

Sum received from sharing infrastructure facilities with other telecom co. eligible for sec. 80-IA deduction

Summary – The High Court of Delhi in a recent case of Vodafone Mobile Services Ltd., (the Assessee) held that where assessee engaged in providing telecommunication services, received income from sharing infrastructure facilities in form of cell-sites and cables with other companies rendering similar services, income so earned would be eligible for deduction under section 80-IA(2A)

Facts

- The assessee-company was engaged in providing telecommunication services. During relevant year, assessee earned income from sharing of infrastructure facilities in the form of cell-sites and fibre cable with other companies engaged in 'telecommunication services'.
- The assessee's claim for deduction under section 80-IA in respect of said income was rejected by Assessing Officer on ground that it would amount to leasing of the assets to third parties and income from the leasing would not be income derived from 'telecommunication services'.
- The Commissioner (Appeals), however, held that the revenues received from sharing of cell-sites and cables was income directly and inextricably linked with the business income of the undertaking engaged in providing telecommunication services. He thus allowed assessee's claim.
- The Tribunal upheld the order of the Commissioner (Appeals).
- On revenue's appeal:

Held

- The expression 'telecommunication services' as defined for the purpose of sub-section (2A) of section 80-IA includes services of varied nature that can be provided to any person including those who are providing 'telecommunication services' to others. Expression 'telecommunication services' is in fact not defined by specific words except in case of domestic satellite service. 'Telecommunication services' has been referred to as by way of basic or cellular services, including radio paging, domestic satellite service, networking broadband network and internet services. It is not confined or restricted to end-user service. Domestic satellite services would be business to business service.
- Finding of the Assessing Officer that income from sharing fibre cables and cell-sites was income by way of leasing and hence not includable in revenue earned for computing profits from 'telecommunication service' was far-fetched and misconceived. The assets *i.e.* cell-sites and fibre cables were not transferred. Third parties wanting to avail the spare capacity were only allowed usage of the said facilities for consideration. Payments so made by the third parties were to avail and use the telecom infrastructure. It would qualify as payments received for availing 'telecommunication services' as is the case when a mobile phone user pays the assessee for availing

the mobile telecom infrastructure. Income from 'telecommunication services' can be earned in different ways and manner.

- In view of language of clause (ii) to sub-section (4) of section 80-IA, which states that for the purpose of the said clause an undertaking shall be treated as providing 'telecommunication services', if it is engaged in basic or cellular, including radio paging, domestic satellite services, network of trunking, broadband network, and internet services within the two dates, the income by the assessee from third parties who had availed of the 'telecommunication services', in the form of payments received by the respondent-assessee from third persons for using fibre cables and cell towers network qualifies for deduction under section 80-IA. This income or receipts have to be treated as income earned by the undertaking from 'telecommunication services'.
- The assessee had also paid bank charges as cheques issued by some of the customers had been dishonoured. The cheque bounce charges were also levied to the customers but entire amount could not be recovered. The Assessing Officer held that late payment charges or cheque bouncing charges were in the nature of penalty and not income derived from telecommunication business. As already noted that the said expression is missing and is not the mandate of the legislature in sub-section (2A) of section 80-IA.
- The aforesaid findings of the Commissioner (Appeals), as affirmed by the Tribunal, are correct and justified. It has been held that the late payment charges or cheque bounce charges were relatable and directly linked with the telecommunication business of the assessee. Further, the expression 'derived from' is not relevant for claim for computation of deduction under sub-section (2A) of section 80-IA.
- In view of the aforesaid discussion, the finding of the Tribunal that income from sharing of fibre cables and cell-sites qualify for deduction under section 80-IA(2A) is correct. The Tribunal was also right and justified in upholding the reasoning and order of the Commissioner (Appeals) on cheques bouncing and late payment charges.
- In the result, revenue's appeal is dismissed.