

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

IT(IT)A No.2432/Bang/2024
Assessment Year: 2012-13

DCIT(IT) Circle-2(2) Bangalore	Vs.	Telekom Malaysia Berhad Level 51, North Wing Menara TM, Jalan Pantai Baharu Kuala Lumpur 50672 Malaysia PAN NO :AAGCT7561A
APPELLANT		RESPONDENT

Appellant by	:	Sri Manju Prasad, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	28.01.2025
Date of Pronouncement	:	25.04.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the Revenue is directed against the order of the Id. CIT(A), Bengaluru-12 dated 8.11.2024 vide DIN & Order No. ITBA/APL/S/250/2024-25/1070196755(1) passed u/s 250 of the Income Tax Act, 1961 (in short “the Act”) for the assessment year 2012-13.

2. The revenue has raised the following grounds of appeal:

- 1. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-12 was right in ignoring the fact that the assessee had in accordance with the agreement entered into by it provided carriage and connectivity services to M/S. Vodafone Idea Ltd. and the payment made therein were taxable as per section 9 of the Income Tax Act?*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in relying upon the judgement of Hon'ble High Court of Karnataka holding that the payments to NTOS for interconnect services and capacity transfer are not taxable as Royalty without considering that the processes were triggered from India thereby making the source of such income accrue/arise out of India, for the NTOs to earn the income and the payments were made the deductor by collecting it from the ultimate payer i.e., the end consumer India for services rendered?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in holding that the process royalty not applicable without as much as considering the agreements between the assessee and payees, opinion experts in the field of telecommunication and provisions governing royalty the act and DTAA?*

3. Brief facts of the case are that the assessee is a non-resident company incorporated under the laws of Malaysia. The Company is engaged in the business of providing telecommunication services. Proceedings under section 201(1) and 201(1A) of the Act in the case of Vodafone South Limited ("VSL") were initiated for the AY 2008-09 to AY 2012-13 in respect of non-deduction of taxes at source on payments made to its non-resident telecom operators for provision of interconnect and bandwidth charges. The said charges were considered as Royalties/ Fee for Technical Services both as per the provisions of the Act and as per the tax treaties. On perusal of the submissions made by VSL, it was observed that VSL had paid an amount of INR 2,03,99,120/- to the Company towards interconnect charges. In this regard, the learned AO issued notice under section

148 of the Act dated 28 March 2019 initiating the assessment proceedings under section 147 of the Act and asked the Assessee to file a return of income ("ROI") for the said year. In response to the notice, the Company filed a NIL ROI for AY 2012-13 on 9 February 2021. During the proceedings, the learned AO had issued notice dated 11 February 2021 under section 143(2) of the Act wherein reasons for initiating the reassessment proceedings were furnished and another notice dated 18 February 2021 under section 142(1) of the Act wherein certain information and documents were sought. The Company filed objections dated 26 February 2021 in response to the notice issued under section 143(2) of the Act which were disposed vide order dated 4 March 2021. Thereafter, the Company complied with the terms of the notice dated 18 February 2021 issued under section 142(1) of the Act by providing submissions dated 29 May 2021 and 24 August 2021. Subsequently, a show cause notice ("SCN") was issued dated 28 August 2021 as to why the said amount received from M/S Vodafone South Limited should not be held as royalty income and brought to tax. In response, the Company filed a response dated 16 September 2021 wherein it referred to its submission dated 29 May 2021 and 24 August 2021 and also highlighted the learned AO about the error in the SCN regarding the Company not filing its ROI in response to the notices issued under section 148 of the Act. Thereafter, a draft assessment order dated 16th September, 2021 was passed by the learned AO under section 143(3) r.w.s 147 r.w.s 144C of the Act. In response, the assessee filed a letter dated 28 October 2021, stating its intention to not file any objections before the Id. Dispute Resolution Panel ("DRP") and reserving its right to file an appeal before the CIT(A) against the final assessment order. Additionally, the assessee also requested the learned AO to adjust its demand from the tax payments already made by the Indian vendors including VSL and the refund due to

the assessee for AY 2009-10 under the Vivad se Vishwas Scheme, 2020. The AO Accordingly, passed the final assessment order dated 18 November 2021(received on 19 November 2021) under section 143(3) r.w.s 147 r.w.s 144C of the Act, holding that payments made to the assessee are taxable in India as they are sourced from India and thus the income accrues in India. Further, the learned AO also held that the payments made to the assessee are taxable as royalty- in India both under section 9(1)(vi)(b) of the Act and Article 12 of the India Malaysia Tax Treaty. Accordingly, the AO determined a final demand of INR 3,49,73,232/-.

4. Aggrieved by the said assessment order issued under section 143(3) r.w.s 147 r.w.s 144C of the Act dated 18 November 2021 of the Act, the assessee Company preferred an appeal before the Id. CIT(A).

5. Before the Id. CIT(A) the assessee submitted that identical issue raised in the case of M/s. Vodafone Idea Ltd., who filed appeal against the order of coordinate bench before the Hon'ble Karnataka High Court wherein the issue was decided against the revenue. The revenue had also challenged it before the Hon'ble Supreme Court and the SLP was dismissed. The Id. CIT(A) held that in view of the decision of the Hon'ble Supreme Court, the issue whether inter-connect charges should be treated as Royalty or not has reached finality, as Hon'ble Supreme Court has held that such charges are not Royalty and accordingly, the appeal of the assessee was allowed by the Id. CIT(A).

6. Aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

7. The Id. D.R. reiterated the findings of Id. AO and the Id. A.R. supported the order of Id. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. We find that the only issue in this case is whether inter-connect service charges paid by various Indian telecom operators amounting to Rs. 17,39,96,177/- are chargeable to tax in India as per the Income Tax Act or DTAA. We find that the Id. CIT(A) has categorically relied upon the Hon'ble Karnataka High Court in the case of M/s. Vodafone India Limited (earlier known as VSL) vide judgement dated 14.7.2023 and Hon'ble Supreme Court has dismissed the SLP also filed by the revenue in its decision dated 26.7.2024. In case of assessee on identical facts and circumstances, the coordinate benches have also held that inter-connect charges are not royalty. Therefore, respectfully following all the above decisions, we do not find any infirmity in the order of Id. CIT(A) in holding that inter-connect charges cannot be taxed as Royalty. Hence, the order of Id. CIT(A) is upheld.

9. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 25th Apr, 2025

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 25th Apr, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
- 5 Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**