

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER
AND SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 2900/Del/2013
AY: 2007-08**

M/s Bharti Airtel Services Ltd. vs. Dy.CIT, Circle 2(1)
Bharti Crescent 1 Circle 2(1)
Nelson Mandela Road New Delhi
Vasant Kunj Phase II
New Delhi 110 070

PAN: AAACB 8917 G

(Appellant)

(Respondent)

Appellant by : Sh. Anil Bhalla, C.A. and
Sh. Gaurav Wadhwa, C.A.

Respondent by : Sh. K.K.Jaiswal, D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the assessee directed against the order of the Ld. Commissioner of Income Tax (Appeals)-V, New Delhi dated 25.2.2013 pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2007-08 on the following grounds.

“1. That the Ld.CIT(A) has erred both on facts and in law in confirming the disallowance made by the A.O. of provisions for deferred bonus to the employees of Rs.4,24,92,000/- on the ground that provisions are not allowable.

1.1. *That the Ld.CIT(A) has erred both on facts and in law in confirming the action of the A.O. in holding that the appellant had not filed any reply to the query raised by the A.O. but in fact, the appellant had filed the reply.*

1.2. *That the Ld.CIT(A) and the A.O. has erred both on facts and in law in not appreciating the fact that the liability crystallised in the relevant A.Y.*

1.3. *That the Ld.CIT(A) and the A.O. has erred both on facts and in law in not appreciating the fact that the expense had been incurred for the purpose of the business of the appellant.*

1.4. *That the Ld.CIT(A) and the A.O. has erred both on facts and in law in not disregarding the details submitted before him as additional evidence even though the same was not asked by the A.O. whilst passing the assessment order and the AO had made a disallowance on its own without providing any opportunity of being heard to the appellant company.*

2. *The appellant craves leave to add, alter or amend any/all of grounds of appeal before or during the course of the hearing of the appeal.”*

2. We have heard Shri K.K.Jaiswal, Ld.D.R. on behalf of the Revenue and Shri Anil Bhalla, the Ld.Counsel for the assessee.

3. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

4. The sole issue agitated in this appeal is disallowance made by the A.O. on provision for deferred bonus to the employees of Rs.4,24,92,000/-. The Ld.CIT(A) has not admitted additional evidence in this case. He held that the A.O. during the assessment proceedings vide letter dt. 17.12.2009 specifically asked from the assessee details relating to this provision for deferred bonus plan, but the assessee did not file any explanation. Thus he held that the objections raised by the assessee that the questions regarding deferred bonus plan were not asked by the A.O. during the course of assessment proceedings is incorrect. He dismissed the appeal without considering the evidence filed by the assessee before him.

5. Before us the assessee produced copy of the order sheet entries made during the assessment proceedings from the assessment record. A perusal of the same shows that the last date of hearing was 10th December, 2009. There was no further hearing thereafter. Under the circumstances the Ld.CIT(A) was factually incorrect in holding that the A.O. has sought these details from the assessee during the course of assessment proceedings on 17th December, 2009.

6. We hold that the Ld.CIT(A) should have admitted the additional evidences filed under Rule 46A. Thus, in view of the above discussion we direct the Ld.CIT(A) to admit these additional evidences and dispose of the case de novo in accordance with law by considering the evidences filed.

7. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 27th May, 2016.

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 27th May, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar