

आयकर अपीलीय अधिकरण, मुंबई पीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI
BENCHES, MUMBAI

BENCH: J
BEFORE OM PRAKASH KANT, HON'BLE ACCOUNTANT MEMBER
AND ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

ITA No. 8971/DEL/2019
(Assessment year: 2015-16)

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| VODAFONE IDEA LIMITED [successor of Vodafone Mobile Services Limited] 10th Floor, Birla Centurion, Century Mills Compound, Pandurang, Budhkar Marg, Worli, -400030, Maharashtra PAN: AAACB2100P | vs | ACIT, CIRCLE-26(2) - New Delhi-110002, Delhi |
| APPELLANT | | RESPONDENT |

Assessee by: Shri Ketan Ved, AR
Revenue by: Shri Saurabh Deshpande, (CIT DR)

Date of hearing : 22/06/2026
Date of pronouncement : 30/06/2026

ORDER

Per: Anikesh Banerjee (JM):

Present appeal filed by assessee is directed against the final assessment order passed by Learned Assessing Officer [hereinafter referred to as the "Ld.AO/Ld.TPO"] u/s 143(3) r.w.s. 144C of the Act on 31/10/2019 pursuant to the directions of the Dispute Resolution Panel-2, New Delhi [hereinafter referred to as the "Ld.DRP"] dated 20/09/2019, for AY 2015-16, on the following grounds of appeal:-

“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 66,32,09,19,130, in pursuance to DRP directions, as against returned income of INR 16,92,86,95,773.

Transfer Pricing Grounds:

2. Transfer pricing ("TP") adjustment amounting to INR 5,72,83,20,370 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 5,72,83,20,370 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.

2.4 Without prejudice to the ground of appeal nos. 2.1 to 2.3, the AO/DRP/TPO have erred in making an arbitrary adjustment of INR 5,72,83,20,370 as against the amount of INR 5,72,35,07,935 computed by the TPO himself.

3. TP adjustment amounting to INR 1,22,31,14,408 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 arbitrarily making an upward TP adjustment of INR 1,22,31,14,408 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 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 determining the arm's length interest rate at LIBOR + 3.72917% in respect of ECB's extended in US Dollars as against interest rate of LIBOR + 4.75% adopted by the Appellant.

3.9 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 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.

4. TP adjustment amounting to INR 9,29,52,69,832 in respect of international transaction of Advertisement, Marketing and Promotion ("AMP") expenditure:

4.1 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 9,29,52,69,832 in respect of alleged excessive AMP expenditure incurred by the Appellant, alleging that the Appellant is rendering brand building services to its AEs.

4.2 That on the facts and circumstances of the case and in law, the orders passed by the AO/ DRP/TPO are bad in law as the pre-requisite for applying Chapter-X, being existence of an international transaction between two Associated Enterprises ("AE's") under section 92B of the Act, was not established or existed in the absence of an agreement, understanding or arrangement between the AE's for incurrance of AMP expenditure by the Appellant.

4.3 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in re-characterizing the unilateral AMP expenditure, being payments made by Appellant to independent third parties, as an 'international transaction' under Chapter X of the Act, particularly when section 92CA of the Act enables the TPO to compute the ALP only of an 'international transaction'.

4.4 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in holding that the alleged excessive AMP expenditure incurred by the Appellant was towards creation of marketing intangibles, which ensures to the benefit of the AEs.

4.5 That on the facts and circumstances of the case and in law, the AO / DRP/TPO erred in determining the ALP of the alleged excessive AMP expenditure, without appreciating that such expenditure was incurred by the Appellant on its own account for furthering its own telecommunication business, and any incidental benefit, if any, has accrued to its AE does not warrant separate compensation/reimbursement from the AE.

4.6 That on the facts and circumstances of the case and in law, the TPO erred in suo-moto benchmarking the alleged international transaction related to excessive AMP expenditure without their being any order or reference from the AO in relation thereto.

4.7 That on the facts and circumstances of the case and in law, the AO / DRP / TPO grossly erred in applying Bright Line Test ("BLT") under the garb of Residual Profit Split Method ("RPSM") for benchmarking the alleged excessive AMP expenditure, without appreciating that BLT has been expressly rejected by various decisions of the High Court.

4.8 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily applying RPSM as the most appropriate method for benchmarking the alleged excessive AMP expenditure without appreciating that the conditions prescribed for applicability of PSM under Rule 10B(1)(d) of the Income Tax Rules, 1962 ("Rules") are not satisfied.

Without prejudice to ground of appeal no. 4.8 above;

4.8.1 The AO / DRP / TPO erred in incorrectly computing the adjustment under RPSM, which is contrary to the provisions of the Act read with Rules.

4.8.2 The AO / DRP / TPO erred in arbitrarily allocating weights to the functions performed, assets employed and risk assumed ("FAR") for computing profit-split ratio of 80%-20% to allocate the residual profits between the Appellant and the AEs.

4.8.3 The AO / DRP / TPO erred in not restricting the adjustment to 20% of the alleged excessive AMP expenditure even after considering profit split ratio of 80%-20% for allocating the residual profits between the Appellant and the AEs.

4.8.4 *The AO / DRP / TPO erred in incorrectly computing the AMP expenditure of comparable companies by not considering certain expenses which were considered as a part of AMP expenditure of the Appellant.*

4.8.5 *The AO / DRP / TPO erred in considering the Profit Level Indicator ("PLI") of Operating Profit/Operating Revenue ("OP/OR") instead of Earnings before interest, tax, depreciation and amortization ("EBITDA") / OR for the purpose of computation of supernormal profits.*

4.8.6 *The AO / DRP / TPO have erred in making an adjustment in respect of alleged international transaction of AMP expenditure, without appreciating that higher EBITDA return of the Appellant compensates for any alleged excessive AMP.*

4.8.7 *The AO / DRP / TPO erred in arbitrarily rejecting Aircel Limited and Tata Teleservices Limited as comparable companies for the purposes of computation of non-routine AMP expenditure and computation of supernormal profits, without providing any cogent reasons.*

4.8.8 *That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in not excluding the sales and distribution expenditure from the quantum of alleged excessive AMP expenditure while benchmarking the alleged international transaction, disregarding the various decisions of the High Court.*

Corporate Tax Grounds:

5. Disallowance amounting to INR 20,57,50,02,571 in respect of depreciation on right to use spectrum:

5.1 *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 20,57,50,02,571 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.*

5.2 *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.*

5.3 *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.

6. Disallowance of INR 27,75,78,909 being penalty imposed by Department of Telecommunication ("DOT") for subscriber verification:

6.1 That on the facts and circumstances of the case and in law, the AO / DRP erred in disallowing INR 27,75,78,909, being amount paid to DOT on account of failure to comply with subscriber verification guidelines, 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 under the license agreement and not for infraction of any law and is therefore allowable as deduction under section 37(1) of the Act.

7. Disallowance amounting to INR 16,68,00,000 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 16,68,00,000 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 16,68,00,000, basis the closing balance of provision, without appreciating that an amount of INR 5,85,94,382 was claimed by the Appellant as depreciation in respect of ARC obligation.

7.2.1 Without prejudice to ground of appeal nos. 8.2, the AO / DRP erred in not restricting the disallowance in respect of ARC obligation to depreciation amounting to INR 5,85,94,382, 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. 8.1 to 8.3, the AO / 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. 8.1 to 8.4, the AO / 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. 8.4 and 8.5, 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 1,48,70,950 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 1,48,70,950 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 3,06,84,13,975 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 3,06,84,13,975 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 prepaid 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 that 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 appreciating that even if such charges were liable to tax deduction at source, no disallowance was warranted 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 (i.e. AYS 2007-08 to 2014-15).

10. Capitalisation of license fees 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 56,62,70,569 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 1,71,30,00,000 paid to IBM as capital expenditure and restricting the allowance to INR 1,14,67,29,431 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 12,78,68,29,868 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 amount of INR 17,04,91,06,491 incurred for use of spectrum and microwave frequency to WPC wing of DOT as capital expenditure and allowing depreciation of INR 4,26,22,76,623.

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 15,49,09,00,000 and not INR 17,04,91,06,491 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 to 2014-15 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 levying interest under section 234B and 234C of the Act.

14.1 Without prejudice, the AO erred in incorrectly computing the interest under section 234B and 234C 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."

2. Brief facts of the case are that, the assessee is engaged in the business of providing telecommunication services. For the year under consideration, it filed its revised return of income declaring Nil income under the normal provisions of the Act and book profit of Rs.514,85,93,299/- under section 115JB of the Act. The return was selected for scrutiny.

2.1. Since the assessee had entered into various international transactions with its Associated Enterprises ("AEs"), the Ld. AO made a reference to the Transfer Pricing Officer ("TPO") under section 92CA(1) of the Act for determination of the arm's length price of such transactions. The TPO passed an order under section 92CA(3) proposing transfer pricing adjustments in respect of certain international transactions entered into by the assessee. Based on the order of the TPO and after making certain additions/disallowances under the normal provisions of the Act, the Ld. AO passed a draft assessment order under section 143(3) read with section 144C(1) of the Act.

Aggrieved by the proposed variations, the assessee filed objections before the Ld. DRP.

2.2. The Ld. DRP issued directions under section 144C(5) of the Act vide order dated 20/09/2019, pursuant to which the Ld. AO passed the impugned final assessment order under section 143(3) read with section 144C of the Act dated 31/10/2019.

Aggrieved by the additions/disallowances sustained by the Ld. DRP, the assessee is in appeal before us.

The grounds raised by the assessee comprise transfer pricing adjustments as well as additions/disallowances made under the normal provisions of the Act. The grounds are dealt with in seriatim hereinafter.

2. **Ground No. 1** is general in nature and does not call for any specific adjudication. The same is, accordingly, dismissed as infructuous.

3. The issue arising in Ground No. 2 and its sub-grounds pertain to the transfer pricing adjustment amounting to Rs.5,72,83,20,370/- made in respect of the international transaction of payment of brand royalty.

3.1. The brief facts of the case, as emanating from the record, are that the assessee, pursuant to an agreement entered into with *Vodafone Sales and Services Ltd.* ("VSSL") for the use of the brand name and trademarks/trade name "Vodafone", paid brand royalty amounting to Rs.6,68,30,40,435/- during the year under consideration. Since the payment was made to an Associated Enterprise, the assessee benchmarked the international transaction by adopting the Comparable Uncontrolled Price ("CUP") Method as the Most Appropriate Method. The assessee submitted that the royalty was paid at the rate of 1.75% of the net service revenue, whereas the average royalty emerging from comparable uncontrolled agreements worked out to 2.67%. It was, therefore, claimed that the payment of royalty satisfied the arm's length standard.

3.2. Pursuant to the reference made by the Ld. AO under section 92CA(1) of the Act, the Transfer Pricing Officer ("TPO"), vide order passed under section 92CA(3) of the Act dated 31.10.2018, rejected the comparable uncontrolled agreements relied upon by the assessee. Following the approach adopted in the preceding assessment years, the TPO adopted the agreement entered into between *Virgin Enterprises Ltd.* and *Virgin Mobile USA LLC* as the comparable transaction and, considering the royalty rate of 0.25% of gross sales provided

therein to represent the arm's length price, proposed a transfer pricing adjustment of Rs.5,72,83,20,370/-. The Ld. DRP, following its directions issued for the earlier assessment years, affirmed the adjustment proposed by the TPO. Consequently, the Ld. AO incorporated the said adjustment while passing the impugned final assessment order.

3.3. The Ld. AR submitted that the controversy is no longer *res integra* and stands squarely covered in favour of the assessee by a consistent line of decisions rendered by the Coordinate Benches of the Tribunal. It was submitted that the Coordinate Bench, while deciding the case of the assessee's group concern, *Vodafone Digilink Ltd.* for the Assessment Year 2009-10, held that the arm's length price of the royalty transaction cannot be determined by adopting a controlled transaction as a comparable under the CUP Method and consequently deleted the transfer pricing adjustment. The Tribunal, while doing so, also relied upon the decisions in *CIT v. EKL Appliances Ltd.* and *Technimont ICB Pvt. Ltd.*, wherein it has been held that the arm's length price of an international transaction has to be determined strictly in accordance with the methods prescribed under Chapter X of the Act and Rule 10B of the Income-tax Rules, 1962, and not by comparing it with another controlled transaction.

3.4. The Ld. AR further submitted that the aforesaid view has consistently been followed by the Coordinate Benches in the assessee's own case for Assessment Years 2011-12, 2012-13 and 2013-14, wherein identical transfer pricing adjustments on payment of brand royalty were deleted. Reliance was also placed upon the decisions rendered in the cases of the assessee's group companies, namely, *DCIT v. Vodafone West Ltd.* in *ITA No.443/Ahd/2016* for Assessment Year 2011-12, *DCIT v. Vodafone West Ltd.* in *ITA No.1634/Ahd/2015* and *ITA No.944/Ahd/2015* for Assessment Year 2010-11, and *Vodafone Digilink*

Ltd. v. DCIT in ITA No.1073/Del/2015 for Assessment Year 2010-11, wherein identical additions were deleted.

3.5. Per contra, the Ld. DR relied upon the orders of the Transfer Pricing Officer, the Ld. DRP and the Assessing Officer.

3.6. 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 Benches of the Tribunal, while dealing with identical transfer pricing adjustments in the assessee's own case for Assessment Years 2011-12, 2012-13 and 2013-14, as well as in the cases of its group concerns referred to hereinabove, have consistently held that the agreement entered into between *Virgin Enterprises Ltd.* and *Virgin Mobile USA LLC*, being a controlled transaction, cannot constitute a valid comparable for determining the arm's length price under the CUP Method. The Tribunal has further held that the arm's length price of an international transaction has to be determined only by comparing it with comparable uncontrolled transactions in accordance with Rule 10B of the Income-tax Rules, 1962. The Revenue has not brought to our notice any distinguishing feature in the facts of the year under consideration nor any subsequent judicial pronouncement taking a contrary view.

3.7. Respectfully following the decisions of the Coordinate Benches in the assessee's own case for the earlier assessment years and in the cases of its group concerns, we direct the Ld. AO/TPO to delete the transfer pricing adjustment of Rs.5,72,83,20,370/- made in respect of payment of brand royalty. **Accordingly, Ground No.2 along with its connected sub-grounds is allowed.**

5. The issue arising in Ground No. 3 and its sub-grounds pertain to the transfer pricing adjustment of Rs.1,22,31,14,408/- made in respect of interest

paid on External Commercial Borrowings ("ECBs") availed by the assessee from its Associated Enterprises.

5.1. The brief facts of the case, as emanating from the record, are that the assessee entered into an ECB Facility Agreement with its Associated Enterprise, namely, *Vodafone Overseas Finance Ltd.* ("VOFL"), for availing an ECB facility amounting to JPY 120.95 billion. The agreement was subsequently amended and restated on 22.03.2010 and was specifically approved by the Reserve Bank of India ("RBI") vide approval dated 31.03.2010. Pursuant thereto, disbursements were made by the Associated Enterprise and the assessee paid interest at the all-in-cost ceiling of LIBOR plus 500 basis points approved by the RBI.

5.2. The assessee also entered into another ECB Facility Agreement with its Associated Enterprise, namely, *Vodafone Investments Luxembourg SARL* ("VLux"), for availing an ECB facility amounting to USD 700 million. The said facility agreement was entered into on 14.11.2011 and received specific approval from the RBI on 24.02.2012. Pursuant to the said approval, the loan was disbursed by the Associated Enterprise and interest was paid by the assessee at the all-in-cost ceiling of LIBOR plus 475 basis points as approved by the RBI.

5.3. For benchmarking the aforesaid international transactions, the assessee adopted the Comparable Uncontrolled Price ("CUP") Method as the Most Appropriate Method. It was contended that the specific approvals granted by the RBI constituted reliable Comparable Uncontrolled Prices for determining the arm's length price of the ECB facilities. Without prejudice thereto, the assessee also carried out an external benchmarking analysis by identifying comparable third-party loan tranches through Reuters' Loan Connector database. On the basis of such analysis, the assessee concluded that the effective interest paid on both the ECB facilities was lower than the arm's length interest spread emerging from the comparable uncontrolled borrowings.

5.4. The Transfer Pricing Officer, however, rejected the RBI approvals as a valid CUP and also rejected the economic analysis undertaken by the assessee. The TPO held that the benchmarking carried out by the assessee suffered from various deficiencies, inter alia, on the ground that current year financial data had not been considered and that the credit rating adopted by the assessee was inappropriate. The TPO further determined the arm's length interest by selecting his own set of comparables and proposed an adjustment in respect of both the ECB facilities. Consequently, a total transfer pricing adjustment of Rs.1,63,56,76,683/- was proposed. The Ld. DRP, following its directions issued in the earlier assessment years, granted partial relief, pursuant to which the transfer pricing adjustment stood reduced to Rs.1,22,31,14,408/-. In conformity with the directions of the Ld. DRP, the Ld. AO passed the impugned final assessment order.

5.5. The Ld. AR submitted that the impugned transfer pricing adjustment is unsustainable both on facts and in law. It was submitted that the ECB facilities obtained from *Vodafone Overseas Finance Ltd.* and *Vodafone Investments Luxembourg SARL* were specifically approved by the Reserve Bank of India after examining all the commercial terms and conditions of the borrowings, including the pricing mechanism and all-in-cost ceiling. Therefore, according to the Ld. AR, such approvals constituted a highly reliable contemporaneous benchmark for determining the arm's length price. Without prejudice thereto, it was submitted that the assessee had also independently benchmarked the transactions by relying upon comparable third-party loan tranches identified from Reuters' Loan Connector database, which demonstrated that the interest paid by the assessee was lower than the arm's length interest spread. The Ld. AR further submitted that the TPO had erroneously rejected the benchmarking analysis by ignoring contemporaneous market conditions prevailing at the time of entering into the ECB agreements and by relying upon current year data. It was further contended

that the TPO failed to grant appropriate adjustments towards country risk, currency risk, tenure of the loan, subordination of the ECB facilities and the credit profile of the borrower. The Ld. AR also submitted that the TPO adopted incomparable loan tranches, including revolving loans and Islamic loans, while widening the search criteria without any cogent basis. It was further submitted that the terms and conditions of the ECB facilities remained unchanged from the earlier assessment years and identical interest payments had already been accepted to be at arm's length in the preceding years.

5.6. The Ld. AR further submitted that the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench in 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, wherein, on identical facts, the transfer pricing adjustment in respect of interest and upfront fee paid on ECB facilities was deleted. Reliance was also placed upon the orders passed by the Coordinate Benches in the assessee's own case for the earlier assessment years, wherein identical transfer pricing adjustments had been deleted.

5.7. Per contra, the Ld. DR relied upon the orders of the TPO, the Ld. DRP and the Assessing Officer. It was submitted that the RBI approval merely prescribes the maximum permissible borrowing cost under the Foreign Exchange Management framework and cannot, by itself, determine the arm's length price under Chapter X of the Act. It was further submitted that the TPO had independently benchmarked the transactions by selecting comparable uncontrolled borrowings and had rightly determined the arm's length interest after carrying out the requisite comparability analysis. It was, therefore, prayed that the adjustment sustained by the Ld. DRP be upheld.

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.**

6. The issue arising in Ground No. 4 pertains to the transfer pricing adjustment made on account of Advertisement, Marketing and Promotion ("AMP") expenditure.

6.1. The brief facts of the case, as emanating from the record, are that during the year under consideration, the assessee incurred expenditure towards distribution and advertisement/sales promotion in the course of carrying on its telecommunication business. The Transfer Pricing Officer held that the said expenditure resulted in promotion of the "Vodafone" brand owned by the Associated Enterprises and, therefore, constituted a separate international transaction requiring compensation by the Associated Enterprises. The TPO further applied the Bright Line Test and held that the AMP expenditure incurred by the assessee was excessive vis-à-vis comparable entities. Accordingly, a transfer pricing adjustment was proposed.

6.2. The Ld. DRP, following its directions issued for the preceding assessment year, rejected the objections raised by the assessee and affirmed the approach adopted by the TPO. Pursuant thereto, the Ld. AO incorporated the impugned transfer pricing adjustment in the final assessment order.

6.3. The Ld. AR submitted that the issue is squarely covered in favour of the assessee by the judgments of the Hon'ble Delhi High Court in *Maruti Suzuki India Ltd. v. CIT (2016) 381 ITR 117 (Del.)* and *CIT v. Whirlpool of India Ltd. (2016) 381 ITR 154 (Del.)*. It was submitted that the Hon'ble High Court has categorically

held that the existence of an international transaction in relation to AMP expenditure cannot be presumed merely by applying the Bright Line Test and that the Revenue must establish, by tangible material, the existence of an arrangement or understanding between the assessee and its Associated Enterprise for incurring such expenditure. It was further submitted that the assessee had incurred the AMP expenditure solely in the ordinary course of its business as a telecom service provider for increasing its subscriber base and promoting its own business and not for promoting the brand owned by its Associated Enterprises.

6.4. The Ld. AR further submitted that the issue stands concluded in favour of the assessee by the decision of the Coordinate Bench in the assessee's own case for Assessment Year 2011-12 in *ITA No. 9160/Del/2019* vide order dated 11.05.2026. It was submitted that the Coordinate Bench, after following the judgments of the Hon'ble Delhi High Court in *Maruti Suzuki India Ltd. (supra)* and *Whirlpool of India Ltd. (supra)*, as well as the earlier decision rendered in the case of *Vodafone Digilink Ltd.* for Assessment Year 2009-10, deleted the transfer pricing adjustment by holding that the Revenue had failed to establish the existence of any international transaction relating to AMP expenditure independent of the Bright Line Test. The Ld. AR also pointed out that no transfer pricing adjustment on account of AMP expenditure has been made in the assessee's own case in the subsequent assessment years.

6.5. Per contra, the Ld. DR relied upon the orders of the TPO, the Ld. DRP and the Assessing Officer. It was submitted that the AMP expenditure incurred by the assessee had resulted in promotion of the "Vodafone" brand owned by the Associated Enterprises and, therefore, the assessee ought to have been suitably compensated. It was further submitted that the TPO had correctly benchmarked the alleged international transaction and determined its arm's length price by

applying the Bright Line Test. Accordingly, it was prayed that the adjustment sustained by the Ld. DRP be upheld.

6.6. 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 Hon'ble Delhi High Court in *Maruti Suzuki India Ltd. v. CIT (2016) 381 ITR 117 (Del.)* and *CIT v. Whirlpool of India Ltd. (2016) 381 ITR 154 (Del.)* has categorically held that the existence of an international transaction in respect of AMP expenditure cannot be inferred merely because the assessee has incurred substantial advertisement and marketing expenditure or by applying the Bright Line Test. The Revenue is required to establish, on the basis of tangible material, the existence of an arrangement or understanding between the assessee and its Associated Enterprise for incurring such expenditure. In the absence of such material, no transfer pricing adjustment can be sustained.

6.7. We further note that the Coordinate Bench in the assessee's own case for Assessment Year 2011-12 in *ITA No. 9160/Del/2019* vide order dated 11.05.2026, after considering the aforesaid judgments of the Hon'ble Delhi High Court and the earlier decision in the case of *Vodafone Digilink Ltd.* for Assessment Year 2009-10, held that the AMP expenditure incurred by the assessee was inextricably linked with its business operations as a telecom service provider and that the Revenue had failed to establish the existence of any separate international transaction relating to AMP expenditure. Accordingly, the transfer pricing adjustment was deleted. We also find that no transfer pricing adjustment on account of AMP expenditure has been made in the assessee's own case in the subsequent assessment years. The Revenue has not brought on record any distinguishing feature in the facts of the year under consideration or any subsequent judicial pronouncement taking a contrary view.

6.8. Respectfully following the judgments of the Hon'ble Delhi High Court in *Maruti Suzuki India Ltd. (supra)* and *Whirlpool of India Ltd. (supra)*, as well as the decision of the Coordinate Bench in the assessee's own case for Assessment Year 2011-12, we direct the Ld. AO/TPO to delete the transfer pricing adjustment made on account of AMP expenditure. **Accordingly, Ground No. 4 along with all its sub-grounds is allowed.**

7. **Ground No. 5 along with its sub-grounds** relates to the disallowance of depreciation claimed by the assessee on the right to use 3G Spectrum.

7.1. The Ld. AR submitted that the authorities below erred in disallowing the depreciation claimed by the assessee on the right to use 3G Spectrum. It was contended that the issue is squarely covered in favour of the assessee by a series of decisions rendered by the Coordinate Benches in the assessee's own cases as well as in the cases of the erstwhile group entities. The Ld. AR invited our attention to the order of the Tribunal in the case of the erstwhile *Vodafone India Ltd.* for A.Y. 2012-13 in *ITA No. 8361/Del/2019* and for A.Y. 2013-14 in *ITA No. 8352/Del/2019*, wherein the Tribunal held that depreciation on the right to use 3G Spectrum is allowable. Reliance was also placed on the consolidated order dated 17.05.2024 passed in the case of the erstwhile *Vodafone India Ltd.* for A.Ys. 2011-12 and 2012-13. The Ld. AR further relied upon the order dated 22.10.2024 passed by the Tribunal in the case of the erstwhile *Vodafone India Ltd.* for A.Y. 2013-14 in *ITA No. 6671/Mum/2017*, the order dated 18.02.2025 passed by the Tribunal in the case of the erstwhile *Vodafone India Ltd.* for A.Y. 2014-15 in *ITA No. 316/Mum/2019*, the order dated 22.04.2026 passed in the case of the erstwhile *Vodafone West Ltd.* for A.Y. 2011-12 in *ITA No. 571/Ahd/2016* and the order dated 28.08.2020 passed in the case of the erstwhile *Vodafone India Ltd.* for A.Y. 2011-12 in *ITA No. 3327/Mum/2018*. Reliance was also placed upon the decision of the Tribunal in the case of the

erstwhile *Idea Cellular Ltd. v. PCIT* (ITA No. 360/Mum/2016), wherein an identical claim was accepted.

7.2. Per contra, the Ld. DR relied upon the assessment order, the order of the Ld. AO and the directions of the Ld. DRP and submitted that the disallowance has rightly been made.

7.3. We have considered the rival submissions and perused the material available on record. We find that the issue arising in the present ground is no longer *res integra*. The Coordinate Bench of the Tribunal, in the assessee's own case for A.Y. 2012-13 in *ITA No. 8361/Del/2019*, after examining the nature of the rights acquired under the 3G Spectrum licence, held that the assessee is entitled to depreciation thereon. The said view has been reiterated by the Tribunal in the assessee's own case for A.Y. 2013-14 in *ITA No. 8352/Del/2019*. We further note that the Coordinate Bench, by its consolidated order dated 17.05.2024 in the case of the erstwhile *Vodafone India Ltd.* for A.Ys. 2011-12 and 2012-13, followed the earlier decisions and allowed the claim of depreciation. The same view has thereafter been consistently followed by the Tribunal in its subsequent orders dated 22.10.2024 for A.Y. 2013-14 (*ITA No. 6671/Mum/2017*), dated 18.02.2025 for A.Y. 2014-15 (*ITA No. 316/Mum/2019*) and dated 22.04.2026 in the case of the erstwhile *Vodafone West Ltd.* for A.Y. 2011-12 (*ITA No. 571/Ahd/2016*). We also note that a similar view has been taken in the case of the erstwhile *Idea Cellular Ltd. v. PCIT* (ITA No. 360/Mum/2016).

7.3.1. The Revenue has not brought on record any distinguishing feature in the facts of the year under consideration nor has it pointed out any subsequent judicial pronouncement taking a contrary view. In these circumstances, judicial discipline warrants that we follow the consistent view taken by the Coordinate Benches in the assessee's own cases.

7.4. Respectfully following the aforesaid decisions, particularly the orders of the Coordinate Bench in the assessee's own case for A.Ys. 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8352/Del/2019*, as consistently followed in the subsequent orders referred to hereinabove, we direct the Ld. AO to allow the depreciation claimed by the assessee on the right to use 3G Spectrum. **Accordingly, Ground No. 5 along with all its sub-grounds is allowed.**

8. **Ground No. 6 along with its sub-grounds** relates to the disallowance of penalty paid by the assessee to the Department of Telecommunication (DoT).

8.1. The Ld. AR submitted that the authorities below erred in treating the amount paid by the assessee to the Department of Telecommunication as penal in nature and consequently disallowing the same. It was contended that the payment was compensatory and incidental to the carrying on of the assessee's telecom business and did not represent any expenditure incurred for an offence or for any act prohibited by law. The Ld. AR submitted that the issue is no longer *res integra* and stands concluded in favour of the assessee by the decisions of the Coordinate Benches in the assessee's own cases.

8.2. Reliance was placed on the orders of the Tribunal in the assessee's own case for A.Y. 2012-13 in *ITA No. 8361/Del/2019* and for A.Y. 2013-14 in *ITA No. 8362/Del/2019*, wherein the disallowance of similar payments made to the Department of Telecommunication was deleted. The Ld. AR further relied upon the order dated 14.10.2025 passed in the case of the erstwhile *Vodafone Digilink Ltd.* for A.Y. 2010-11, the decision of the Kolkata Bench in *Vodafone East Ltd. v. ACIT* [(2016) 156 ITD 337 (Kol. Trib.)], the decision of the Delhi Bench in *DCIT v. Erstwhile Vodafone Digilink Ltd.* [(2018) 193 TTJ 150 (Delhi Trib.)] and the consolidated order dated 17.05.2024 in *DCIT v. Erstwhile Vodafone India Ltd.* (*ITA No. 1919/Mum/2016*), wherein identical disallowances were deleted.

8.3. Per contra, the Ld. DR relied upon the orders of the lower authorities and submitted that the payment represented penalty for violation of the terms of the licence granted by the Department of Telecommunication and was, therefore, hit by the provisions of Explanation 1 to section 37(1) of the Act.

8.4. We have considered the rival submissions and perused the material available on record. We find that the issue involved in the present ground stands squarely covered in favour of the assessee by a consistent line of decisions rendered by the Coordinate Benches in the assessee's own cases as well as in the cases of the erstwhile group entities. The Coordinate Bench in the assessee's own case for A.Y. 2012-13 in *ITA No. 8361/Del/2019* and for A.Y. 2013-14 in *ITA No. 8362/Del/2019*, after examining the nature of the payments made to the Department of Telecommunication, held that such payments were compensatory in character and allowable as business expenditure under section 37(1) of the Act. The said view has also been consistently followed in the order dated 14.10.2025 passed in the case of the erstwhile *Vodafone Digilink Ltd.* for A.Y. 2010-11, as well as in *Vodafone East Ltd. v. ACIT* [(2016) 156 ITD 337 (Kol. Trib.)], *DCIT v. Erstwhile Vodafone Digilink Ltd.* [(2018) 193 TTJ 150 (Delhi Trib.)] and the consolidated order dated 17.05.2024 passed in *DCIT v. Erstwhile Vodafone India Ltd.* (*ITA No. 1919/Mum/2016*).

8.5. The Revenue has not placed before us any material to demonstrate that the facts for the year under consideration are distinguishable from those considered in the aforesaid decisions or that the legal position has undergone any change. Judicial propriety, therefore, requires us to follow the consistent view adopted by the Coordinate Benches.

8.6. Respectfully following the decisions of the Coordinate Benches in the assessee's own case for A.Ys. 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, as consistently followed in the subsequent decisions

referred to hereinabove, we direct the Ld. AO to delete the disallowance made in respect of the penalty paid to the Department of Telecommunication. **Accordingly, Ground No. 6 along with all its sub-grounds is allowed.**

9. **Ground No. 7 along with its sub-grounds** relates to the disallowance of depreciation claimed on the addition to the fixed asset account towards Asset Restoration Cost ("ARC"). Without prejudice thereto, the assessee has also raised an alternate plea seeking deduction of the Asset Restoration Cost as revenue expenditure under section 37(1) of the Act.

9.1. The Ld. AR submitted that the authorities below erred in disallowing depreciation on the Asset Restoration Cost capitalised by the assessee as part of the cost of the relevant assets. Without prejudice, it was contended that even if the capitalization of the Asset Restoration Cost is not accepted, the entire expenditure ought to be allowed as a deduction under section 37(1) of the Act, being wholly and exclusively incurred for the purposes of the business. It was submitted that the issue relating to depreciation on Asset Restoration Cost stood decided against the assessee by the Coordinate Bench in the case of the erstwhile *Vodafone Digilink Ltd.* for A.Y. 2010-11 in *DCIT v. Erstwhile Vodafone Digilink Ltd.* [(2018) 92 taxmann.com 250 (Delhi Trib.)]. However, it was pointed out that, in further appeal, the Hon'ble Delhi High Court vide judgment dated 11.03.2025, reported in (2025) 172 taxmann.com 192 (Delhi), while affirming the disallowance of depreciation, accepted the assessee's alternate contention and held that the Asset Restoration Cost was allowable as revenue expenditure under section 37(1) of the Act. The Ld. AR further submitted that, following the aforesaid judgment, the Coordinate Benches in the assessee's own case for A.Y. 2012-13 in *ITA No. 8361/Del/2019* and for A.Y. 2013-14 in *ITA No. 8362/Del/2019* have allowed the alternate claim of deduction under section 37(1) of the Act.

9.2. The Ld. DR, on the other hand, relied upon the orders of the lower authorities.

9.3. We have considered the rival submissions and perused the material available on record. We find that the issue regarding allowability of depreciation on Asset Restoration Cost was earlier decided against the assessee by the Coordinate Bench in the case of the erstwhile *Vodafone Digilink Ltd.* for A.Y. 2010-11 in *DCIT v. Erstwhile Vodafone Digilink Ltd.* [(2018) 92 taxmann.com 250 (Delhi Trib.)]. However, the said decision has since been carried in appeal before the Hon'ble Delhi High Court, which vide judgment dated 11.03.2025 reported in (2025) 172 taxmann.com 192 (Delhi) has upheld the disallowance of depreciation while simultaneously accepting the alternate plea of the assessee and holding that the Asset Restoration Cost is allowable as revenue expenditure under section 37(1) of the Act.

9.4. We further note that the Coordinate Bench, while deciding the assessee's own cases for A.Ys. 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, has followed the aforesaid judgment of the Hon'ble Delhi High Court and allowed the alternate claim of deduction under section 37(1) of the Act. Since the facts of the year under consideration are identical and no distinguishing feature has been brought to our notice by the Revenue, we see no reason to take a different view.

9.5. Respectfully following the judgment of the Hon'ble Delhi High Court in (2025) 172 taxmann.com 192 (Delhi) and the decisions of the Coordinate Benches in the assessee's own cases for A.Ys. 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, we uphold the disallowance of depreciation on Asset Restoration Cost. However, following the binding judgment of the Hon'ble Delhi High Court, we direct the Ld. AO to allow the assessee's alternate claim of deduction of the Asset Restoration Cost as revenue expenditure under

section 37(1) of the Act. **Accordingly, Ground No. 7 is partly allowed in terms indicated hereinabove.**

10. **Ground No. 8 along with its sub-grounds** relates to the addition made in respect of liabilities written back.

10.1. The Ld. AR submitted that the authorities below erred in treating the amount of liabilities written back as taxable income. It was contended that a substantial portion of the liabilities written back represented customer security deposits received by the erstwhile group companies, which had subsequently amalgamated with the assessee. According to the Ld. AR, such security deposits are in the nature of capital receipts and, therefore, their write back does not attract the provisions of section 41(1) or section 28(iv) of the Act. Reliance was placed on the decisions of the Hon'ble Bombay High Court in *Mahindra & Mahindra Ltd. v. CIT* [(2003) 261 ITR 501 (Bom.)] and the Hon'ble Supreme Court in *CIT v. Mahindra & Mahindra Ltd.* [(2018) 404 ITR 1 (SC)]. It was further submitted that the issue had earlier been decided against the assessee in its own case for A.Ys. 2012-13 and 2013-14 in ITA Nos. 8361/Del/2019 and 8362/Del/2019. However, the Ld. AR submitted that subsequent orders dated 31.10.2025 passed by the Coordinate Bench in the assessee's own case for A.Y. 2012-13 and dated 18.03.2026 in the assessee's own case for A.Y. 2013-14 have taken a view in favour of the assessee on this issue and, therefore, the addition deserves to be deleted.

10.2. The Ld. DR relied upon the orders of the lower authorities and submitted that the issue already stands concluded against the assessee by the decisions of the Coordinate Bench rendered in the assessee's own cases for A.Ys. 2012-13 and 2013-14.

10.3. We have considered the rival submissions and perused the material available on record. We find that the precise issue arising in the present ground had come up for consideration before the Coordinate Bench in the assessee's own cases for A.Y. 2012-13 in *ITA No. 8361/Del/2019* and A.Y. 2013-14 in *ITA No. 8362/Del/2019*, wherein, after considering the nature of the liabilities written back as well as the applicability of sections 41(1) and 28(iv) of the Act, the issue was decided against the assessee. The Coordinate Bench, while dealing with identical facts, rejected the assessee's contentions and upheld the addition.

10.4. The Ld. AR has sought to place reliance upon subsequent orders dated 31.10.2025 and 18.03.2026 stated to have been passed in the assessee's own cases for A.Ys. 2012-13 and 2013-14. However, we find that the issue already stands concluded by the earlier decisions of the Coordinate Bench rendered in the assessee's own cases, which directly govern the year under consideration. No material has been placed before us to demonstrate that the earlier decisions have been reversed, modified or overruled by any higher judicial forum. In these circumstances, judicial discipline requires us to follow the earlier binding decisions rendered on identical facts.

10.5. Respectfully following the decisions of the Coordinate Bench in the assessee's own cases for A.Ys. 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, we uphold the action of the Ld. AO in making the impugned addition on account of liabilities written back. **Accordingly, Ground No. 8 along with all its sub-grounds is dismissed.**

11. **Ground No. 9 along with its sub-grounds** relates to the disallowance of discount extended to pre-paid distributors under section 40(a)(ia) of the Act.

11.1. The Ld. AR submitted that the authorities below erred in invoking the provisions of section 40(a)(ia) of the Act by treating the discount allowed to pre-

paid distributors as commission liable for deduction of tax at source under section 194H of the Act. It was submitted that the issue is no longer *res integra* and stands squarely covered in favour of the assessee by the decisions of the Hon'ble Supreme Court as well as the Coordinate Benches in the assessee's own cases. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Bharti Cellular Ltd. v. ACIT [(2024) 160 taxmann.com 12 (SC)]*, wherein it has been held that discount allowed to pre-paid distributors does not partake the character of commission under section 194H of the Act. The Ld. AR further relied upon the orders of the Coordinate Bench in the assessee's own case for A.Y. 2012-13 in *ITA No. 8361/Del/2019*, A.Y. 2013-14 in *ITA No. 8362/Del/2019*, order dated 05.06.2024 in the assessee's own case for A.Y. 2012-13 in *ITA No. 37/Del/2023*, order dated 14.10.2025 in the case of the erstwhile *Vodafone Digilink Ltd.* for A.Y. 2010-11, order dated 18.02.2025 in the case of the erstwhile *Vodafone India Ltd.* for A.Y. 2014-15, consolidated order dated 17.05.2024 in the case of the erstwhile *Vodafone India Ltd.* for A.Ys. 2011-12 and 2012-13 and order dated 22.10.2024 in the case of the erstwhile *Vodafone India Ltd.* for A.Y. 2013-14, wherein identical disallowances were deleted following the law laid down by the Hon'ble Supreme Court.

11.2. The Ld. DR relied upon the orders of the lower authorities.

11.3. We have considered the rival submissions and perused the material available on record. We find that the controversy involved in the present ground stands concluded in favour of the assessee by the judgment of the Hon'ble Supreme Court in *Bharti Cellular Ltd. v. ACIT [(2024) 160 taxmann.com 12 (SC)]*, wherein it has been categorically held that the discount extended to pre-paid distributors does not constitute commission within the meaning of section 194H of the Act and, consequently, no disallowance under section 40(a)(ia) is warranted for non-deduction of tax at source. We further note that the

Coordinate Benches, while deciding the assessee's own cases for A.Ys. 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, as well as in the subsequent orders dated 05.06.2024 in *ITA No. 37/Del/2023*, dated 14.10.2025 in the case of the erstwhile *Vodafone Digilink Ltd.*, dated 18.02.2025 in the case of the erstwhile *Vodafone India Ltd.*, consolidated order dated 17.05.2024 in the case of the erstwhile *Vodafone India Ltd.* and order dated 22.10.2024 in the case of the erstwhile *Vodafone India Ltd.*, have consistently followed the aforesaid judgment of the Hon'ble Supreme Court and deleted identical disallowances.

11.4. The Revenue has not brought on record any distinguishing feature in the facts of the year under consideration nor has it pointed out any subsequent change in law warranting a departure from the settled position. Judicial discipline, therefore, requires us to follow the binding precedent of the Hon'ble Supreme Court as consistently applied by the Coordinate Benches in the assessee's own cases.

11.5. Respectfully following the judgment of the Hon'ble Supreme Court in *Bharti Cellular Ltd. v. ACIT* [(2024) 160 taxmann.com 12 (SC)] and the decisions of the Coordinate Benches in the assessee's own cases referred to hereinabove, we direct the Ld. AO to delete the disallowance made under section 40(a)(ia) of the Act. **Accordingly, Ground No. 9 along with all its sub-grounds is allowed.**

12. **Ground No. 10 and its sub-grounds** relate to the disallowance of licence fee claimed as revenue expenditure under section 37(1) of the Act by treating the same as capital expenditure eligible for amortisation under section 35ABB of the Act.

12.1. The Ld. AR submitted that though the issue regarding the nature of annual licence fee now stands concluded by the judgment of the Hon'ble Supreme Court in *CIT v. Bharti Hexacom Ltd. (2023) 458 ITR 593 (SC)*, the assessee has raised an

alternate plea that the consequential deduction under section 35ABB requires recomputation in the peculiar facts of the present case. Drawing our attention to **Appendix-C** placed in the Paper Book, the Ld. AR submitted that detailed workings have been furnished explaining the impact of the judgment of the Hon'ble Supreme Court after considering the amalgamation of various group entities, transfer of telecom licences, cancellation/extinguishment of licences pursuant to mergers and the balance licence period available for amortisation under section 35ABB of the Act. It was submitted that the judgment of the Hon'ble Supreme Court does not result in a permanent disallowance of the licence fee but merely postpones the deduction over the balance period of the licence. Therefore, the consequential deduction admissible under section 35ABB requires verification and recomputation by the Assessing Officer on the basis of the detailed workings furnished by the assessee.

12.2. The Ld. AR further submitted that an identical issue had arisen before the Coordinate Bench in the assessee's own case for Assessment Years 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, wherein, after following the judgment of the Hon'ble Supreme Court in *CIT v. Bharti Hexacom Ltd. (supra)*, the Tribunal restored the matter to the file of the Assessing Officer for verifying the workings furnished by the assessee and allowing consequential deduction under section 35ABB of the Act. Reliance was also placed upon the decision of the Coordinate Bench in the case of the erstwhile *Vodafone Digilink Ltd.* for Assessment Year 2010-11 in *ITA No. 1079/Del/2018*, order dated 21.03.2025, wherein similar directions were issued after considering the effect of the decision of the Hon'ble Supreme Court. Further reliance was placed on the order of the Coordinate Bench in the case of the erstwhile *Vodafone West Ltd.* for Assessment Year 2011-12 in *ITA No. 443/Ahd/2022*, wherein the matter was restored to the file of the Assessing Officer for working out the consequential

deduction under section 35ABB after verification of the assessee's computations.

12.3. Per contra, the Ld. DR relied upon the orders of the lower authorities.

12.4. We have perused the submissions advanced by both sides in light of the record placed before us. We find that the controversy regarding the allowability of annual licence fee is no longer *res integra*. The Hon'ble Supreme Court in *CIT v. Bharti Hexacom Ltd. (2023) 458 ITR 593 (SC)* has categorically held that the annual licence fee payable under the New Telecom Policy is capital in nature and is not allowable as revenue expenditure under section 37(1) of the Act, the deduction being governed by the provisions of section 35ABB of the Act. In view of the aforesaid binding decision, we uphold the action of the lower authorities in disallowing the assessee's claim of deduction under section 37(1) of the Act.

12.5. However, we find merit in the alternate plea advanced by the assessee that the consequential deduction admissible under section 35ABB requires fresh computation after considering the amalgamation of various group entities, transfer and cancellation of telecom licences and the surviving licence period, as explained in **Appendix-C** placed before us. The detailed working furnished by the assessee demonstrates that the effect of mergers and transfer of licences has a direct bearing on the period over which amortisation under section 35ABB is to be granted. The verification of such factual workings is required to ensure that the deduction admissible under section 35ABB is correctly computed in accordance with the judgment of the Hon'ble Supreme Court.

12.6. We further notice that an identical issue had come up before the Coordinate Bench in the assessee's own case for Assessment Years 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, wherein, following the judgment of the Hon'ble Supreme Court in *CIT v. Bharti Hexacom Ltd. (2023) 458*

ITR 593 (SC), the Tribunal restored the matter to the file of the Assessing Officer for the limited purpose of verifying the workings furnished by the assessee and allowing consequential deduction under section 35ABB of the Act. Similar directions have also been issued by the Coordinate Benches in the case of the erstwhile *Vodafone Digilink Ltd.* for Assessment Year 2010-11 in *ITA No. 1079/Del/2018*, vide order dated 21.03.2025, and in the case of the erstwhile *Vodafone West Ltd.* for Assessment Year 2011-12 in *ITA No. 443/Ahd/2022*.

12.7. Respectfully following the aforesaid decisions of the Coordinate Benches in the assessee's own case as well as in the cases of its group concerns, while upholding the disallowance of the assessee's claim for deduction under section 37(1) of the Act in view of the binding judgment of the Hon'ble Supreme Court in *CIT v. Bharti Hexacom Ltd. (2023) 458 ITR 593 (SC)*, we restore the matter to the file of the Ld. AO for the limited purpose of verifying the computation and workings furnished by the assessee, including those contained in **Appendix-C**, and thereafter allowing consequential deduction under section 35ABB of the Act in accordance with law. The Ld. AO shall afford adequate opportunity of being heard to the assessee and decide the issue afresh after due verification of the workings and supporting details.

Accordingly, Ground No. 10 and its sub-grounds are partly allowed for statistical purposes.

13. **Ground No. 11 and its sub-grounds** relate to the disallowance of payments made to IBM by treating the same as capital expenditure instead of allowing the same as revenue expenditure.

13.1. The Ld. AR submitted that the assessee had claimed deduction of Rs. 1,71,36,90,072/- towards payments made for use of hardware supplied by IBM. It was submitted that although the said expenditure was capitalised in the books

of account in accordance with Accounting Standard-19 as a finance lease, the accounting treatment is not determinative of the tax treatment under the Act. The Ld. AR submitted that IBM continued to remain the owner of the hardware throughout the tenure of the agreement and no ownership rights in the assets were transferred to the assessee. Therefore, the payments merely represented lease rentals for use of hardware in the course of business and were allowable as revenue expenditure under section 37(1) of the Act.

13.2. The Ld. AR further submitted that an identical issue had arisen in the assessee's own case for Assessment Years 2012-13 and 2013-14 in *ITA Nos. 8361/Del/2019* and *8362/Del/2019*, wherein the Coordinate Bench had allowed the claim of the assessee by following the judgment of the Hon'ble Delhi High Court in *CIT v. Bharti Hexacom Ltd., ITA No. 799/2016, order dated 22.11.2016*. Reliance was also placed upon the decision of the Delhi Bench of the Tribunal in *Minda Corporation Ltd. v. DCIT (2016) 69 taxmann.com 317 (Delhi - Trib.)*, wherein lease rentals paid under a finance lease were held to be allowable as revenue expenditure. Further reliance was placed upon the judgment of the Hon'ble Rajasthan High Court in *Rajshree Roadways v. Union of India (2003) 129 Taxman 663 (Raj.)*.

13.3. Per contra, the Ld. DR relied upon the orders of the lower authorities.

13.4. 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 squarely covered in favour of the assessee by the decisions of the Coordinate Bench rendered in the assessee's own case. The Coordinate Bench in the assessee's own case for Assessment Years 2012-13 and 2013-14 in *ITA No. 8361/Del/2019* and *ITA No. 8362/Del/2019* has held that merely because the payments were capitalised in the books under Accounting Standard-19 as a finance lease, the same cannot be regarded as capital expenditure for the

purposes of the Act where the ownership of the assets continued to vest with IBM. The Tribunal, after considering the judgment of the Hon'ble Delhi High Court in *CIT v. Bharti Hexacom Ltd.*, ITA No. 799/2016, order dated 22.11.2016, held that the true nature of the transaction has to be determined independently for tax purposes and that lease rentals paid for use of hardware owned by IBM constitute allowable revenue expenditure.

13.5. The aforesaid view also finds support from the decision of the Delhi Bench of the Tribunal in *Minda Corporation Ltd. v. DCIT (2016) 69 taxmann.com 317 (Delhi - Trib.)* as well as the judgment of the Hon'ble Rajasthan High Court in *Rajshree Roadways v. Union of India (2003) 129 Taxman 663 (Raj.)*, wherein similar principles have been laid down.

13.6. Respectfully following the decisions of the Coordinate Bench in the assessee's own case for Assessment Years 2012-13 and 2013-14, which in turn follow the judgment of the Hon'ble Delhi High Court in *CIT v. Bharti Hexacom Ltd. (supra)*, we direct the Ld. AO to delete the impugned disallowance.

Accordingly, Ground No. 11 and its sub-grounds are allowed.

14. The issue arising in Ground No. 12, pertains to the disallowance made on account of royalty paid to Wireless Planning Commission ("WPC").

14.1. The brief facts of the case, pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee incurred an expenditure of Rs. 1704,91,06,491/- in respect of license fees payable to WPC, a wing of Department of Telecommunication towards use of spectrum availed by the assessee. Since the amount paid to WPC was on a quarterly basis as a percentage of revenue and was incurred for carrying on the telecommunication operations, the assessee claimed the expenditure to be revenue in nature. Accordingly, the assessee claimed the expenditure under section 37(1) of the

Act. The AO, vide Draft Assessment Order, disagreed with the submissions of the assessee and held this payment to be capital in nature. While doing so, the AO also granted deduction towards depreciation at the rate of 25% and disallowed a sum of Rs. 1278,68,29,868/-. The DRP following its directions for the earlier years upheld the said disallowance.

14.2. The Id AR submitted that this issue has been decided in favour of the assessee by the Tribunal in its own case for:

- Order dated 11 May 2026 for the A.Y. 2011-12 (ITA No. 1042/Del/2016);
- Order dated 24 October 2025 for the A.Y. 2012-13 (ITA No. 8361/Del/2019); and
- Order dated 18 March 2026 for the A.Y. 2013-14 (ITA No. 8362/Del/2019)

14.2.1. Also, similar issue has been decided by the Tribunal in favour of the assessee's group company viz. Vodafone West Ltd for the A.Y. 2011-12 vide Order dated 02 April 2026. The relevant extract from the Order dated 11 May 2026 passed in the assessee's own case for the A.Y. 2011-12 is reproduced below:

".....Ground No.5 pertains to capitalization of royalty- Wireless Planning Commission (WPC) expenses payable to DoT. The Ld. AR submitted at the outset that the DRP has allowed the relief and the issues is covered by the following decisions: (i) Vodafone West Ltd. (ITA No. 1634/Ahd/2025) for AY 2010-11; (ii) Vodafone West Ltd. (ITA No. 909/Ahd/2014) for AY 2009-10; (iii) Vodafone Digilink Ltd., (ITA No. 1158/Del/2015) AY 2010-11; (iv) in DCIT v/s. Vodafone Essar Digilink Ltd., (2018) 170 ITD 430 (Delhi Trib.) and (v) CIT v/s. Fascel Ltd., (2009) 221 CTR 305 (Delhi). We find that the Tribunal in ITA No.671 & 1634/Ahd/2025 (supra) has decided the issue in favour of the appellant by relying on the decision of Hon'ble Delhi High Court in case of Fascel Ltd. (supra). The relevant part of the decision is reproduced below:

"74. The DRP, vide its direction, following the decision of the Hon'ble Delhi High Court in assessee's own case in CIT vs. Fascel Ltd., reported in (2009) 21 CTR 305 (Del), held that the payment of fees of WPC is deductible as revenue expenditure under section 37(1) of the Act. Accordingly, the learned DRP, directed the AO to delete the proposed addition on this issue. In conformity, the

AO, *inter alia*, passed the final assessment order on this issue. Being aggrieved, the revenue is in appeal us.

75. Having considered the submissions of both sides and perused the material available on record, as the learned DRP, following the decision of the Hon'ble Delhi High Court, rendered in the assessee's own case directed the AO to delete the impugned addition, we do not find any infirmity in the findings of the learned DRP on this issue in the absence of any allegation of change in facts or law. Accordingly, the impugned order on this issue is upheld, and Ground No. 11 raised in Revenue's appeal is dismissed."

14.3. The revenue has not brought anything contrary either on fact or law. Hence, following the above decision, the ground is dismissed.

15. We have perused the submissions advanced by both sides in light of the record placed before us. We find that the issue arising in the present ground is squarely covered in favour of the assessee by the decisions of the Coordinate Bench in the assessee's own case for Assessment Years 2011-12 in *ITA No. 1042/Del/2016* vide order dated 11/05/2026, Assessment Year 2012-13 in *ITA No. 8361/Del/2019* vide order dated 24/10/2025 and Assessment Year 2013-14 in *ITA No. 8362/Del/2019* vide order dated 18/03/2026. We further note that an identical issue has also been decided in favour of the assessee's group concern, *Vodafone West Ltd.*, for Assessment Year 2011-12 vide order dated 02/04/2026. In the aforesaid decisions, after considering the judgment of the Hon'ble Delhi High Court in *CIT v. Fascel Ltd. (2009) 221 CTR 305 (Del.)*, it has consistently been held that the royalty/WPC charges paid to the Department of Telecommunications are revenue expenditure allowable under section 37(1) of the Act. The Revenue has not brought on record any distinguishing feature in facts or any change in law warranting a different view for the year under consideration. Respectfully following the aforesaid decisions, we direct the Ld. AO to delete the impugned disallowance. **Accordingly, Ground No. 12 and its sub-grounds are allowed.**

16. The issue raised in Ground No. 13 is purely consequential in nature. The Ld. AO is directed to verify the claim of the assessee and grant due credit for tax deducted at source (TDS) in accordance with law after due verification of the records. **Accordingly, Ground No. 13 is allowed for statistical purposes.**

17. The levy of interest under sections 234B and 234C of the Act is consequential and mandatory. The Ld. AO is directed to recompute the interest chargeable, if any, while giving effect to this order. **Accordingly, Ground No. 14 is disposed of as consequential.**

18. Ground No. 15, relating to initiation of penalty proceedings under section 271(1)(c) of the Act, is premature at this stage and does not call for any adjudication in the present appellate proceedings. **Accordingly, the same is dismissed as infructuous.**

19. In the net result, the appeal of the assessee bearing **ITA No. 8971/Del/2019** is **partly allowed in terms indicated hereinabove.**

Order pronounced in the open court on 30th day of June 2026.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/06/2026
SAUMYA Sr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

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(Asstt. Registrar), ITAT, MUMBAI

