and perused the materials available on record. The assessee has incurred club expenses of Rs.58,337 and claimed as revenue expenditure. The A.O without examining the nature of expenditure has held it capital expenditure The Hon'ble Karnataka High Court in the case Ingersoll-Rand India Ltd. v. CIT, supra, has held that expenditure spend on club expenses are revenue in nature. Respectfully following the decision of Hon'ble Karnataka High Court, supra, the addition made on disallowance of club expenses is deleted. The ground of appeal is accordingly deleted.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 29th January, 2025.

Sd/-	**Sd/-**
(यस यस विश्वनेत्र रवि)	**(जगदीश)**
(SS Viswanethra Ravi)	**(Jagadish)**
न्यायिक सदस्य / Judicial Member	**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 29th January, 2025.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF