

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRIYOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 8361/Del/2019
(Assessment Year: 2012-13)

Vodafone Idea Ltd (earlier known as Vodafone Mobile Services Ltd) 10 th Floor, Birla Centurion, Century Mills Compound, Pandurang Budhkar Marg, Worli, Mumbai, Maharashtra	Vs.	ACIT, Circle-26(2), New Delhi
(Appellant)		(Respondent)
PAN: AAACB2100P		

Assessee by :	Shri Salil Kapoor, Adv Ms. Soumya Singh, Adv
Revenue by:	Shri S. K., Jadav, CIT DR
Date of Hearing	13/08/2025
Date of pronouncement	24/10/2025

ORDER

PER SHRI S. RIFAUH RAHMAN:

1. The Assessee Vodafone Idea Ltd (hereinafter referred to as 'assessee') by filing the present appeal sought to set aside the impugned order dated 30.08.2019 passed by the Assessing Officer (AO) under section 143(3) r.w.s. 143C of the Income Tax Act, 1961 (for short 'the Act') in consonance with the order passed by the Dispute Resolution Panel-2(DRP) dated 27.06.2019 u/s 144C(5) and order dated 30.01.2016 passed by Transfer Pricing Officer (TPO) under section 92CA(3) for AY 2016-17.

2. Brief facts of the case are, the assessee (along with its erstwhile entities except one entity) had filed a demerger scheme

("Demerger Scheme") for transfer of their Passive Infrastructure ('PI') assets to Vodafone Infrastructure Limited (VInFL.) with effect from 01.04.2009. The Demerger Scheme in case of two erstwhile entities, as approved by the Hon'ble Delhi High Court (in the case of erstwhile VSL) and Madras High Court (in the case of VCL) provided that book value of the 'PI' assets transferred shall be carried to the Balance Sheet as miscellaneous expenditure and amortized over a period of 10 accounting years beginning from 01 April 2009. The unamortized balance of the said miscellaneous expenditure amounted to Rs. 1879,70,00,000/- reported in the stand-alone Balance Sheets of the erstwhile two entities as on 31 March 2011. Accordingly, as a result implementation of the Demerger Scheme, all the transferor entities therein (including erstwhile VSL and VCL) accounted for such transfer of 'PI' assets as per the accounting treatment provided as per the method prescribed in the Demerger Scheme. While erstwhile VCL and VSL (ie. Fifth and Seventh Transferor Company in the Demerger Scheme) followed the treatment specified in clause (b) above. Other transferor companies (including the Assessee on a standalone basis) followed the accounting treatment specified in clause (a) above. This accounting treatment was in line with the Court approved Demerger Scheme. Subsequently, when erstwhile VCL and VSL merged into the Assessee with effect from April 1, 2011 under a Court approved scheme for amalgamation ('Merger Scheme'), the accounting policies of merging and merged entities had to be aligned in view of AS-14 which specifies that a uniform set of accounting policies shall be followed pursuant to amalgamation. Accordingly, with respect to the accounting of 'PI' assets transferred by the merging entities, since there was difference in the accounting policy of erstwhile VCL and VSL in comparison to the Assessee, which had written off the loss arising on transfer of 'PI' assets to Profit and Loss account, the

unamortized balance of 'Miscellaneous Expenditure' reported in the standalone financial statements of erstwhile VCL and VSL (as on March 31, 2011) was charged off to the profit and loss account of the Assessee during FY 2011-12 in line with the accounting policy followed by the Assessee (which was to debit the book value of the transferred 'PI' assets to the profit and loss account). The AO has made an adjustment amounting to INR 1,879,70,00,000 to the book profits under section 115JB of the Act for the reason that the same is debited to the Profit & Loss account but is not added back by the Assessee for the purpose of MAT calculation. The said adjustment was upheld by the DRP. Pursuant thereto, the A.O., in terms of the impugned final Assessment Order, made an adjustment amounting to INR 1,879,70,00,000 to the book profits under section 115JB of the Act.

3. Aggrieved with the above order, the assessee is in appeal before us and raised for following grounds of appeal. We shall deal with issues groundwise.

4. Ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication. Therefore, same is dismissed.

5. Ground No. 2 to 2.4 raised by the assessee is with regard to Transfer Pricing Adjustment amounting to Rs. 1,20,54,47,020/- pertaining payment of brand to royalty made for obtaining the right to use of 'Vodafone' and 'Essar' trademarks and trade names.

4.1 Considered the rival submissions and material placed on record. The brief fact of the issue is that assessee paid royalty for use of trademark of Rs. 158,91,68,933/- paid to its AE Vodafone Ireland Marketing Limited ("VIML") and Vodafone Sales and Services Limited ("VSSL") for use of 'VODAFONE'. Agreement to pay royalty

fee @ 0.70% of Net services revenues. Rs. 19,17,63,087/- paid to Rising Group Limited ("RGL") for use of "ESSAR" in terms of Agreement dated 19.12.2008. Agreement to pay royalty fee @ 0.35% of Net services revenues. The assessee benchmarked the transaction using CUP as the most appropriate method and TNMM at entity level. The assessee benchmarked the transaction with three comparables as under:-

Licensor	Licensee	Rate
Jeanmichel Cousteau ocean future society Inc.	Ultrastrip systems Inc.	2.00 %
Inc NetTalk.com	OmniReliant Inc.	1%
Harnishfeger Technologies Inc.	Morris material handling	075%

4.3 The IdAO/TPO rejected the TNMM method and held that 'Essar' has no brand recognition and alleged that Assessee has not substantiated any benefit derived from use of the said trademark and therefore, payment of royalty for Essar to be taken at Nil. For 'VODAFONE'; it rejected the three comparables selected by the Assessee and proposed 0.25% as the royalty rate based on the following comparable:

- i. Virgin Enterprises Ltd. and Virgin Mobile USA LLC- taken as comparable despite Assessee's objection that the transaction being a 'controlled transaction' between two AEs, cannot be considered as comparable for benchmarking the royalty paid by Assessee. Accordingly, it computed the rate of royalty @.25% of the gross sales.
- ii. Deutsche Telekom AS and T-Mobile US, Inc.-However, in the Order, the TPO dropped Deutsche Telekom AS and T-

Mobile US, Inc. as comparable on account of being a transaction between related parties.

Accordingly, it made adjustment amounting 1,20,54,47,020/- on account of royalty payment as under:

- ⇒ by taking the ALP paid to RGL to be NIL instead of Rs. 19,17,63,087/- paid by the Assessee in respect of 'ESSAR';
- ⇒ by computing the ALP paid to VIML/VSSL @0.25% of gross sales instead of 0.70% of Net services revenues paid by the Assessee in respect of 'VODAFONE'

4.4 Aggrieved, the assessee filed the objections before DRP. The Id DRP rejected the assessee's comparable and upheld that it is not proved that Virgin Enterprises Ltd. and Virgin Mobile USA LLC are related parties and upheld the benchmarking done by the TPO. He further upheld that TPO's action of taking royalty paid in respect of 'ESSAR' to be Nil. Accordingly, they upheld the adjustment of Rs. 1,20,54,47,020/- on account of royalty payment.

4.5 At the time of hearing, the Id AR placed on the following decisions in the case of assessee's group company on the identical issues which is in favour of the assessee:-

- a. M/s Vodafone West Ltd V/s DCIT (ITA No. 909 & 944 /Ahd/2014) (A.Y.: 2009-10)
- b. M/s Vodafone Digilink Ltd. v. DCIT (ITA No.1169/Mum/2014 dated 12.02.2025) (A.Y. 2009-10) [Mum. Trib.)

4.5 Further, the Id AR submitted that regarding ALP computed in respect of payment made to VIML/VSSL for use of trademark

'VODAFONE' @0.25% of gross sales instead of 0.70% of Net services revenues paid by the assessee, it is submitted that transaction between Virgin USA LLC and Virgin Enterprise Ltd is controlled transaction and cannot be taken as a comparable to benchmark the international transaction and therefore, the TPO/DRP/AO's action on selecting to benchmark the transaction is completely erroneous. As regards the ALP paid to RGL taken as NIL instead of Rs. 19,17,63,087/- paid by the Assessee in respect of 'ESSAR', it is submitted that royalty payments made for "Essar" is purely a business decision of the Assessee which cannot be questioned by the learned TPO. Reliance in this regard is placed on:

- a. Cushman and Wakefield (India) Pvt. Ltd. [ITA No. 475/2012]
- b. CIT v. EKL Appliances Ltd. [2012] 345 ITR 241

4.6 The Id DR vehemently relied on the orders of the lower authorities.

4.7 Considered the rival submissions and material placed on record. We observed that ITAT Ahmedabad Bench had considered the similar issues and decided the similar issues under consideration as under:

"30. A perusal of the case record indicates that the assessee had paid brand royalty fee amounting to Rs.5,37,37,397/- and Rs.2,68,68,699/- to its overseas associate enterprises, namely, M/s. Vodafone Ireland Marketing Ltd. and M/s. Rising Groups Ltd.; respectively. It adopted the transaction net margin method (TNMM) to benchmark the same. We find from Transfer Pricing Officer's order dated 28.01.2013 that he rejected assessee's method after holding that the same was an indirect one liable to give way to the other direct methods in the Income Tax Rules. He relied on this tribunal's decision in M/s. Serdia Pharmaceuticals India Pvt. Ltd. case 44 SOT 391 (Mumbai) to adopt CUP method (comparable uncontrolled price) in facts of the instant case. He thereafter was of the view that arms'

length price for royalty payment for "Essar" brand as Rs. Nil and corresponding payment had to be restricted to 0.25% on gross sales as against 0.275% declared by the assessee. He adopted similar course of action for the later payee regarding "Vodafone" brand. The same resulted in the impugned upward adjustment of Rs.3,17,53,917/-. We notice from the above TPO's order that he went by assessee's related parties royalty agreement transactions in proposing the impugned adjustment. The Dispute Resolution Panel reverses the same leaving the Revenue aggrieved.

31. We have heard rival contentions. Suffice to say, since the transfer pricing officer in the instant case has proceeded to propose the impugned upward adjustment on the basis of related party transactions after adopting CUP method instead of TNMM hereinabove, we find that a co-ordinate bench of this tribunal in ACIT vs. Bilag Industries Pvt. Ltd. ITA No. 1441 & 1670/Ahd/2006 and 343/Ahd/2012 quotes a catena of case law to disagree with such an approach as follows:

"28. We have heard both the sides. Learned representatives reiterate their respective pleadings in support of and against the impugned transfer pricing adjustment. There is hardly any dispute that the assessee agreed to supply Deltametrin and its intermediate chemical solutions to the above stated associate enterprise or its designee. This list however is confined to arms length price determination of 18 tones supplied to the foreign entity. The assessee charges @ US \$ 126.2 per kg by following cost + 55% markup. Its agreement quoted Deltametrin price to be @ 161.20 US \$ per kg. The assessee also admitted the latter rate to be at arms length price as already indicated in page 292 of the paper book. This made the TPO to inter alia to reject assessee's other contentions for making impugned upward transfer pricing adjustment of Rs. 2,96,10,000/- subject matter of the instant litigation.

29. We deem it appropriate at this stage to deal with chapter X of the act containing transfer pricing provisions relating to avoidance of tax introduced by the Finance Act, 2001 w.e.f. 01-04-2002. The impugned assessment year before us is the first full fledged year of business thereafter. Section 92(1) mandates any income arising from an international transaction to be computed having regard to arms length price. The same admittedly applies in case of international transactions; as it then was, between two associate enterprises illustrated in section 92A of the Act. We repeat that this assessee and its overseas associate enterprise admittedly fall in this category. There is further no quarrel about its Deltamethrin sale to be in the nature of international transactions u/s. 92B of the Act. We notice that section 92C(1) of the Act postulates arms length price computation by applying six methods namely; comparable un-controlled price method (CUP), re-sale price

method (RPM), cost method (CPM), profit split method (PSM), transactional net margin method (TNMM) and the residuary one such other methods as may be prescribed by the Central Board of Direct Taxes. An Assessing Officer's jurisdictional flows thereafter u/s. 92CA of the Act to make reference to the TPO for ascertaining arms length price of the relevant international transactions.

30. We now come to the corresponding income tax rules. Rule 10A defines various expressions used in all contemporary provisions. Sub-rule (a); as it was in the impugned assessment year defines an un-controlled transaction to mean a transaction other than that between two associate enterprises; whether resident or non-resident. We keep in mind the same and proceed further to Rule 10B prescribing arms length price for the purpose of section 92C(2) of the Act by using any of the six method as the most appropriate method as enumerated in clause (a) to (f); respectively in the given sequence in chapter 10 of the Act. The last clause (f) relevant for any other appropriate method hereinabove contains a specific rule 10AB. This is admittedly not germane to the issue before us. We find that only clause (a) to (e) hereinabove pertaining to 'CUP' and 'TNMM' methods are relevant for the instant adjudication. We find it a fit case to repeat that the assessee had employed TNMM method for charging @ cost + 55% markup i.e. an indirect method for declaring its ALP. The TPO adopted its direct sale price @ 161.2 US \$ per kg for making the impugned upward adjustment. We do not find a single observation even in his order rejecting assessee's TNMM method before adopting the agreement price in question under the CUP method.

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

negating the basic fundamental condition of CUP methods application.

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

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

34. We further deem it appropriate to observe at this stage that the impugned assessment year 2002-03 is the first full-fledged business of year after introduction of chapter X transfer pricing provision incorporated in the act. The TPO's order dated 10-03-2005 does not even issue a show cause notice disagreeing with assessee's TNMM method. He has rather proceeded to adopt CUP method (supra) again by ignoring the fundamental condition of applying the same. Same is the case with learned CIT(A) who has proceeded on revenue neutral implication without even taking into section 92(1) r.w.s. 92C and 92C(4) proviso along with rules discussed hereinabove at length. There is hardly any dispute that this chapter and the rules notified thereunder prescribe that an arms length price is not the price an assessee is charging or paying for being a party in the international transaction in question but it is the price i.e. to be paid or charged in such a comparable controlled transaction in comparison to a comparable un-controlled transaction. We repeat that the TPO has not kept in mind this fine distinction. We accordingly reverse his action on this sole legal principle. Needless to say, the CIT(A) has already deleted the impugned adjustment. We find no reason to interfere in the lower appellate order albeit on a different score as enumerated hereinabove. This Revenue's ground is declined accordingly."

We have given out thoughtful consideration to rival contentions. Ld. Departmental Representative fails to pinpoint any exception in facts of the instant case vis-à-vis those extracted hereinabove with regard to the impugned upward transfer pricing adjustment based on related party agreements only. We thus find no reason to interfere with the DRP's direction under challenge on this count alone. This substantive ground is also rejected."

Respectfully following the above decision and other decisions relied upon by the Id AR, in view of the facts and circumstances of the case, we are of the considered opinion that the issue involved in ground No. 2 of the assessee is squarely covered. In view of the above, we direct the Learned TPO / AO to delete the transfer pricing adjustment made in the sum of Rs 1,20,54,020/- in respect of international transaction towards payment of royalty.

5. Ground No. 3 to 3.3 raised by the assessee is about Disallowance of depreciation amounting to Rs. 12,47,17,47,967/- in respect of right to use 3G Spectrum.

5.1 Considered the rival submissions and material placed on record. Brief facts of the issue is, assessee paid fees for acquisition of 3G spectrum and treated the same as capital expenditure and claimed depreciation u/s 32 of the Act as 'Spectrum' was mentioned as 'intangible asset' in Note 12 of its audited financials. Assessee claimed depreciation during the year under consideration, spectrum fee was not covered u/s 35 ABB of the Act since the same is only with respect to amortization of expenditure incurred for obtaining license for telecommunication services. As regards amortization u/s 35ABA of the Act, it was submitted that it has been inserted only by Finance Act, 2016, w.e.f. 01.04.2017 and therefore, the same is not applicable for the year under consideration.

5.2 We observed that the AO disallowed the claim of depreciation and amortized the same u/s 35ABB of the Act. The Id DRP upheld the action of the AO.

5.3 At the time of hearing, the Id AR submitted that this issue is identical to the facts and circumstances of the case of the assessee's group company and relied on the following decisions:-

- a. Consolidated Order dated 17 May 2024 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Ys. 2011-12 and 2012-13
- b. Order dated 22 October 2024 passed in the case of the erstwhile Vodafone India Ltd. for AY 2013-14.
- c. Order dated 28 August 2020 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Y. 2011-12 (ITANo. 3327/Mum/2018)
- d. Erstwhile Idea Cellular Ltd. (now merged with the Appellant) v/s. PCIT (IT A No. 360/Mum/2016)
- e. Tata Teleservices (Maharashtra) Ltd. v/s. PCIT (ITA No. 3567/Mum/2016).

5.4 The Id DR vehemently defended the impugned order and prayed for confirmation of the addition made by the Id AO.

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

this issue is squarely covered in favour of the assessee. Hence, ground No. 3 raised by the assessee is allowed.

6. Ground No. 4 raised by the assessee is about disallowance of penalty amounting to Rs. 21,39,94,348/- imposed by the Department of Telecommunication.

6.1 Considered the rival submissions and material placed on record. Brief fact of the issue is, assessee incurred expenditure on account of penalty paid to DOT for non-compliance of terms of the license agreement entered between the Assessee and DOT, therefore, the assessee submitted before the AO that the said expenditure is on account of contractual liability and not a statutory liability. Hence, the same does not fall under explanation to Section 37(1) of the Act.

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

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

6.4 At the time of hearing, Id counsel for the assessee submitted that this issue is covered in favour of the assessee and relied on the following decisions which is decided in cases of assessee's group company:-

- a. Erstwhile Vodafone East Ltd. v/s. ACIT (2016) 156 ITD 337 (Kolkata Trib.)
- b. DCIT v/s. Erstwhile Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 (Delhi Trib.)

- c. Order dated 17 May 2024 passed by the Tribunal in the case of the erstwhile 'Vodafone India Ltd.' for the A.Y. 2011-12
- d. Commissioner of Income- tax vs. Enchante Jewellery Ltd. [2014] 220 Taxman 8 (Delhi) (Mag.)[20-11-2012]

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

7. Ground No. 5 raised by the assessee is about Disallowance of depreciation amounting to Rs. 2,36,69,878/- claimed on the addition to fixed assets on account of Asset Restoration Cost ("ARC") obligation.

7.1 Considered the rival submissions and material placed on record. Brief fact of the issue is, Assessee entered into lease agreement with various owners for setting up of cell sites (telecom towers) on their premises. As per the terms of the agreement [Ref. sample agreement at pgs. 370-377 of PBJ], Assessee is obligated to incur cost to restore the site to its original condition at the expiry of the lease period and accordingly, the estimated cost to be incurred at the end of the lease period is the ARC. Assessee capitalized certain sum on account of ARC and claimed depreciation, since ARC is directly attributable to the cost of acquisition of the capital asset and hence formed part of the cost of acquisition. As per Accounting Standard 29 (AS-29') (Provisions, Contingent Liabilities and Contingent Assets) issued by the ICAI. It was submitted by the assessee that it is compulsory to make a provision on account of such ARC obligation. Without prejudice, the Assessee submitted that the

expense may be allowed as revenue expense u/s 37 of the Act as the same is necessary to bring such assets into existence and put them in working condition.

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

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

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

- a. Order dated 16 March 2023 for the A.Y. 2006-07
- b. Order dated 08 May 2023 for the A.Y. 2008-09
- c. Order dated 08 November 2023 for the A.Y. 2009-10

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

7.6 On careful perusal of the above decisions relied upon by the assessee, we find that similar issues are involved in this ground of appeal of the assessee. Therefore, respectfully following the decisions and in view of the facts and circumstances of the instant case, we find that this issue is squarely covered in favour of the assessee. Hence, ground No. 5 raised by the assessee is allowed.

8. Ground No. 6 raised by the assessee is about disallowance amounting to Rs. 2,50,57,883/- in respect of liabilities written back.

8.1 Considered the rival submissions and material placed on record. Brief fact of the issue is, the assessee had written back liabilities pertaining to the reversal of amount payable to 'Motorola Inc.' towards supply of capital equipment during the years 2004 to 2008. During the year under consideration, it was agreed with the said supplier that the liability shall no longer be payable and hence, the same was written back. It was submitted before the AO that liabilities in the instant case relate to capital account creditors (i.e. supplier of capital assets/ equipment) resulting in capital expenditure for the assessee, which was capitalized, hence, the same cannot be construed as a loss, expenditure or trading liability. Since such liability cannot be construed as a loss, expenditure or trading liability

and reversal thereof could not be brought to tax in the hands of the assessee under section 41(1) of the Act.

8.2 The Id AO rejected the claim of the Assessee alleging that Assessee has not established that the liability was capital in nature and even if it was capital, expenditure would have been claimed in terms of depreciation. Alternatively held that since there is no reduction in capital, it amounts to benefit the assessee in terms of alleged excess depreciation being allowed and hence, it is to be added back u/s 28(iv) of the Act.

8.3 The Id DRP followed the decision of Hyderabad ITAT in the case of Binjrajka Steel Tubes Limited v. ACIT (130 ITD 46) and held that the amount of Rs. 2,50,57,883/- in respect of liabilities written back, cannot be taxed u/s 41(1) of the Act since depreciation is neither a loss nor expenditure nor a trading liability, as referred in Section 41(1) of the Act. He further held with regard to addition u/s 28(iv) by placing reliance on Binjrajka Steel Tubes Limited (supra) held that the Assessee was not entitled to depreciation claimed on the amount of liabilities written back and accordingly, directed the AO to bring back the amount of depreciation claimed on the liability written back u/s 28(iv) and re-determine the written down value of block of assets for present AY.

8.4 The Id counsel for the assessee submitted that the AO as well as DRP have failed to appreciate that in the facts of the present case, the requisite conditions for invoking provisions of Section 28(iv) of the Act are not satisfied. Provisions of Section 28(iv) of the Act, as it stood at the relevant time, read as under:

“25. Profits and gains of business or profession.

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

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

Section 28(iv) of the Act seeks to tax only such benefit or perquisite that may be arise to an assessee in consideration of exercise of his business or profession. Therefore, not only the business or profession should have been carried out by an assessee but such benefit should have been received in consideration of rendering of services by the assessee. The reversal of a capital liability cannot be said to have arisen from the business or exercise of the profession by the Assessee and thus, it is submitted that such reversal cannot be brought to tax u/s. 28(iv) of the Act. Furthermore, it is submitted this issue is also covered its favour by the decision of the Supreme Court in the case of CIT v/s. Mahindra & Mahindra Ltd. (2018) 404 ITR 1 (SC) wherein it has been held that waiver of loan for acquiring capital assets cannot be taxed u/s. 28(iv) of the Act.

8.5 The Id DR vehemently submitted defended the impugned order and prayed for confirmation of the addition.

8.6 We observed from the submissions that the liability pertains to the supply of capital equipment during the years 2004 and 2008. It was agreed between the parties that the liability shall no longer be payable, therefore, the assessee written back the same. In our considered view, the assessee had purchased the capital equipment and capitalized the same, also utilized the same for the purpose of business during the period 2004 to 2008. Once the assessee recognizes the assets in their books, it becomes business assets. Therefore, as per the provisions of section 28(iv) of the Act, this liability is arising from business. Therefore, the submission of the

LdAR is not acceptable. With regard to reliance in the case law Mahindra & Mahindra Ltd. (supra), the facts are, the loan was waived for acquiring the capital assets. The facts are distinguishable to the facts of the present case, in the given case, the assets were purchased and capitalized, this will not take the character of loan transactions rather it is business liability. Therefore, the ground raised by the assessee is dismissed.

9. Ground No. 7 raised by the assessee is with regard to Disallowance of discount amounting to Rs. 6,6,47,91,228/- extended to pre-paid distributors under section 40(a)(ia) of the Act.

9.1 Considered the rival submissions and material placed on record. Brief fact of the issue is, assessee offered discount to its prepaid sim card distributors, which was alleged as "commission" by the Id AO.

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

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

9.4 The Id counsel for the assessee submitted that this issue is squarely covered in favour of the assessee and relied on the following decisions:-

- a. Bharti Cellular Ltd. v/s. A CIT reported in (2024) 462 ITR 247(SC)

b. Order dated 05 June 2024 in the Appellant's own case for A.Y. 2012-13 (ITA No. 37/Del/2023)

c. Vodafone Mobile Services Ltd. v. DCIT [ITA No. 4189/DEL/2017 dated 22.05.2025] (AY 2007-08;

9.5 The Id CIT DR vehemently relied upon the orders of the Id AO.

9.6 On careful perusal of the above decisions relied upon by the assessee, we find that similar issues are involved are already considered by the apex court and other decisions of the coordinate benches in favour of the assessee. Therefore, respectfully following the decisions and in view of the facts and circumstances of the instant case, we find that this issue is squarely covered in favour of the assessee. Hence, ground No. 7 raised by the assessee is allowed.

10. Ground No. 8 raised by the assessee is with regard to disallowance of roaming charges amounting to Rs. 4,54,75,74,959/- under section 40(a)(ia) of the Act.

10.1 The Id AO/ DRP erred in making addition of Rs. 4,54,75,74,959/- u/s 40a(a)(ia) of the Act on account of non-deduction of tax at source on roaming charges incurred by the assessee. The Id DRP held as under:-

"Identical ground was decided against the assessee in AY 2009-10, 2010-11 and 2011-12 DRP in A.Y 2011-12 had held as under: "The issue has been decided against the assessee by the prior DRP directions The same are respectfully followed in view of identical factual matrix. The Tribunal judgments cited are in respect of other assesseees and none of them is on account of the jurisdictional ITAT

The assessee objection per IX(j) is dismissed as untenable as it does not pertain to the period under consideration of the DRP. The assessee may take available legal recourse in relevant assessment years. The objection is thus disposed of"

Since the issue is identical in the relevant assessment year, we have no reason to differ from the decision of the DRP taken in the A.Y 2011-12. It is also pertinent to note here that in later years the assessee itself has started deducting TDS on such domestic charges. In view of the above, Ground of objection No. (xi) is, therefore, rejected"

Since the DRP-II has not made any variation in the addition as proposed in the draft assessment order, an addition of Rs. 4,54,75,74,959/- is made to the total income on account of Roaming Charges. I am satisfied that the assessee has furnish inaccurate particulars thereby concealing the particulars of its income and rendering itself liable for initiation of penalty proceedings u/s 271(1)(c) read with section 274 of the IT Act, 1961. The same is being initiated separately."

10.2 The Id counsel for the assessee submitted that this issue is squarely covered in favour of the assessee in the case of assessee's group company and relied on the following cases:-

- a. CIT v/s. Vodafone South Ltd. (2016) 241 Taxman 497 (Karnataka)
- b. Order dated 05 June 2024 in the Appellant's own case for A.Y. 2012-13 (ITA No. 137/Del/2021);
- c. Vodafone Idea Ltd (erstwhile Idea Cellular Ltd.) v/s. DCIT (ITA No. 3424/Mum/2014 dated 27 July 2023): and
- d. Consolidated Order dated 17 May 2024 in the Appellant's group company i.e. erstwhile 'Vodafone India Ltd.' for the A.Ys. 2011-12 & 2012-13
- e. CIT (TDS-2) v. M/s Tata Teleservices [ITA No. 1417 of 2018 dated 30.05.2022] (Assessment Year 2005-06 to 2012-13) (Delhi HC)

10.3 The Id CIT DR vehemently relied upon the orders of the Id AO and prayed for confirmation of addition made by the Id AO.

10.4 On careful perusal of the above decisions relied upon by the assessee, we find that similar issues are involved in this ground of appeal of the assessee already considered by the other coordinate benches in favour of the assessee. Therefore, respectfully following the decisions and in view of the facts and circumstances of the instant case, we find that this issue is squarely covered in favour of the assessee. Hence, ground No. 8 raised by the assessee is allowed.

11. Ground No. 9 raised by the assessee is about disallowance amounting to Rs. 9,31,78,54,060 on account of capitalization of license fees u/s. 37(1) of the Act.

11.1 Considered the rival submissions and material placed on record. Brief fact of the issue is, assessee paid license fee amounting to Rs. 9,31,78,54,060/- which was claimed as revenue expenditure since it was not to obtain the license but to maintain the license obtained.

11.2 The Id AO disallowed the said expense holding it to be on account of capital expenditure and hence, not allowable. The Id DRP upheld the action of the Id AO.

11.3 In the facts and circumstances of the instant issue, we find that this issue is decided against the assessee by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Bharti Hexacom Ltd. reported in [2023] 458 ITR 593 (SC). However, considering the aforesaid decision of the Supreme Court, the assessee will be entitled to a deduction being the amortized value pertaining to the year under consideration as has been allowed in ACIT, Delhi v. M/s. Vodafone West Ltd. ITA No.7658 & 8079/Del/2018 dated 21.03.20251.

11.4 Respectfully following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Bharti Hexacom Ltd (supra), we are

inclined to confirm the addition of Rs. 9,31,78,54,060/-. In the result, the ground No. 9 of the appeal is dismissed.

12. Ground No. 10 raised by the assessee is about disallowance in respect of payments made to IBM.

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

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

12.2 The Id AO proposed disallowance only of Rs. 49,74,60,732/- and held that the same should be amortized over the period of contract of 5 years and thereby allowed a deduction of Rs. 9,94,92,146/- ($1/5^*$ of Rs. 49,74,60,732/-), he continued to allow deduction Rs. 46,97,23,758/- as revenue expenditure. Before the DRP, AO submitted that expenditure with regard to 28% of the payment to IBM, amounting to Rs. 46,97,35,758/-, should also be disallowed and capitalized. AO categorized payments to IBM as one related to IT services and one related to hardware- both of which were to be capitalized. In the final assessment order, it disallowed a total of Rs. 96,71,96,490/- and made addition of Rs. 77,37,57,132/-, after allowing deduction of amortized amount of Rs. 19,34,39,298/-.

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

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

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

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

12.6 The Id DR vehemently relied upon the orders of the lower authorities.

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

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

(i) Finance Lease

(ii) Operating Lease

5.2 Finance Lease, in AS-19, is described as a lease that transfers substantially all the risks and rewards in respect of ownership of an asset, title may or may not be transferred under such lease. An operating lease, on the other hand, is described as a lease other than a finance lease. The aforesaid Accounting Standard provides that under the finance lease, the lessee should recognize the asset in its books and should charge depreciation on the same. In the case of operating lease, the Accounting Standard provides that the lessee should recognize the lease payments as an expense in the profit and loss account and the lessor should recognize the asset given on lease and charge depreciation in respect of the same. The aforesaid distinction between finance lease and operating lease is not recognized under the Act. Under the provisions of the Act, depreciation is admissible under section 32 of the Act only to the 'owner' of the asset. Lease charges paid for the use of the asset, without acquiring any ownership rights in the same, are allowable as revenue expenditure under section 37 of the Act.

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

"Under the Income-tax Act, in all leasing transactions, the owner of the asset is entitled to the depreciation if the same is used in the business, under section 32 of the Income-tax. The ownership of the asset is determined by the terms of the contract between the lessor and the lessee.

It has come to the notice of the Board that the New Accounting Standard on 'Leases' issued by the Institute of Chartered Accountants of India require capitalization of the asset by the lessees in financial lease transaction. By itself, the accounting standard will have no implication on the allowance of depreciation on assets under the Act."

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

5.5 The aforesaid legal position finds support from the decision of the Hon'ble Supreme Court in the case of ICDS Ltd. vs. CIT 350 ITR 527, wherein the Hon'ble Court held that the lessor is the owner of the leased property in case of finance lease, entitled to depreciation of the same. The pertinent observation of the Hon'ble Court is reproduced hereunder:

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

However the revenue's contention cannot be accepted. As long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eye of law. A scrutiny of the sale agreement cannot be the basis of

raising question against the ownership of the vehicle. The clues qua ownership lie in the lease agreement itself, which clearly point in favour of the assessee"

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

5.7 The other relevant judgments are as follows:-

(i) The decision of the Hon'ble Rajasthan High Court in the case of CIT vs. Banswara Synthetic Ltd. 216 Taxman 113, wherein the High Court while following its earlier decision in the case of Rajshree Roadways (supra) observed that lease rentals paid by an assessee in case of a finance lease is allowable as an revenue expenditure under section 37(1) of the Act.

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

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

5.8 In view of the aforesaid reasoning and the judicial precedents, we hold that disallowance of Rs.9,29,592/- is not justified on facts and circumstances of the case. It is ordered accordingly."

Respectfully, following the same, we direct the AO to allow the finance lease paid by the assessee on the assets acquired from IBM as revenue expenditure. In the result, ground raised by the assessee is allowed.

13. Ground No. 11 raised by the assessee is with regard to disallowance on account of capitalisation of royalty – WPC expenses.

13.1 Brief facts of the issue is, the assessee in its P & L A/c had claimed Royalty-WPC expenses amounting to Rs. 791,56,14,811/-. The assessee was asked to furnish the details on the basis of these royalty expenses and also to justify such claim. In response the assessee vide its reply dated 24.01.2014 stated that Royalty-WPC expenses booked in the profit and loss account pertain to spectrum charges paid to DOT on quarterly basis, as a percentage of revenue. Every telecom operator in India, in addition to the initial operator license fee, is required to pay GSM spectrum royalty for the usage of spectrum and microwave royalty for given microwave frequency usage on a regular basis, year on year. It was submitted by the assessee before the AO that this fee, incurred by the assessee, is in the nature of a regulatory payment which is necessarily to be incurred on a regular basis for the conduct of its business. Such expenses have been claimed as revenue expenditure by the assessee in the subject assessment year.

13.2 The Id AO observed that as per the submissions made by the assessee, an amount of Rs WPC-royalty fee of Rs. 791,56,14,811/- has been paid during the subject year. After allowing depreciation @ 25% amounting to Rs. 197,89,03,703/- the remaining amount of Rs. 5,93,67,11,109/- (i.e. 791,56,14,811/- less 197,89,03,703) is hereby disallowed and added to the income of the assessee. In addition to this amount, a deduction in respect of amounts similarly treated as capital expenditure in earlier years should be allowed in this year. However, given that the CIT(A)/ DRP have given relief in past years on this issue, no deduction is required to be allowed in this order for WPC-Royalty expense capitalized in the past years.

Directions of DRP

"Considering the above facts and the arguments of the AO, and the fact that, in this case, as per status of appellate proceedings in assessee's case in different assessment years submitted before the DRP, Department's SLP/appeal against the order of the Hon'ble Delhi High Court is pending before the Hon'ble Supreme Court. Hence, the action of AO is upheld. This ground is accordingly rejected"

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

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

13.5 The Id counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of Vodafone West Limited' (earlier known as Fascel Limited') by the Hon'ble Delhi High Court reported in (2009) 221 CTR 305 (Delhi). This issue has also been decided in favour in the assessee own case by the Hon'ble Delhi High Court vide an Order dated 07 November 2016 for the A.Y. 2008-09.

13.6 Considering the above submission and the decisions relied upon by the Id counsel for the assessee, we respectfully following the decision of the Hon'ble Jurisdictional High Court and also the decision of the coordinate bench, we are inclined to allow ground No. 11 of the assessee.

14. Ground No. 12 is with respect to upward adjustment on account of Miscellaneous expenditure written off for computing book profits u/s 115JB of the Act.

14.1 Brief fact of the issue is, Rs. 18,79,70,00,000 for the purpose of computing book profits under section 115JB of the Act. That on the facts and circumstances of the case and in law, it was submitted that the AO/DRP erred in making an upward addition of INR 18,79,70,00,000 to the book profits computed under section 115JB of the Act. That on the facts and circumstances of the case and in law, the AO/DRP failed to appreciate that the accounts drawn by the company and accepted as such by the auditors cannot be modified except for the adjustments specified in section 115JB of the Act.

14.2 The Id AO made an addition of Rs. 1879,70,00,000/- to the total income of the assessee on account of adjustment made in post-merger. The Id AO also observed that the assessee has furnished inaccurate particulars of income therefore, he proposed for initiation of penalty proceedings u/s 271(1)(c) r.w.s. 274 of the Act.

14.3 The Id DRP has confirmed the addition made by the Id AO.

14.4 The Id counsel for the assessee submitted that assessee (alongwith its erstwhile entities except one entity) had filed a demerger scheme for transfer of their Passive Infrastructure ('PI') assets to Vodafone Infrastructure Limited ('VInFL').The Scheme in case of two erstwhile entities provided that book value of the PI

assets transferred shall be carried to the Balance Sheet as miscellaneous expenditure and amortized over a period of 10 accounting years beginning from 01 April 2009. The unamortized balance of the said miscellaneous expenditure amounted to Rs.1879,70,00,000/- reported in the standalone Balance Sheets of the erstwhile two entities as on 31 March 2011. Detailed submissions on this aspect are furnished by the Assessee from page Nos. 269 to 288 of the objections filed by it before the DRP. In view of the same, the assessee submits that there is no basis for adjustment of the aforesaid amount while computing book profits of the assessee u/s. 115JB of the Act for the year under consideration. It is beyond clear doubt that the Assessing Officer cannot make any adjustments to the net profits of the company for the year other than those prescribed in Explanation 1 to Section 115JB(2) of the Act as held by the Hon'ble Supreme Court in the case of Apollo Tyres v/s. CIT (2002) 255 ITR 273 (SC). Following the aforesaid decision, the Supreme Court in the case of HCL Comnet Systems and Services Ltd (2008) 305 ITR 409 (SC) has again held that the Assessing Officer only has power to examine whether the books of accounts are duly certified by the authorities under the Companies Act and does not have jurisdiction to go beyond the net profit shown in the profit and loss account except to the extent of the explanation.

14.4 The Id CIT DR vehemently opposed the arguments of the assessee and prayed for confirmation of addition made by the Id AO.

14.5 Considered the arguments advanced by the both parties and the decisions relied upon hereinabove, We observed that the Assessee (along with its erstwhile entities except one entity) had filed a demerger scheme ("Demerger Scheme") for transfer of their Passive Infrastructure ('PI') assets to Vodafone Infrastructure Limited ('VInfl') with effect from 01.04.2009.

14.6 The Demerger Scheme in case of two erstwhile entities, as approved by the Hon'ble Delhi High Court (in the case of erstwhile VSL4) and Madras High Court (in the case of VCL5) provided that book value of the PI assets transferred shall be carried to the Balance Sheet as miscellaneous expenditure and amortized over a period of 10 accounting years beginning from 01 April 2009. The unamortized balance of the said miscellaneous expenditure amounted to Rs. 1879,70,00,000/- reported in the standalone Balance Sheets of the erstwhile two entities as on 31 March 2011. Accordingly, as a result implementation of the Demerger Scheme, all the transferor entities therein (including erstwhile VSL and VCL) accounted for such transfer of PI assets as per the accounting treatment provided as per the method prescribed in the Demerger Scheme. Relevant extract of the Demerger Scheme is being reproduced below for brevity:

"3.2 ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEROR COMPANIES"

3.2.1. Upon the Scheme becoming effective, with effect from the Appointed Date:

a) The First, Second, Third, Fourth and Sixth Transferor Companies shall reduce from the book value of their respective assets, the book value of their respective demerged Passive Infrastructure Assets. The book value of the demerged Passive Infrastructure Assets so reduced. shall be debited by the respective Transferor Companies to their respective profit and loss accounts prepared for the financial year commencing from the Appointed Date.

b) The Fifth and Seventh Transferor Companies shall reduce from the book value of their of respective assets, the book

value of their respective de merged Passive Infrastructure Assets. The book value of the Passive Infrastructure Assets so reduced shall be carried to the balance sheet as miscellaneous expenditure which will be amortized evenly over a period of ten (10) accounting years beginning with the financial year commencing from the Appointed Date."

14.7 While erstwhile VCL and VSL (i.e. Fifth and Seventh Transferor Company in the Demerger Scheme) followed the treatment specified in clause (b) above. other transferor companies (including the Assessee on a standalone basis) followed the accounting treatment specified in clause (a) above. This accounting treatment was in line with the Court approved Demerger Scheme.

14.8 Subsequently, when erstwhile VCL and VSL merged into the Assessee with effect from April 1, 2011 under a Court approved scheme for amalgamation ('Merger Scheme'), the accounting policies of merging and merged entities had to be aligned in view of AS-14 [as per AS-14 at Pgs. 517-532, relevant Para 3.2 @ pg. 529 of the Paperbook Vol. I], which specifies that a uniform set of accounting policies shall be followed pursuant to amalgamation. Relevant extract of the AS 14 is reproduced below:

"34. If, at the time of the amalgamation, the transferor and the transferee companies have conflicting accounting policies, a uniform set of accounting policies should be adopted following the amalgamation. The effects on the financial statements of any changes in accounting policies should be reported in accordance with Accounting Standard (AS) 5 Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies."

14.9 Accordingly, with respect to the accounting of PI assets transferred by the merging entities, since there was difference in the accounting policy of erstwhile VCL and VSL in comparison to the

Assessee, which had written off the loss arising on transfer of PI assets to Profit and Loss account. the unamortized balance of 'Miscellaneous Expenditure' reported in the standalone financial statements of erstwhile VCL and VSL (as on March 31, 2011) was written off to the profit and loss account of the Assessee during FY 2011-12 in line with the accounting policy followed by the Assessee (which was to debit the book value of the transferred PI assets to the profit and loss account).

14.10 The AO has made an adjustment amounting to INR 1,879,70,00,000 to the book profits under section 115JB of the Act for the reason that the same is debited to the Profit & Loss account but is not added back by the Assessee for the purpose of MAT calculation.

14.11 The said adjustment was upheld by the DRP. Pursuant thereto, the A.O., in terms of the impugned final Assessment Order, made an adjustment amounting to INR 1,879,70,00,000 to the book profits under section 115JB of the Act.

14.12 At the outset, we observe that the adjustment made by the assessee is in line with the accounting standard followed and declared by the assessee in their financial statement, which is in line with the books maintained by the assessee as per the schedule III of the Companies Act, 2013. Further we observed that the AO cannot make any adjustments to the net profits of the company for the year other than those prescribed in Explanation 1 to Section 115JB(2) of the Act as held by the Hon'ble Supreme Court in the case of Apollo Tyres v/s. CIT (2002) 255 ITR 273 (SC) wherein a three Judge Bench of the Supreme Court has held that while computing income under section 115J, the assessing officer has no jurisdiction to question the

net profit shown in the profit and loss account, except to the extent of making adjustments specifically permitted under the Explanation to the said section, and is otherwise bound by the accounts certified under the Companies Act. The observations of the Hon'ble Supreme Court are as under:

"Therefore, we are of the opinion that the Assessing Officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increase and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J."

14.13 Following the aforesaid decision, the Hon'ble Supreme Court in the case of HCL Comnet Systems and Services Ltd (2008) 305 ITR 409 (SC) has again held that the Assessing Officer only has power to examine whether the books of accounts are duly certified by the authorities under the Companies Act and does not have jurisdiction to go beyond the net profit shown in the profit and loss account except to the extent of the explanation. It is relevant to observe that the DRP accepted that the subject adjustment made in the instant case does not fall under any of the clauses of Explanation 1 to Section 115JB of the Act, yet it preceded to uphold the action of the AO. Therefore, in our considered view, the miscellaneous expenses carried forward in the erstwhile balance sheet of the merged entities are properly written off by the assessee by following and aligning the accounting standard regularly followed by it and which was also declared in their financial statement. Further, the relevant amount written off by the assessee does not fall any of the clauses of adjustments mentioned under explanation 1 to the section 115JB of

the Act. Therefore, we are inclined to allow the ground raised by the assessee in this regard.

15. In respect of ground Nos. 13, 14, 15 and 16, these issues require factual verification, therefore, in the interest of justice, we hereby remit the matter back to the file of the Id AO to consider the submissions and relevant claim of the assessee and after due verification allow the same as per law. In the result, all above said grounds are allowed for statistical purpose.

16. In the result, appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 24/10/2025.

-Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

-Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated:24/10/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	22.10.2025
Date on which the typed draft is placed before the dictating member	23.10.2025
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	