$~10
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 799/2016, CM APPL.42006 & 42007/2016

CIT-2 ..... Appellant
Through: Mr. P. Roychoudhuri, Sr. Standing Counsel.

versus

BHARTI HEXACOM LTD ..... Respondent
Through: Mr. Vaibhav Kulkarni, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **22.11.2016**

Two questions are urged by the revenue in this appeal against the ITAT's decision. The first relates to applicability of Section 35ABB vis-a-vis spectrum charges paid by the assessee. These were paid after the change in the telecom policy in 1999. The question of law sought to be urged is squarely covered by the previous decision of this Court in the assessee's case for another assessment year *CIT v. Bharti Hexacom Ltd.* 2013 40 Taxmann.com 40 (Delhi). Therefore, this question cannot be framed and is answered against the revenue.

The second question sought to be urged in this appeal is whether the treatment by the assessee in its books of accounts to the lease rent paid to IBM for use of its software and equipments should have been amortized or the assessee permitted to claim that they were revenue expenses. The findings recorded after the examination of the documents and related agreements by the ITAT are reproduced below: -

> *"82. We have considered the submissions of both the parties. The assessee has clearly explained that in order to comply with the mandate of AS 19 it had capitalized the assets taken on lease from IBM but while computing the income, the amounts were adder back and the whole amount paid as lease rent to IBM was claimed.*
>
> *83. Now the main issue which arises for consideration is, whether merely because assessee in its books of ale had given some treatment to the transaction, has to be taken as sacrosanct or the substance of the transaction is to be considered. In our opinion, there cannot be any quarrel with the proposition that the substance of the transaction has to be taken into consideration and merely because in books of ale, the assessee had complied with the requirement of AS 19 and, accordingly, charged depreciation on the asset treating the whole transaction as capital in nature, could not disentitle the assessee to claim the expenditure in computation of income on the basis of true nature of the transaction. It is well settled law that a particular mode of recording a transaction in books of ale is of little consequence and the substance of the transaction has to be considered to arrive at proper conclusion.*
>
> *84. Ld. CIT (DR) has very rightly submitted that substance of the transaction has to be considered. His main plank of argument is that the assets are identified in terms of identity as well as sequence. Certain clause of the agreement also states that these assets could be handed over to the assessee upon exit of IBM. With reference to these two aspects, ld. CIT(DR) submits that the assessee was the beneficial owner of these assets and the IBM was only titular owner. His contention is that these being movable properties, such titular ownership does not entitle the owner to any benefit or right except, principal security against finance lease charges.*

85. However, ld. AR has referred to various clauses, which we have noted in the argument advanced by him, to demonstrate that for all practical purposes IBM was exercising all the ownership rights on the assets such as their maintenance, insurance etc. Had the ownership rights been effectively transferred to assessee it would have taken all necessary steps to protect the assets from all risks. However, the agreement clearly lays liability on IBM on this count. Therefore, the substance of the transaction clearly suggests that the beneficial ownership remained with IBM and not with assessee and, therefore, the assessee had rightly claimed the entire lease rent paid by it to IBM."

This Court holds that the impugned order has correctly appreciated that the treatment of a particular transaction in the books of accounts is inconclusive as of its true nature which has to be adjudged on an independent consideration by the Assessing Officer. In this case, therefore, the ITAT's conclusion was justified that the expenditure was essentially revenue in character. No question of law arises; the appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 22, 2016
/vikas/