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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 22.04.2025*

\+ **ITA 103/2025**

THE PR. COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -1 .....Appellant

Through: Mr Ruchir Bhatia, SSC, Mr Anant Mann, JSC Ms Aditi Sabharwal and Mr Abhishek Anand, Advocates.

versus

BHARTI AIRTEL LTD. .....Respondent

Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**
**HON'BLE MR. JUSTICE TEJAS KARIA**

**VIBHU BAKHRU, J. (*ORAL*)**

**CM APPL. 23263/2025**

1. For the reasons stated in the application, the delay of 20 days in filing the appeal is condoned.

2. The application is disposed of.

**ITA 103/2025**

3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning a common order dated 09.10.2024 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.7891/Del/2019 captioned *M/s. Bharti Airtel Limited, Bharti*

*Crescent 1, Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi v. Assistant Commissioner of Income-tax, Circle 4(2), New Delhi* and ITA 8044/Del/2019 captioned *Income Tax Officer, Ward-1(2)(2), International Taxation, New Delhi v. M/s. Bharti Airtel Limited, 1, Bharti Crescent, Nelson Mandela Road, Vasant Kunj, Phase II, New Delhi*. The said appeals were cross appeals impugning an order dated 31.07.2019 passed by the learned Commissioner of Income Tax [Appeals]-42, New Delhi [**CIT(A)**] in respect of Assessment Year [**AY**] 2014-15.

4. The Assessing Officer [**AO**] passed an order dated 28.03.2017 under Section 201(1)/201(1A)/195 of the Act holding that the respondent [**Assessee**] was an assessee in default as it had failed to deduct the withholding tax on the payments made to overseas entities. The AO had found that certain payments, which were made for bandwidth charges to foreign telecom service providers as well as the annual maintenance charges and other charges were either in the nature of fees for technical services [**FTS**] or royalty and thus were chargeable to tax under the Act. Consequently, the Assessee was obliged to deduct and deposit tax at source (TDS).

5. The Assessee had appealed the said decision before the learned CIT(A). The learned CIT(A) had partially allowed the appeals. Whilst it accepted the Assessee's contention in regard to certain charges being remitted to entities overseas were not chargeable to tax, and therefore, it was not obliged to deduct tax at source; it rejected the assessee's contention that bandwidth charges paid to telecom service providers overseas are not in the nature of royalty.

6. The Revenue as well as the assessee appealed the said decision before

the learned ITAT. Whilst the Revenue was aggrieved by the decision to the extent that the decision of the AO had been set aside, the assessee was aggrieved by the decision to reject its contention that bandwidth charges paid to overseas telecom service providers was not FTS or royalty.

7. It is material to note that the Revenue has confined its present appeal to the question whether the payment for bandwidth services is required to be construed as royalty and has projected the following questions for consideration of this court:

> "2.1 Whether the payment for bandwidth service do not qualify as 'royalty' under section 9 (l)(vi) of the Income Tax Act, 196 1, despite the clear definition of 'process' in Explanation to introduced by the Finance Act, 2012?
>
> 2.2 Whether the beneficial provision of the DTAA override retrospective amendments in domestic tax law, particularly when such amendments are clarificatory in nature and aim to bring clearly to the taxation of 'process' and 'equipment' under section 9 (l)(vi) of the Income Tax Act, 1961 ?
>
> 2.3 Whether the decision of Ld. ITAT disregarded the principles set out by the Hon'ble Madras High Court in Verzon Communication Singapore Pte Ltd. Vs ITO, which held that payment for bandwidth service are taxable as royalty under Indian tax law?
>
> 2.4 Whether the Ld. ITAT ruling undermines the substance over from principle by ignoring the actual use of processes and infrastructure that enable the provisions of service to Indian customers, even though such equipment is located outside India?"

8. Undisputedly, the questions raised are covered by the earlier decisions of this court in ***New Skies Satellite BV [68 taxmann.com8] [2016]*** and ***CIT v. Telstra Singapore Pte. Ltd. : [2024] 165 taxmann.com 85 (Delhi)***. Thus, the charges paid for bandwidth to overseas telecom service providers cannot

be construed as royalty in the meaning of Section 9(1)(vi) of the Act.

9. In view of the above, no substantial question of law arises for consideration of this court. The appeal is accordingly dismissed.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**APRIL 22, 2025/**tr

*Click here to check corrigendum, if any*