

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

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.2009/Del/2022, A.Y. 2018-19**

HMD Mobile India Pvt. Limited Flat No.814, 8 <sup>th</sup> Floor, Ashoka Estate, 24 Barakhamba Road, Connaught Place, New Delhi PAN: AADCH9938G	Vs	Assistant Commissioner of Income Tax, Circle 10(1), Central Revenue Bldg., I P Estate, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Manuj Sabharwal, Advocate Sh. Drona Negi, Advocate Sh. Devvrat Tiwari, Advocate
Respondent by	Sh. Rajesh Kr. Dhanista, Sr. DR

Date of Hearing	29/01/2025
Date of Pronouncement	25/04/2025

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

This appeal of the assessee for the Assessment Year (hereinafter, the 'AY') 2018-19 is directed against the order dated 31.07.2022 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter, the 'Act') by the Assistant Commissioner of Income Tax, Circle 10(1), New Delhi (hereinafter, the Assessing Officer 'AO').

2. Vide 6 grounds and sub-grounds there to, the assessee has raised various issues. However, during the course of hearing before us, it pressed

for only one core issue; that is the disallowance of Rs.44,25,00,000/- out of various expenses as per para 7 of the impugned assessment order. Since ground Nos. 1.1 to 1.3 and 2.1 to 2.7 were not pressed, hence, these grounds stand dismissed accordingly. Grounds numbered 4, 5 and 6, being consequential and or premature; therefore, these also stand dismissed.

2.1 Vide ground Nos. 3, 3.1 to 3.4; the disallowance of Rs.44,25,00,000/- @ 25% of various expenditure made by the Assessing Officer (hereinafter, the 'AO') is in challenge. The AO proposed the disallowance of Rs.44,25,00,000/- in the body of the draft assessment order. However, inadvertently, he mentioned the disallowance of Rs.3,00,00,000/- in the computation of income. The relevant para of the draft assessment order reads as under: -

*"7.2 The assessee has failed to submit any details in regard to above. Since the assessee failed its onus to prove the genuineness of expenses with the supporting evidences, hence, the same cannot be accepted at their face value. Therefore, I have no option but to disallow 25% of below mentioned expenses:*

<i>Expense</i>	<i>Rs. in crores</i>
<i>Salaries, wages and bonus</i>	<i>16.40</i>
<i>Staff welfare expenses</i>	<i>0.20</i>
<i>Marketing expenses</i>	<i>148.00</i>
<i>Warehousing Charges</i>	<i>6.30</i>
<i>Service expenses</i>	<i>3.10</i>
<i>Legal &amp; Professional Fees</i>	<i>0.90</i>
<i>Travelling Expenses</i>	<i>1.60</i>
<i>Miscellaneous Expenses</i>	<i>0.50</i>
<i>Total</i>	<i>177.00</i>
<i>Disallowance Proposed @ 25%</i>	<i>44.25</i>

7.3 Accordingly, the amount of Rs.44,25,00,000/- is added to total income of the assessee. Penalty proceedings u/s 270A are initiated separately for mis-reporting of income.

The assessee was show caused as to why an amount of Rs.44,25,00,000/- being 25% of total expenses amounting to Rs.177.00 Crores should not be added to the total income and penalty be initiated. The assessee, vide its reply dated 22.09.2021 submitted his response, which was carefully perused and observed that w.r.t marketing expenses and other expenses to the tune of Rs. 3. Crores, the assessee has failed to submit the complete details and also not proved the genuineness of expenses.

7.4. The assessee had sought for personal hearing through video conferencing. The same was provided on 27.09.2021 at 12.30 p.m. wherein the assessee reiterated the same submissions that he had already made in response to SCN. Meanwhile, the assessee vide letter dated 28.09.2021 submitted the details with regard to the expenses including legal and professional fees & other expenses on which TDS were not deducted. The details submitted by the assessee were perused but not found tenable. Assessee has submitted the copy of communication with the party, where the party has requested to not deduct the TDS. However, there is no effort made from the side of the assessee to get the low deduction certificate" from the party Moreover, with respect to other expenses assessee has not provided satisfactory details. Hence, In the absence of evidence filed, the entire expenses amounting to Rs.3 crores w.r.t which complete details have not been provided by the assessee is disallowed and added to the total income of the assessee. Penalty u/s.270A has been initiated separately for mis-reporting of Income. **W.r.t to other expenses the assessee has provided the details. Hence, no adverse inference has been drawn.**

Hence the assessment is being completed on the lines of draft assessment order."

[Emphasis has been supplied by us]

3. The relevant facts of the case giving rise to this appeal are that the assessee, designs, manufactures, sells, markets and distributes Nokia brand mobiles & accessories globally, filed its Income Tax Return (hereinafter, the 'ITR') on 30.11.2018 declaring income of Rs.48,93,16,419/-. The case was selected for scrutiny. The consequential draft assessment order was completed at income of Rs.121,17,66,420/- making following addition/adjustment:

- i. Transfer Pricing Adjustment: Rs.69,24,50,000/-
- ii. Disallowance of expenses: Rs.3,00,00,000/-

3.1 Aggrieved with the draft assessment order, the assessee filed objections before the Hon'ble Dispute Resolution Panel (hereinafter, the 'DRP'), which disposed of the objections upholding Transfer Pricing Adjustment and deciding the second issue; i.e. disallowance of expenses, vide issuing directions (DRP direction dated 14 June, 2022) to the AO to reconsider the submissions filed before the AO and additional evidence before the DRP and verify those submissions of the assessee and decide the issue. Thereafter, the AO verified the said expenditure and passed the final assessment order on 31<sup>st</sup> July, 2022 making disallowance of Rs.44,25,00,000/- on this score vide para 7.1 to para 7.3 of the final assessment order. Vide final assessment order, the AO completed the assessment at income of Rs.162,42,66,420/- making following addition/adjustment:

- i. Transfer Pricing Adjustment (para 6): Rs.69,24,50,000/-
- ii. Disallowance of expenses (para 7): Rs.44,25,00,000/-

3.2 The relevant part of the final assessment order reads as under:

*“7.1 Vide Notice u/s 142(1) dated, 01.09.2021, the assessee was asked to submit details of various expenses as under:*

*In respect of Salaries, wages and bonus of Rs. 16.40 crores, please submit name, address, designation, experience, job description, amount, and Form 16 for payments above Rs. 15 lakhs.*

*In respect of Marketing expenses of Rs. 148.00 crores, Warehousing Charges of Rs. 6.30 crores, Service expenses of Rs. 3.1 crores, and all other expenses debited to P&L account, please submit name of party, address, PAN, description, TDS, & sample supporting evidences:*

*7.2 The assessee has failed to submit any details in regard to above. The assessee was show caused as to why an amount of Rs. 44,25,00,000/- being 25% of total expenses amounting to Rs.177.00 Crores should not be added to the total income and penalty be initiated. The assessee vide its reply dated 22.09.2021 submitted his response, which was carefully perused and observed that w.r.t marketing expenses and other expenses to the tune of Rs. 3.1 Crores, the assessee has failed to submit the complete details and also not proved the genuineness of expenses.*

*The assessee had sought for personal hearing through video conferencing. The same was provided on 27.09.2021 at 12.30 p.m, wherein the assessee reiterated the same submissions that he had already made in response to SCN. Meanwhile, the assessee vide letter dated 28.09.2021 submitted the details with regard to the all expenses including legal and professional fees on which TDS were not deducted. The details submitted by the assessee were perused and considered but found not satisfactory and not tenable/ The assessee has also not submitted the certificate of 'No Deduction of Tax' certificate with regard to the claim of service expenses of Rs. 44.25 crore being 25% of total expenses amounting to Rs.177.00 Crores w.r.t to which complete details have not been provided by the assessee during assessment proceedings. Even after the order of the Hon'ble DRP, the assessee has failed to furnish necessary detail in support the claim.*

*Since the assessee failed in its onus to prove the genuineness of expenses with supporting evidences, hence the same cannot be accepted at their face value. Therefore, I have no option but to disallow 25% of below mentioned expenses:*

<i>Expense type</i>	<i>Rs. in crores</i>
<i>Salaries, wages and bonus</i>	<i>16.40</i>
<i>Staff Welfare expenses</i>	<i>0.20</i>

<i>Marketing expenses</i>	<i>148.00</i>
<i>Warehousing Charges</i>	<i>6.30</i>
<i>Service expenses</i>	<i>3.10</i>
<i>Legal &amp; Professional Fees</i>	<i>0.90</i>
<i>Travelling Expenses</i>	<i>1.60</i>
<i>Miscellaneous Expenses</i>	<i>0.50</i>
<b>Total</b>	<b>177.00</b>
<i>Disallowance @ 25%</i>	<b>44.25</b>

7.3. Accordingly, the amount of Rs. 44,25,00,000/- is added to total income of the assessee. Penalty proceedings u/s 270A are initiated separately for mis-reporting of income.”

4. Before us, various grounds relating to the Transfer Pricing Adjustment of Rs.69,24,50,000/- were not pressed. Hence, those grounds as mentioned above stand dismissed. The core issue required to be decided by us is only the disallowance of expenses of Rs.44,25,00,000/-.

5. The Ld. Counsel submitted the voluminous paper book containing documents, submission, etc. submitted before the AO not only prior to the draft assessment order but thereafter also as per the DRP directions. The gist of submission is as under:

**TABLE-A**

S. No.	Particulars	INR Crores	Details Submitted
1.	Amount disallowed in draft assessment order	3	Point no. 2, 6, 7 and 8 in Table B below equivalent to 3.2 crores. Also, refer Submission dated 28.09.2021 submitted post VC hearing (@pg. 420. Also, refer pg. 152-154 of appeal memo-specifically table at @pg. 154 for disallowances proposed in draft order

**TABLE-B**

S.No.	Expense	INR corres	Details Submitted
1.	Salaries. wages and bonus	16.40	Submission dated 08.09.2021-Pg. 8 (point 5), 9-69 Submission dated 22.09.2021-Pg. 81
2.	Staff welfare expenses	0.20	Submission dated 22.09.2021-Pg. 420-440 Letter dated 05.04.2022 Pg. 441-551
3.	Marketing expenses	148.00	Submission dated 15.09.2021-Pg 70 (point 1), 71-74 Submission dated 22.09.2021- Pg 79 (point 2), 80-301
4.	Warehousing Charges	6.30	Submission dated 22.09.2021- Pg. 79 (Point 2), 303-402
5.	Service expenses	3.10	Submission dated 22.09.2021-Pg 79 (point 2), 403-419
6.	Legal & Professional	0.90	Submission dated 22.09.2021- Pg 420-440 Letter dated 05.04.2022-Pg. 441-551
7.	Travelling Expensees	1.60	
8.	Miscellaneous Expenses	0.50	
	<b>Total</b>	<b>177.00</b>	
	Disallowance Proposed @ 25% as per notice dated 29.09.2021		

5.1 The Ld. Counsel contended that the final assessment order was almost same or paraphrasing of the draft assessment order. The AO, in the draft assessment order, had accepted the assessee's submissions, documentary evidences and proposed the disallowance of Rs.3,00,00,000/-, which was enhanced to Rs.44,25,00,000/- in the final assessment order. The Ld. Counsel drew our attention to the finding of the AO in the draft assessment order wherein the AO had given categorical finding as **“W.r.t to Other expenses the assessee has provided the details. Hence, no adverse inference has been drawn.”** The Ld. Counsel questioned the AO's action by submitting that the AO had not placed any contrary material on the record

to overrule his own finding ***“W.r.t to Other expenses the assessee has provided the details. Hence, no adverse inference has been drawn”*** in the draft assessment order.

5.2 The Ld. Counsel questioned the disallowance of Rs.44,25,00,000/- in the final assessment order as against the proposed disallowance of Rs.3,00,00,000/- in the draft assessment order on the following reasoning:

- i. The AO had not pointed out any specific shortcoming/discrepancy in the evidence submitted before him.
- ii. The AO had not pointed out the specific details wherein the withholding tax/TDS not done.
- iii. The finding of the AO in para 7.2 of the final assessment order that the assessee had failed to submit any details in regard to above (employee cost of Rs.16.40 Crores and Marketing expenses of Rs.148.00 Crores) after categorical finding in the draft order as highlighted above was factually incorrect as these details were also filed before the DRP who had also given categorical finding on this score in para 4.11.1 to 4.11.3.
- iv. The AO had not brought any other facts in the final assessment order than those mentioned in the draft assessment order.
- v. The AO had not given any basis of working of the disallowance @ 25% of expenses of Rs.177.00 Crores. The disallowance was made on ad-hoc basis.



- vi. The AO had not given any reasoning and or justification for the disallowance for each head of expenses. Such disallowance had been made on ad-hoc basis. In the first instance, there was no merit in such disallowance of the expenses, as the assessee books of accounts had not been rejected. Further, the AO had failed to point out the exact expenses which were not verifiable.
  - vii. There was no adverse observation the audit report in Form 3CD (as the books of accounts are duly audited under section 44AB of the Act) which may entail the disallowance under section 40a(ia), 40A(3), etc. of the Act. Hence, the AO's observation that the assessee had not given the detail on which the TDS not made was factually incorrect. The assessee had deducted TDS wherever applicable and not made cash payment in contravention to provisions of Rule 8DD of the I. T. Rules. That was why the AO did not mention any categorical specific shortcoming/discrepancy in the evidence relating to expenses of Rs.177.00 Crores submitted before him.
6. The Ld. Sr. DR, placing emphasis on the orders of lower authorities, prayed for dismissal of the appeal.
7. We have heard both parties and have perused the material available on the record. We find merit in the submissions/contentions/arguments of the Ld. Counsel. The voluminous evidence regarding the expenses of Rs.177.00 Crores were submitted before the AO. The copies of those

documents, addition evidence, submission, etc. were also furnished before us in the paper book with the certification that these were dully submitted before the lower authorities. We have perused these materials. In the final assessment order, it appears that the AO had not consider the additional evidence submitted before the DRP and that is why he has not made any comment thereon. The AO is duty bound to incorporate the specific directions issued by the DRP in the relevant para of the assessment order and do needful accordingly. The DRP directed the AO to reconsider and verify the submissions (including additional evidence) before completing the assessment. However, the DRP direction did not mandate the AO to provide opportunity of being heard to the assessee on this score. From the perusal of the final assessment order, it is not evident that whether the AO followed the direction of the DRP in this regard as there is no such mention in the final assessment order. Thus, it cannot be held that the AO has not followed the direction of the DRP in this regard as it cannot be ruled out that the verifications of submission might have not resulted new facts other than those mentioned the draft assessment order. Hence, the argument of the Ld. Counsel that the AO had failed to carry out the statutory duty to abide by the direction of the DRP as the AO had not issued any notice to the assessee, nor did he independently examine the additional evidence filed by the assessee before the DRP is held to have no merit.

8. here, in the present case, the AO has adopted an ad-hoc percentage of 25% to make a disallowance out of certain expenses aggregating to Rs.177.00 Crores. The AO has not given any rational basis for the same except holding that the assessee has not filed details of employee cost of Rs.16.40 Crores and Marketing expenses of Rs.148.00 Crores. however, the facts are contrary as evident from the Paper book and statement at Bar by the Ld. Counsel that the assessee has submitted these details much time ahead of the draft assessment order. In view of the consistent position taken by various benches of the Tribunal on the issue of the disallowability of expenses on ad-hoc basis without rejecting the books of accounts. In the present case the AO has not specify any shortcoming/discrepancy in the bills, vouchers, etc. in the expenses aggregating to Rs.177.00 Crores. The books of accounts have not been rejected by the AO.

9. It is hereby held that the AO has not pointed out that any part of the expenditure in question is either found to be bogus or fictitious nor is found to have not been incurred by the assessee wholly and exclusively for business. There is no mention of rationale in arriving at the percentile of disallowance in the instant case. Further, there is no clear findings as to the number of bills and vouchers requiring denial of allowances with the amount of expenditure and nature of defects therein or therewith. The AO has not given any reasoning for enhancing the disallowance to Rs.44,25,00,000/- in the final assessment order than the proposed disallowance of

Rs.3,00,00,000/- in the draft assessment order. Moreover, the Revenue has not brought out any deprecative material on the record to substantiate its conclusion as logical particularly when the AO has not rejected the books of the assessee. Thus, the AO's action ((25% disallowance out of certain expenses aggregating to Rs.177.00 Crores), in view of the details mentioned above and in para 5.2 of this order is held unjustified. Consequentially, the disallowance of Rs.44,25,00,000/- made in the impugned order is hereby deleted.

10. In the result, the appeal of the assessee is allowed as above.

Order pronounced in open Court on 25<sup>th</sup> April, 2025

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**Sd/-**

**(AVDHESH KUMAR MISHRA)  
ACCOUNTANT MEMBER**

Dated: 25/04/2025  
*Binita, Sr. PS*

Copy forwarded to:

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2. Respondent
3. CIT/PCIT
4. CIT(Appeals)
5. Sr. DR: ITAT

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