IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "I", NEW DELHI

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No. 8972/Del/2019 (A.Y. 2014-15)

Vodafone Idea Limited (Successor of Vodafone Mobile Services Ltd.) 10th Floor, Birla Centurion, Century Mills Compound, Pandurang, Budhkar Marg, Worli, Mumbai, Maharashtra	Vs.	ACIT Circle-26(2) New Delhi
स्थायीलेखासं./जीआइआरसं./**PAN**/GIR No: AAACB2100P		
Appellant	..	Respondent

Appellant by :	Shri Salil Kapoor, Adv, Ms. Soumya Singh, Adv & Ms. Ananya Kapoor, Adv
Respondent by :	Shri Mahesh Kumar, CIT(DR)

Date of Hearing	16.07.2026
Date of Pronouncement	13.10.2026

O R D E R

PER VIMAL KUMAR, JM:

The appeal filed by the Assessee is against Final Assessment Order dated 31.10.2019 of the Ld. Assessing Officer/ACIT, Circle 26(2), New Delhi (hereinafter referred to as 'the Ld. AO') under Section 143(3)

read with Section 144C of the Income Tax Act, 1961 (hereinafter referred to as "the Act") A.Y. 2014-15.

2. Brief facts of the case are that, the Assessee Company is a telecom service provider. The Assessee filed return declaring NIL income under the normal provisions of the Act and book profit of Rs. 262,21,46,684/- under Section 115BBE of the Act on 30.09.2014. Subsequently, the group Companies amalgamated with Assessee Company w.e.f. 01.04.2011 as under:

"a. M/s Vodafone Digilink Ltd.

b. M/s Vodafone South Ltd.

c. M/s Vodafone East Ltd.

d. M/s Vodafone Cellular Ltd."

2.1 Subsequently, following Companies amalgamated with the Assessee Company w.e.f 01.04.2012 as under:-

"e. M/s Vodafone West Ltd.

f. M/s Vodafone Spacetel Ltd."

3. After amalgamation/merger of above Companies, the Assessee Company filed another return declaring NIL income under the normal provisions of Income Tax and book profit of Rs. 929,61,79,910/-under

Section 115JB of the Act on 22.02.2017. The case was selected through CASS for scrutiny. Notice under Section 143(2) of the Act dated 10.09.2015 was issued. Detailed questionnaire along with notice under Section 142(1) were issued to the Assessee Company. Reply to questionnaire through various submissions were submitted in response to the notice. The case of the Assessee company was referred for computation of Arm's Length Price vide office letter dated 25.10.2016. Ld. Transfer Pricing Officer-3(3) passed order under Section 92CA(3) of the Act dated 31.10.2017 stating that an upward adjustment of Rs. 407,62,34,204/- is to be made in income of the Assessee while computing total income. In response to letter dated 12.10.2017 reply of the Assessee dated 27.10.2017 was received. The Assessee was asked to furnish details vide various notice under Section 142(1) dated 04.10.2017 and letters dated 07.10.2017, 12.10.2017, 27.10.2017, 10.11.2017, 05.11.2017, 24.11.2017, 30.11.2017, 12.12.2017, 18.12.2017, notice under Section 142(1) read with Section 143(3) dated 05.12.2018 letter dated 06.03.2018, notice under Section 142(1) dated 24.10.2018, letter dated 13.11.2018 and 22.11.2018. Show cause notices dated 03.12.2018, 10.12.2018, letter dated 13.12.2018, show cause notice dated 17.12.2018 and letter dated 21.12.2018 were issued. Due to non co-operation of the

assessee, penalty proceedings under Section 271(1)(b) were initiated. Draft assessment order dated 27.12.2018 was passed. The Assessee preferred appeal before DRP (2) Delhi against the Draft Assessment Order. Dispute Resolution Panel-2, Delhi issued directions vide order dated 20.09.2019. The directions of DRP as summarized as follows:

The directions of the DRP are summarized as follows:

S.No	Description	Amount	DRP's directions
1.	TP Adjustment	Rs. 407,62,34,204/-	Partly allowed
2.	Spectrum	Rs. 876,28,00,769/-	Upheld
3.	Bad Debts	Rs. 187,49,94,137/-	Deleted
4.	Penalty to DOT (normal)	Rs. 59,66,96,116/-	Upheld
5.	Penalty to DOT (USO)	Rs. 42,66,427/-	Upheld
6.	Asset retirement obligation	Rs.7,26,00,000/-	Upheld
7.	Write back of capital liability	Rs. 11,70,33,676/-	Upheld

8.	Commission on prepaid coupons	Rs. 967,68,35,317/-	Upheld
9.	IUC Charges	Rs. 326,48,02,228/-	Reference given to Hon'ble Delhi Court Order in the case of Bharti Airtel Limited
10.	License fees	Rs. 1005,66,67,366/-	Upheld
11.	Subsidy under USOF	Rs. 1,09,12,220/-	Deleted
12	Disallowance u/s 14A	Rs.98,82,500/-	Deleted
13	Software capitalization as intangible	Rs. 39,83,00,000/-	Deleted
14.	Payments to IBM	Rs.821,7764,904/-	Upheld and direction given to consider only Rs. 147,49,94,137/- as Capital expenditure
15.	Royalty payments WPC	Rs. 1095,67,36,505/-	Upheld
17.	Club Service Facility	Rs. 18,38,204/-	Deleted
18.	Projected Income IBM	Rs. 5,28,00,000/-	Deleted with a direction to allow the net expenses as Revenue expenses or amortised.
19	Disallowance of brought forward losses of VSPL		Deleted
	Penalty u/s 271(1)(c)		Rejected being pre-mature

3.1. Enhanced income of amounting of Rs. 407,62,34,204/- as recommended by TPO vide order dated 31.10.2017 was to be treated as cumulative adjustments under Section 92CA. Assessee was issued show cause notice dated 03.12.2018. Assessee submitted reply dated 13.12.2018. The submissions of the Assessee were found not acceptable. TPO vide letter dated 23.10.2019 had given the appeal effect report as under:

S.No	Description	Adjustment made in TPO order dated 31.10.2017	Adjustment after giving DRP direction	Revised adujstment
1	Payment of royalty	2,54,14,80,808	2,54,14,80,808	2,54,14,80,808
2	Passive infrastructure charges-rent	172,391,064	Nil	Nil
3	Payment of interest on ECB to VOFL and VLux	1,362,362,332	1,362,362,332	1,362,362,332
	Total	4,076,234,204	3,903,843,140	3,903,843,140

4. As concluded after incorporation of directions of Ld. DRP, the adjustment was revised to Rs. 390,38,43,140/-. On completion of proceedings Ld. AO vide Final Assessment Order dated 31.10.2019 made following additions:-

(Net Addition of Rs. 1095,67,36,505)

12. Final conclusion

S.No	Description	Amount
	Returned Income	**22,91,50,35,009/-**
1.	TP Adjustment	**Rs. 3,903,843,140/-**
2.	Spectrum	**Rs923,54,60,140/-**
3.	Penalty to DOT (normal)	**Rs. 59,66,96,116/-**
4.	Penalty to DOT (USO)	**Rs. 42,66,427/-**
5.	Asset retirement obligation	**Rs.7,26,00,000/-**
6.	Write back of capital liability	**Rs. 11,70,93,676/-**
7.	Commission on prepaid coupons	**Rs. 967,68,35,317/-**
8.	License fees	**Rs415,22,94,682/-**
9.	Payments to IBM	**Rs67,03,12,649/-**
10.	Royalty payments WPC	**Rs. 1095,67,36,505/-**
	Total (Disallowance)	**Rs.3938,61,38,652/-**
	Assessed Income	**Rs.6230,11,73,661/-**

5. Being aggrieved appellant/assessee preferred present appeal on following Grounds:

"1. That on the facts and circumstances of the case and in law, the AO has erred in assessing the income of the Appellant at INR 62,30,11,73,661, in pursuance to DRP directions, as against the returned income of INR 22,91,50,35,009.

Transfer Pricing Grounds:

2. Transfer pricing ("TP") adjustment amounting to INR 2,54,14,80,808 in respect of international transaction of payment of royalty:

2.1 That on the facts and circumstances of the case and in law, the AO/ DRP/ Transfer Pricing Officer ("TPO") have erred in making an upward TP adjustment of INR 2,54,14,80,808 in respect of the international transaction pertaining to payment of royalty (for use of Vodafone Trademark and Trade name / brand) by determining the arm's length price at 0.25% of gross sales.

2.2 That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in disregarding the royalty agreements selected by the Appellant as comparable for benchmarking the subject transaction under Comparable Uncontrolled Price method ("CUP") and erroneously accepting agreement between Virgin Enterprises Ltd. and Virgin Mobile USA LLC as a valid comparable.

2.3 Without prejudice, the AO/DRP/TPO have erred in disregarding corroborative Transaction Net Margin Method ("TNMM") benchmarking analysis adopted by the Appellant, wherein the international transaction of payment of royalty was benchmarked on aggregate basis

3. TP adjustment amounting to INR 1,36,23,62,332 in respect of international transaction of payment of interest on External Commercial Borrowings ("ECB's"):

3.1 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in making an upward TP adjustment of INR 1,36,23,62,332 in respect of international transaction of payment of interest on ECB's alleging that the benchmarking as well as economic analysis done by the Appellant is erroneous.

Payment of interest to Vodafone Overseas Finance Limited ("VOFL")

3.2 That on the facts and circumstances of the case and in law, the AO / DRP/TPO have erred in arbitrarily determining the arm's length interest rate at LIBOR + 2.58% in respect of ECB's extended in Japanese Yen as against interest rate of LIBOR + 4.60% adopted by the Appellant.

3.3 That on the facts and circumstances of the case and in law, the AO / DRP/TPO have erred in not appreciating that since the payment of interest on ECB's was based on the specific approval of the Reserve Bank of India ("RBI"), no transfer pricing adjustment was warranted

3.4 That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in disregarding the corroborative benchmarking analysis undertaken by the Appellant using Reuters Loan Connector (DealScan) database, without providing any cogent reasons.

3.5 That on the facts and circumstances of the case and in law, the AO / DRP/TPO have erred in rejecting the benchmarking analysis adopted by the Appellant and erroneously / arbitrarily benchmarking the transaction applying inappropriate search criteria

3.6 That on the facts and circumstances of the case and in law, the AO/ DRP/ TPO have erred in arbitrarily choosing loan agreements, not comparable to the ECB facility availed by the Appellant, for determining the arm's length price ("ALP") of interest paid to VOFL.

3.7 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not granting economic adjustments being currency risk adjustment, country risk

adjustment and subordination adjustment claimed by the Appellant.

Payment of interest to Vodafone Investments Luxembourg SARL ("VLux")

3.8 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in arbitranly determining the arm's length interest rate at LIBOR+3.73% in respect of ECB's extended in US Dollars as against interest rate of LIBOR + 4.75% adopted by the Appellant.

3.9 not That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred appreciating that since the payment of interest on ECB's was based on the specific approval of the RBI, no transfer pricing adjustment was warranted.

3.10 That on the facts and circumstances of the case and in law, the AO / DRP/TPO have erred in disregarding the quotations received from third party banks and corroborative benchmarking analysis undertaken by the Appellant using Reuters Loan Connector (DealScan) database, without providing any cogent reasons.

3.11 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in rejecting the benchmarking analysis adopted by the Appellant and erroneously / arbitrarily benchmarking the transaction applying inappropriate search criteria.

3.12 That on the facts and circumstances of the case and in law, the AO/DRP/ TPO have erred in arbitrarily choosing loan agreements, not comparable to the ECB facility availed by the Appellant, for determining the ALP of interest paid to VLux.

3.13 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not granting economic adjustments being country risk adjustment and subordination adjustment claimed by the Appellant

Corporate Tax Grounds:

4. Disallowance amounting to INR 9,23,54,60,140 in respect of depreciation on right to use spectrum:

4.1 That on the facts and circumstances of the case and in law, the AO/DRP erred in disallowing the claim of depreciation amounting to INR 9,23,54,60,140 in respect of expenditure incurred for acquisition of right to use of 3G spectrum under section 32 of the Act, alleging that the same is amortizable under section 35ABB of the Act.

4.2 That on the facts and circumstances of the case and in law, the AO / DRP erred in not appreciating that the spectrum fees paid was not incurred for the acquisition of right or license for operating telecommunication services as envisaged under section 35ABB of the Act.

4.3 That on the facts and circumstances of the case and in law, the AO / DRP erred in disallowing the claim of depreciation under section 32 of the Act, even after admitting that the expenditure was incurred towards acquisition of an intangible asset.

5.Disallowance of INR 59,66,96,116 being penalty imposed by Department of Telecommunication ("DOT") for subscriber verification:

5.1 That on the facts and circumstances of the case and in law, the AO/DRP erred in disallowing INR 59,66,96,116, being amount paid to DOT on account of failure to comply with subscriber verification guidelines, alleging it to be penal in nature.

5.2 That on the facts and circumstances of the case and in law the AO/DRP erred in disallowing penalty imposed by DOT without appreciating that the same is paid for breach of contractual liability under the license agreement and not for infraction of any law and is therefore allowable as deduction under section 37(1) of the Act.

6. Disallowance of INR 42,66,472 being penalty imposed by DOT in respect of Universal Service Obligation Fund:

6.1 That on the facts and circumstances of the case and in law, the AO / DRP erred in disallowing INR 42,66,472, being amount paid to DOT for violation of duty in respect of Universal Service Obligation Fund, alleging it to be penal in nature.

6.2 That on the facts and circumstances of the case and in law the AO/DRP erred in disallowing penalty imposed by DOT without appreciating that the same is paid for breach of contractual liability and is therefore allowable as deduction under section 37(1) of the Act

7. Disallowance amounting to INR 7,26,00,000 in respect of Asset Restoration Cost ("ARC") obligation:

7.1 That on the facts and circumstances of the case and in law, the AO/DRP erred in disallowing INR 7,26,00,000 in respect of depreciation on ARC obligation.

7.2 That on the facts and circumstances of the case and in law, the AO/DRP erred in incorrectly computing the depreciation to be disallowed on ARC obligation at INR 7,26,00,000, basis the closing balance of provision, without appreciating that an amount of INR 6,89,34,567 was claimed by the Appellant as depreciation in respect of ARC obligation.

7.2.1 Without prejudice to ground of appeal nos. 7.2, the AO/DRP erred in not restricting the disallowance in respect of ARC obligation to depreciation amounting to INR 6,89,34,567, actually claimed by the Appellant

7.3 That on the facts and circumstances of the case and in law, the AO/DRP erred in not appreciating that ARC, being directly attributable to the acquisition of capital asset, is includible in cost of telecom towers under section 43(1) of the Act.

7.4 Without prejudice to grounds of appeal nos. 7.1 to 73, the AD/DRP erred in not allowing the deduction for provision in respect of ARC obligation on proportionate basis over the period of lease.

7.5 Without prejudice to grounds of appeal nos. 7.1 to 7.4, the AD/DRP erred in not allowing the deduction under section

37(1) of the Act as revenue expenditure in respect of provision for ARC obligation

7.6 Without prejudice to ground of appeal nos. 7.4 and 7.5, the AO/ DRP erred in not allowing the deduction in respect of ARC expenditure amount actually incurred by the Appellant during the year.

8. Disallowance amounting to INR 11,70,93,676 in respect of liabilities written back:

8.1 That on the facts and circumstances of the case and in law, the AO erred in making an addition of INR 11,70,93,676 invoking provisions of section 41(1) and/or section 28(iv) of the Act, in respect of capital account liabilities written back during the subject assessment year. The DRP further erred in not directing the AO to delete the addition in toto made in this regard.

8.2 Without prejudice, that on the facts and circumstances of the case and in law, the AO erred in not giving effect to directions given by DRP by restricting the disallowance to the amount of depreciation actually granted to the Appellant in the earlier year(s).

9. Disallowance amounting to INR 9,67,68,35,317 under section 40(a)(ia) in respect of discount extended to prepaid distributors:

9.1 That on the facts and circumstances of the case and in law, the AO/ DRP erred in making disallowance of INR 9,67,68,35,317 under section 40(a)(ia) of the Act on account of non-deduction of tax at source in respect of discount allowed to prepaid distributors

9.2 That on the facts and circumstances of the case and in law, the AO / DRP erred in holding that relationship between the Appellant and its pre-paid distributors is that of principal and agent, therefore the discount extended to prepaid distributors is in the nature of commission warranting deduction of tax at source under section 194H of the Act.

Without prejudice to the above:

9.3 That on the facts and circumstances of the case and in law, the AO/DRP ought not to have made the disallowance under section 40(a)(ia) of the Act as the Appellant was under bonafide belief tha no tax was required to be deducted at source on the discount allowed to prepaid distributors.

9.4 That on the facts and circumstances of the case and in law, the AO / DRP erred in not appreciatin that even if such charges were liable to tax deduction at source, no disallowance was warrante under section 40(a)(ia) of the Act since tax on the same was paid by the recipient(s) of income.

9.5 The DRP erred in not directing the AO to allow deduction of disallowance made in the subject assessment year under section 40(a)(ia) of the Act. in subsequent year(s), under the first and/or second proviso to section 40(a)(ia) of the Act.

9.6 The DRP erred in not directing, and AO erred in not allowing deduction under the first and/or second proviso to section 40(a)(ia) of the Act, in respect of similar disallowances made for prior assessment years (ie. AYs 2007-08 to 2013-14).

9.7 Notwithstanding and without prejudice to the above grounds, the disallowance relating to the discount should have been restricted to 30% of the sum payable in view of amendment to section 40(a)(ia) of the Act.

10. Disallowance of license fees amounting to INR 4,15,22,94,682 under section 37(1) of the Act:

10.1 That on the facts and circumstances of the case and in law, the AO/DRP erred in holding that annual license fee payable to DOT, based on percentage of revenue earned, is in the nature of capital expenditure amortizable under section 35ABB of the Act.

10.2 That on the facts and circumstances of the case and in law, the AO/DRP erred in not appreciating that annual revenue share license fee payable to DOT is allowable as deduction under section 37(1) of the Act.

11. Disallowance amounting to INR 67,03,12,649 in respect of payments made to IBM:

11.1 That on the facts and circumstances of the case and in law, the AO/DRP erred in disallowing IT support service charges amounting to INR 1,47,49,94,137 paid to IBM as capital expenditure and restricting the allowance to INR 80,46,81,487 by arbitrarily amortizing the same over the period of agreement

11.2 That on the facts and circumstances of the case and in law, the AO/DRP failed to appreciate that the Appellant did not own the assets and had only received the benefit of the services and / or right to use the assets over the term of the agreement with IBM.

11.3 Without prejudice to above, that on the facts and circumstances of the case and in law, the AO/DRP ought to have allowed depreciation at the rate of 60% under section 32 of the Act on the amount alleged as capital expenditure for acquisition of computer hardware/software.

12. Disallowance amounting to INR 10,95,67,36,505 in respect of royalty WPC expense:

12.1 That on the facts and circumstances of the case and in law, the AO/DRP erred in holding that the amount of INR 14,60,89,82,006 incurred for use of spectrum and microwave frequency to WPC wing of DOT as capital expenditure and allowing depreciation of INR 3,65,22,45,502.

12.2. That on the facts and circumstances of the case and in law, the AO/DRP erred in not appreciating that WPC-royalty expense is an expenditure for use of spectrum in the relevant frequencies, based on the revenues earned by the Appellant and therefore allowable as revenue expenditure under section 37(1) of the Act.

12.3 That on the facts and circumstances of the case and in law, the AO/DRP erred in not appreciating that INR 13,11,21,00,000 and not INR 14,60,89,82,006 was incurred by the Appellant for the use of spectrum and microwave frequency to WPC wing of DOT

12.4 That on the facts and circumstances of the case and in law, the AO/ DRP erred in not granting depreciation in respect

of royalty WPC expense incurred in assessment years 2012-13 and 2013-14 and capitalized in those years, especially when the AO in the assessment order observed that depreciation is to be granted in respect of expense capitalized in earlier year(s).

13. That on the facts and circumstances of the case and in law, the AO erred in granting short credit of taxes deducted at source.

14. That on the facts and circumstances of the case and in law, the AO erred in granting incorrect interest on refunds under section 244A of the Act.

15. That on the facts and circumstances of the case and in law, the AO erred in initiating penalty proceedings under section 271(1)(c) of the Act

Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at, the time of hearing, of the appeal."

6. The Ld. Assessee's Representative for appellant/assessee submitted that Ground of Appeal No. 1 is general in nature.

6.1. Ground of Appeal No. 2 is relating to Transfer Pricing Adjustment amounting to Rs. 2,54,14,80,808/-pertaining payment of brand royalty made for obtaining the right to use of 'Vodafone trademarks trade names.

6.2. Assessee paid royalty amounting to 339,80,15,808/-its Rs to Associated Enterprise ('AE') Vodafone Sales and Services Limited

("VSSL") for use of 'VODAFONE' (Ref. pgs. 523-533 of Appeal Set Agreement [Ref. pgs. 423-444 of PB stipulated to pay royalty fee @.70% of Net services revenues [CL. 4.3 @pg. 432 of PB-1)

-Assessee benchmarked the transaction using Comparable Uncontrolled Price ("CUP") as the most appropriate method and Transactional Net Margin Method ("TNMM") at entity level. (Ref. para 6.2 @pg. 533 of Appeal Set)

Licensor	*License*	*Rate*
Jeanmichel Cousteau ocean future society Inc.	*Ultrasrip systems Inc.*	*2.00%*
Net Talk.com Inc.	*Omni Reliant Inc.*	*1%*
Harnishfeger Technologies Inc.	*Morris material handling Inc.*	*075%*

6.3. Issue starts at para 6 @pgs. 532-555 of Appeal Set

TNMM rejected - para 8.2 @pg. 540 of Appeal Set

-TPO rejected the three comparables selected by the Assessee [Ref. pgs. 542-549 of Appeal Set) and proposed 0.25% as the royalty rate by taking Virgin Enterprises Ltd. and Virgin Mobile USA LLC-as comparable, despite Assessee's objection that the transaction being a 'controlled transaction' between two AEs, cannot be considered

comparable for benchmarking the royalty paid by Assessee. [para 9 @pg. 555 of Appeal Set). Accordingly, it computed the rate of royalty @ 25% of the gross sales and made adjustment amounting to Rs. 2,54,14,808/-.

6.4. Para 3.1 to 3.8 @ pages 62-63 of Appeal:

-Finding at para 3.5 to 3.8 rejection Upheld rejection of comparables Assessee's and TPO'S action, following its directions for A.Y. 2013-14. Accordingly, upheld the adjustment Rs. 2,54,14,80,808/- on account of royalty payment.

6.5. At the outset, it is submitted that the said issue has been decided in favour of the Appellant's own case and also in group company's case:

i. Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) (Ref. Sr. No. 1 @pgs. 1-36 of Case Law Compilation ("CLC"), relevant Para Nos. 4 to 4.7 @ pgs.3 to 10, finding @ para 4.7).

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 (Ref.

Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 6 to 9@pgs. 44-48, finding @para 91

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) (Ref. Sr. No. 17 (@pgs. 561-600 of CLC, relevant Para Nos. 3 to 3.7 @ pgs. 573-574, finding at paras 3.6-3.7).

8. The Ld. Departmental Representative relied on impugned order.

9. From examination of record, in light of aforesaid rival contention, it is crystal clear that the Transfer Pricing Adjustment of Rs. 250,14,80,808/- pertaining to payment of brand royalty made for obtaining right to use of Vodafone Trade Marks and Trade names has been challenged by the Assessee. The Assessee paid royalty amounting to Rs. 3,39,80,15,808/- to its Associated Enterprises Vodafone Sales and Services Limited as per agreement page no 423 to 444 of Paper Book on which stipulated payment of royalty fee @ 70% of net services revenue. The Assessee bench marked transaction using Comparable Controlled Price (CUP) as the Most Appropriate Method and Transactional Net Margin Method (TNMM) at entry level as mentioned in Para No. 6.2 at Page No. 533 of Appeal set.

9.1. The Ld. AO/TPO rejected TNMM Method, TPO rejected three comparables selected by assessee and proposed 0.25 as royalty rate. DRP upheld rejection of assessee's comparable and action of Ld. AO by following its directions for A.Y 2013-14.

10. A Co-ordinate Bench of the Tribunal in Assessee's own case for A.Y 2013-14 in ITA No. 8362/Del/2019 decided on 18.03.2026 in Para No. 6 to 9 at page No. 44 to 48 of case law compilation observed as follows:

> *"6. Ground of Appeal No.2 is with respect to the addition of Rs.2,21,27,39,573/- made towards payment of brand royalty made for obtaining the right to use of 'Vodafone' trademarks and trade names.*
>
> *7. Heard both the parties at length and perused the materials available on record.*
>
> *7.1. Brief facts invoked in this case are that the assessee has paid royalty of Rs.76,05,17,500/- to its AE Vodafone Ireland Marketing Limited in terms of agreement made with AE assessee has to paid royalty fee @ 0.70% of Net services revenues. The assessee benchmarked the transaction by using Comparable Uncontrolled Price method ("CUP") as the most appropriate method (MAM). The TPO rejected the same and applied Transactional Net Margin Method ("TNMM") and also rejected three comparable selected by the assessee and included two new comparables and proposed 0.25% as the royalty rate and made the adjustment of Rs.221,27,39,573/-. The assessee claimed that M/s Vergin Enterprises Ltd. and M/s Virgin Mobile USA LLC taken as new comparables to benchmarking transactions is erroneous as transaction between these two enterprises is control transactions and, thus, cannot be considered as valid comparable for benchmarking the royalty transaction in the case of the assessee.*
>
> *7.2. It is submitted that that the identical issue as came up for consideration before the Co-ordinate Bench of ITAT, Delhi in assessee's own case for Assessment Year 2012-13 wherein in ITA No.8561/Del/2019, the Co-ordinate Bench by placing reliance on the judgment of Hon'ble Co-ordinate Bench of ITAT, Ahmedabad in the case of M/s Vodafone West Ltd. vs. DCIT in ITA No.909 & 944/Ahd/2014 has*

deleted the transfer pricing adjustments made. Therefore, it is humbly prayed that the adjustment made be deleted.

8. On the other hand, ld. CIT DR has placed reliance on the order of lower authorities and requested for the confirmation of the same.

9. Heard the parties and perused the material available on records. It is observed that this issue has already been decided by the coordinate bench of Tribunal in assessee's own case for AY 2012-13 wherein in ITA No.8561/Del/2019, while deleting the adjustment, in para 4.7 of the order has made following observations:

> *"4.7 Considered the rival submissions and material placed on record, we observed that ITAT Ahmedabad Bench had considered the similar issues and decided the similar issues under consideration as under:*
>
> *"30. A perusal of the case record indicates that the assessee had paid brand royalty fee amounting to Rs.5,37,37,397/- and Rs.2,68,68,699/- to its overseas associate enterprises, namely, M/s. Vodafone Ireland Marketing Ltd. and M/s. Rising Groups Ltd.; respectively. It adopted the transaction net margin method (TNMM) to benchmark the same. We find from Transfer Pricing Officer's order dated 28.01.2013 that he rejected assessee's method after holding that the same was an indirect one liable to give way to the other direct methods in the Income Tax Rules. He relied on this tribunal's decision in M/s. Serdia Pharmaceuticals India Pvt. Ltd. case 44 SOT 391 (Mumbai) to adopt CUP method (comparable uncontrolled price) in facts of the instant case. He thereafter was of the view that arms' length price for royalty payment for "Essar" brand as Rs. Nil and corresponding payment had to be restricted to 0.25% on gross sales as against 0.275% declared by the assessee. He adopted similar course of action for the later payee regarding "Vodafone" brand. The resulted in the impugned upward adjustment of Rs.3,17,53,917/-. We notice from the above TPO's order that he went by assessee's related parties royalty agreement transactions in proposing the impugned adjustment. The Dispute Resolution Panel reverses the same leaving the Revenue aggrieved.*
>
> *31. We have heard rival contentions. Suffice to say, since the transfer pricing officer in the instant case has proceeded to propose the impugned upward adjustment on the basis of related party transactions after adopting CUP method instead of TNMM hereinabove, we find that a co-ordinate bench of this tribunal in ACIT vs. Bilag Industries Pvt. Ltd. quotes a catena of case law to disagree with such an approach as follows:*

"28. We have heard both the sides. Learned representatives reiterate their respective pleadings in support of and against the impugned transfer pricing adjustment. There is hardly and dispute that the assessee agreed to supply Deltametrin and its intermediate chemical solutions to

the above stated associate enterprise or its designee. This lis however is confined to arms length price determination of 18 tones supplied to the foreign entity. The assessee charges @ US $ 126.2 per kg by following cost + 55% markup. Its agreement quoted Deltametrin price to be @ 161.20 US $ per kg. The assessee also admitted the latter rate to be at arms length price as already indicated in page 292 of the paper book. This made the TPO to inter alia to rejectassessee's other contentions for making impugned upward transfer pricing adjustment of Rs. 2,96,10,000/-subject matter of the instant litigation.

29. *We deem it appropriate at this stage to deal with chapter X of the act containing transfer pricing provisions relating to avoidance of tax introduced by the Finance Act, 2001 w.e.f. 01-04-2002. The impugned assessment year before us is the first full fledged year of business thereafter. Section 92(1) mandates any income arising from an international transaction to be computed having regard to arms length price. The same admittedly applies in case of international transactions; as it then was, between two associate enterprises illustrated in section 92A of the Act. We repeat that this assessee and its overseas associate enterprise admittedly fall in this category. There is further no quarrel about its Deltamethrin sale to be in the nature of international transactions u/s. 928 of the Act. We notice that section 92C(1) of the Act postulates arms length price computation by applying six methods namely; comparable un-controlled price method (CUP), re-sale price method (RPM), cost method (CPM), profit split method (PSM), transactional net margin method (TNMM) and the residuary one such other methods as may be prescribed by the Central Board of Direct Taxes. An Assessing Officer's jurisdictional flows thereafter u/s. 92CA of the Act to make reference to the TPO for ascertaining arm's length price of the relevant international transactions.*

30. *We now come to the corresponding income tax rules. Rule 10A defines various expressions used in all contemporary provisions. Sub-rule (a); as it was in the Impugned assessment year defines an un-controlled transaction to mean a transaction other than that between two associate enterprises; whether resident or non-resident. We keep in mind the same and proceed further to Rule 108 prescribing arms length price for the purpose of section 92C(2) of the Act by using any of the six method as the most appropriate method as enumerated in clause (a) to (f); respectively in the given sequence in chapter 10 of the Act. The last clause (f) relevant for any other appropriate method hereinabove contains a specific rule 10AB. This is admittedly not germane conthe issue before us. We find that only clause (a) to (e) hereinabove pertaining to 'CUP' and 'TNMM' methods are relevant for the instant adjudication. We find it a fit case to repeat that the assessee had employed TNMM method for charging @ cost + 55% 11 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT markup i.e. an indirect method for declaring its ALP. The TPO adopted its direct sale price @ 161.2 US $ per kg for making the impugned upward adjustment. We do*

not find a single observation even in his order rejecting assessee's TNMM method before adopting the agreement price in question under the CUP method.

31. We stay back on Rule 10B(1)(a) at this stage. It is evident that this clause prescribes CUP methods application to determine controlled price of an international transaction by the price charged or paid for property transfer or services provided in a comparable uncontrolled transaction; or a number of transaction, as identified. The same forms a price charged or paid in relation to property or services as the basis of ALP transaction. We referred to the above stated rule 10A(a) to observe here that the expression 'comparable untransaction between controlled transaction' signifies enterprises other than associate ones; whether resident or non-resident. It has already come on record that the TPO in the instant case relied upon assessee's agreed price rate of US $ 161.20 per kg for Deltamethrin supply in order to make the impugned transfer pricing adjustment. We reply on above stated statutory provision in the act as well as rule to observe that the same is rather in the nature of a comparable controlled transaction between two associate enterprises negating the basic fundamental condition of CUP methods application.

32. We proceed further to observe here that various co-ordinate benches of this tribunal have already adjudicated this issue as to whether an accepted net profit margin from a transaction with an associate enterprise can be taken as comparable or not being an internal comparable for determining arm's length price. Two tribunals decisions reported as (2012) 24 taxmann.com 28 (Mum) (TM) Technimont ICB Pvt. Ltd. vs. ACIT as reiterated in ITA 2587/Ahd2012 Pino Bisazza Glass Pvt. Ltd vs. ACIT already decide this issue in assessee'sfavour toconclude that such a comparable is not to be adopted as comparable un-controlled transaction price in question.

33. We have already noticed that a comparable un-controlled transaction instead of a controlled forms sine qua non for determining ALP of an international transaction between two associate enterprises leaving behind no scope of application of estoppel principle or acceptance of agreed prices in absence of an comparable un-controlled transaction. The Revenue's vehement contentions advanced in the course of hearing seeking to invoke estoppel principle fails to convince us.

34. We further deem it appropriate to observe at this stage that the impugned assessment year 2002-03 is the first full-fledged business of year after introduction of chapter X transfer pricing provision Incorporated in the act. The TPO's order dated 10-03-2005 does not even issue a show cause notice disagreeing with assessee's TNMM method. He has rather proceeded to adopt CUP method(supra) again by ignoring the fundamental condition of applying the same. Same is the case with learned CIT(A) who has proceeded on revenue 12 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT neutral implication

without even taking into section 92(1) r.w.s. 92C and 92C(4) proviso along with rules discussed hereinabove at length. There is hardly any dispute that this chapter and the rules notified thereunder prescribe that an arms length price is not the price an assessee is charging or paying for being a party in the international transaction in question but it is the price i.e. to be paid or charged in such a comparable controlled transaction in comparison to a comparable un-controlled transaction. We repeat that the TPO has not kept in mind this fine distinction. We accordingly reverse his action on this sole legal principle. Needless to say, the CIT(A) has already deleted the impugned adjustment. We find no reason to interfere in the lower appellate order albeit on a different score as enumerated hereinabove. This Revenue's ground is declined accordingly." We have given out thoughtful consideration to rival contentions Ld. Departmental Representative fails to pinpoint any exception in facts of the instant case vis-à-vis those extracted hereinabove with regard to the impugned upward transfer pricing adjustment based on related party agreements only. We thus find no reason to interfere with the DRP' direction under challenge on this count alone. This substantive ground is also rejected."

Respectfully following the above decision and other decisions relied upon by the Id AR, in view of the facts and circumstances of the case, we are of the considered opinion that the issue involved in ground No. 2 of the assessee is squarely covered. In view of the above, we direct the Learned TPO / AO to delete the transfer pricing adjustment made in the sum of Rs.1,20,54,020/- in respect of international transaction towards payment of royalty." Admittedly, the facts in the present appeal are identical, therefore, by respectfully following the decision of the Co-ordinate Bench in assessee's own case for Assessment Year 2012-13, we delete the transfer pricing adjustment of Rs.221,27,39,573/- so made on Royalty payment."

11. In view of above material facts and judicial precedents the Transfer Pricing Adjustment of Rs. 250,14,80,808/- on payment of royalty is being illegal and liable to be set aside. Ground of appeal No. 2 is allowed.

12. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 3 submitted that the Transfer Pricing

Adjustment amounting to Rs. 1,36,23,62,332/- in respect of payment of interest on External Commercial Borrowings ('ECBs') obtained from Vodafone Overseas Finance Ltd. ('VOFL') and Vodafone Investments Luxembourg SARL ('VLux').

12.1. The Appellant entered into an ECB agreement with its AE i.e., VOFL in order to avail an external commercial borrowing facility amounting to JPY 120.95 billion on which interest was paid @6 months Japanese Yen ("JPY") Libor plus 460 basis points (bps), i.e., LIBOR+4.6%.

[Ref. para 12 @pg. 565 of Appeal Set]

-This agreement was subsequently amended and restated on 22 March 2010 and was specifically approved by the Reserve Bank of India ('RBI') on 31 March 2010. Subsequent to such approval, disbursements were made by the AE. [Ref. pgs.770-771 of Paperbook Vol. 1]

-Further, the Appellant has also entered into an ECB agreement with another AE, i.e., VLux in order to avail an external commercial borrowing facility amounting to USD 700 million, on which interest was paid @ Libor plus 475 basis points (bps), i.e., LIBOR+4.75%

(Ref. PARA 12@PG. 565 of appeal Set)

-This agreement was entered into on 14 November 2011 and was specifically approved by the Reserve Bank of India ('RBI') on 24 February 2012. Subsequent to such approval, disbursements were made by the AE. [Ref. pg.772 of Paperbook Vol. 1]

-Since the approval obtained for both the ECBs, by the Appellant, from the RBI, was specific in nature, the Appellant benchmarked the transaction using the approval as a CUP for determination of arm's length price ('ALP').

-Further, the ECB borrowed from VLux was also determined to be at ALP under 'Other Method' using quotations obtained from BNP Paribas and Royal Bank of Scotland, considered as comparable data.

-In addition to the above, in order to determine the ALP of payment of interest on ECB facility availed from AE, the Appellant undertook an external search wherein it identified three comparable loan tranches using Reuter's LPC Loan Connector ("Loan Connector"). database

-The Appellant concluded that the adjusted interest of LIBOR plus 460 bps paid by it to VOFL was less than the arm's length interest spread of LIBOR plus 1,118 bps in case of comparable loan tranches.

-The Appellant also concluded that the adjusted interest of LIBOR plus 475 bps paid by it to VLux was less than the arm's length interest spread of LIBOR plus 1,71,bps in case of comparable loan tranches (Ref Pg. 537 of appeal set).

12.2. Issue starts at para 6 @pgs. 565-586 of Appeal Set

-The TPO rejected the RBI approval as an appropriate CUP for benchmarking the transaction.

-The TPO rejected the economic analysis without cogent reasons undertaken by the Appellant for determining the ALP of interest by contending that:

i. current financial year data was not used.
ii. using the credit rating of the Assessee in a jointly borrowed loan with holding company

-The TPO accordingly, made the following adjustment:

-determined at i. Interest on ECB loan paid to VOFL, LIBOR+2.58%, as opposed to LIBOR+4.60% applied by Assessee, and made adjustment of Rs. 88,71,69,226/-

ii. Interest on ECB loan paid to VLux, determined LIBOR+3.73%, as opposed to LIBOR+4.75% applied by Assessee, and made adjustment of Rs. 47,51,93,106/-.

12.3. Para 5 to 5.12 Appeal:

Finding at pa @pg. 71-73
DRP has up the TPO Appellant's without
Para 5 to 5.12 @pgs. 65-73 of Appeal:
Finding at para 5.2 to 5.12 @pg. 71-73

-DRP has upheld the order of the TPO and rejected Appellant's contentions without any cogent reason.

12.4. A. At the outset, it is submitted that in Appellant's own case for A.Y. 2015-16, the Tribunal, on identical facts has decided this issue in favour vide Order dated 30 June 2026 (ITA No. 8971/Del/2019) [Ref. Sr. No. 17 @pgs. 561-600 of CLC, relevant Para Nos. 5 to 5.10 @pgs. 574-579, finding at paras 5.8 to 5.10]

B. Similar view has been taken by the Tribunal in the Appellant's group company's case viz. erstwhile Vodafone West Ltd., on identical facts, has decided this issue in favour vide Order dated 02 April 2026 (ITA No. 571/Ahd/2016) [Ref. Sr. No. 16 @pgs. 467-560 of CLC,

relevant Para Nos. 65 to 98 @pgs. 504-520, finding @ para 79 @pg. 509]

C. Reliance in this regard is placed on the following decisions of the Tribunal wherein the Tribunal held that payment of interest on ECB as per the rate approved by RBI can be considered to be at an ALP.

- CIT v/s. GE Technology Centre Pvt. Ltd. (2021) 278 Taxman 261 (Karnataka);
- Firmenich Aromatics India Pvt. Ltd. v/s. DCIT (2019) 107 taxmann.com 535 (Mumbai Trib.); and
- Ion Exchange (I) Ltd. V ACIT [ITA No. 5109/Mum/2013].

D. The Appellant has undertaken the transaction in prior years (i.e. AY 2011-12, 2012-13 and 2013-14) and the same was accepted to be at an ALP by the TPO. The terms and conditions of the ECB have not changed over the tenure of loan. Since the payment of interest was accepted at ALP in the first year, no TP adjustment in this regard is warranted in current year. TP adjustment in the current AY without any change in facts is violation of principle of res-judicata. Reliance in this regard is placed on decision of Delhi Bench of the Tribunal in the case of Brahma Center Development Private Limited v/s. ACIT (2017) 85 taxmann.com 107 (Delhi Trib.)

13. The Ld. Departmental Representative relied on impugned order.

14. From examination of record, in light of aforesaid rival contention, it is crystal clear that adjustment of amounting to Rs. 1,36,23,62,332/- in respect of payment of interest on External Commercial Borrowings ('ECBs') obtained from Vodafone Overseas Finance Ltd. ('VOFL') and Vodafone Investments Luxembourg SARL ('VLux') was made. The issue in appellant's own case for A.Y 2015-16 vide order dated 30.06.2026 in ITA No. 8971/Del/2019 in Para No. 5.8 to 5.10 observed as under:

> *"5.8. We have perused the submissions advanced by both sides in light of the record placed before us. We find that the controversy involved in the present ground is no longer res integra. The Coordinate Bench of the Tribunal, while deciding the case of the assessee's group concern, Vodafone West Ltd. for Assessment Year 2011-12 in ITA No. 571/Ahd/2016 vide order dated 02.04.2026, after an elaborate examination of the very same ECB arrangements, held that though the RBI approval may not be conclusive for determining the arm's length price, it nevertheless constitutes a highly relevant contemporaneous benchmark. The Tribunal further held that the benchmarking undertaken by the TPO suffered from material infirmities inasmuch as appropriate comparability adjustments relating to country risk, currency risk, tenure of the loan, borrower profile, nature of borrowing and subordination of the debt had not been duly factored into the analysis. The Tribunal also held that the upfront fee formed an integral part of the borrowing cost and was required to be considered together with the interest while determining the effective all-in-cost of the ECB facility. Accordingly, the effective all-in-cost approved by the RBI was accepted as representing a more reliable benchmark and the transfer pricing adjustment was deleted.*
>
> *5.9. We further note that the terms and conditions governing the ECB facilities obtained by the assessee from Vodafone Overseas*

Finance Ltd. and Vodafone Investments Luxembourg SARL have remained unchanged from the earlier assessment years. The Revenue has not brought on record any distinguishing feature either in facts or in law warranting a departure from the consistent view adopted by the Coordinate Benches. We also find that the various objections raised by the assessee regarding contemporaneous data, credit rating, country risk, currency risk, tenure and subordination adjustments stand duly addressed by the Coordinate Bench in the aforesaid decision.

5.10. Respectfully following the decision of the Coordinate Bench in the case of Vodafone West Ltd. for Assessment Year 2011-12 in ITA No. 571/Ahd/2016 dated 02.04.2026, as well as the decisions rendered in the assessee's own case for the earlier assessment years on identical facts, we direct the Ld. AO/TPO to delete the transfer pricing adjustment made in respect of the interest and upfront fee paid on the ECB facilities obtained from the Associated Enterprises. Accordingly, Ground No. 3 along with all its sub-grounds is allowed."

15. In view of above judicial precedent, the Transfer Pricing Adjustment amounting to Rs. 1,36,23,62,332/- being illegal is set aside. Ground of Appeal No. 3 is allowed.

16. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 4 submitted that the disallowance of depreciation amounting to Rs. 9,23,54,60,140/- in respect of right to use 3G Spectrum.

16.1. Assessee paid fees for acquisition of 3G spectrum as capital expenditure and claimed depreciation u/s 32 of the Act as 'Spectrum'

was mentioned as 'intangible asset' in Note 12 of its audited financials [Ref. pg. 15 of PB-I].

Assessee claimed depreciation since during the year under consideration, spectrum fee was not covered u/s 35ABB of the Act since the same is only with respect to amortisation of expenditure incurred for obtaining license for services. telecommunication

As regards, amortisation u/s 35ABA of the Act, it was submitted that it has been inserted only by Finance Act, 2016, w.e.f. 01.04.2017 and therefore, the same is not applicable for the year under consideration.

16.2. Para 3 @ pages 17-28 of Appeal set: AO disallowed the claim of depreciation and amortized the same under Section 35ABB of the Act.

16.3. Para 6.1 to 6.4 @ page 74 of appeal set: DRP upheld AO's action following its own directions for AY 2011-12 and A.Y 2012-13.

16.4. This issue has been decided in favour of the Appellant in Appellant's own case and also in group company's case:

i. Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A. Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) [Ref. Sr. No. 1 @pgs. 1-36 of CLC, relevant Para Nos. 5 to 5.5 @pgs.10 to 12, finding @ para 4.5]

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 [Ref. Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 15 to 16 @pgs. 51-52, finding @ para 52]

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17 @pgs. 561-600 of CLC, relevant Para Nos. 7 to 7.4 @ pgs. 582-584, finding at paras 7.3-7.4]

iv. Order dated 11.05.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2011-12 (ITA No. 9160/DEL/2019 & ITA No. 1042/DEL/2016) [Ref. Sr. No. 18 @pgs. 601-661 of CLC, relevant Para Nos. 13 to 13.1 @pgs. 627-629, finding at para 13.1]

v. Order dated 18.02.2025 passed by the Tribunal in the Appellant's own case in the case of erstwhile 'Vodafone India Limited' for the A.Y. 2014-15 (ITA No. 316/Mum/2019) [Ref. Para Nos. 6.3 to 6.5]

vi. Consolidated Order dated 17.05.2024 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Ys. 2011-12 and 2012-13 [Ref. Paras 28.1 to 28.5]

vii. Order dated 22.10.2024 passed in the case of the erstwhile Vodafone India Ltd. for AY 2013-14 [Ref. para 6.5 to 6.7]

viii. Order dated 28.08.2020 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Y. 2011-12 (ITA No. 3327/Mum/2018) [Ref. Paras 26 to 371.

ix. Erstwhile Idea Cellular Ltd. (now merged with the Appellant) v/s. PCIT (ITA No. 360/Mum/2016) [Ref. Para 20.

17. The Ld. Departmental Representative relied on impugned order.

18. The disallowance of depreciation amounting to Rs. 9,23,54,60,140/- in respect of right to use 3G Spectrum has been challenged in Ground No. 4.

18.1. A Co-ordinate Bench of the Tribunal in ITA No. 8362/Del/2019 for A.Y 2013-14 in order dated 18.03.2026 in Para No. 15 & 16 on Page No. 51 and 52 of the Paper Book mentioned as under:-

"15. Next ground of appeal No.3 is with respect to the disallowance of depreciation of Rs.1047,25,37,853/- in respect of right to use 3G Spectrum.

16. Heard both the parties and perused the materials available on record. The assessee paid fee for acquisition of 3G spectrum and treated the same as capital expenditure and claimed deprecation u/s 32 of the Act as Spectrum was included in the 'intangible asset' in the financial statement of company. The assessee claimed depreciation as Spectrum fee was not covered u/s 35ABB of the Act which is applicable with respect to amortization of expenditure incurred for obtaining license for telecommunication services. The assessee further claimed that amortization u/s 35AB of the Act has been inserted only by Finance Act 2016 w.e.f. from 01.04.2017, and, therefore, the same is not applicable for the year under consideration. It is further observed that disallowance of identical nature was made in immediately preceding year where the Co-ordinate 'H' Bench ITAT, Delhi in ITA No. 836/Del/2019 has deleted the disallowance by following the judgment of Coordinate Bench of Mumbai ITAT in group company case of Vodafone India Ltd. for Asst. Years 2011-12 in ITA No.3327/Mum/2018. The relevant observations as contained in para 5.5 of the order are reproduced as under:

> *"5.5 On careful perusal of the above decisions relied upon by the assessee, we find that similar issues was already considered by the ITAT Mumbai in the group case and decided the issues in favour of the assessee. Therefore, respectfully following the decisions and in view of the facts and circumstances of the instant case, we find that*

this issue is squarely covered in favour of the assesse. Hence, ground No.3 raised by the assessee is allowed." Admittedly the facts are identical, thus, by respectfully following the aforesaid judgement of the coordinate bench in assessee's own case, the disallowance made of Rs.10,47,25,37,853/- is deleted. Ground of Appeal No.3 is accordingly allowed

18.2. In view of above material facts and well settled judicial view the disallowance of Rs. 9,23,54,60,140/- in respect of right to use 3G Spectrum being illegal is set aside. Accordingly, Ground of Appeal No. 4 is allowed.

19. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No.5 submitted that disallowance of penalty amounting to Rs. 59,66,96,116/- imposed by the Department of Telecommunication. ("DOT").

19.1. Assessee incurred expenditure on account of penalty paid to DOT for non-compliance of terms of the license agreement entered between the Assessee and DOT and therefore, the said expenditure is on account of contractual liability and not a statutory liability.

Hence, the same does not fall under explanation to Section 37(1) of the Act.

19.2. Para 4.1 to 4.5 @pgs. 28-29 of Appeal Set:

Penalty is on account of non-adherence to law and not on account of contractual violation. Accordingly, disallowed in terms of Explanation to section 37(1) of the Act.

19.3. Para 8.1. to 8.6 @pgs. 76-77 of Appeal Set:

DRP upheld AO's action following its own directions for A.Y. 2013-14.

19.4. This issue has been decided in favour of the Appellant in Appellant's own case and also in group company's case:

(i) Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) [Ref. Sr. No. 1 @pgs. 1-36 of CLC, relevant Para Nos. 6.1 to 6.5 @pgs. 12 to 13, finding @para 6.5]

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 [Ref. Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 17 to 19 @ pgs. 52-54, finding @ paras 18-19]

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17 @pgs. 561-600 of CLC, relevant Para Nos. 8 to 8.6 @ pgs. 584-586, finding at paras 8.4-8.6].

iv. Order dated 11.05.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2011-12 (ITA No. 9160/DEL/2019 & ITA No. 1042/DEL/2016) [Ref. Sr. No. 18 @pgs. 601-661 of CLC, relevant Para Nos. 17 to 17.2 @pgs. 636-638, finding at para 17.1-17.2]

v. Erstwhile Vodafone East Ltd. v/s. ACIT (2016) 156 ITD 337 (Kolkata Trib.)

vi. DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 (Delhi Trib.)

vii. Order dated 17 May 2024 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Y. 2011-12.

Reliance in this regard is also placed on Commissioner of Income-tax vs. Enchante Jewellery Ltd. [2014] 220 Taxman 8 (Delhi) (Mag.)[20-11-2012].

20. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 6 submitted that disallowance of penalty amounting to Rs. 42,66,472/- imposed by the DOT in respect of Universal Service Obligation Fund.

20.1 Appellant has entered into an agreement with DOT for provision of telecommunication services in certain rural areas ('USO

agreement'). As per the said USO agreement read with the license agreement, the Appellant is obligated to abide by the terms and conditions of the license agreement, and in an event of any failure to do so or any irregularity, it shall be liable to pay penalty as stipulated by the DoT for such failures - copy of the Universal Service Obligation agreement entered into by the Appellant with DOT @pgs. 1337 to 1434 of PB.

- Assessee incurred expenditure on account of penalty paid to DOT for non-compliance of terms of the USO agreement (Clause 2.3 and 2.4) and therefore, the said expenditure is on account of contractual liability and not a statutory liability.
- Hence, the same does not fall under explanation to Section 37(1) of the Act.

20.2. Para 5.1 to 5.4 @ pages 29-30 of appeal set:

Penalty is on account of non-adherence to law and no on account of contractual violation. Accordingly, disallowed in terms of Explanation to Section 37(1) of the Act.

21. The Ld. Departmental Representative relied on impugned order.

22. From perusal of record, it is evident that Ground of Appeal No. 5 is regarding disallowance of penalty amounting to Rs. 59,66,96,116/- imposed by the Department of Telecommunication. ("DOT") and Ground No.6 is disallowance of penalty amounting to Rs. 42,66,472/- imposed by the DOT in respect of Universal Service Obligation Fund has been challenged.

22.1. A Co-ordinate Bench of the Tribunal in assessee's own case in ITA No. 8362/Del/2019 for A.Y 2013-14 in Para No. 18 & 19 at Page No. 52 to 53 of Paper Book observed as under:

> *"18. Heard both the parties and considered the material available on record. It is observed that this issue is covered by the decision of the Co-ordinate Bench in assessee's own case for Asst. Year 2012-13 in ITA No.836/Del/2019 wherein the Co-ordinate Bench had in para 6.1 to 6.5 after considering the factual aspect as deleted the disallowance by following decision of Co-ordinate Bench in group case. The relevant observations are as under:*
>
> > *"6.1 Considered the rival submissions and material placer on record. Brief fact of the issue is, assessee incurred expenditure on account of penalty paid to DOT for noncompliance of terms of the license agreement entered between the Assessee and DOT, therefore, the assessee submitted before the AO that the said expenditure is on account of contractual liability and not a statutory liability. Hence, the same does not fall under explanation to Section 37(1) of the Act.*

6.2 The Id. AO observed that penalty is on account of non-adherence to law and not on account of contractual violation. Accordingly, he disallowed the same in terms of Explanation to section 37(1) of the Act.

6.3 The Id DRP upheld the action of the Id AO.

6.4 At the time of hearing, ld. counsel for the assessee submitted that this issue is covered in favour of the assessee and relied on the following decisions which is decided in cases of assessee's group company:- a. Erstwhile Vodafone East Ltd. v/s. ACIT (2016) 156 ITD 337 (Kolkata Trib.) b. DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 (Delhi Trib.) c. Order dated 17 May 2024 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Y. 2011-12. d. Commissioner of Income tax vs. Enchante Jewellery Ltd. [2014] 220 Taxman 8 (Delhi) (Mag.) [20-11-2012]

6.5 On careful perusal of the above decisions relied upon by the assessee, we find that similar issues are involved in this ground of appeal. Therefore, respectfully following the decisions and in view of the facts and circumstances of the instant case, we find that this issue is squarely covered in favour of the assessee. Hence, ground No. 4 raised by the assessee is allowed."

19. Since the facts are identical, therefore, by respectfully following the order of Co-ordinate Bench in assessee's own case for AY 2012-13 disallowance made of 18 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT Rs.18,96,32,587/- regarding penalty imposed by DOT is deleted. Grounds of appeal No.5 is allowed."

22.2. In view of above factual position by following the decision of Co-ordinate Bench of the Tribunal, it is held that the disallowance of penalty amounting to Rs. 59,66,96,116/- imposed by the Department of Telecommunication and disallowance of penalty of Rs. 42,66,472/- imposed by the Department of Universal Service Obligation Fund being illegal are set aside. Ground of Appeal No. 5 and 6 are allowed.

23. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 7 submitted that Disallowance depreciation of amounting to Rs. 7,26,00,000/-claimed on the addition to fixed assets on account of Asset Restoration Cost ("ARC") obligation.

23.1. Assessee entered into lease agreement with various owners for setting up of cell sites (telecom. towers) on their premises. As per the terms of the agreement, Assessee was obligated to incur cost to restore the site to its original condition at the expiry of the lease period and accordingly, estimated cost to be incurred at the the end of the lease period is the ARC.

-Assessee capitalized certain sum on account of ARC and claimed depreciation since ARC is directly attributable to the cost acquisition of the capital asset and hence formed part of the cost of acquisition of

-As per Accounting Standard 29 ('AS-29') (Provisions, Contingent. Liabilities and Contingent Assets) issued by the ICAI, Assessee is compulsorily required to make a provision on account of such ARC obligation.

-Without prejudice, the Assessee submitted that the expense be allowed as revenue expense u/s 37 of the Act as the same is necessary to bring such assets into existence and put them in working condition.

23.2. Para 6.1 to 6.17 @pgs. 31-35 of Appeal Set:

-AO rejected the contention of the Assessee and held that there was no legal obligation on the Assessee to incur the ARC and hence, the same is neither allowable u/s 37 of the Act nor it can be capitalized under the provisions of the Act.

-It also held that the liability to incur ARC is an unascertained liability and that ARC does not form part of 'actual cost' as stipulated u/s 43(1) of the Act.

-Further it held that since the asset is not owned by the Assessee, provisions of Section 32 of the Act do not apply.

-It also rejected Assessee's alternate plea to allow it under Section 37 of the Act by holding that since the leased premises have been taken

on rent for a long time, it cannot be said to be revenue in nature and that since, Assessee has not so far incurred any expense on the account of ARC, it cannot be allowed u/s 37 of the Act.

23.3. Para 9 to 9.4 @pgs. 77-78 of Appeal Set:

DRP upheld AO's action following the decision in DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 (Delhi Trib.) and its own directions for A.Ys. 2009-10, 2010-11, 2012-13 and 2013-14.

23.4 This issue has been decided in favour of the Appellant in Appellant's own case and also in group company's case:

i. Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) [Ref. Sr. No. 1 @pgs. 1-36 of CLC, relevant Para Nos. 7.1 to 7.6 @pgs.13 to 15, finding @paras 7.4, 7.5]

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 [Ref. Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 22 to 23 @pgs. 54-55, finding @ para 23]

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17

@pgs. 561-600 of CLC, relevant Para Nos. 9 to 9.5 @ pgs. 586-588, finding at paras 9.3-9.5]

iv. Order dated 11.05.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2011-12 (ITA No. 9160/DEL/2019 & ITA No. 1042/DEL/2016) [Ref. Sr. No. 18 @pgs. 601-661 of CLC, relevant Para Nos. 14 to 14.3 @pgs. 629-632, finding at para 14.2-14.3]

It is further submitted that the decision of DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 (Delhi Trib.), relied upon by DRP, was appealed by the Assessee in the Hon'ble Delhi High Court vide ITA No. 660/2018 titled Vodafone Mobile Services Ltd. v. DCIT [(Assessment Year 2009-10) and the High Court has, vide order dated 11.03.2025, held that the said expenses are allowable u/s 37 of the Act. [Ref. Sr. No. 8 @pgs. 339-379 of CLC, relevant para 41 @pg. 362]. Therefore, this issue stands covered in favour of the Appellant.

24. Ld. Departmental Representative relied on impugned orders.

25. Ground of Appeal No. 7 is regarding disallowance of penalty amounting to Rs. 7,26,00,000/- claimed on the addition to fixed assets on account of Asset Restoration Cost (“ARC”) obligation.

25.1. A Co-ordinate Bench of the Tribunal in assessee's own case in ITA No. 8362/Del/2019 for A.Y 2013-14 in Para No. 23 observed as under:

"23. Heard both the parties and perused the materials available on record. It is observed that identical issue was came up for consideration before the Co-ordinate Bench in assessee's own case for AY 2012-13. The Co-ordinate Bench after considering the submissions and the judgment of Hon'ble Delhi High Court dated 11.03.2025 in the case of Vodafone Mobile Services Ltd. vs. DCIT in ITA No.660/2018 for Assessment Year 2009-10 held the said expenses are allowable u/s 37 of the Act and, thus, allowed the deduction. The relevant observations of the Coordinate Bench as contained in para 7.2 to 7.6 are reproduced as under:

"7.2 The Id. AO rejected the contention of the Assessee and held that there was no legal obligation on the Assessee to incur the ARC and hence, the same is neither allowable u/s 37 of the Act nor it can be capitalized under the provisions of the Act. It also held that the liability to incur ARC is an unascertained liability and that ARC does not form part of 'actual cost' as stipulated u/s 43(1) of the Act. Further it was stated that since the asset is not owned by the Assessee, provisions of Section 32 of the Act do not apply. It also rejected Assessee's alternate plea to allow it under Section 37 of the Act by holding that since the leased premises have been taken on rent for a long time, it cannot be said to be revenue in nature and that since, Assessee has not so far incurred any expense on the account of ARC, it cannot be allowed u/s 37 of the Act.

7.3 The Id DRP upheld AO's action following the decision in DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TT) 150 (Delhi Trib.)

7.4 The Id counsel for the assessee submitted that decision of DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 (Delhi Trib.) was appealed by the Assessee in the Hon'ble Delhi High Court vide ITA No. 660/2018 titled Vodafone Mobile Services Ltd. v. DCIT /(Assessment Year 2009-10) and the Hon'ble High Court has, vide order dated 11.03.2025, held that the said expenses are allowable u/s 37 of the Act. Therefore, this issue stands covered in favour of the assessee by the decision of the Tribunal in the assessee'sgroup company's case i.e. erstwhile 'Vodafone India Limited' has set-aside the issue to the files of the Assessing Officer vide:

a. Order dated 16 March 2023 for the A.Y. 2006-07

b. Order dated 08 May 2023 for the A.Y. 2008-09 C. Order dated 08 November 2023 for the A.Y. 2009-10

7.5 The Id DR vehemently relied upon the decision of the Id AO and prayed for confirmation of the addition.

7.6 On careful perusal of the above decisions relied upon by the assessee, we find that similar issues are involved in this ground of appeal of the assessee. Therefore, respectfully following the decisions and in view of the facts and circumstances of the instant case, we find that this issue is squarely covered in favour of the assessee. Hence, ground No. 5 raised by the assessee is allowed." Since, the facts are identical, therefore, the assessee is eligible for deduction u/s 37(1) of the Act and, therefore, the AO is directed to allow the expenditure, against

the deprecation claimed by the assessee. Accordingly, the deprecation claimed by the assessee is withdrawn and AO is directed to verify the expenditure and allowed the same as per section 37 of the Act. This ground of appeal is thus, allowed for statistical purposes."

25.2. In view of above material facts and judicial precedents the disallowance of penalty amounting to Rs. 7,26,00,000/- claimed on the addition to fixed assets on account of Asset Restoration Cost ("ARC") obligation being illegal is set aside. Ground of Appeal No. 7 is allowed.

26. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 8 submitted that Disallowance amounting to Rs. 11,70,93,676/- of liabilities written back.

26.1. During the year under consideration, the Appellant had written back liabilities amounting. to Rs. 11,70,93,676/- the break of which is as under:

i. Reversal of ARC provision Rs. 9,42,06,573/-

ii. Reversal of other capital liabilities - Rs. 2,28,87,103/-

i. Re: Reversal of ARC provisions:

- During the captioned year, the Appellant re-evaluated the quantification of the provision created in the earlier years on account of ARC and basis such re-evaluation, it was observed that the provision as it stood in the books of accounts was excessive and thus, the excessive provision was reversed from the cost base of the passive infrastructure assets (not routed through Profit & Loss A/c.) and the corresponding excessive accumulated depreciation which was recorded in the books of accounts amounting to Rs. 9,42,06,573/- was reversed and credited the profit and loss account.

ii Re: Reversal of other capital liabilities:

- Substantial portion of the said liabilities relate to security deposits taken by the appellant assessee which remained unclaimed by the customers for over three years. Accordingly, as per Appellant's policy, the same were written back.

26.2. Para 7.1 to 7.11 @pgs. 35-39 of Appeal Set:

AO rejected the claim of the Assessee alleging that Assessee has not established that the liability was capital in nature and even if it was capital, expenditure would have been claimed in terms of depreciation.

Alternatively held that if 41(1) is not applicable, it amounts to benefit to the assessee in terms of alleged excess depreciation being allowed and hence, it is to be added back u/s 28(iv) of the Act

26.3. Para 10 to 10.2 @pgs. 78-79 of Appeal Set:

DRP upheld AO's action to add back the liability written back u/s 28(iv) of the Act, following its own directions for A.Y. 2012-13 and A.Y. 2013-14.

26.4. Re.: Reversal of ARC provision:

It is submitted that neither ARC provision created in the earlier years was claimed as deduction nor was the book depreciation (which now stands reversed) ever claimed as deduction in the computation of income of the earlier years. Thus, the reversal of such book depreciation should in any case cannot be subject to tax in the captioned year since only tax depreciation in terms of section 32 of the Act was claimed in the earlier years.

- It is pertinent to note here that liabilities in the instant case relates to capital account creditors (i.e. supplier of capital assets/ equipment) resulting in capital expenditure for the assessee which

was capitalized, and hence, the same cannot be construed as a loss, expenditure or trading liability.

- Since such liability cannot construed as a loss, expenditure or trading liability and hence, reversal thereof could not be brought to tax in the hands of the assessee under section 41(1) of the Act.
- In so far as the taxability u/s. 41(1) is concerned, the Appellant submits that the same is applicable when any benefit in received in respect of loss, expenditure or trading liability which been allowed as a deduction/ claimed as a deduction in any earlier year.
- The write back of ARC provision related to depreciation is neither a loss nor an expenditure nor a trading liability. Reliance in this regard is placed on the decision of the Supreme Court in the case of Nectar Beverages Pvt. Ltd. v/s. DCIT (2009) 314 ITR 314 (SC).
- Re.: Reversal of other capital liabilities:
- The Appellant submits that a substantial portion of the said liabilities written back pertains to security deposits taken from the customers which remained unclaimed for a period in excess of three years. Security deposits received from customers are refundable deposits and are taken from the customers as a security against outstanding dues from them. The write back of this amount was not offered to tax in the captioned year since security deposits

from customers are in the nature of loans and hence, they are capital receipts.

- Reliance in this regard is placed on the decision of the Bombay High Court in the case of Mahindra and Mahindra Ltd. v/s. CIT (2003) 261 ITR 501 (Bombay) wherein it has been held that waiver of loan doesn't amount to cessation of liability since the assessee has not claimed any deduction in respect thereof in the past. This decision has been affirmed by the Apex Court reported in CIT v/s. Mahindra & Mahindra Ltd. (2018) 404 ITR 1 (SC). The Apex Court has held that neither the provisions of section 41(1) nor the 28(iv) would apply in such cases.
- The reversal of a capital liability cannot be said to have arisen from the business or exercise of the profession by the Appellant and thus, it is submitted that such reversal cannot be brought to tax u/s. 28(iv) of the Act.
- It is submitted that the AO as well as DRP have failed to appreciate that in the facts of the present case, the requisite conditions for invoking provisions of Section 28(iv) of the Act are not satisfied. Provisions of Section 28(iv) of the Act, as it stood at the relevant time, read as under:

"28. Profits and gains of business or profession.

The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession:

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession"

- Section 28(iv) of the Act seeks to tax only such benefit or perquisite that may be arise to an assessee in consideration of exercise of his business or profession. Therefore, not only the business or profession should have been carried out by an assessee but such benefit should have been received in consideration of rendering of services by the assessee.

- The reversal of a capital liability cannot be said to have arisen from the business or exercise of the profession by the Appellant and thus, it is submitted that such reversal cannot be brought to tax u/s. 28(iv) of the Act.

- Furthermore, it is submitted this issue is also covered its favour by the decision of the Supreme Court in the case of CIT v/s. Mahindra & Mahindra Ltd. (2018) 404 ITR 1 (SC) wherein it has been held that waiver of loan for acquiring capital assets cannot be taxed u/s. 28(iv) of the Act.

27. The Ld. Departmental Representative's submissions are as under:

" During the year under consideration, the Appellant has written back liabilities amounting to Rs. 11,70,93,676/- the break-up of which is given hereunder:

i. Reversal of Asset Restoration Obligation provision - Rs. 9,42,06,573/-

ii. Reversal of other capital liabilities - Rs. 2,28,87,103/-

The said amount was not offered to tax by the Appellant in the return of income filed for the captioned year.

2. During the course of hearing on 16 July 2026, liberty was granted to the Appellant to file a short synopsis on the non-taxability of the item No. (ii) mentioned above.

3. The Appellant submits that a substantial portion of the aforesaid other capital liabilities written back pertains to security deposits taken by the Appellant which remained unclaimed by its customers for a period in excess of three years. Since more than three years had elapsed from the scheduled date of payment, as per the policy followed by the Appellant with respect to payables, it was decided to write back such liabilities in the books of accounts. In this regard, it is also submitted that the quantum of the aforesaid write back is microscopic when compared with the overall quantum of transactions entered into by the Appellant during the captioned year.

4. The Appellant submits that security deposits from customers are refundable deposits and are taken from the customers as a security against outstanding dues of the customers. As per Note 21 to the Financial Statements of the captioned year, an amount of Rs. 447 million has been included in "Other Income". Out of this amount, Rs. 2,28,87,103/- pertains to 'security deposit from customer written back' during the year under consideration. This amount was not offered to tax by the Appellant in its return of income for the captioned year as security deposits received from customers are in the nature of loans and hence, take the character of "Capital Receipts".

5. The Assessing Officer whilst adjudicating this issue has based his entire arguments on item No. (i) mentioned hereinabove and held that undue benefit has been granted to the Appellant for reduced value of assets on which depreciation has been claimed. The Assessing Officer also held that even it is assumed that section 41 of the Income-tax Act, 1961 ['the Act'] is not applicable because of capital assets, then such benefit shall be considered as income of the Appellant in terms of section 28(iv) of the Act. While doing so, the AO has also relied on the assessment Order passed in the Appellant's case for AY 2012-13, which was on different facts. In A.Y. 2012-13, the Appellant had written back liabilities pertaining to the reversal of amount payable to Motorola Inc. towards supply of capital equipment during the years 2004 to 2008 and during A.Y. 2012-13, it was agreed with the said supplier that the liability shall no longer be payable and hence, the same was

written back. Similar facts were there for A.Y. 2013-14 wherein the written back liabilities pertained to the reversal of amount payable to Motorola Inc.

6. The DRP following its own Directions for AY 2012-13 & 2013-14 dismissed this ground by directing the Assessing Officer to bring back to tax, the amount of depreciation granted to the Appellant in the earlier years u/s. 28(iv) of the Act and then re-determine the closing WDV of the block of assets.

7. It is submitted that even the DRP merely following its own Directions for the earlier years, has decided this issue against the Appellant. While doing so, neither the Assessing Officer nor the DRP has considered this fact that the taxability of reversal of other capital liabilities amounting to Rs. 2, 28,87,103/- does not have any co-relation with the block of assets and the claim of depreciation thereon.

8. As submitted above, reversal of other capital liabilities majorly constitutes of write back of security deposits given to customers which remained unclaimed for a certain period of time. The write back of these amounts is not chargeable to tax since security deposits from customers are in the nature of loans and hence, they constitute capital receipts. It is important to highlight here that the facts of the present case being on account of write back of security deposits from customers is distinguishable from the facts of the earlier years i.e. AY 2012-13 and AY 2013-14 wherein it was agreed that liability to Motorola Inc. was no longer payable and hence, the ratio laid

down by the Hon'ble ITAT in its orders for A.Y. 2012-13 and A.Y. 2013-14, does not apply to the year under consideration.

9. In so far as the taxability u/s. 28(iv) is concerned, the Appellant submits that this issue is covered in its favour by the decision of the Supreme Court in the case of CIT v/s. Mahindra & Mahindra Ltd. (2018) 404 ITR 1 (SC) wherein it has been held that waiver of loan for acquiring capital assets cannot be taxed u/s. 28(iv) of the Act. This decision has been affirmed by the Apex Court reported in CIT v/s. Mahindra & Mahindra Ltd. (2018) 404 ITR 1 (SC). The Apex Court has held that neither the provisions of section 41(1) nor the 28(iv) would apply in such cases. Reliance is also placed on the decision of the jurisdictional High Court in the case of CIT v/s. Jindal Equipments and Leasing Consultancy Services Ltd. (2010) 325 ITR 87 (Delhi).

10. It is submitted that the reversal of a capital liability cannot be said to have arisen from the business or exercise of the profession by the Appellant and thus, it is submitted that such reversal cannot be brought to tax u/s. 28(iv) of the Act."

28. The Ld. Departmental Representative relied of impugned order.

29. From perusal of record, it is evident that Ground of Appeal No. 8 is regarding challenge to disallowance amounting to Rs. 11,70,93,676/- of liabilities written back. DRP by following its own directions for earlier years decided the issue against assessee. Hon'ble

ITAT did not decide the issue. Appellant has relied on decision of Hon'ble Bombay High Court in Mahindra and Mahindra Ltd. Vs. CIT (supra) wherein it is held that waiver of loan does not amount to cessation of liability since the Assessee has not claimed any deduction in respect of thereof in the part. The decision of Hon'ble High Court of Bombay has been affirmed by Apex Court reported in CIT Vs. Mahindra and Mahindra Ltd. 92018) 404 ITR page 1. Department of Revenue has placed reliance on Jurisdictional High Court in CIT Vs. Jindal Development and Leasing Consultancy Services Ltd. (2010) 325 ITR 87 Delhi. In view of above facts specially reversal of a capital liability and ratio of Jurisdictional High Court, it cannot be said that the same has to be brought to tax under Section 28(4) of the Act. Accordingly, Ground of Appeal No. 8 is dismissed.

30. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 9 submitted that Disallowance of discount amounting to Rs. 9,67,68,35,317/- contended to pre-paid distributors under Section 40(a)(ia) of the Act.

30.1. Assessee offered discount to its pre-paid sim card distributors, which was alleged as 'commission' by the AO.

30.2. Para 8 to 8.5 @pgs. 39-40 of Appeal Set:

AO made a disallowance u/s 40(a)(ia) of the Act on account of non-deduction of tax at source (TDS) on the discount offered by the Assessee to pre-paid sim-card distributors under Section 194H of the Act, alleging the same to be in the nature of "commission".

30.3. Para 11 to 11.2 @pgs. 79-80 of Appeal Set:

DRP upheld AO's action following its own directions for A.Y. 2012-13 and A.Y. 2013-14.

30.4. This issue has been decided in favour of the Appellant in Appellant's own case and also in group company's case:

i. Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A. Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) [Ref. Sr. No. 1 @pgs. 1-36 of CLC, relevant Para Nos. 9 to 9.6 @pgs. 18 to 19]

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 [Ref. Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 26 to 27 @ pgs. 56-57, finding @ para 27].

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17

@pgs. 561-600 of CLC, relevant Para Nos. 11 to 11.5 @ pgs. 589-591, finding at paras 11.3-11.5]

iv. Order dated 11.05.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2011-12 (ITA No. 9160/DEL/2019 & ITA No. 1042/DEL/2016) [Ref. Sr. No. 18 @pgs. 601-661 of CLC, relevant Para Nos. 16 to 16.3@pgs. 634-636, finding at para 16.2-16.3]

v. Bharti Cellular Ltd. v/s. ACIT reported in (2024) 462 ITR 247 (SC) [Ref. Para 42]

vi. Order dated 09.08.2024 passed by the Supreme Court in the Appellant's own case (SLP No. 12160 of 2024 and 16251 of 2024).

vii. Order dated 05.06.2024 in the Appellant's own case for A.Y. 2012-13 (ITA No. 37/Del/2023) [Ref. Paras 5.1-6].

31. The Ld. Departmental Representative relied on impugned order.

32. Ground of Appeal No. 9 is regarding Disallowance of discount amounting to Rs. 9,67,68,35,317/- contended to pre-paid distributors.

32.1. A Co-ordinate Bench of the Tribunal in ITA No. 8362/Del/2019 for A.Y 2013-14 in order dated 18.03.2026 in Para No. 27 on page No. 56 and 57 observed as under:

"27. Heard both the parties and perused the materials available on record. This issue is squarely covered in favour of the assessee by the judgement of Hon'ble Supreme Court in the case of Bharti Cellular Ltd. reported in [2024] 461 ITR 247 (SC). Further following the order of Bharti Celluar, the Co-ordinate Bench in assessee's own case for AY 2012-13 in ITA No.8361/Del/ 2019 has deleted the disallowance. Since, the Hon'ble Supreme Court has held that discount given to prepaid distributors is not commission, therefore, provisions of section 194H are not applicable. Thus by respectfully following the judgment of hon'ble Supreme Court in the case of Bharti Cellular Ltd. and further in assesse's own case for AY 2012-13, we decided this issue in favour of the assessee and deleted the disallowance made. Ground of appeal No.8 of assessee is allowed."

32.2. In view of above material facts by following judicial precedent, it is held that the disallowance of discount amounting to Rs. 9,67,68,35,317/- contended to pre-paid distributors being illegal is set aside. Therefore, Ground of appeal No. 9 is allowed.

33. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 10 submitted that Disallowance amounting to Rs. 4,15,22,94,682/- on account of capitalization of license fees under Section 37(1) of the Act.

33.1. Assessee paid license fee which was claimed a revenue expenditure since it was not to obtain the license but to maintain the license obtained.

33.2. Para 9 to 9.22 @pgs. 40-46 of Appeal Set:

AO disallowed the said expense holding it to be on account of capital expenditure and hence, not allowable.

33.3. Para 13 to 13.2 @pgs. 82-83 of Appeal Set:

DRP upheld the AO's order following its own directions for A.Y. 2012-13 and A.Y. 2013-14.

33.4. The Supreme Court in the case of CIT v/s. Bharti Hexacom Ltd. reported in [2023] 458 ITR 593 (SC) [relevant Paras 26-28), held the expense to be capital in nature, however, it allowed amortisation in accordance with section 35ABB of the Act.

i. The said decision has been followed in Assessee's own case for A.Y. 2013-14 decided vide Order dated 18.03.2026 passed by Hon'ble 'H' bench I ITA No. 8362/Del/2019 [Ref. Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 28 to 29 @pgs. 57-58, finding @ para 29], where, following the aforesaid decision of the Supreme Court, the Appellant has been held entitled to a deduction being the amortised value pertaining to the year under consideration.

ii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17

@pgs. 561-600 of CLC, relevant Para Nos. 12 to 12.7 @ pgs. 591-594, finding at paras 12.4-12.7]

iii. Order dated 11.05.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2011-12 (ITA No. 9160/DEL/2019 & ITA No. 1042/DEL/2016) [Ref. Sr. No. 18 @pgs. 601-661 of CLC, relevant Para Nos. 12 to 12.3 @pgs. 625-627, finding at para 12.2-12.3]

Reliance is also placed on ACIT, Delhi v. M/s. Vodafone West Ltd. [ITA No.7658 & 8079/Del/2018 dated 21.03.2025] (Assessment Year 1999-2000) (Del. Trib.) relevant para 14].

34. The Ld. Departmental Representative relied on impugned order.

35. From examination of record it is evident that Ground of Appeal No. 10 is regarding disallowance of amounting to Rs. 4,15,22,94,682/- on account of capitalization of license fees under Section 37(1) of the Act.

35.1. A Co-ordinate Bench of the Tribunal in Assessee's own case in ITA No. 8362/Del/2019 for A.& 2013-14 decided on 18.03.2026 in para No. 29 on Page No. 57 and 58 observed as under:-

"29. Heard the parties and perused the materials available on record. Claim of the assessee is that license fee paid is Revenue expenditure as it was not paid for obtaining the license but to maintain the license obtained. However, the issue has been settled by the Hon'ble Supreme Court in the case of the CIT vs. Bharti Hexacom Ltd. reported in [2023] 458 ITR 593 wherein the Hon'ble Supreme Court has held the same as capital in nature and allowed amortization in accordance with section 35ABB of the Act. Further, the Co-ordinate Bench of the Tribunal in the case of ACIT vs. Vodafone Ltd. in ITA No.7658 and 8709/Del/2018has followed the decisions of Hon'ble Supreme Court in the case of Bharti Hexacom Ltd. (supra). Thus by respectfully following the same, we direct the AO to verify the working of 22 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT the assessee and allow the amortization in accordance with provisions of section 35ABB of the Act. Thus, this ground of appeal of the assesse is allowed for statistical purposes."

35.2. In view of above material facts by following the judicial precedent, it is held that disallowance amounting to Rs. 4,15,22,94,682/- on account of capitalization of license fees under Section 37(1) of the Act being illegal is set aside. Ground of Appeal No. 10 is allowed.

36. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 11 submitted that Disallowance amounting to Rs. 67,03,12,649/- in respect of payments made to IBM.

36.1. The Appellant had inter-alia claimed a deduction of Rs. 10,37,49,94,137/-with respect to the service charges for provision of services and hardware paid to IBM by way of the following description:

- Amount of Rs. 1,47,49,94,137/-was described as 'Amount paid on IBM Leased Assets - which is capitalised in books'; and
- Amount of Rs. 1082.20 crore was described as 'IT and business process outsourcing cost'.

This expenditure represents payments made towards the use of hardware supplied by IBM which were capitalised in the Appellant's books of accounts in accordance with Accounting Standard - 19 on leases. It is imperative to note that IMB continued to be the owner of the hardware provided for use to the Appellant and he ownership of such assets was not transferred to the appellant. For all practical purposes, IBM was exercising all ownership rights on the assets.

For the purpose of computing income as per the provisions of the Act, since these charges were towards the use of hardware owned by IBM and used by the appellant for its business operations, the appellant claimed a deduction of the aforesaid expenditure.

36.2. Para 10 to 10.07 @ pages 46-52 of appeal set:

- While the Assessing Officer proposed disallowance of entire Rs. 10,37,49,94,137/-, however, pursuant to DRP direction, disallowed a sum of Rs. 67,03,12,649/-.

  Para 17 to 17.5 @pgs. 84-86 of Appeal Set:

- DRP held that the entire amount of Rs. 1,47,49,94,137/- should be considered as capital in nature and should be amortized over a period of the agreement. Pursuant thereto, the AO in terms of the impugned final Assessment Order, has disallowed a sum of Rs. 67,03,12,649/-.

36.3. At the outset, it is submitted that the said issue has been decided in favour of the Appellant's own case and also in e group company's case:

i. Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) [Ref. Sr. No. 1 @pgs. 1-36 of CLC, relevant Para Nos. 12.1 to 12.7 @pgs. 22 to 27, finding @para 12.7-pgs. 25 to 27.

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 [Ref. Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 30 to 31 @pgs. 58-62, finding @ para 31]

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17 @pgs. 561-600 of CLC, relevant Para Nos. 13 to 13.6 @ pgs. 594-596, finding at paras 13.4-13.6]

37. The Ld. Departmental Representative relied on impugned order.

38. Ground of Appeal No. 11 is regarding Disallowance amounting to Rs. 67,03,12,649/- in respect of payments made to IBM.

38.1. A Co-ordinate Bench of the Tribunal in ITA No. 8362/Del/2019 in order dated 18.03.2206 in Para No. 31 on Page No. 58 to 62 observed as under:

"31. Heard the parties at length and perused the material available on record. The issue is identical to immediately preceding assessment year wherein the Co-ordinate Bench by following judgment of coordinate bench of Delhi ITAT in the case of Minda Corporation Ltd. vs. DCIT reported in [2016] 69 taxmann.com 317 dated 31.07.2015 (Del. Trib.) hold that finance lease fee paid by the assessee on the asset acquired from IBM as Revenue expenditure. The relevant observations of the Coordinate Bench as contained in para 12.1 to 12.6 of the order are reproduced as under:

"12.1 Considered the rival submissions and material placed on record. Brief fact of the issue is, assessee had inter-alia claimed a deduction of Rs.96,71,96,490/- with respect to the service charges for provision of services and hardware paid to IBM by way of the following description:

- *Amount of Rs. 46,97,35,758/- was described as 'Amount paid on IBM Leased Assets which is capitalized in books for accounting purposes, however for income tax purposes, it is not capitalized in block of asset; recurring charges towards use of hardware; (28%) and*
- *Amount of Rs. 49,74,60,732/- was described as 'Service charges paid to IBM (72%)• considered as finance lease in IGAAP' towards IT support services."*

12.2 The Id AO proposed disallowance only of Rs. 49,74,60,732/-and held that the same should be amortized over the period of contract of 5 years and thereby allowed a deduction of Rs. 9,94,92,146/- (1/5 of Rs. 49,74,60,732/-), he continued to allow deduction Rs. 46,97,23,758/- as revenue expenditure. Before the DRP, AO submitted that expenditure with regard to 28% of the payment to IBM, amounting to Rs. 46,97,35,758/-, should also be disallowed and capitalized. AO categorized payments to IBM as one related to IT services and one related to hardware- both of which were to be capitalized. In the final assessment order, it disallowed a total of Rs. 96,71,96,490/- and made addition of Rs.77,37.57,132/-, after allowing deduction of amortized amount of Rs. 19,34,39.298/-. 23 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT

12.3 The Id DRP allowed the claim of the assessee. However, it still directed AO to treat it as capital expenditure-holding that AO has not examined the audited financials properly, which is contrary to its own finding that this amount should be allowed. The Id. DRP directed AO to treat it as capital expenditure-holding that AO has not examined the audited financials properly.

12.4 However, the DRP held that the entire amount of Rs. 96,71,96,490/- should be considered as capital in nature and should be amortized over a period of 5 years. Pursuant thereto, the Assessing Officer in terms of the impugned final Assessment Order, allowed a deduction of Rs. 19,34,39,298/- (1/5 of Rs. 96,71,96,490/-) and disallowed a sum of Rs. 77,37,57,192/-).*

12.5 The Id counsel for the assessee submitted that the assessee submits that the difference in the description of the two items merely represents different description adopted by the erstwhile merging entities. There is no difference in the nature of the aforementioned expenditure. This expenditure represents payments made towards the use of hardware supplied by IBM which were capitalized in the Assessee's books of accounts in accordance with Accounting Standard 19 on leases. It is imperative to note that IBM continued to be the owner of the hardware provided for use to the Assessee and the ownership of such assets was not transferred to the Assessee. For all practical purposes, IBM was exercising all ownership rights on the assets. For the purpose of computing income as per the provisions of the Act, since these charges were towards the use of hardware owned by IBM and used by the assessee for its business operations, the assessee claimed a deduction of the aforesaid expenditure. It is submitted that while this expenditure has been classified as 'finance lease' from an accounting perspective, since the hardware supplied by IBM during the tenure of the contract continued to be owned by IBM and the amount capitalized essentially represents charges incurred by the assessee for usage of the hardware for the year under consideration and hence ought to be allowed as a deduction while computing its business income. Mere classification of a payment as

'finance lease' from an accounting perspective is not determinative of the tax treatment of such payment. Reliance in this regard is placed on the unreported decision of the Delhi High Court in the case of CIT Vs. Bharti Hexacom Ltd. (ITA No. 799 of 2016 dated 22 November 2016) wherein on identical facts the High Court affirmed the decision of the Tribunal with respect to the deduction claimed by the assessee for payment made to IBM and held that the treatment of a particular transaction in the books of accounts is inconclusive as of its true nature which has to be adjudged on an independent consideration by the Assessing Officer. In this case too, the High Court affirmed the findings given by the Tribunal that the substance of the transaction clearly suggest that the beneficial ownership remained with IBM and not the assessee and hence it has rightly claimed the entire lease rent paid to IBM as a revenue expenditure. Reliance in this regard is also placed on the decision of the Delhi Bench of the Tribunal in the case of Minda Corporation Ltd. vs. DCIT, Circle 6(1), New Delhi (2016) 69 taxmann.com 317 (Delhi Tribunal) wherein too it has been held that lease rentals paid by the assessee in case of a finance lease is allowable as revenue expenditure. Similar view has been taken by the Rajasthan High Court in the case of Rajshree Roadways v/s. UOI (2003) 129 Taxman 663 (Rajasthan). Para 16- Page no 483-487 of CLC1.

12.6 The Id DR vehemently relied upon the orders of the lower authorities.
12.7 After considering the submissions and factual matrix on record, we observed that the assessee no doubt pays lease rent as finance lease and accordingly capitalized the same by following the AS 19, we observed that the various precedents of this issue indicate that as far as Income Tax is concerned, the lease payments are considered as revenue expenditure whether they are operating or finance lease, they are allowed as revenue expenditure. We observe from the decision of coordinate bench in the case of Minda Corporation (supra), the bench had analyzed the issue under consideration in the right perspective and decided the issue as under:

> *"5.1 After having heard rival submissions, we are of the view that AS-19 on accounting for "Leases" issued by the ICAI is only applicable for accounting the lease transaction in the books of accounts. It is a settled law that treatment in the books of account is not determinative of liability towards income-tax for the purpose of the Act. The liability under the Act is governed by provisions of the Act and is not dependent on the treatment followed for the same in the books of accounts. For above proposition, I reference is made to Sutlej Cotton Mills Ltd. vs. CIT: 116 ITR 1 (SC) and Kedarnath Jute Mfg. Co. Ltd. vs. CIT: 82 ITR 363 (SC). AS-9 on accounting for leases classifies lease transactions for accounting purposes as under:*
>
> *(1) Finance Lease*
>
> *(ii) Operating Lease*
>
> *5.2 Finance Lease, in AS-19, is described as a lease that transfers substantially all the risks and rewards in respect of ownership of an*

asset, title may or may not be transferred under such lease. An operating lease, on the other hand, is described as a lease other than a finance lease. The aforesaid Accounting Standard provides that under the finance lease, the lessee should recognize the asset in its books and should charge depreciation on the same. In the case of operating lease, the Accounting Standard provides that the lessee should recognize the lease payments as an expense in the profit and loss account and the lessor should recognize the asset given on lease and charge depreciation in respect of the same. The aforesaid distinction between finance lease and operating lease is not recognized under the Act. Under the provisions of the Act, depreciation is admissible under section 32 of the Act only to the 'owner' of the asset. Lease charges paid for the use of the asset, without acquiring any ownership rights in the same, are allowable as revenue expenditure under section 37 of the Act.

5.3 The Circular No.2 of 2001 dated 09.02.2001 (247 ITR (SL) 53) issued by the Central Board of Direct Taxes (CBDT) has opined that the aforesaid accounting standard issued by ICAI creating distinction between finance lease and operating lease will have no implications under the provisions of the Act. The relevant excerpt of the said Circular are reproduced herein below:

> *"Under the Income-tax Act, in all leasing transactions, the owner of the asset is entitled to the depreciation if the same is used in the business, under section 32 of the Income-tax. The ownership of the asset is determined by the terms of the contract between the lessor and the lessee. 25 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT It has come to the notice of the Board that the New Accounting Standard on 'Leases' issued by the Institute of Chartered Accountants of India require capitalization of the asset by the lessees in financial lease transaction. By itself, the accounting standard will have no implication on the allowance of depreciation on assets under the Act."*

5.4 Thus, the CBDT's view on the treatment of finance lease is not aligned to the accountant's perspective of a finance lease. For accounting purposes, although the lessee shows the asset in his balance sheet, charges depreciation in accounts and even makes impairment provision, yet the assessee is not eligible to claim depreciation under the Act, which is allowed to the legal owner of the asset. Furthermore, not only the interest/finance/ other charges component in the lease payments, but the entire lease payments are treated as a deductible expense and no deduction is allowed for the impairment provision. In the hands of the lessor, the entire 'lease rentals' and not merely the finance charges component thereof is taxed as income. The lessor, who is the legal owner of the asset, is entitled to claim depreciation under the provisions of the Act.

5.5. The aforesaid legal position finds support from the decision of the Hon'ble Supreme Court in the case of ICDS Ltd. vs. CIT350 ITR 527, wherein the Hon'ble Court held that the lessor is the owner of the leased property in case of finance lease, entitled to depreciation of the same. The pertinent observation of the Hon'ble Court is reproduced hereunder:

The revenue's objection to the claim of the assessee is founded on the lease agreement. It argued that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding one per cent of the original cost of the vehicle, making the assessee in effect a financier.

However the revenue's contention cannot be accepted. As long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eye of law. A scrutiny of the sale agreement cannot be the basis raising question against the ownership of the vehicle. The clues qua ownership lie in the lease agreement itself, which clearly point in favour of the assessee"

5.6 The Hon'ble Rajasthan High Court in the case of Rajshree Roadways vs. Union of India [2003] 129 Taxman 663 upheld the assessee's claim of allow ability of lease rentals paid as lessee of the Trucks as a revenue expenditure under section 37(1) of the Act, even though the lease was categorized as finance lease.

5.7 The other relevant judgments are as follows:-

(i) The decision of the Hon'ble Rajasthan High Court in the case of CIT vs. Banswara Synthetic Ltd. 216 Taxman 113, wherein the High Court while following its earlier decision in the case of Rajshree Roadways (supra) observed that lease rentals paid by an assessee in case of a finance lease isallowable as an revenue expenditure under section 37(1) of the Act. 26 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT

(ii) The decision of the Karnataka High Court in the case of Banashankari Medical & Oncology Research Centre Ltd [2009] 316 ITR 407 is also to the same effect. In that case, the assessee had taken certain equipments on lease for which it had paid a certain sum as deposit which was to be adjusted against the lease rentals and besides that, the assessee was also paying finance/interest charges to the owner of equipment. The entire amount of lease rentals paid during the year, was claimed by the assessee as revenue expenditure under section 37(1) of the Act, which was upheld by the High I Court.

(iii) The decision of the Jharkhand High Court in the case of CIT vs. Tata Robins Fraser Ltd 253 CTR 227, wherein it was held that a lease agreement providing lessee a right to purchase an asset is not Hire Purchase Agreement until such right is exercised by the lessee. 5.8 In view of the aforesaid reasoning and the judicial precedents, we hold

that disallowance of Rs.9,29,592/- is not justified on facts and circumstances of the case. It is ordered accordingly." Respectfully, following the same, we direct the AO to allow the finance lease paid by the assessee on the assets acquired from IBM as revenue expenditure. In the result, ground raised by the assessee is allowed." Admittedly, the facts are identical, thus by respectfully following the decision of the Co-ordinate Bench in assessee's own case in preceding year (supra), we allowed this ground of appeal of the assessee."

38.2. In view of above material facts and judicial precedent, it is held that disallowance amounting to Rs. 67,03,12,649/- in respect of payments made to IBM being illegal is set aside.

39. The Ld. Assessee's Representative for appellant/assessee regarding Ground of Appeal No. 12 submitted that Disallowance amounting to Rs. 10,95,67,36,505/- on account of capitalization of royalty WPC expenses.

39.1. Royalty-WPC expenses were booked in the profit and loss account by the Appellant pertaining to spectrum charges paid to DOT on quarterly basis, as a percentage of revenue.

The Appellant further submitted that the charges cannot be said to be in the nature of a capital expenditure since no enduring benefit can be said to be accruing to the assessee on this account. The said payment is in the form of a recurring charge being incurred by the assessee on a quarterly basis. The government has levied this charge for the purpose of carrying on the telecom operations and not for acquisition of any

right. The same accordingly acquires the character of revenue expenditure.

39.2. Para 11 to 11.10 @pgs. 52-54 of appeal set:

AO rejected the contention of the Appellant and held that royalty being paid in order to get the right to use the spectrum is capital in nature and disallowed the said expenditure.

39.3. Para 18 to 18.1 @pgs. 86-87 of Appeal Set:

DRP upheld the AO's order following its own directions for A.Y. 2012-13 and A.Y. 2013-14.

39.4. This issue has been decided in favour of the Appellant in Appellant's own case and also in group company's case:

i. Order dated 24.10.2025 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2012-13 -ITA No. 8361/Del/2019 (A.Y. 2012-13) [Ref. Sr. No. 1 @pgs. 1-36 of CLC, relevant Para Nos. 13.1 to 13.6 @pgs.28 to 30, finding @para 13.5, 13.6 @pgs. 29-30]

ii. Order dated 18.03.2026 passed by Hon'ble 'H' bench in the Appellant's own case for A.Y. 2013-14 -ITA No. 8362/Del/2019 [Ref.

Sr. No. 2 @pgs. 37-65 of CLC, relevant Para Nos. 32 to 33 @ pgs. 62-64, finding @ para 33]

iii. Order dated 30.06.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2015-16 (ITA No. 8971/DEL/2019) [Ref. Sr. No. 17 @pgs. 561-600 of CLC, relevant Para Nos. 14 to 15 @ pgs. 596-598, finding at para 15]

iv. Order dated 11.05.2026 passed by the Mumbai ITAT in Appellant's own case for A.Y. 2011-12 (ITA No. 9160/DEL/2019) [Ref. Sr. No. 18 @pgs. 601-661 of CLC, relevant Para Nos. 31 to 31.1 @ pgs. 655-656, finding at para 31.1]

This issue has been decided in favour in the case of erstwhile 'Vodafone West Limited' (earlier known as Fascel Limited') by the Hon'ble Delhi High Court reported in (2009) 221 CTR 305 (Delhi).

This issue has also been decided in favour in the Appellant's own case by the Hon'ble Delhi High Court vide an Order dated 07.11.2016 for the A.Y 2008-09 (Pr. CIT Vs. Vodafone Mobile Services Ltd. ITA No. 730/2016, dated 07.11.2026 (Delhi High Court.)

40. The Ld. Departmental Representative relied on impugned order.

41. The ground of appeal No. 12 is regarding Disallowance amounting to Rs. 10,95,67,36,505/- on account of capitalization of royalty WPC expenses.

41.1. A Co-ordinate Bench of the Tribunal in assessee's own case in ITA No. 8362/Del/2019 in order dated 18.03.2206 in Para No. 33 on page No. 63 and 64 observed as under:

> *"33. Heard the parties and perused the materials available on record. It is observed that identical issue was raised in immediately preceding year where disallowance of similar nature was made towards the WPC royalty expenses. The Co-ordinate Bench in ITA No.8361/Del/2019 by following the judgment of Hon'ble Delhi High Court in the case of Vodafone West Limited reported in [2009] 221 CTR 305 (Delhi), has deleted the same. The relevant observations of the Co-ordinate as contained in para 13.1. to 13.6 are as under:*
>
> > *13.1 Brief facts of the Issue is, the assessee in its P & L A/c had claimed Royalty-WPC expenses amounting to Rs. 791,56,14,811/-, The assessee was asked to furnish the details on the basis of these royalty expenses and also to justify such claim. In response the assessee vide its reply dated 24.01.2014 stated that Royalty-WPC expenses booked in the profit and loss account pertain to spectrum charges paid to DOT on quarterly basis, as a percentage of revenue. Every telecom operator in India, in addition to the initial operator license fee, is required to pay GSM spectrum royalty for the usage of spectrum and microwave royalty for given microwave frequency usage on a regular basis, year on year. It was submitted by the assessee before the AO that this fee, incurred by the assessee, is in the nature of a regulatory payment which is necessarily to be incurred on a regular basis for the conduct of its*

business. Such expenses have been claimed as revenue expenditure by the assessee in the subject assessment year.

13.2 The Id AO observed that as per the submissions made by the assessee, an amount of Rs. WPC-royalty fee of Rs. 791,56,14,811/-has been paid during the subject year. After allowing depreciation @ 25% amounting to Rs. 197,89,03,703/- the remaining amount of Rs.5,93,67,11,109/- (i.e. 791,56,14,811/-less 197,89,03,703) is hereby disallowed and added to the income of the assessee. In addition to this amount, a deduction in respect of amounts similarly treated as capital expenditure in earlier years should be allowed in this year. However, given that the CIT(A)/ DRP have given relief in past years on this issue, no deduction is required to be allowed in this order for WPC Royalty expense capitalized in the past years. Directions of DRP "Considering the above facts and the arguments of the AO, and the fact that, in this case, as per status of appellate proceedings in assessee's case in different assessment years submitted before the DRP, Department's SLP/appeal against the order of the Hon'ble Delhi High Court is pending before the Hon'ble Supreme Court. Hence, the action of AO is upheld. This ground is accordingly rejected"

13.3 Since the DRP-II has not made any variation in the addition as proposed in the draft assessment order, Rs.5,93,67,11,109/- is made to the total income on account of an addition of disallowance of WPC-Royalty expenses. I am satisfied that the assessee has furnish inaccurate particulars thereby concealing the particulars of its income anc rendering itself liable for initiation of penalty proceedings u/s 271(1)(c) read with section 274 of the IT Act, 1961. The same is being initiated separately.

13.4 The Id DRP did not make any variation in the addition in the draft assessment order, however, an addition 5,93,67,11,109/- was made to the total income on account of disallowance of WPC Royalty Expenses.

13.5 The Id counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of Vodafone West Limited' (earlier known as Fascel Limited') by the Hon'ble Delhi High Court reported in (2009) 221 CTR 305 28 ITA No.8362 /Del/2019 Vodafone Idea Limited vs. ACIT (Delhi). This issue has also been decided in favour in the assessee own case by the Hon'ble Delhi High Court vide an Order dated 07 November 2016 for the A.Y. 2008- 09.

13.6 Considering the above submission and the decisions relied upon by the Id counsel for the assessee, we respectfully following the decision of the Hon'ble Jurisdictional High Court and also the decision of the coordinate bench, we are inclined to allow ground No. 11 of the assessee." Admittedly, facts are identical, thus by respectfully following the judgment of the Co-ordinate Bench in assessee' own case for preceding assessment years, we allow this ground of appeal of the assessee."

41.2. In view of above material facts by following the judicial precedent, it is held that disallowance amounting to Rs. 10,95,67,36,505/- on account of capitalization of royalty WPC expenses being illegal is set aside. Ground of appeal No. 12 is allowed.

42. The Grounds of Appeal Nos. 13 to 15 are regarding ground of TDS computation of interest under Section 44A and initiation of penalty proceedings under Section 2711(c) of the Act being consequential are left open.

43. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 13.10.2026

Sd/- Sd/-

(M. BALAGANESH) **(VIMAL KUMAR)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 13.10.2026
Reshma, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI