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. 4965 /DEL/2024
Asstt. Yrs: 2021-22

HCL Comnet Systems And Services Ltd., 806 Siddharth, 96 Nehru Place, South Delhi-110019. **PAN: AAACH 3130 M**	Vs	DCIT, Circle 19(1)/ Assessment Unit, I.T. Department.
APPELLANT		**RESPONDENT**
Assessee represented by	Shri Aditya Vohra, Adv. & Sh. Shashvat Dhamija, Adv.	
Department represented by	Sh. Rajesh Kumar Dhanesta, Sr. DR	
Date of hearing	19.02.2025	
Date of pronouncement	19.05.2025	

O R D E R

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 31.12.2022passed 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 2021-22.

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 paid an amount of Rs. 2,27,94,115/- on the basis of percentage of Adjusted Gross Revenue under the new revenue sharing regime effective from August1, 1999, to the Government of India, Department of Telecommunication in consideration for grant of license to operate and provide the servicesfor a period of twenty years with effect from financial year 2014-15. Ld. AO issue show cause notice as to why the expenses incurred on license fee should not be treated as Capital Expenditure as per Section 35ABB of the Act. In response thereto appellant made its submission before ld. AO and has placed reliance upon various judgments including judgment of Hon'ble High Court of Delhi in the case of Bharti Hexacom Limited reported in 265 CTR 130 (Del). However ld. AO having not satisfied with the submission of appellant, in view of the facts that the similar disallowance has been made in appellant's own case in the earlier years and the issue is pending before ld. First Appellate Authority and ITAT. Thus he recorded his observation that the National Telecom Policy 1999,

which brought about a change from fixed license fee regime to a revenue sharing regime did not alter the character of the right obtained or of the nature of payment made and, it was only the methodology of calculating the license fee which has been changed. He further stated that the appellant has been granted a license for a period of twenty years subject to payment of prescribed license fee and new policy only implied that there was no change in the license acquired by the appellant and only the quantum of license fee to be paid was variable subject to a minimum. Thus there is only amendment to the license granted earlier and not the grant of a fresh license and once the payment for the original license is treated as capital in nature any subsequent change in the quantum of payments to be made will not change the character of the rights acquired or the nature of the payments. He finally held that the payment of license fees is capital in nature and the license fee paid by the appellant during the year is to be amortized in accordance with the provisions of Section 35ABB of the Act. Consequently, in view of the facts that the license was granted with effect from financial year 2014-15 for a period of 20 years, fourteen years still remain for the license to expire, he allowed one fourteenth of total expenses of Rs. 2,27,94,115/- i.e. Rs. 16,28,151/- and remaining amount i.e. Rs. 2,11,65,964/- is disallowed for year under consideration and to be allowed, according to provision of section 35ABB of the Act.

3 Appellant has challenged the aforesaid disallowances made by ld. AO, before First Appellate Authority. Appellant through original grounds of appeals filed before him claimed that the ld. AO has erred in making disallowance of Rs. 2,11,65,964/- by arbitrarily concluding that the license fee which the appellant had paid to the Government of India, Department of Telecommunication ("DOT") is not a revenue expenditure but is liable to be amortised u/s 35ABB of the Act. However, on perusal of order of ld. CIT(A), wherein submission made by appellant has been reproduced, it is evident that appellant fairly accepted that the issue has now been settled by the Hon'ble Supreme Court vide it order dated October 12, 2023 passed in Civil Appeal No(s). 11128 of 2016 in the case of CIT vs. Bharti Hexacom Ltd. reported in 458 ITR 593 (SC) wherein Apex Court reversed the decision of Hon'ble High Court of Delhi in the case of Bharti Hexacom and held that the acquisition of the right to carry on the business of rendering telecommunication services was in the nature of a capital asset and thus, payment made towards the acquisition of the right, would be in nature of capital expenditure, and hence, not allowed as deduction in the year of incurring of expenditure. Hon'ble Court further held that such payments would be covered under the ambit of section 35ABB of the Act and hence, the said amount is allowed to be amortized in equal instalments in the years for which the license is in force.

3.1 Thus in view of subsequent development through judgment of Hon'ble Apex Court in Bharti Hexacom (supra), appellant according to its written submission before First Appellate Aurhority has raised application dated 9.5.2024 for admission of additional ground for claiming deduction in respect of amount of license fee disallowed in the proceedings of past assessment years. However from perusal of finding of First Appellate Authority it is unequivocal that he has neither admitted nor rejected the aforesaid additional grounds of appeal and consequently recorded his finding on the same and, has merely proceeded to sustain the decision of disallowance made by ld. AO, which even appellant does not disputes as of now. He thus finally sustain the disallowance and has dismissed the appeal. Hence, the instant appeal before us.

4 We have heard the respective parties, we have also perused the relevant materials available on record and also the judgments relied upon by the respective parties.

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

Ground No. 3 :-

6. The issue arises for our consideration is limited to the additional grounds of appeal raised before First Appellate Authority. As stated above, now there is no dispute in respect of disallowance made by ld. AO in order of assessment and only

dispute is limited to issue whether claim made through additional grounds of appeal for the first time before the First Appellate Authority should be allowed for year under consideration or not. We have gone through the order of the First Appellate Authority; there is no finding of the First Appellate Authority in context of additional grounds of appeal raised by appellant before him. Thus, having heard the ld. Counsels appearing for the parties and havingregard to the facts and circumstances of the case, we dispose of this ground of appeal by remitting the issue to the Ld. CIT(A), to deal with the same afresh along with the main issue having relevance with the additional ground 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. In the result ground of appeal is allowed for statistical purpose.

Ground No. 4:-

7. The appellant vide ground 4 of grounds of appeal has challenged the computation of tax payable of Rs. 51,31,916/- in view of the facts that the order of assessment has been concluded at an assessed loss of Rs. 53,55,148/-.

7.1 In the facts of the appellant company has returned loss of Rs. 2,65,21,112/-, which after making the disallowance by ld. AO has been reduced to Rs. 53,55,148,

thus, we are inclined to accept the contention of appellant that computation of tax payable of Rs. 51,31,916/- is invalid and therefore, the same is directed to be deleted and in the result, ground of appeal is allowed.

8. In the result, the appeal of the assessee in ITA No. 4965/Del/2024 is allowed for statistical purposes.

Order pronounced in open court on 19.05.2025.

Sd/-	Sd/-
(M. BALAGANESH)	**(MS. MADHUMITA ROY)**
ACCOUNTANT MEMBER	**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