

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

**SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos. 4867/DEL/2024  
Asstt. Yrs: 2022-23**

|   |           |   |
|---|-----------|---|
| <b>HCL Comnet Systems And Services Ltd., 806 Siddharth, 96 Nehru Place, South Delhi-110019.</b> | <u>Vs</u> | DCIT, Circle 19(1)/<br>Assessment Unit, I.T.<br>Department. |
| <b>PAN: AAACH 3130 M</b>  |           |   |
| <b>APPELLANT</b>  |           | <b>RESPONDENT</b>   |
| <b>Assessee represented by</b>  |           | Shri Aditya Vohra, Adv. &<br>Sh. Shashvat Dhamija, Adv.     |
| <b>Department represented by</b>  |           | Sh. Rajesh Kumar Dhanesta, Sr.<br>DR                        |
| <b>Date of hearing</b>  |           | 18.02.2025  |
| <b>Date of pronouncement</b>  |           | 19.05.2025  |

**ORDER**

**PER Ms. MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 03.09.2024 passed by the National Faceless Appeal Centre (NFAC) (hereinafter referred to as "First Appellate Authority), Delhi, arising out of the assessment order dated 31.03.2024 passed by Assessment Unit, Income Tax Department (hereinafter referred to as "AO") under Section 143(3) read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**') for Assessment Year 2022-23.

2 Brief facts, appellant company is a Public Limited Company, engaged in business of providing remote infrastructure management service and telecommunication service. The appellant company in its return of income filed on 25.10.2022 has declared Nil income and claimed refund of Rs. 92,53,060. That on 27.6.2023 case was selected for complete scrutiny vide issuance of notice u/s 143(2) of the Act. Ld. AO, from the information available on record, observed that appellant has paid an amount of Rs. 7,75,32,989/- to the Government of India, Department of Telecommunication in consideration for grant of license to operate and provide the services. The License has been provided for a period of twenty years with effect from financial year 2014-15, subject to payment of prescribed license fees and, thus thirteen years still remain for the license to expire. Ld. AO proposed the above expenses of Rs. 7,75,32,989/- to be capitalized as per provisions of section 35ABB of the Act, consequently computed the amortized deduction amounting to Rs. 59,64,076/- to be allowed to the appellant u/s 35ABB of the Act and, thus issued show cause notice accordingly. In response thereto appellant submitted that out of expenses of Rs. 7,75,32,989/- expense of Rs. 5,80,89,337/- was on account of Transponder Fees and expense of Rs. 1,94,43,653/- was on account of license fees. Appellant submitted before AO that the Transponder fees is distinct and separate from the license fees paid at a specified percentage of its adjusted gross revenue, towards maintenance and use of

the license obtained by the appellant. Appellant further submitted that Transponder Fees has always been allowed as a revenue expenditure since inception and has also enclosed copy of order of assessment for preceding assessment year 2021-22, wherein revenue has accepted the Transponder Fees payment as revenue expenditure. Appellant finally submitted that as the appellant is engaged in the business of bandwidth services and hence, the transponder fees expenditure is required to be incurred to earn the revenue, thus entire expenditure to the tune of Rs. 5,80,89,337/- has been claimed as revenue expenditure u/s 37(1) of the Act and is not covered under the ambit of section 35ABB of the Act. Having not satisfied with the reply of the appellant, Ld. AO by relying upon the judgment of Hon'ble Apex Court in the case of Bharti Hexacom reported in 458 ITR 593(SC), is of the view that the Transponder Fees is akin to the license obtained by the appellant- which the Apex Court deemed capital in nature, despite being paid in instalments, the Transponder Fees constitutes payment towards the acquisition of a right essential for the operation of telecommunication services, thereby qualifying as capital expenditure and thus concluded that the transponder fee of Rs. 5,80,89,337/- incurred by the appellant constitutes capital expenditure.

2.1 As far as expenditure of Rs. 1,79,47,987/- paid on account of license fees, though appellant has submitted revised computation before Id. AO, wherein it restricts the claim of license fee only to the amount available for amortization u/s

35ABB of the Act to Rs. 14,95,666/- by amortizing the same to remaining life of 13 years of license, however has also claimed deduction of Rs. 1,20,95,781/- in respect of amortized amount to license fee expenditure disallowed in preceding assessment year. However Ld. AO, by referring to the judgment of Bharti Hexacom (supra) has allowed the expenditure of Rs. 14,95,666/- u/s 37(1) of the Act and disallowed the remaining expenditure of Rs. 1,79,47,987/- and, held the same as capital expenditure, to be amortized over remaining 13 years.

3 Appellant has challenged the aforesaid disallowances made by Id. AO, before First Appellate Authority, who vide his order dated sustained the disallowances and thus dismissed the appeal of appellant. Hence, the instant appeal before us.

4 At the time of hearing of the instant appeal the Ld. Senior Advocate Mr. Vohra appear for the assessee submitted before us that the transponder fees was paid to Department of Space (DOS), whereas license fees paid to Department of Telecommunications (DOT), which are two distinct and separate Departments of the Government of India and payments were made under separate agreements and there was no correlation between the two expenditures. He submits that the license fees was paid by the appellant for securing the license to operate and provide telecommunication services for a period of twenty years, however appellant only received the right to use bandwidth capacity in the transponder for a period of one

year by making payment of transponder fee and even the said right would be taken away in a case where no payment could be made, which would also result in the agreement being terminated. Thus he submitted that the payment of transponder fee amounting to Rs. 5,80,89,337/- did not result in any enduring benefit to the appellant and therefore, the same deserves to be allowed in entirety as revenue expenditure. Apart thereof it was also submitted before us that the disallowance of transponder fee is against the principles of consistency, as the transponder fee has been allowed as deduction from assessment years 2007-08 to 2018-19 and 2021-22 by Id. AO.

4.1 While challenging the disallowance of expenditure of Rs. 1,79,47,987/- paid on account of license fees, Id. AR submits that as the judgment of Hon'ble Apex Court in the case of Bharti Hexacom Ltd. (supra) was rendered subsequent to filing of return of income by the appellant, therefore appellant, during the course of assessment proceedings, in terms of that judgment, suo moto disallowed the expenditure of Rs. 1,94,43,653/-. By way of revised computation filed before Id. AO, appellant restricts the claim of license fee only to the amount available for amortization u/s 35ABB of the Act to Rs. 14,95,666/- by amortizing the same to remaining life of 13 years of license, however, has also claimed additional deduction of Rs. 1,20,95,781/- in respect of amortized amount to license fee expenditure disallowed in preceding assessment year. Thus Id. AR submits that

disallowance on account of payment of license fees deserves to be restricted to Rs. 58,52,207/- only, i.e. Rs. 1,79,47,988 less Rs. 1,20,95,781/-.

5. On the other hand, the Ld. DR relied upon the order passed by the authorities below.

6. We have heard the respective parties, we have also perused the relevant materials available on record including written submission filed by appellant and also the judgments relied upon by the respective parties.

7. **Ground Nos. 1 & 2** are general and need no adjudication.

**Ground No. 3 to 3.4:-**

8. The crux of the issue is that as to whether the payment made by appellant towards transponder fees is capital expenditure as held by lower authorities or revenue expenditure as claimed by appellant.

8.1 Lower Authorities by relying upon the judgment of Hon'ble Apex Court in case of Bharti Hexacom Ltd. (supra) was rendered subsequent to filing of return of income by the appellant, has held that the Transponder Fees is akin to the license obtained by the appellant- which the Apex Court deemed capital in nature, despite being paid in instalments, the Transponder Fees constitutes payment towards the acquisition of a right essential for the operation of telecommunication services, thereby qualifying as capital expenditure. However, according to assessee expenditure of transponder fees has always been allowed as a revenue expenditure

since inception. On perusal of order of the Id. First Appellate Authority it is evident that there is no observations in this context. In these circumstances in the interest of natural justice we remit this issue to the First Appellate Authority to deal with this issue afresh and to pass orders accordingly, upon granting an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter, as per law. In the result the ground of appeal is allowed for statistical purpose.

**Ground No. 4:-**

9 From the facts stated above, it emerges that appellant in its return of income has claimed the expenditure for payment made during the year towards license fees of Rs. 1,94,43,653/- as revenue expenditure. Likewise in preceding assessment years, it has claimed license fees as revenue expenditure, which has been disallowed by revenue and status of the same, as per written submission filed by appellant before us, is as under:

| Assessment Year | Particulars  | Disallowance of license fee (in Rs.) |
|-----------------|--|--------------------------------------|
| 2016-17         | Disallowance pursuant to High Court order passed against the Appellant | 5,78,44,487                          |
| 2017-18         | Disallowance made by the assessing officer                             | 5,28,03,660                          |
| 2018-19         | Disallowance made by the assessing officer and confirmed by the CIT(A) | 7,63,23,985                          |
| 2021-22         | Disallowance made by the assessing officer and confirmed by the CIT(A) | 2,27,94,115                          |

9.1 However, after the judgment of Hon'ble Apex Court in case of Bharti Hexacom Ltd. (supra) both, revenue and appellant are of the view that the claim of license fees should be amortized in accordance with provisions of section 35ABB of the Act, therefore out of the total expenditure of Rs. 1,94,43,653/- claimed in return of income, only expenditure of Rs. 14,95,666/- to be allowed for the year under consideration. Resultantly remaining expenditure of Rs. 1,79,47,987/- to be disallowed as far as year under consideration. Appellant has accepted the aforesaid position through revised computation of income filed before the Ld AO, however appellant has made additional claim of Rs. 1,20,95,781/- representing amortization cost to be claimed in year under consideration, which has been disallowed in preceding assessment years and even such disallowance is challenged by appellant in respective appeals. Thus, dispute is limited to issue whether such additional claim through revised computation of income filed before the learned AO, should be allowed for year under consideration or not. Status of disallowance made in the preceding assessment years as submitted by appellant is reproduced hereunder:

| Assessment Year | Particulars                               | Total Disallowance of license fee (in Rs.) | Unexpired period of license or period of amortisation (in years) | 35ABB deduction allowable for AY 2022-23 (in Rs.) |
|-----------------|---|--|--|---|
| 2016-17         | Disallowance pursuant to High Court order | 5,78,44,487                                | 19   | 30,44,447   |

|         |  |             |    |           |
|---------|--|-------------|----|-----------|
|         | passed against the Appellant   |             |    |           |
| 2017-18 | Disallowance made by the assessing officer                             | 5,28,03,660 | 18 | 29,33,537 |
| 2018-19 | Disallowance made by the assessing officer and confirmed by the CIT(A) | 7,63,23,985 | 17 | 44,89,646 |
| 2021-22 | Disallowance made by the assessing officer and confirmed by the CIT(A) | 2,27,94,115 | 14 | 16,28,151 |
| Total   |  | 1,20,95,781 |    |           |

9.2 We have gone through the order of Id. AO and First Appellate Authority; there is no specific finding of lower authorities on additional claim made through revised computation of income, whereby appellant claims that as the expenditure of license fees was disallowed in preceding assessment years, corresponding amortized expenditure pertains to year under consideration should be allowed in the year under consideration, despite the fact that the such disallowances was separately challenged in respective appeals or even appeal effect making disallowance for assessment year 2016-17 is yet to be given. Further we have already decided the identical issue in appellant's own case for assessment year 2021-22 in ITA No. 4965/D/2024, wherein identical claim has been made via additional grounds raised before First Appellate Authority, which has been

remitted by us to the First Appellate Authority in absence of any finding of First Appellate Authority on additional ground, likewise we remit this issue also to the First Appellate Authority to deal with the same afresh and to pass orders accordingly, upon granting an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. This is in view of the particular fact of main issue having been sent to the file of the Ld. CIT(A) for fresh adjudication. In result ground of appeal is allowed for statistical purpose.

**Ground No. 5:-**

10. The appellant vide ground 5 of grounds of appeal has challenged the issue of direction of non-waiver of interest levied u/s 234B of the Act in so far as the same related to disallowance of license fees pursuant to judgement of Hon'ble Apex Court in Bharti Hexacom (supra).

10.1 We have gone through the judgment of Hon'ble Apex Court in MA No. 218/2024 in CA No. 11128/2016 in the case of Bharti Hexacom, part of case law paper book of appellant and respectfully following the same, direct the ld. AO to waive of the interest. In the result this ground of appeal is allowed.

**Ground No. 6 (i) to (iv) :-**

11 Grounds 6 (i) to (iv) are in respect of computation of tax payable and consequent demand (if any), we allowed these grounds of appeal with direction to allow brought forward business losses or unabsorbed depreciation (if any), compute the income under MAT provisions and allowed set off of MAT credit (if any) in accordance with provisions of Income Tax Act. As far as levy of interest u/s 234B in respect of disallowance of transponder fee, once the disallowance has itself deleted by us (supra), there is no question of levy of interest on the same. Thus in result ground is allowed in aforesaid terms.

12 In the result, the appeal of the assessee in ITA No. 4867/Del/2024 is allowed for statistical purposes.

Order pronounced in open court on 19.05.2025.

Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Sd/-

**(MS. MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Dated: 19.05.2025.

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**