

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: G : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITAs No.27 & 28/Del/2017
Assessment Years: 2009-10 & 2010-11

Tata Teleservices Ltd.,
A-37,
Sector-60,
Noida.

Vs ACIT,
Circle-25(1),
New Delhi.

PAN: AAAct2438A

(Appellant)

(Respondent)

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| Assessee by | : Shri Salil Kapoor, Shri Shivam Yadav, Shri Tarun Chanana, Shri Anil Chachra & Ms Ananya Kapoor, Advocates |
| Revenue by | : Shri Mahesh Kumar, CIT-DR |
| Date of Hearing | : 02.06.2025 |
| Date of Pronouncement | : 18.06.2025 |

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the orders dated 17.10.2016 of the Ld. Commissioner of Income-tax (Appeals)-14, New Delhi (hereinafter referred to as the Ld. First Appellate Authority or 'the Ld. FAA', for short) in Appeals No.194/15-16/IT/DEL/2015-16 and No. 184/15-16/IT/DEL/2015-16 arising out of the appeals before it against the orders dated 26.12.2011 and 28.03.2013 passed u/s 143(3) of the Income Tax Act, 1961

(hereinafter referred as 'the Act') by the ACIT, Circle-2(3), Hyderabad and ACIT, Circle 16(1), New Delhi (hereinafter referred to as the Ld. AO), respectively.

2. The assessee company derives income from providing telecommunication services and the return of the assessee for the two years before us was selected for scrutiny and mandatory notices were issued. The AO examined the amortization expenses of tangible assets and amortization expenditure for funding TTML acquisition. Accordingly, in 2009-10 an addition of Rs.90,14,00,000/- and in 2010-11 an addition of Rs.33,30,00,000/- was made as pre-operative expenses. The AO alleged that the pre-operative expenses incurred by the assessee pertain to the expenditure incurred prior to the commencement of commercial operations of new circles. The Id. AO observed that being prior period expenses, they were required to be capitalized and instead of that they have been debited to the Profit & Loss Account and claimed as expenditure. The CIT(A) sustained it and did not appreciate the contention of the assessee that the expenditure pertained to expansion of the existing business in the form of new circles where operations were extended and the decisions relied in that context were not found sustainable.

3. Then, in AY 2009-10 on account of customer acquisition cost, an addition of Rs.3,38,40,00,000/- and AY 2010-11 an addition of Rs.2,41,60,00,000/- was made. The assessee had shown the same as an

expenditure towards the cost of prospective customers acquisition, but, the AO observed that the cost of prospective customers has no certainty involved in the expenditure and accordingly, the assessee cannot claim the entire expenditure in the current year, but, ought to have apportioned the said expenses over the years and, accordingly, disallowed full expenditure in the relevant years. The assessee had claimed before the CIT(A) that its distributors sell the telephone handset to customers at lower price than the cost at which they were purchased from the vendors and the assessee compensated the distributors the difference of the sale price and purchase price of the same which is shown as customer acquisition cost. It was further submitted that the expenditure is incurred for promoting the provision of telecommunication services as more customers would avail the services when handsets are cheaper and affordable. It was further submitted that even the AO did not doubt the genuineness of the expenditure and the same have been incurred for business. The Hon'ble Supreme Court in the case ***Taparia Tools Ltd. vs. JCIT (2015) 372 ITR 605 (SC)*** was relied. CIT(A) upheld the disallowance to the extent of 50% of the expenditure.

4. Accordingly, the assessee is in appeal and to dispose of the two appeals heard together, the facts wherever relevant and the grounds also for AY 2009-10 are reproduced below:-

“1. The Learned Commissioner of Income Tax (Appeals)-14, New Delhi [hereinafter referred to as the 'Ld. CIT(A)'] has erred on facts and in law, in concluding the determination of Loss at Rs 5,71,64,72,090/-

2. A) *The Learned Commissioner of Income Tax (Appeals)-14 , New Delhi [hereinafter referred to as the 'Ld. CIT(A)'] has erred on facts and in law, in concluding the disallowance of Rs 90,14,00,000 made by the Ld. AO on account of "pre-operating cost" by not appreciating that these are revenue expenditure incurred in relation to expansion of business;*

B) by concluding the disallowance of the said expenditure as per the provisions of section 37(1) of the Act;

3. A) *The Ld. CIT(A) has erred on facts and in law, in concluding the disallowance by AO of expenditure of Rs.338,40,00,000 which were incurred on customer acquisition related cost by considering that said expenditure do not fall into the ambit of revenue expenditure;*

B) By not allowing the said expenditure as per provision of section 37(1) of the Act

All the above grounds are without prejudice to each other.

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

5. The ld. AR has reasserted the contentions as were made before the lower authorities below while the ld. DR has relied the orders of ld. tax authorities below.

6. We find that the case of assessee is that the pre-operative expenditure incurred in the subject matter pertains to expansion of the existing business of the Assessee, with intermingling of funds and common management and not in relation to set-up of new business. Ld. AR has contended that it is a well-established principal that the nomenclature of the expense does not determine the allowability of a claim. Now there is no dispute with regard to the fact that the expense pertains to subject year itself and same is revenue in nature and therefore, allowable to the Assessee. There is nothing on record by way of any enquiry or findings any new asset was created after incurring the said pre-

operating expenditure. The details of the pre-operative expenses are provided in schedule "S" of the financial statements (page 21 of the paper book). The details of the expenses itself clearly shows that these expenses are revenue in nature and not incurred to create a capital asset. These expenses are revenue expenditure incurred by the Assessee to expand its existing business in three new circles viz. Northeast, Jammu & Kashmir and Assam & to introduce the new GSM technology in existing circles in order to provide the telecommunication services. Further, the new circles were launched in the subject year itself and the subject fact has been disclosed at para 1 of schedule "T" of the financial statements (page 22 of the paper book). Mere nomenclature of the expense in the books cannot be the sole determinative factor of allowability of expense. It is trite law that mere nomenclature of entry in the books of accounts is not determinative of the true nature of transaction. Reliance can be placed on decision in *Commissioner of Income Tax Vs. India Discount Co. Ltd.* 75 ITR 191 (SC), *Commissioner of Income Tax Vs. Provincial Farmers (P) Ltd.* 108 ITR 219 (Cal) and *KCP Ltd. Vs. CIT*, 245 ITR 421, which have been considered by Hon'ble Delhi High court in the case of *Commissioner of Income-tax v Arvind Kumar Jain* {[2012] 18 taxmann.com 132 (Delhi HC)}. In the present case after going through the relevant evidence of so called pre-operating expenses at page 21 of PB it has been established that the payment made were on account of expansion of exiting business to new

geographical area before is commercial exploitation. Thus corresponding grounds in both the years involve deserve to be sustained.

7. In regard to second issue involved we find force in the contention of ld. AR that if Assessee does not opt to amortize any revenue expense, benefit of which is extending to future years, the tax department cannot make any contrary tax treatment. Further, by allowing 50% of the expenditure, CIT(A) has itself appreciated that subject customer acquisition expenditure is revenue in nature. Further, Hon'ble Supreme court in the case of *CIT v Excel Industries Ltd. [(2013) 38 taxmann.com 100 (SC)]* has held that where the tax rate in a given AY and its subsequent AY is same, then the department should not continue with the litigation as it may not add anything to the public coffers. Hence, in the present case also the expenditure incurred in relation to customer acquisition cost should be allowed to the Assessee in current AY and should not be deferred i.e. 50% of expense allowed by learned CIT(A). The corresponding ground deserves to be sustained.

8. As a consequence of aforesaid discussion both the appeals are allowed and impugned additions stand deleted.

Order pronounced in the open court on 18.06.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 18th June, 2025.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi