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

\+ ITA 730/2016, CM Nos. 39153-39154/2016

PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant

Through: Mr. Rahul Chaudhry, Sr. Standing Counsel.

versus

VODAFONE MOBILE SERVICES LTD ..... Respondent

Through: Mr. Sachit Jolly, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **07.11.2016**

The question urged by the revenue is *"whether the payments made were capital or revenue in nature?"*. The assessee had urged that in the light of the National Telecom Policy 1999, the payments –made on quarterly basis were not capital- that is for depreciation under Section 32 but entitled to be treated as revenue expenditure. The CIT (A) and ITAT accepted the assessee's contention and directed that the expenditure should be treated as falling under revenue fee by relying upon ***Commissioner of Income Tax vs. Fascel Limited*** *(2009) 221 CTR 305.* There is also a subsequent judgment ***Commissioner of Income Tax vs. Bharti Hexacom Ltd,*** *(2014) 220 Taxmann 323 (Del),* in which it was held that such payments are in fact revenue and cannot be treated as capital expenditure.

This court is of the opinion that having regard to *Bharti Hexacom Ltd (supra)*, the question of law urged does not arise. No other substantial questions of law have been pleaded. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 07, 2016

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