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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 660/2018 & CM APPL 24384/2018

VODAFONE MOBILE SERVICES LTD. Appellant

Through Mr.Sachit Jolly and Mr.Siddharrth
Joshi, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through Mr.Zoheb Hossain, Sr.Standing
Counsel with Mr.Deepak Anand,
Jr.Standing Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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01.06.2018

Admit.

The following two questions of law are framed for
consideration:-

“1. Did the Income Tax Appellate Tribunal (ITAT) fall into error in upholding the disallowance of the depreciation claimed to the extent of Rs.5,10,79,752/- on account of asset reconstruction cost in holding that it was a contingent liability?

2. Did the ITAT fall into error in upholding the disallowance under Section 49(a)(ia) of the Income Tax Act, 1961 with respect to the discount offered by the assessee to the prepaid SIM Card distributor as commission?”



The assessee has urged other questions. He submits that the installation of cell-site towers did not amount to extension of existing business and the ITAT had disallowed the proportionate interest claimed, on account of Section 36(1)(iii) in the circumstances of the case. The Court is of the opinion that the assessee's argument that the improved efficiency within the circle if it was allowed for operation of its licences, did not amount to extension of business, is unpersuasive. The facts are that the assessee is a license holder in respect of three telecom circles. At the relevant time, it sought to install cell-site towers claiming that they would merely improve its efficiency. The lower authorities discerned that materials on record clearly show that the object of such exercise was to reach the greater number of customers and thus increase subscriber base. In these circumstances, the finding of the lower authorities cannot be faulted. No substantial question of law arises. This, however, will not preclude the lower authorities from deciding the issues which have been remitted by the ITAT, in accordance with law.

The Court has considered the submissions of the parties; the ITAT remitted for fresh reconsideration of the issue relating to advertising, marketing and promotion (AMP) expenses. Furthermore, it also, through stray sentences in the impugned order not premised on any reason in no manner observed that the benchmarking of international transactions pertaining to payment of royalty cannot be done by using comparables with transactions entered into between two foreign parties. This observation in the



opinion of the Court is not warranted to. Having regard to the fact that all materials were available with it, the ITAT is directed to consider the transactions involving AMP expenditure as well as the issue of royalty. In this regard its observations with respect to the comparables used by the assessee vis-a-vis the two foreign parties shall not be treated conclusive. The ITAT shall carry out necessary inquiry if need be by resorting to a limited remand to the TPO or DRP as the case may be having regard to the overall facts and circumstances and decide whether AMP expenses required in the present case involve international transaction, if so, to what extent.

List on 3rd of October, 2018.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JUNE 01, 2018

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