

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARRY, JUDICIAL MEMBER**

**ITA No.-4736/Del/2012  
(Assessment Year: 2008-09)**

ACIT Circle 2(1), Room No. 398D C.R. Building, New Delhi.	vs	Bharti Infratel Ltd. No. 1, Aravali Crescent, Nelson Mandela Road, Vasant Kunj, Phase-III, New Delhi. AADCB0274F
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**ITA No.-2823/Del/2013  
(Assessment Year: 2009-10)**

ACIT Circle 2(1), Room No. 398D C.R. Building, New Delhi.	vs	Bharti Infratel Ltd. No. 1, Aravali Crescent, Nelson Mandela Road, Vasant Kunj, Phase-III, New Delhi. AADCB0274F
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**ITA No.-4941/Del/2012  
(Assessment Year: 2008-09)**

Bharti Infratel Ltd. No. 1, Aravali Crescent, Nelson Mandela Road, Vasant Kunj, Phase-III, New Delhi. AADCB0274F	vs	DCIT Circle 2(1) New Delhi.
<b>Assessee by</b>		<b>Sh. Ravi Jain, CIT DR &amp; Sh. S.K. Jain, DR</b>
<b>Revenue by</b>		<b>Sh. Anil Bhalla, CA</b>

<b>Date of Hearing</b>	<b>19.04.2017</b>
<b>Date of Pronouncement</b>	<b>21.04.2017</b>

**ORDER**

**PER BENCH:**

ITA No. 4736 and 4941/Del/2012 are directed against the order dated 25.06.2012 in appeal no. 161/2010-11 whereas ITA No. 2823 of 2013 is against the order dated 27.02.2013 in appeal no. 183/Del/2011-12 passed by the Commissioner of Income Tax (Appeals)-V, New Delhi.

2. Facts giving rise to all these appeals are that M/s Bharti Infratel Ltd. is a passive infrastructure service provider and engaged in providing telecom infrastructure support services to telecommunication companies providing mobile services. The support services are being provided by offering passive equipments like towers, green shelters, DG sets, UPS etc. installed at sites on non exclusive basis. The company takes on a lease certain premises for the purpose of installation of the passive equipment for providing infrastructure support services to various telecommunication companies like Airtel, Idea, Vodafone, etc. and enters into live and license agreement with landlords for a period ranging between 15 to 20 years with the stipulation that the

license fee increasable by 15% at the expiry of every 5 years. However, the company has been adopting the account policy in respect of leases as prescribed by the Accounting Standard-19 issued by the ICAI which says that if the payment terms include fixed escalation clause in non-cancellable lease, the effect of such increase is recognized on a straight line basis. In view of this there will be some difference in the actual lease amount that is accrued and the amount debited/credited to the P &L A/c due to the following of AS-19. The difference is called the Lease Equalization Amount and the company has been debiting or crediting this difference to the lease revenue equalization account, depending upon the fact whether the actually accrued lease amount is lesser or greater than the amount arrived by way of straight line basis.

3. For AY 2008-09 the difference between the lease accrued and the amount debited to the rent account in respect of the property taken on lease was Rs. 8,60,42,238/- and this amount was first debited to the rent account in the profit and loss account and subsequently added back to the computation of income, since this particular amount is not the rent that was accrued, but a notional

rent debited as per AS-19. So far as this adding back of the amount of Rs. 8,60,42,238/- is concerned, AO has accepted the same, though such amount was not really accrued.

4. Similarly in respect of the assets given on lease, the lease equalization amount that was credited to Revenue was Rs. 28,59,91,766/- and since this is also similarly not accrued but credited on notional basis in view of AS-19, the same was reduced in the computation of income. However, the AO rejected the same and added the same back to the income of the assessee.

5. In respect of the same year the assessee had an income of Rs. 52,15,095/- which does not form part of total income and the average investment value for earning such income was Rs. 15,96,57,16,500/-. The assessee's contention is that for earning this income they have incurred an expenditure of Rs. 5,21,510/- which is 10% of the income. AO rejected such estimate of 10% as the expenditure relatable to earning of the exempt income and proceeded to calculate the same under Rule 8D(2) of the Rules and disallowed the sum of Rs. 7,98,28,582/-.

6. Thus, the AO made an addition of Rs. 7,93,07,072/- u/s 14A of the Act and Rs. 28,59,91,766/- while denying the deduction of the lease equalization charges.

7. Aggrieved by such additions the assessee carried the matter in appeal and by way of an order dated 25.06.2012 Ld. CIT (A) allowed the appeal in so far as the addition in respect of 14A of the Act is concerned but confirmed the addition in respect of the lease equalization charges.

8. Challenging the denial of the reduction of the notional entry on account of lease equalization income the assessee preferred ITA No. 4941/Del/2012 and the deletion of the addition in respect of Section 14A the Revenue preferred ITA No. 4736/Del/2012.

9. Similarly in respect of the AY 2009-10 AO made an addition of Rs. 121,66,79,662/- rejecting the reduction of the lease equalization charges and in appeal Ld. CIT (A) deleted the same. Therefore, the Revenue is in appeal before us in ITA No. 2823/Del/2013.

**ITA No. 4941/Del/2012 & 2823/Del/2013:**

10. Adverting to the lease equalization charges, it is the argument of the Ld.AR that the assessee has been following the mercantile system of accounting as such the tax liability is only on such amount which is actually accrued to the assessee during the year but because of the accounting policy of the company in respect of the lease to follow AS-19, the lease payable or receivable has to be debited or credited to the profit and loss account on straight line basis. The difference between the accrued lease and the lease arrived on straight line basis is called lease equalization charges. For the initial years lease equalization charges will be more than the actual amount of lease accrued as such for such years lease amount arrived on straight line basis is credited to the profit and loss account but the lease equalization charges are reduced in the computation of income. Similarly as the years passed on, at one point of time actual lease accrued will exceed the lease amount on straight line basis as such from such point of time the lease equalization charges will be added to the computation of income. This is how the difference between the actual lease payable or

receivable and the lease on straight line are accounted for. Ld. Counsel submits that for the AY 2008-09 AO has accepted the adding back of Rs. 8,60,42,238/- in respect of the property taken on lease but he denied the similar adjustments in respect of the property given on lease. He submits that in respect of the AY 2009-10 Ld. CIT (A) appraised the matter in a proper prospective and deleted the additions made on account of the lease equalization charges. Ld. AR vehemently supports the order of the Ld. CIT (A) in respect of the AY 2009-10 and prayed to quash the orders of the authorities below in respect of the lease equalization charges for the year 2008-09. Per contra, Ld. DR vehemently relied on the assessment orders in respect of both the years and also on the order of the Ld. CIT (A) in respect of the AY 2008-09. He prayed to dismiss the ITA No. 4941/Del/2012 and to allow ITA No. 2823/Del/2013.

11. We have carefully gone through the record. Ld. AR vide page 8 of the synopsis demonstrated before us in a tabular form how the lease equalization charges are dealt with. As could be seen from the order of the ld. CIT(A) in respect of the AY 2009-10, a

similar exercised was undertaken before him. Ld. AR submitted that in case of a lease for 15 years on an initial rent of Rs. 1000/- with a stipulation of increase of lease amount at 2.5% every year the rent will be Rs. 1,000/- for the first year, whereas it is Rs.1,413/- in the 15<sup>th</sup> year. Total lease amount receivable in these 15 years is Rs. 17,932/-. For the purpose of arriving the straight line lease amount, this Rs.17,932/- is divided by 15 and the result is 1,195/- for every year. Therefore, for the first year actual lease accrued is Rs. 1,000/-, whereas the amount that is credited to the profit and loss account by following AS-19 is Rs. 1,195/- i.e. with the increase of Rs. 195/- which is added on notional basis. Therefore, while computing the income this notionally added amount of Rs. 195/- is reduced. Similarly for the 15<sup>th</sup> year the actual lease amount accrued will be Rs. 1,413/-, whereas lease on straight line basis will be only Rs. 1,195/-, which is less by Rs.218/-. Therefore, this Rs. 218/- is added back while computing the income. This is the mechanism devised to account for the difference that arises by following AS-19 with reference to the actual lease amount that is accrued. This is exactly that was approved by the Ld. CIT (A) in respect of the year 2009-10.

12. In respect of the year 2008-09 also it's not in dispute that in respect of the property taken on lease, the assessee debited the straight line basis lease amount to rent account in the profit and loss account and because such amount is less than the actual amount that was received by Rs. 8,60,42,238/- they added it back in the computation of income, and the same was accepted by the AO. Having accepted this adjustment of the lease equalization charges in respect of the property taken on rent and having accepted the proposition that when the amount actually accrued exceeds the amount that was debited to the rent account, such exceeded portion has to be added back to the computation of income, the AO should have realized that the natural corollary for this in respect of the property given on lease would be that where the lease equalization charges that are credited to the Revenue are greater than the actual rent accrued, such excess portion shall be reduced in the computation of income. Accepting the lease equalization charges adjustment in respect of the property taken on rent and rejecting the same in respect of the property given on rent does not fit it into any logic and it is not permissible for the Revenue to follow the rule of convenience i.e. wherever the amount

is added back it is accepted and wherever the amount is reduced it is rejected.

13. With this view of the matter, we find that the approach of the Ld. CIT (A) to this lease equalization charges in respect of the AY 2009-10 is perfectly logical and legal and we do not find any illegality or regularity in the reasons given by him. We, therefore, uphold the findings of the Ld. CIT (A) in respect of the AY 2009-10 and on that very analogy we reject the approach the authorities in respect of these lease equalization charges for the AY 2008-09. We, therefore, find that ITA No. 4941/Del/2012 has to be allowed and ITA No. 2823/Del/2013 has to be dismissed.

**ITA No. 4736/Del/2012**

14. As stated above, this appeal is preferred by the Revenue in respect of the deletion made by the CIT in respect of the amount added by the AO by application of Section 14A read with Rule 8D of the Rules. According to AO with the average investment of Rs. 15,96,57,16,500/- the assessee earned a sum of Rs. 52,15,095/- and the contention of the assessee that the expenditure incurred was only at 10% i.e. 5,21,510/- cannot be accepted. AO dealt with

this matter in paragraph no. 3 and according to us it cannot be said that AO has not recorded any reasons or satisfaction. Vide paragraph no. 3.6 of his order the AO recorded a satisfaction to the follows effect:

*“3.6 I am also satisfied within the meaning of Rule 8D(1) of the IT Rules that the claim of the assessee company that it had only incurred expenditure of Rs. 5,21,510/- for earning the income which do not form part of the total income to the tune of Rs. 52,15,095/- and having average investments value earning exempt income to the tune of Rs. 15,96,57,16,500/- for earning the same, is not incorrect considering the facts and circumstances of the case.”*

15. Though Ld. AR placed reliance on:

1. *Maxopp Investment Limited 347 ITR 272 (Del);*
2. *Taikisha Engineering India Ltd. (2015) 54 taxmann.com 198 (Del.);*
3. *Continental Carriers 2012-TIOL-467-ITAT-Del;*
4. *Kalyani Steels – ITA No. 1733/PN/2012;*
5. *Priya Exhibitors (2012) 27 taxman.com (Del.)*

since we find that there is sufficient recording of reasons by the AO to the effect that the expenditure offered by the assessee for earning the tax exempt income is not acceptable, these decisions are not at all helpful to the case of the assessee.

16. In this matter the total tax exempt income of the assessee is Rs. 52,15,095/- with the average investment value of

Rs.15,96,57,16,500/-. We find that the AO has rightly reached a conclusion that the expenditure at Rs. 5,21,510/- offered by the assessee cannot be accepted. However, by calculating the disallowance under Rule 8D(2) the AO reached the disallowance at Rs. 7,98,28,582/- whereas the Ld. CIT (A) felt that the action of the AO in invoking Rule 8D was arbitrary in as much as the profit and loss account shows the expenditure of personnel at Rs. 1.67 crores and an administrative and other at Rs. 1.32 crores as such put together it comes 2.99 crores. According to the Ld. CIT (A) when the total expenditure incurred by the assessee in respect of personnel, administrative and other was only Rs. 2.99 crores, invocation of Section 14A was against the spirit of the Section.

17. On this aspect Ld. AR argued that investment to a tune of Rs. 2,017/- crores was made at the vague end of the financial year and offering of 10% of the earnings as expenditure is just and proper; whereas Ld. DR submits that they need not always be any proportion between the expenditure and income and many times it is possible that expenditure may exceed the income depending the business vicissitudes, as such offering of expenditure at 10% is

wholly baseless. He prayed to uphold the order of the AO on this aspect.

18. On a careful perusal of the material, we are of the considered opinion that insofar as the finding of the AO is that offering of 10% expenditure has no basis and cannot be accepted, is concerned it does not admit of any interference inasmuch as admittedly, no separate accounts are being maintained in respect of the expenditure incurred in respect of the income exempt from tax. The Hon'ble jurisdictional High Court in CIT VS. Holcim India P Ltd 272 CTR 282 and Cheminvest Ltd Vs. CIT (2015) 378 ITR 33 (Delhi) held that where no exempted income was earned by the assessee in the relevant assessment year no disallowance could be made under section 14A of the Act. Further, at the same time in view of the decision of the jurisdictional High Court in Joint Investments P. Ltd. vs. CIT (2015) 372 ITR 694 disallowance of expenditure u/s 14A of the Act cannot exceed the amount of tax exempt income, as such disallowance of expenditure at Rs. 7,98,28,582/- as against the exempt income of Rs. 52,15,095/-

cannot be sustained. We, therefore, direct the AO to limit the disallowance to the tax exempt income.

19. In the result, ITA No. 4941/Del/2012 is allowed and ITA No. 2823/Del/2013 is dismissed and ITA No 4736/Del/2012 is allowed in part.

Order pronounced in the open court on 21.04.2017

Sd/-  
**(G.D. AGRAWAL)**  
**VICE PRESIDENT**

Dated: 21.04.2017  
\*Kavita Arora

Sd/-  
**(K. NARSIMHA CHARRY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

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