



*“1. a) On the facts and under the circumstances of the case and in law, the Learned CIT(A) erred in passing a non-speaking order u/s 250 which is bad in law.*

*b) On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in passing order u/s 250 without providing the assessee a reasonable opportunity of being heard thereby violating principles of natural justice*

*2. a) On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in passing order u/s 250 by merely relying on adverse order passed u/s 201 by a Subordinate officer without appreciating the fact that order passed u/s 201 is a pending subject matter of appeal before CIT(A)*

*b) On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in passing adverse order u/s 250 on basis of order u/s 201 which thereby taxes the appellant u/s 112, a capital gain section instead of any TDS section under chapter XVII.*

*3. a) On the facts and under the circumstances of the case and in law, the entire re-assessment u/s 147 is purely based on conjectures and surmises without any concrete evidence*

*b) On the facts and under the circumstances of the case and in law, the leaned CIT(A) erred passing an adverse order by treating purchase of minutes from foreign party as a technical service by merely relying on Union Carrier Services Agreement without passing a speaking order as to why the same would fall within the definition of technical service u/s 9(1)(vii) and without providing any justification to the reasons submitted by the appellant.*

*c) On the facts and under the circumstances of the case and in law, learned CIT(A) erred in passing order u/s 250 without considering the judgement of Apex Court in case of Bharti Cellular which inter-alia states that a service can be termed as technical service only in presence of a human intervention.”*

2. The assessee is a company and engaged in the business of rendering Voice over Internet Protocol (VoIP) services to clients in India. VoIP is a technology that allows the user to make voice calls using internet connection instead of the regular or analog phone line. Under the VoIP technology voice signals are converted into digital data which is then transmitted over internet and uses a public network

internet that results in lower cost and better quality. The assessee has obtained a licence from Department of Tele-communications (DOT) in the year 2006 to operate the internet and VoIP services in India. The assessee has built its own data centre infrastructure and cultivated a customer base in India such as contact centre, BPOs and was purchasing VoIP units from International Telecom Carriers. The assessee filed the return of income for AY 2018-19 on 16.10.2018 declaring a total income of Rs. 20,17,190/-. The AO received certain information through insight portal from International Taxation, Mumbai that the assessee has paid a sum of Rs. 3,44,82,784/- to Novanent, Singapore Pte. Ltd (NSPL) during the Financial Year (FY) 2017-18 towards communication charges and that the assessee has not deducted tax on the same. Based on the said information the AO initiated the proceedings under section 148A of the Income Tax Act, 1961 (the Act) and after passing the order under section 148A(d) issued a notice under section 148 of the Act. The assessee submitted that the amount paid by the assessee to NSPL is towards purchase of VoIP minutes which the assessee in turn would sell to the Indian customers and the difference in the price is the income of the assessee. The assessee also submitted that the amount paid is not taxable in the hands of NSPL in India and therefore the assessee has not deducted tax at source on the same.

3. The AO did not accept the submissions of the assessee. The AO further relied on the proceedings initiated under section 201 of the Act where it has been held that the exact nature of the transaction remained unverified. The assessee submitted a copy of the Unilateral Carrier Services Agreement (UCSA) which defines the terms of engagement between the assessee and NSPL. The AO after perusing the agreement and the other details furnished by the assessee held that NSPL is providing technical services which taxable in India and that the tax ought to have been deducted on the said payments. The AO further held that the assessee

is a PE of NSPL and therefore, the payment is taxable in India. Accordingly, the AO disallowed the entire amount of Rs. 3,44,82,784/- under section 40(a)(i) of the Act.

4. Aggrieved the assessee filed further appeal before the CIT(A) who upheld the order of the AO by holding that

*“5.3.0 I have gone through the grounds of appeal, assessment order and Statement of facts submitted by the appellant. In this case, separate proceedings was initiated against the appellant under sec. 201 of the Act wherein a demand of Rs. 53,00,415/- was raised on the assessee. In the said proceedings, the concerned officer has concluded that assess liable to deduct tax at source on payment made to Novanet Singapore Pte. Ltd. The concerned officer has observed that 'the exact nature of transaction remained unverified.*

*5.3.1 In the present appellate proceedings, it was submitted that during the relevant year instead of buying the said minutes from other operators the appellant bought the same from the Singapore entity which had relationships with major global telecom companies. Thus it is very clear that appellant was not securing orders in India for NSPL since it already has existing business in India along with complete technology infrastructure and required telecom license to conduct the business for which it procured VoIP minutes.*

*5.3.2 During the course of assessment proceedings, the appellant vide letter dated 14.4.2023 has submitted audit report, P & L account, Balance sheet, computation of income, 26AS, Unilateral Carrier Service Agreement, order u/s. 201 of the Act. The AO observed from the Unilateral carrier services Agreement submitted by the appellant during the course of assessment proceedings that the Singapore Entity is providing technical services to the assessee and the payment made thereon partakes the character of fee for technical services.*

*5.3.3 In view of the above and after perusal of the Unilateral Carrier Services Agreement and order under sec. 201 of the IT Act passed by the concerned officer for the violation of the provisions of TDS on payment made to NSPL, I am of the opinion that no interference is required in the assessment order. Hence, the addition is upheld and the ground No. 2 and 3 are dismissed.”*

5. The Id. AR submitted that NSPL was incorporated only in the year 2012 whereas the assessee is incorporated in the year 1997 and that the assessee has

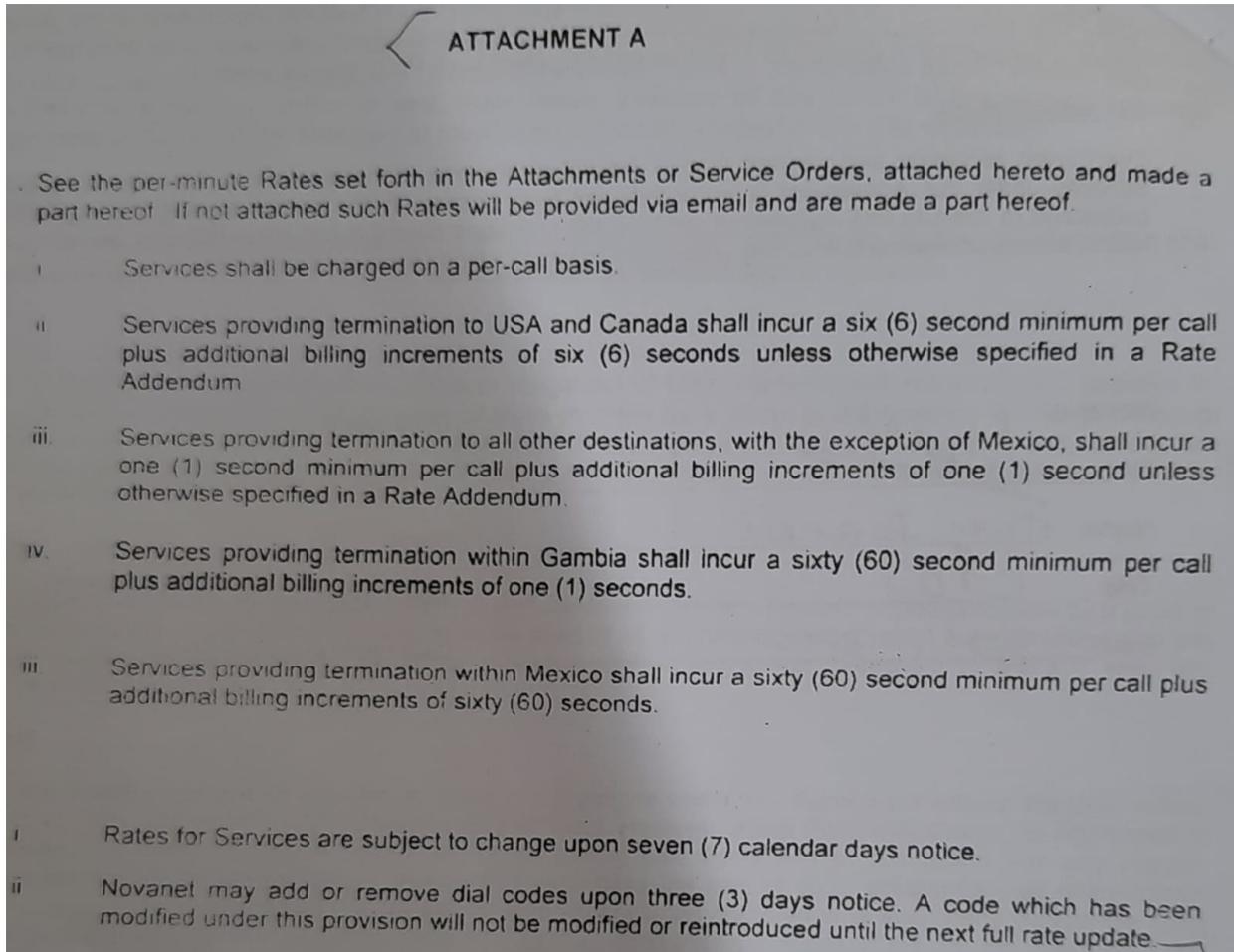
been carrying on the business of rendering VoIP services much before the Singapore entity was incorporated. The ld. AR further submitted that the assessee has been buying the VoIP Minutes from other international operators before the NSPL was incorporated and that the assessee is having an existing business in India with complete technology, infrastructure, telecom licence, etc. The ld. AR also submitted that the NSPL is not providing any technical services to the assessee and that the payment is made for procuring the VoIP Minutes which is a fully automated process. It is also submitted that the ld. AR that NSPL does not have any technical staff to provide any technical support of any nature which is evidenced from the financials of NSPL where the employee cost is only 3%. The ld AR argued that NSPL does not make available any knowledge to the assessee and therefore the income cannot be treated as FTS in the hands of NSDL. The ld AR further argued that the VoIP process is entirely system driven without human intervention and therefore it cannot be said that NSPL is providing any technical services to the assessee. In this regard the ld. AR placed reliance on the following decisions

1. *Commissioner of Income Tax V. Bharti Cellular Ltd. [2008] 175 Taxman 573 (Delhi).*
2. *Vodafone Digilink Ltd. Vs. Commissioner of Income-Tax, (TDS) [2017] 87 taxmann.com 315 (Delhi-Trib.)*
3. *Atos Information Technology HK Ltd. Vs. Deputy Commissioner of Income-tax, (IT)-1 (1)(2), [2017] 79 taxmann.com 26 (Mumbai-Trib.)*
4. *Atos Information Technology HK Ltd. Vs. Deputy Commissioner of Income-tax, (International Taxation) [2022] 138 taxmann.com 439 (Mumbai-Trib.)*”

6. The ld. DR on the other hand relied on the order of the lower authorities.

7. We heard the parties and perused the material on record. The issue arising in this appeal for our consideration is whether the amount paid by the assessee to NSPL toward purchase of VoIP minutes is to be treated as FTS and accordingly tax deductible under the Act. Before we proceed to adjudicate the impugned issue, we will understand the VoIP technology and the nature of billing done for usage of VoIP i.e. based on VoIP minutes. VoIP is a technology in which calls are made using the internet connection instead of traditional telephone lines. VoIP converts the voice into a digital signal which is sent in digital packets through internet and these packets gets arranged to be reconverted at the receiving end. A typical example of VoIP is the calls using WhatsApp. VoIP communication can be done using a public internet services such as Airtel, Jio etc. where the issues may arise due to poor connectivity and also there is a risk of data protection. Therefore the big companies, who have huge requirement for uninterrupted and secured communication link, enter into agreement with internet service providers for a dedicated VoIP services i.e. where the network is dedicatedly made available to the customer. If the companies have international operation then the service provider procures the VoIP network from various suppliers across the globe and sells the same to the customer. The assessee is one such service provider who procures the VoIP network from various carriers across the globe and sells the same to the customers in India. As per the submissions of the assessee, instead of the assessee obtaining the VoIP from various international carriers across the globe, NSPL was formed to consolidate the procurement and to manage the various suppliers. In other words, NSPL buys and sells the VoIP network among various international customers including the assessee. The billing for using VoIP network is done for the bandwidth and the usage i.e. VoIP minutes. This is similar to the billing of traditional phone lines where the customer is billed for the minutes

spoken during a particular call. The fact that the assessee is using the similar method for purchasing the VoIP network from NSPL and that the assessee is charging the customers also in the similar manner is evidenced from the below extracts from the UCSA with NSPL and the contract entered into by the assessee with Bajaj Alianze General Insurance Company Ltd.



3. Exhibit A of the Original Agreement is replaced as under :

Pricing Summary			
Sr. No.	Description of Materials /Services	For 1 year (INR)	For 2 year (INR)
1	Rental (UFIN/ITFS) international Toll free Number		
	Basic Cost	1,211,760	2,423,520
Location	Incoming	Incoming	Rental

	from Fixed per min rate	from Mobile per min rate	
Australia	6.17		
Austria	7.43	6.17	3300
Belgium	6.47	27.39	3300
Denmark	6.47	30.03	3300
Finland (Elisa)	6.47	38.81	3300
Finland (Telia)	26.3	No Access	3300
France	30.03	No Access	3300
Germany	6.47	19.8	3300
Hong Kong	6.468	19.8	3300
Hungary	6.47	6.47	3300
Ireland	8.68	24.52	3300
Israel	6.47	No Access	3300
Italy	12.54	12.54	3300
Japan (NTT)	14.32	39.27	3300
Japan (KDDI)	31.18	31.19	3300
Japan (Softbank)	31.19	31.19	3300
Korea, South (LG)	31.19	31.19	3300
Malaysia	10.96	10.96	3300
Netherlands	6.47	No Access	3300
New Zealand	7.18	33	3300
Norway	6.47	33	3300
Philippines	14.85	14.85	3300
Portugal	45.53	No Access	3300
Singapore	8.5	38.61	3300
Spain	6.47	6.47	3300
Sweden	10	29.87	3300
Switzerland	6.47	34.78	3300
Thailand	7.18	34.25	3300
UK	25.61	25.61	3300
USA	14.09	14.09	3300
Canada	4.09	4.09	2640
	4.75	4.75	2640
Monthly Rental	Extra at actual	Extra at actual	100980

Air time: Airtime is counted anytime you are using your phone to make or receive voice calls.

8. Now coming to the issue of whether NSPL is providing any technical service to the assessee by procuring and selling the dedicated VoIP network. It is relevant to note here that the VoIP is a fully automatic process with no human intervention i.e. the conversion of voice in to digital data, transmitting data packets through optimum routing, and reconvertng into voice at the receiving end etc. The role of NSPL and for that matter even that of the assessee is to ensure that the customer who has bought the dedicated VoIP network is provided with the same. NSPL is not involved in the technology of VoIP but acts as an intermediary to obtain the network services and sell the same to the customers. Therefore it cannot be said that NSPL is providing any technical services to the assessee by procuring and selling the VoIP network. There are judicial precedences as relied on by the assessee where it has been held that when there is no human intervention and process is carried out through a fully automated software, then there is no FTS. Considering unique nature of business of providing VoIP network to the customers, we are of the view that NSPL cannot be said to be providing any technical service to the assessee and therefore the payment made by the assessee cannot be treated as FTS. Further NSPL does not have a PE in India and that no technical services are made available to the assessee. Accordingly we hold that the payments made by the assessee to NSPL towards VoIP are not taxable in the hands of NSPL in India and therefore the assessee is not liable to deduct any tax on such payments. We direct the AO to delete the disallowance made under section 40(a)(ia) of the Act.

9. In result, the appeal of the assessee is allowed

*Order pronounced in the open court on 27-02-2025.*

**Sd/-**  
**(AMIT SHUKLA)**  
**Judicial Member**

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**