IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.3540/Mum/2026 & 3541/Mum/2026
(**Assessment Year :2019-20**)

Dy.Commissioner of Income Tax Circle-3(3)(1), Mumbai	Vs.	Reliance Jio Infocomm Limited 9th Floor, 222, Maker Chamber IV, Nariman Point Mumbai – 400 021
PAN/GIR No.AABCI6363G		
(**Appellant**)	..	(**Respondent**)

Assessee by	Shri Nimesh Vora & Moksha Mehta
Revenue by	Shri Sandeep Lakra, CIT DR
Date of Hearing	**15/07/2026**
Date of Pronouncement	**21/08/2026**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

These two appeals have been preferred by the Revenue against two separate orders passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, for Assessment Year 2019-20 in the case of the same assessee, M/s Reliance Jio Infocomm

Limited. Since both the appeals pertain to the same assessment year and arise from proceedings concerning the same assessee, they were heard together and are being disposed of by this consolidated order. We shall first take up ITA No. 3540/Mum/2026, arising from the assessment completed under section 143(3) read with section 144B of the Income-tax Act, 1961 vide order dated 29.03.2022. The principal grievance of the Revenue is against the action of the learned CIT(A) in deleting the disallowance of ₹1,10,03,17,60,701, representing operational expenditure which, though capitalised in the books of account under the head Capital Work-in-Progress ("CWIP"), was claimed as revenue expenditure in computing the taxable income. The issue, therefore, is whether the accounting treatment accorded to the expenditure as part of CWIP is determinative of its character under the Act, or whether its allowability has to be adjudged independently having regard to the nature and purpose of the expenditure and the business circumstances in which it was incurred.

2. The assessee is a public limited company engaged in the business of providing digital and telecommunication services through its pan-India 4G LTE network. It holds a Unified Licence enabling it to provide various telecom services, including voice and data services, and has established a wide telecom infrastructure comprising towers, fibre, telecom

equipment, electronics and allied network facilities. Its commercial operations for providing digital services had commenced in Financial Year 2016-17. During the year under consideration, therefore, the assessee was not at the stage of setting up its business or awaiting commencement of commercial operations. On the contrary, its telecom network was already commercially operational on a substantial scale. As on 31.03.2019, the assessee had approximately 306.7 million subscribers, and during the relevant previous year it had earned operational revenue of approximately ₹38,838 crore, which was offered to tax as revenue income and assessed accordingly. These facts assume significance because the expenditure under consideration was incurred in the course of an existing, functioning and revenue-generating telecom business and not for bringing the business itself into existence.

3. During the course of assessment proceedings, the Assessing Officer noticed from the computation of income that the assessee had claimed deduction of ₹1,10,03,17,60,701 under the description "expenses capitalised in books – allowable as revenue for tax purposes". The assessee had capitalised these expenses in its financial statements as part of CWIP, but claimed deduction thereof while computing income under the Act. The details and supporting documents relating to the expenditure were

furnished before the Assessing Officer in response to the queries raised during assessment. Broadly, the expenditure comprised various recurring operational heads, including interconnect charges, employee cost, professional fees, call-centre expenses, power and fuel, repairs and maintenance, other network costs, interest, selling and distribution expenditure, other operating expenses, exchange loss, customer-service expenses, bank charges, rates and taxes, ILL expenses and travelling expenditure. The assessee's consistent case was that these expenses represented routine operating costs incurred in connection with an already established telecom business and did not, in themselves, bring into existence any new capital asset or enlarge the installed profit-making apparatus.

4. There is, however, an important distinction in the accounting treatment adopted by the assessee which lies at the heart of the controversy. The assessee had separately incurred expenditure towards acquisition and construction of tangible telecom network assets, such as antennas, radio equipment, ducts, fibre, energy meters, diesel generator sets, routers, racks, batteries, switched-mode power supply circuits and various electronic equipment. Such expenditure was treated by the assessee as capital expenditure both in the books of account and for income-tax purposes. The present dispute does not concern those capital assets. It concerns the

indirect and operational expenditure of ₹1,10,03,17,60,701 which, according to the assessee, was revenue in its intrinsic character but stood reflected in CWIP in the financial statements because of the accounting policy followed for determining when network assets attained the level of functionality intended by the management. Thus, the assessee's case is not one of claiming the same capital expenditure once as capital and again as revenue; the controversy is confined to the tax character of the operational and indirect costs allocated to CWIP for financial reporting purposes.

5. The accounting policy adopted by the assessee also requires some elaboration because considerable emphasis has been placed upon it by the Assessing Officer. In accordance with the accounting policy consistently followed by the assessee and having regard to paragraphs 20 and 55 of Ind-AS 16 – Property, Plant and Equipment, the assessee capitalises its network assets when they are available for use and are working in the manner intended by the management. For this purpose, the management had prescribed certain Quality of Service ("QoS") parameters. These parameters included, inter alia, retainability in terms of call drops and handovers, HD voice quality, true HD video experience, ultra-high-speed services, Multimedia Broadcast Multicast Services, ecosystem for multi-band network and seamless

integration of open-market devices into the IP Multimedia Subsystem. According to the assessee, these parameters were intended to measure the quality and efficiency of its operating network and efforts directed towards achieving them formed part of its continuing telecom operations rather than creation of a new business or a new source of income.

6. Consequently, where the tower/fibre network infrastructure had achieved the QoS parameters contemplated by the management, the corresponding operational expenditure was charged to the Profit and Loss Account. Where the network infrastructure was already installed and even put to use but was yet to achieve the intended QoS benchmarks, the corresponding indirect and operational expenditure was classified as CWIP in the books until those standards were attained. The significant accounting policy disclosed in the audited financial statements proceeded on the basis that the assets would be capitalised when available for use and working in the manner intended by the management, i.e., when the prescribed parameters were achieved. It was in this accounting context that part of the recurring operating expenditure came to be reflected in CWIP. The assessee nevertheless claimed the same as revenue expenditure for tax purposes on the premise that, notwithstanding its accounting allocation, the expenditure had been incurred for running an already

operational business, did not result in creation of any separate asset and did not procure any advantage in the capital field.

7. The assessee accordingly explained before the Assessing Officer that the purpose of capitalization under the accounting framework and the test for allowability of expenditure under the Income-tax Act operate in different fields. The accounting standards determine the manner in which assets and expenses are to be recognised and presented in the financial statements, whereas the computation of taxable business income has to be made in accordance with the provisions of the Act. According to the assessee, therefore, an accounting entry may be a relevant circumstance, but cannot be conclusive of the legal character of an expenditure. It was specifically pointed out that the impugned operational expenditure was incurred wholly and exclusively in the course of an already set-up and running business; it did not bring any new asset into existence; it did not enhance the installed capacity or create a new profit-making apparatus; and it did not secure an enduring advantage in the capital field. The fact that such expenditure was allocated to CWIP until the management's QoS benchmarks were achieved could not, according to the assessee, convert its underlying revenue character into capital expenditure.

8. The Assessing Officer, however, was not persuaded by the aforesaid explanation. He noted that expenses under similar heads had also been debited by the assessee to the Profit and Loss Account, whereas the disputed expenditure had consciously been classified as CWIP in the books. According to him, this disclosed an apparent dichotomy in the assessee's stand. He observed that an expenditure could either be capital or revenue and could not assume two different characters merely because one treatment was adopted for preparation of financial statements and another for computation of taxable income. On examining Ind-AS 16 and the accounting policy followed by the assessee, he inferred that the impugned expenses were incurred as part of ongoing asset additions for improvement of network connectivity and towards upgradation and improvement of the tower/fibre network infrastructure. The fact that the assessee itself had capitalised the expenses was considered by him to reflect their true nature. He accordingly held that there ought to be uniformity in the treatment of the expenditure in the books and for income-tax purposes and that expenditure capitalised as CWIP could not simultaneously be claimed as revenue expenditure.

9. The Assessing Officer further held that since the expenditure was incurred in connection with upgradation and

improvement of network infrastructure and had been treated as capital in the books under the applicable accounting policy, it fell outside the ambit of section 37(1). According to him, the appropriate tax consequence was capitalization of the expenditure with consequential depreciation under section 32 rather than allowance of the entire amount as a revenue deduction in the year of incurrence. On this reasoning, the Assessing Officer disallowed the entire amount of ₹1,10,03,17,60,701. The assessment was consequently completed determining loss at ₹83,97,58,53,793 as against the returned loss of ₹1,94,00,76,14,494.

10. Aggrieved, the assessee carried the matter in appeal before the learned CIT(A). Apart from reiterating the distinction between the accounting treatment and tax deductibility, the assessee emphasised that the Assessing Officer had not disputed either the genuineness of the expenditure or the fact that it had been incurred for the purposes of business. It was further pointed out that the Assessing Officer had not undertaken any exercise to demonstrate that the constituent operational expenses had themselves resulted in acquisition or creation of an identifiable capital asset. The assessee was already carrying on commercial operations and earning substantial revenue from the installed telecom network. The continuing expenditure towards employees, professional services, call-

centre operations, power and fuel, maintenance, network operations, customer service, finance and other recurring business requirements was therefore claimed to be part of the process of operating the existing profit-earning apparatus. The mere fact that the network was simultaneously being stabilised, strengthened or expanded to cater to increasing demand for voice and data services, according to the assessee, did not convert every expenditure having some connection with the network into capital outlay.

11. The learned CIT(A) examined the nature of the expenditure and the accounting policy in considerable detail. He noted that the operational expenses had been incurred for meeting the QoS parameters prescribed by the company in relation to assets which had already been installed and put to use. He accepted the assessee's explanation that such expenditure did not result in creation of a new asset of an enduring nature; rather, it facilitated improvement in the efficiency and capability of the existing operational assets. The learned CIT(A) further noticed that the disputed expenses were in the nature of regular operational expenditure incurred in the course of and for the purposes of an existing business. He, therefore, did not approve the Assessing Officer's inference that expenditure incurred towards attaining the desired operating standards of an existing

network necessarily represented expenditure on upgradation or improvement of a capital nature.

12. Another material consideration which weighed with the learned CIT(A) was that the controversy was recurring in the assessee's own case. On the very same issue, the Mumbai Bench of the Tribunal in the assessee's own case for Assessment Year 2018-19 in ITA No. 2843/Mum/2022, vide order dated 01.02.2023, reported as ACIT v. Reliance Jio Infocomm Ltd. [2023] 149 taxmann.com 197 (Mumbai-Trib.), had upheld the allowance of operational expenditure notwithstanding its capitalization in the books. The expenditure considered by the Tribunal in that year comprised, inter alia, interconnect charges, employee cost, professional fees, call-centre expenses, power and fuel, repairs and maintenance, other network costs, interest, selling and distribution expenses, exchange loss, customer-service expenses, bank charges, rates and taxes, ILL expenses and travelling expenses. The Tribunal noticed that the business had already been set up and the assessee had commenced providing digital services and recognising revenue therefrom. It further found that the Revenue had not demonstrated how the day-to-day operating expenses represented upgradation of assets or produced an enduring benefit. The Tribunal accordingly held that the expenses incurred in relation to services provided to existing

customers, being wholly and exclusively for the purposes of the business, were allowable under section 37(1), irrespective of the different treatment accorded to them in the books.

13. The learned CIT(A) also noticed that the aforesaid principle was consistent with the decisions rendered in the group concerns. In Reliance Footprint Ltd. v. ACIT [2014] 41 taxmann.com 553 (Mumbai-Trib.), the assessee therein was already carrying on retail business but was simultaneously expanding by opening new stores. Project-development expenditure comprising salaries and wages, employee welfare costs, travelling expenses, professional fees, communication expenditure, printing and stationery, hire charges and other similar expenses had been capitalised in the books but claimed as revenue expenditure for tax purposes. The Tribunal held that once the business had already been set up, such recurring expenses incurred in the course of expansion and not attributable to acquisition of any capital asset were allowable as revenue expenditure; and that the manner of accounting was not determinative of their tax character. The said decision was upheld by the Hon'ble Bombay High Court in CIT v. Reliance Footprint Ltd., ITA No. 948 of 2014, dated 05.07.2017. Similar was the view taken by the Tribunal in Reliance Fresh Ltd. v. ACIT [2016] 72 taxmann.com 170 (Mumbai-Trib.), where routine expenditure incurred in connection with expansion of an already existing

retail business was allowed notwithstanding its capitalization in the books; and the said decision was also upheld by the Hon'ble Bombay High Court in PCIT v. Reliance Fresh Ltd., ITA No. 985 of 2017.

14. Thus, on an overall appreciation of the nature of the expenses, the fact that the telecom business had commenced in FY 2016-17 and was being conducted on a massive commercial scale during the relevant year, the distinction between actual capital expenditure on acquisition of network assets and the indirect operational expenditure allocated to CWIP, the accounting rationale founded upon achievement of QoS parameters, and the view already taken by the Tribunal in the assessee's own case as well as in the aforesaid group concerns, the learned CIT(A) held that the Assessing Officer was not justified in treating the entire operational expenditure of ₹1,10,03,17,60,701 as capital expenditure. He accordingly directed deletion of the disallowance. The Revenue is aggrieved by the said finding and is in appeal before us. The rival submissions and our independent examination of this issue, including the effect of the earlier decision of the Tribunal in the assessee's own case, shall now be dealt with in the succeeding part.

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15. Before us, the learned DR strongly relied upon the assessment order and submitted that the learned CIT(A) was not justified in deleting the disallowance of ₹1,10,03,17,60,701. His principal contention was that the assessee itself, following the applicable Ind-AS and its consistently adopted accounting policy, had capitalised the impugned expenditure as part of CWIP. Such treatment, according to him, was not a mere matter of nomenclature but reflected the assessee’s own understanding that these expenses were attributable to the ongoing addition, improvement and upgradation of its telecom network infrastructure. He submitted that the assessee had separately debited similar categories of expenses to the Profit and Loss Account wherever the concerned network assets had attained the prescribed QoS parameters, whereas expenses pertaining to network infrastructure which was yet to attain those parameters were consciously accumulated in CWIP. Therefore, the distinction made by the assessee itself demonstrated a nexus between the impugned expenditure and the capital assets under development. He further submitted that an expenditure cannot simultaneously be capital in the books and revenue for tax purposes merely at the option of the assessee, and that once the expenditure was attributable to improvement/upgradation of the network infrastructure, the Assessing Officer was justified in treating

it as capital expenditure with consequential entitlement to depreciation under section 32.

16. The learned counsel for the assessee, on the other hand, submitted that the Revenue's argument proceeds on an erroneous assimilation of accounting recognition with tax characterization. He reiterated that commercial operations had commenced in FY 2016-17 and that, during the year under consideration, the assessee had approximately 306.7 million subscribers and operational revenue of about ₹38,838 crore. The network was thus already installed, deployed and extensively used for earning revenue. The expenditure in question represented recurring operating costs incurred for running this existing business and consisted of interconnect charges, employee cost, professional fees, call-centre expenses, power and fuel, repairs and maintenance, other network costs, interest, selling and distribution expenditure, exchange loss, customer-service expenses, bank charges, rates and taxes, ILL expenses and travelling expenditure. He clarified that actual expenditure incurred on acquisition of antennas, fibre, routers, batteries, generators, electronic equipment and other network assets had been capitalised even for income-tax purposes and was not part of the claim presently under consideration. The dispute was confined to operating expenditure which was placed in CWIP in the books because the management's QoS benchmarks had not yet

been achieved in respect of the concerned network infrastructure. He further submitted that the identical controversy already stands decided in favour of the assessee by the Tribunal for AY 2018-19 in ITA No. 2843/Mum/2022 dated 01.02.2023, and that the same principle has been approved by the Hon'ble jurisdictional High Court in the group cases of Reliance Footprint Ltd. and Reliance Fresh Ltd.

17. We have heard the rival submissions and carefully considered the assessment order, the findings recorded by the learned CIT(A), the accounting policy and factual explanation placed on record, and the judicial precedents relied upon before us. At the outset, we find that two different concepts have to be kept distinct. One is the accounting point of capitalization of an asset, having regard to the manner in which the management intends the asset to function and the prescribed QoS benchmarks; the other is the character of an expenditure under the Income-tax Act. The former determines its recognition and presentation in the financial statements, whereas the latter determines whether the expenditure is deductible in computing taxable business income. The accounting treatment is undoubtedly a relevant circumstance and cannot be disregarded, but it cannot become a substitute for examining the real nature of the expenditure. Ultimately, the question whether an outgoing is capital or revenue has to

be answered by examining what the expenditure was incurred for and what it brought about in the commercial framework of the assessee's business.

18. The distinction assumes greater significance on the peculiar facts before us. There is no dispute that the assessee's telecom business had already commenced in FY 2016-17. During the year under consideration, it was serving approximately 306.7 million subscribers and had earned operational revenue of about ₹38,838 crore. Thus, the profit-earning apparatus was not in the process of being brought into existence; it was already deployed on a nationwide scale and generating substantial business receipts. At the same time, telecom infrastructure, by its very nature, cannot remain static after commencement of commercial operations. It requires continuous optimisation, strengthening, maintenance and enhancement of network efficiency to cater to increasing voice and data traffic and to maintain the desired service quality. Therefore, the mere fact that expenditure is incurred in relation to a network which is undergoing improvement or optimisation does not, without more, determine its capital character. What is required to be seen is whether the particular expenditure brings into existence a new asset or enlarges the fixed profit-making apparatus, or whether it represents the cost of operating and efficiently exploiting the apparatus already in existence.

19. The accounting methodology followed by the assessee itself brings out this distinction. The assessee capitalised actual expenditure incurred for acquisition and construction of telecom network assets, including antennas, radio equipment, ducts, fibre, energy meters, generator sets, routers, racks, batteries and other electronic equipment, and treated such expenditure as capital even for income-tax purposes. However, in addition thereto, it incurred a large body of indirect and recurring operational expenditure in connection with its functioning network. Under its accounting policy, operational expenditure relatable to network infrastructure which had attained the intended QoS benchmarks was charged to the Profit and Loss Account, whereas similar expenditure relatable to infrastructure which was already installed and put to use but had not yet attained the management's desired QoS parameters continued to be carried in CWIP. Thus, the differentiation in the books was not necessarily based upon one category being revenue and the other capital in its intrinsic nature; rather, it was linked with the point at which the concerned network infrastructure attained the performance standards prescribed by the management. This accounting rationale cannot automatically be transposed into the statutory test for determining whether the underlying operating expenditure is capital or revenue.

20. The nature of the constituent expenses reinforces this conclusion. The disputed expenditure includes interconnect charges, employee costs, professional fees, call-centre expenses, power and fuel, repairs and maintenance, network operating costs, interest, selling and distribution expenditure, exchange loss, customer-service expenditure, bank charges, rates and taxes, ILL charges and travelling expenses. We are conscious that nomenclature by itself is not decisive and that even salaries, professional charges, interest or other indirect expenditure may, in an appropriate case, form part of the cost of bringing a capital asset into existence. However, if the Revenue seeks to treat such expenditure as capital, there must be some examination of its purpose and a demonstrable nexus with acquisition or creation of a capital asset. In the present case, the Assessing Officer has not undertaken such an exercise in relation to the constituent expenditure. Rather, the entire amount of ₹1,10,03,17,60,701 has been treated as one composite capital outlay substantially because it was carried in CWIP and was connected with network improvement/upgradation. Such a broad characterization, in our view, does not adequately address the true nature of the individual expenditure comprising the disallowance.

21. In fact, the underlying premise adopted by the Assessing Officer that there must necessarily be uniformity between the treatment in the books and the treatment under the Income-

tax Act cannot be accepted as an absolute proposition. The entitlement to deduction has to be determined by the provisions of the Act. The Hon'ble Supreme Court in Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC) recognised that entitlement to a deduction depends upon the relevant provision of law and is not conclusively determined by the view taken by the assessee in its books. Again, in Taparia Tools Ltd. v. JCIT [2015] 372 ITR 605 (SC), the Hon'ble Supreme Court reiterated that entries in the books are not determinative or conclusive and the claim has to be examined on the touchstone of the provisions of the Act. The same broad principle is reflected in Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172 (SC) that, where the question concerns taxability or permissible deductions, the matter has ultimately to be decided according to law and accounting practice cannot override the statutory provisions. Thus, while the assessee's capitalization of the expenses is undoubtedly relevant, it cannot foreclose an otherwise sustainable claim under section 37(1).

22. We also do not find that the test of enduring benefit, in the manner invoked by the Assessing Officer, advances the Revenue's case. In Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC), the Hon'ble Supreme Court explained that even where an expenditure produces an advantage which may endure for some period, the decisive consideration is whether the

advantage lies in the capital field and whether there is an addition to the fixed capital or profit-making structure. Similarly, the Hon'ble jurisdictional High Court in CIT v. Salgaocar Mining Industries (P.) Ltd. [2019] 108 taxmann.com 116 (Bom.) recognised that expenditure facilitating more efficient or profitable conduct of the business may remain on revenue account where the fixed capital structure is left untouched. These principles have particular relevance in an operating telecom business, where expenditure directed towards stabilising connectivity, improving network efficiency or meeting desired service parameters does not necessarily create a new profit-making apparatus. Unless the expenditure itself brings into existence or adds to the capital structure, improvement in the efficiency with which the existing apparatus functions cannot, by itself, be conclusive of capital character.

23. More importantly, this very controversy has already been examined by the coordinate bench in the assessee's own case for the immediately preceding year. In ACIT v. Reliance Jio Infocomm Ltd. [2023] 149 taxmann.com 197 (Mumbai-Trib.), ITA No. 2843/Mum/2022, order dated 01.02.2023, for AY 2018-19, the Tribunal was concerned with the character of substantially identical operational expenditure consisting of interconnect charges, employee cost, professional fees, call-centre expenses, power and fuel, repairs and maintenance,

other network costs, interest, selling and distribution expenditure, exchange loss, customer-service expenses, bank charges, rates and taxes, ILL expenses and travelling expenses. After noticing that the assessee’s business had already been set up and it had commenced providing digital services and recognising income therefrom, the Tribunal held in substance that expenditure incurred for running such existing business was revenue expenditure for income-tax purposes notwithstanding its capitalization in the books under the accounting standards. The Tribunal further observed that the Revenue had not substantiated how the day-to-day expenses were towards upgradation of an asset or resulted in an enduring benefit and concluded that expenditure incurred in relation to services provided to existing customers, being wholly and exclusively for the purposes of business, was allowable under section 37(1). Revenue’s appeal on the issue was accordingly dismissed.

24. The ratio of the aforesaid decision applies with full force to the year under consideration. Not only is the accounting policy the same, but the constituent expenditure and the factual setting are materially identical. Indeed, the assessee’s business during the present year had expanded further, with a subscriber base of approximately 306.7 million and operational revenue of ₹38,838 crore. No material distinction in facts has been brought before us by the Revenue which

would justify departure from the view taken by the coordinate bench for AY 2018-19. We are conscious that the principle of consistency cannot compel perpetuation of an erroneous view or preclude examination where the underlying facts have changed; however, where a recurring issue arising from the same accounting policy and substantially identical expenditure has been adjudicated in the immediately preceding year and there is no material change either in facts or law, judicial discipline requires that the earlier view be followed unless a cogent reason exists for taking a different course. We find none in the present case.

25. The conclusion also finds support from the decisions rendered in the assessee's group concerns. In Reliance Footprint Ltd. v. ACIT [2014] 41 taxmann.com 553 (Mumbai-Trib.), the assessee was already carrying on retail business but was simultaneously expanding its operations by setting up additional stores. It had capitalised in its books project-development expenditure comprising employees' salaries and wages, employee welfare costs, travelling expenditure, professional fees, communication expenditure, printing and stationery, hire charges and other project-development expenditure, but claimed deduction thereof in computing taxable income. The Tribunal held that once the business was already set up, expenditure of a revenue character incurred in the course of expansion and not for acquisition of a capital

asset remained allowable notwithstanding its capitalization in the books. The decision was upheld by the Hon'ble Bombay High Court in CIT v. Reliance Footprint Ltd., ITA No. 948 of 2014, dated 05.07.2017, wherein the revenue nature of expenditure incurred in the course of expansion of an existing business was accepted and the accounting presentation was held not to be determinative.

26. Likewise, in Reliance Fresh Ltd. v. ACIT [2016] 72 taxmann.com 170 (Mumbai-Trib.), routine business expenditure such as employee costs, travelling expenses, professional fees, communication expenses, printing and stationery and hire charges incurred in connection with new projects of an already existing retail business was held deductible as revenue expenditure despite having been capitalised in the books. The said view was thereafter upheld by the Hon'ble jurisdictional High Court in PCIT v. Reliance Fresh Ltd., ITA No. 985 of 2017, following its decision in Reliance Footprint Ltd. These authorities are relevant not because every expenditure incurred during expansion of an existing business must invariably be revenue, but because they reject the very proposition which forms the principal basis of the impugned assessment, namely, that capitalization in the books or a nexus with expansion of an existing business, by itself, determines the capital character of the expenditure for tax purposes.

27. If we now examine the matter cumulatively, the following features emerge without any serious dispute: the assessee had commenced its telecom operations in FY 2016-17; its existing network was extensively deployed and commercially exploited during the relevant year; it had approximately 306.7 million subscribers and operational revenue of ₹38,838 crore; actual expenditure incurred for acquisition and construction of telecom assets was separately capitalised even for tax purposes; the disputed amount represented indirect and operational expenditure allocated to CWIP under the accounting policy until the concerned network infrastructure attained management-prescribed QoS parameters; the Assessing Officer has not identified any specific capital asset brought into existence by the disputed operational expenditure; nor has he demonstrated by a head-wise examination that the recurring expenses in question constituted cost of acquisition or creation of a capital asset. His conclusion rests predominantly upon the manner of presentation in the financial statements and the broad proposition that the expenses facilitated network improvement/upgradation. In our considered view, these circumstances are insufficient to displace the revenue character of expenditure otherwise incurred in the course of operating an established business.

28. We may also observe that the magnitude of the claim, though substantial, cannot influence its juridical character. The amount involved is more than ₹1,100 crore, but the question whether expenditure is capital or revenue is qualitative and not quantitative. The amount has to be appreciated in the context of a nationwide telecom enterprise earning operational revenue of approximately ₹38,838 crore and servicing more than 300 million subscribers. A recurring operating expense does not acquire the character of capital merely because, owing to the enormous scale of the business, its aggregate quantum is large. Conversely, even a relatively small expenditure may be capital if it is incurred for acquiring or creating an asset or advantage in the capital field. The quantum, therefore, cannot substitute for examination of the nature and purpose of the expenditure.

29. Thus, both on an independent examination of the facts and on the basis of the binding judicial principles discussed above, we are unable to find any infirmity in the conclusion reached by the learned CIT(A). The learned CIT(A) has correctly appreciated that the expenditure incurred for meeting the QoS parameters in relation to assets already installed and put to use did not, on the facts brought on record, result in creation of a new asset of enduring nature but facilitated the efficient operation of the existing network. His conclusion is also directly supported by the coordinate

bench decision in the assessee's own case for AY 2018-19 and by the decisions of the Hon'ble jurisdictional High Court in the group concerns discussed hereinabove. Accordingly, we uphold the order of the learned CIT(A) deleting the disallowance of ₹1,10,03,17,60,701. The grounds raised by the Revenue in ITA No. 3540/Mum/2026 are, therefore, dismissed.

30. We shall now proceed to Revenue's appeal in ITA No. 3541/Mum/2026, arising from the reassessment completed under section 147 read with section 144B, wherein the principal controversy relates to the disallowance of payments aggregating to ₹66,65,41,174 under section 40(a)(i) for alleged failure to deduct tax under section 195 on payments made to non-resident telecom operators for voice termination, bandwidth and operation and maintenance services.

31. We shall now take up the Revenue's appeal in ITA No. 3541/Mum/2026, which also pertains to Assessment Year 2019-20 but arises from reassessment proceedings completed under section 147 read with section 144B of the Act. The controversy in this appeal is distinct from the issue adjudicated hereinbefore. Here, the Assessing Officer has disallowed a sum of ₹66,65,41,174 under section 40(a)(i) on the premise that payments made by the assessee to certain non-resident telecom operators for voice termination services,

bandwidth services and operation and maintenance services constituted “royalty” and/or “fees for technical services” and were, therefore, chargeable to tax in India. According to the Assessing Officer, the assessee ought to have deducted tax at source under section 195 and, having failed to do so, the corresponding expenditure was liable to be disallowed. The learned CIT(A), however, deleted the disallowance holding that the payments represented consideration for standard telecommunication/interconnect services and were not taxable as royalty or FTS under the applicable DTAAs. It is this deletion which forms the subject matter of the present Revenue appeal.

32. The relevant chronology leading to the reassessment may briefly be set out. The assessee had originally filed its return of income on 29.11.2019 declaring loss of ₹19,400,76,14,494 under the normal provisions of the Act and book profit of ₹3,988,64,90,408 under section 115JB. The original assessment was completed under section 143(3) read with section 144B on 29.03.2022. Subsequently, information was received on the Insight Portal under the category “High Risk CRIU/VRU Information”, emanating from proceedings undertaken by the DCIT, International Tax Circle 4(1)(1), Mumbai, in connection with verification of Forms 15CA/15CB. The information indicated that the assessee had made certain overseas remittances for bandwidth, voice

termination and allied telecom services which, in the view of the International Taxation Officer, were in the nature of royalty/FTS and had already resulted in proceedings under section 201. There was also separate information concerning certain transactions in immovable properties and possible applicability of section 50C. On the basis of such information, notice under section 148A(b) dated 22.03.2023 was issued. The assessee filed its detailed objections; however, an order under section 148A(d) was passed on 07.04.2023 and notice under section 148 was issued on the same date. The assessee thereafter filed its return in response to the notice and the reassessment proceedings ultimately culminated in the order dated 29.03.2025 under section 147 read with section 144B.

33. The foundation of the substantive disallowance made in reassessment was the order passed under section 201 in relation to the very same remittances. The DCIT, International Tax Circle 4(1)(1), Mumbai had treated the assessee as an assessee-in-default for failure to deduct tax under section 195 on payments aggregating to ₹66,65,41,174 made to the overseas telecom operators. The broad premise in those proceedings was that consideration paid for interconnect/voice termination, bandwidth and O&M services fell within the ambit of royalty and/or FTS. In the reassessment proceedings, the Assessing Officer substantially adopted this characterization and proceeded on the footing

that once the corresponding payments were chargeable to tax in India, failure to deduct tax necessarily attracted section 40(a)(i). The assessee, however, contended that the order under section 201 itself had been challenged in appeal and that the taxability of identical or substantially similar telecom services had already been considered in its favour in appellate proceedings for earlier years.

34. Since the nature of the payment is central to the determination of its tax character, it would be apposite to first set out the service-wise and recipient-wise breakup. The payments made during the relevant previous year were as under:

Nature of payment	**RJIPL**	**RJIUK**
Voice Termination Services	₹19,62,15,994	₹8,39,13,042
Bandwidth Services	₹15,47,82,016	-
Annual Operation & Maintenance Services	₹9,07,41,670	-
Total	₹44,17,39,680	₹8,39,13,042

RJIUK	RJIUS	Total
₹8,39,13,042	₹14,08,88,454	₹42,10,17,490
-	-	₹15,47,82,016
-	-	₹9,07,41,670
₹8,39,13,042	**₹14,08,88,454**	**₹66,65,41,176**

The assessment order has proceeded with a disallowance of ₹66,65,41,174. The marginal arithmetical difference in the aggregate appearing in the service-wise statement does not affect the controversy before us, which concerns the tax character of these payments and the consequent invocation of section 40(a)(i).

35. The three categories of services, though falling broadly within the telecom ecosystem, are functionally distinct. Voice termination services involve the termination of voice traffic delivered by one operator to another at designated interconnection points, gateways or network domains for onward carriage and termination at agreed destinations. The overseas operator uses its own telecom network for carrying and terminating the traffic and consideration is ordinarily linked to usage and the destination at which the call is terminated. Bandwidth services involve provision of point-to-point connectivity between agreed locations for carriage of voice/data traffic. Both are essentially inter-operator arrangements which enable traffic originating on one network

to traverse or terminate through another network, thereby ensuring connectivity across jurisdictions and different telecom systems.

36. The assessee's case throughout has been that in neither arrangement does it acquire the underlying network, equipment or technological process employed by the service provider. The assessee merely delivers its traffic at the agreed interconnection point and receives the contracted connectivity or termination service. The foreign telecom operator independently determines how its own network, equipment and technical resources are to be deployed for rendering that service. No identified equipment is placed under the possession or control of the assessee; the assessee does not operate the overseas network; nor is any specific technical resource earmarked for its exclusive use. The service provider remains responsible for maintaining, repairing and managing its network and the assessee is concerned only with the availability and delivery of the contracted telecom service.

37. Insofar as O&M services are concerned, these relate to routine operation and maintenance of the infrastructure employed by RJIPL for providing bandwidth services, including maintenance of the cable landing station and associated equipment. According to the assessee, the obligation to keep such infrastructure operational rests

entirely upon RJIPL. The assessee neither undertakes the maintenance itself nor acquires any technical skill or know-how concerning maintenance of the underlying equipment. The O&M arrangement merely ensures the continued and uninterrupted availability of the bandwidth facility which the assessee has contracted to receive. The assessee, therefore, contended that the fact that technical expertise may be employed by RJIPL for maintaining its own infrastructure does not mean that technical services, in the statutory or treaty sense, are thereby rendered to the assessee.

38. The assessee further explained that once the interconnection arrangement is operational, the actual carriage and termination of telecom traffic takes place automatically through the network systems and does not require human intervention in relation to each transaction. Any servicing, repairs, maintenance or technical intervention that may occasionally be required is undertaken by personnel of the service provider for operating its own network. The assessee does not contract for the services of any identified engineer, technician or technical personnel deployed by the foreign operator. In the case of voice termination, consideration is determined broadly by usage and destination and bears no relation to the number or expertise of persons engaged by the overseas operator. Similarly, in bandwidth services, though the charges may be contractually fixed, the

assessee neither controls nor is concerned with the cost structure, equipment configuration or manpower deployed by the provider. Thus, according to the assessee, the use of sophisticated technology by the service provider cannot be equated with rendition of technical services to the payer.

39. The Assessing Officer rejected this explanation. Referring substantially to the reasoning adopted in the section 201 proceedings, he held that the interconnect/voice termination and bandwidth arrangements necessarily involved sophisticated telecom networks, technical processes and equipment and, therefore, the consideration paid for availing such facilities had the character of royalty within the meaning of section 9(1)(vi) and/or fees for technical services within the meaning of section 9(1)(vii). In his view, the assessee was obtaining the benefit of the underlying technical infrastructure and process and, consequently, the amounts were chargeable to tax in India. He therefore held that the assessee ought to have deducted tax under section 195. Since no such tax had been deducted, he disallowed ₹66,65,41,174 under section 40(a)(i), thereby reducing the returned loss to ₹19,334,10,73,320.

40. It is pertinent that the assessee had specifically brought to the notice of the Assessing Officer that substantially identical withholding controversies had already travelled

through appellate proceedings. It was pointed out that in relation to bandwidth and allied telecom services, appellate authorities, including the Tribunal, had taken a view favourable to the assessee in earlier years. The assessment order itself records that the corresponding issue had been decided in favour of the assessee by the learned CIT(A) and the Tribunal for earlier assessment years, though the Revenue had carried the matters further. Nevertheless, since the section 201 order continued to remain the immediate foundation of the reassessment and had not been accepted by the Revenue as finally concluded, the Assessing Officer proceeded to make the consequential disallowance under section 40(a)(i).

41. Aggrieved, the assessee preferred appeal before the learned CIT(A) and challenged both the validity of reopening as well as the disallowance on merits. On the jurisdictional aspect, the assessee raised various grounds questioning the initiation and manner of reassessment. The learned CIT(A) rejected the challenge concerning the jurisdiction of the Assessing Officer, relying upon the judicial view that the jurisdictional Assessing Officer and the faceless Assessing Officer could exercise concurrent jurisdiction in reassessment proceedings. Certain other grounds concerning reopening, according to the assessee, were not independently adjudicated. However, on the substantive issue of

disallowance under section 40(a)(i), the learned CIT(A) accepted the assessee's contention and deleted the addition.

42. While doing so, the learned CIT(A) examined the character of the payments under the applicable DTAAs and held that consideration for the telecom/interconnect services could not be regarded either as royalty or as FTS. He accepted that the assessee was receiving standard telecom connectivity/interconnect services and was not granted possession, control or dominion over the network, equipment or process employed by the overseas operators. The fact that the foreign operators necessarily deployed sophisticated equipment and technology for rendering the service did not, in his view, amount to conferring upon the assessee a right to use such equipment or process. Similarly, on the issue of FTS/FIS, he found that no technical knowledge, experience, skill, know-how or process was made available to the assessee so as to enable it to independently apply the technology thereafter. In respect of O&M also, the learned CIT(A) accepted that the activity represented maintenance by RJIPL of the infrastructure through which its bandwidth service was rendered and did not result in transfer of technical capability to the assessee.

43. The learned CIT(A) further held that, once the receipts did not fall within the treaty provisions relating to royalty or

FTS/FIS, they were in the nature of business profits of the respective foreign telecom operators. There was no finding that the concerned non-residents had a permanent establishment in India to which these receipts could be attributed. Accordingly, under Article 7 of the applicable DTAAs, the business profits were not taxable in India. Since section 90(2) permits application of the treaty where its provisions are more beneficial, the learned CIT(A) held that the payments were not chargeable to tax in India in the hands of the recipients. Consequently, no obligation arose under section 195 and, in the absence of a withholding obligation, there could be no disallowance under section 40(a)(i). The entire addition of ₹66,65,41,174 was accordingly deleted.

44. The learned CIT(A)'s conclusion also found support in the earlier orders concerning these very categories of telecom payments. In the assessee's own withholding-tax litigation, the Tribunal had examined bandwidth and related services in different assessment years and consistently held against the Revenue. The record before us refers, inter alia, to the Tribunal's orders for AY 2016-17 in ITA No. 936/Mum/2026, where the amount received by RJIPL for providing standard bandwidth services was held not to constitute royalty and the Revenue had not successfully assailed the finding concerning FTS; AY 2018-19 in ITA No. 5780/Mum/2018, where

payment made by the assessee to RJIPL for bandwidth services was held not taxable as royalty; and AY 2019-20 in ITA No. 2866/Mum/2022, wherein the Tribunal held that there was no obligation on the assessee to deduct tax at source while making payment to RJIUK for bandwidth services. In the order for AY 2019-20, the Tribunal also noticed the principle emerging from New Skies Satellite and Engineering Analysis that unilateral retrospective amendment of the domestic law cannot, in the absence of corresponding bilateral amendment, be read into the treaty definition of royalty.

45. The assessee also relied upon the fact that the controversy has travelled beyond payer-side withholding proceedings and has subsequently been examined in the hands of the recipient entities themselves. In RJIUS for AY 2020-21 in ITA No. 2991/Mum/2023, the Tribunal held that receipts towards voice termination services were in the nature of business profits and could not be brought to tax in India either as FTS or royalty under the Act and the India-USA DTAA. Further, in the cases concerning RJIPL and RJIUS for AY 2019-20 in ITA Nos. 7827 & 7828/Mum/2025, the Tribunal considered receipts towards voice termination, bandwidth and O&M services and held that the same were not taxable as royalty and/or FTS under the applicable India-Singapore and India-USA DTAAs. Thus, according to the

assessee, the very receipts which constitute the subject matter of the present withholding controversy have already been examined from the standpoint of chargeability in the hands of the recipients.

46. Before us, the learned DR relied upon the reasoning of the Assessing Officer and the section 201 order and submitted that the services cannot be regarded as mere routine commercial facilities divorced from the sophisticated technical architecture underlying them. According to him, voice termination and bandwidth necessarily involve use of complex network processes, equipment and technology and the consideration paid for availing these facilities partakes of the character of royalty. Similarly, O&M and network-related services, by their very nature, involve technical expertise and therefore fall within the ambit of FTS. He submitted that the learned CIT(A) has attached undue significance to absence of physical possession or direct human intervention and has not correctly appreciated the width of the statutory provisions. He therefore urged that the disallowance under section 40(a)(i) be restored.

47. The learned counsel for the assessee, on the other hand, strongly supported the order of the learned CIT(A). He submitted that the Revenue's approach fundamentally conflates technology employed by the service provider with

technology, equipment or process used by the customer. According to him, the assessee merely receives the end telecom service; the overseas operator retains complete control over the network and technical processes through which that service is produced. No equipment is placed at the assessee's disposal, no right in any process is transferred and no technical knowledge is imparted or made available. He emphasised that the earlier Tribunal orders in the assessee's own cases already cover the bandwidth/interconnect controversy and that the subsequent orders in the cases of RJIPL and RJIUS, being the recipients themselves, place the matter beyond any substantive doubt. Reliance was also placed upon the decision in Vodafone Idea Ltd., where payments to non-resident telecom operators for interconnect services and capacity in foreign jurisdictions were held not to attract withholding, and the Revenue's Special Leave Petition against the Karnataka High Court judgment was dismissed by the Hon'ble Supreme Court.

48. There is one further procedural aspect. The assessee has filed an application dated 13.07.2026 under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963, seeking to support the ultimate order of the learned CIT(A) on the additional ground that the reassessment proceedings themselves are invalid. The assessee has, however, fairly submitted that if the Revenue's appeal fails on the

substantive issue relating to section 40(a)(i), adjudication of the Rule 27 grounds would become unnecessary and those contentions may be kept open. Thus, the principal issue which now falls for our consideration is whether, having regard to the true nature of voice termination, bandwidth and O&M services, the applicable statutory and treaty provisions and the judicial precedents governing substantially identical payments, the sums in question were chargeable to tax in India so as to attract section 195 and, consequently, section 40(a)(i). We shall now proceed to examine this issue on merits.

ITA No. 3541/Mum/2026

49. We have heard the rival submissions and carefully considered the material placed before us, the reasoning of the Assessing Officer and the learned CIT(A), the nature of the contractual services and the judicial precedents relied upon by the parties. At the threshold, it needs to be borne in mind that the disallowance under section 40(a)(i) is only a consequence of an antecedent obligation to deduct tax under section 195. Section 195 does not fasten a withholding obligation merely because a payment is made to a non-resident; the sum paid must be chargeable to tax in India under the Act, read with the applicable DTAA where its provisions are more beneficial in terms of section 90(2). Therefore, the enquiry cannot commence with section 40(a)(i).

It must first be ascertained whether the consideration received by RJIPL, RJIUK and RJIUS for voice termination, bandwidth and O&M services is chargeable to tax in India as royalty or FTS/FIS or under any other applicable treaty provision. If the receipts are not so chargeable, the edifice of withholding under section 195, and consequently the disallowance under section 40(a)(i), cannot survive.

50. The factual character of the transactions has already been discussed in some detail hereinbefore. Voice termination charges of ₹42,10,17,490 represent consideration for carriage and termination of voice traffic through the networks of the overseas telecom operators; bandwidth charges of ₹15,47,82,016 represent consideration for connectivity between agreed locations; and O&M charges of ₹9,07,41,670 represent expenditure relating to operation and maintenance by RJIPL of the infrastructure employed for ensuring uninterrupted provision of bandwidth services. The common thread running through these arrangements is that the foreign service provider retains its network, equipment, technical resources and processes under its own possession and control and employs them for rendering the contracted service. The assessee does not operate that network or equipment, does not decide how the overseas operator should configure or deploy its resources and does not acquire any proprietary or possessory interest in the technological

apparatus. The assessee purchases the output of the network, namely connectivity, carriage or termination of telecom traffic; it does not purchase or acquire the network or the technology through which that output is produced.

51. We first examine the Revenue's case from the standpoint of equipment royalty. There is a conceptual distinction between a customer making use of a service which is rendered through sophisticated equipment and the customer itself having the use or right to use that equipment. The former is an ordinary incident of innumerable modern technology-driven services; the latter requires the payer to acquire a legally and commercially meaningful right in relation to the equipment itself. On the facts before us, no identified equipment belonging to the overseas operators is placed at the disposal of the assessee. The assessee cannot operate, access, control, alter or direct the functioning of such equipment; it cannot exclude the service provider or other customers from its use; nor is any particular equipment earmarked exclusively for the assessee. The responsibility for selection, operation, configuration, maintenance and repair of the equipment remains throughout with the foreign telecom operator. In such circumstances, the fact that the service cannot be rendered without deployment of sophisticated telecom equipment does not transform the consideration for

the service into consideration for the use or right to use such equipment.

52. The Revenue's alternative characterization of the payments as consideration for use of a process also encounters the same fundamental difficulty. Undoubtedly, carriage and termination of voice or data traffic involve a complex technological process. However, what is relevant under the treaty is not merely whether a process is employed somewhere in rendering the service, but whether consideration is paid for the use or right to use the process contemplated by the royalty article. The technological processes through which the foreign operator routes, carries and terminates traffic remain embedded within its own network. The assessee neither acquires those processes nor is enabled to employ them independently. It delivers the traffic at the agreed point and receives the contracted result. The manner in which the foreign operator thereafter carries or terminates that traffic remains within its own technological domain. The distinction between availing the result of a process and acquiring a right to use the process itself is material and cannot be obliterated merely because technology is indispensable to the rendition of the service.

53. There is another treaty aspect which assumes relevance in this context. The assessee has relied upon the judicial

position that retrospective enlargement of the domestic definition of royalty by the Finance Act, 2012 cannot, without a corresponding bilateral amendment, be bodily imported into the definition contained in an existing DTAA. This very aspect has already been noticed by the Tribunal in the assessee's earlier proceedings, where reliance upon the enlarged domestic-law conception of "process" was considered in the light of DIT v. New Skies Satellite BV [2016] 382 ITR 114 (Delhi) and the principle subsequently approved in Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 432 ITR 471 (SC). The treaty represents an allocation of taxing rights negotiated between sovereign States and its language cannot be unilaterally expanded by a subsequent domestic amendment unless the treaty itself is correspondingly amended. Therefore, even assuming that the amended domestic provision is wider, the assessee is entitled under section 90(2) to the more beneficial treaty protection. This aspect substantially answers the Revenue's attempt to bring standard telecom connectivity within an expanded domestic conception of process/equipment royalty where the applicable treaty does not permit such characterization.

54. We next consider the case of the Revenue that the payments constitute fees for technical services. Here again, the mere presence of sophisticated technology cannot be the determinative criterion. A service may be technologically

complex from the standpoint of the person who provides it, yet remain a standard facility from the standpoint of the customer who merely consumes its output. The record before us shows that, once interconnection is established, carriage and termination of telecom traffic take place automatically through the network. The assessee does not seek or receive the services of any identified technical personnel of the overseas operator for each call or transmission. Repair, maintenance, configuration and management of the foreign network are undertaken by the service provider as part of its own obligation to keep its network functional. The consideration paid by the assessee is for connectivity/termination and is not consideration for deployment of engineers or for furnishing technical advice, consultancy or expertise to the assessee.

55. The principle that mere use of sophisticated technology does not, by itself, constitute rendition of technical services has been consistently applied in the context of telecom and connectivity arrangements. The judicial authorities relied upon by the assessee, including Bharti Cellular Ltd., Pacific Internet (India) (P.) Ltd., Bharat Sanchar Nigam Ltd. and Siemens Ltd., proceed substantially on the distinction between a standard automated telecom facility and technical services rendered to a customer. The essential enquiry is not whether technical expertise exists somewhere behind the

service which in a modern telecom network it undoubtedly does but whether such expertise is rendered to the payer in the sense contemplated by the statutory provision. On the facts before us, the technical personnel employed by the overseas operators operate and maintain their own networks; their expertise is not placed at the disposal of the assessee. The service consumed by the assessee remains the automated telecom facility.

56. The Revenue's case becomes still more tenuous under those applicable treaty provisions which require the technical service to "make available" technical knowledge, experience, skill, know-how or processes. The make-available requirement contemplates that the recipient should acquire from the service provider a technical capability of some enduring utility so that, upon completion of the service, the recipient is enabled to apply the technology or know-how itself without having to continuously depend upon the provider for the same function. Mere benefit from a service, however technically sophisticated, is not sufficient. Here, upon termination of a call or utilisation of bandwidth, the assessee acquires no technical knowledge concerning the foreign operator's network. It cannot thereafter terminate international traffic through that network by itself, nor can it reproduce the technological process employed by the foreign operator. The service is consumed when rendered; what

remains with the assessee is the commercial benefit of connectivity and not the technical ability by which such connectivity was produced. Therefore, wherever the relevant treaty incorporates the make-available condition, that requirement is plainly not satisfied.

57. The same reasoning applies, with necessary adaptation, to the O&M charges of ₹9,07,41,670 paid to RJIPL. The O&M services involve routine operation and maintenance of the infrastructure employed by RJIPL, including the cable landing station and related equipment, so that the bandwidth service can be provided smoothly and without interruption. It is RJIPL which bears the responsibility for maintaining the infrastructure. The assessee neither operates nor maintains that infrastructure and no technical know-how concerning its maintenance is transmitted to it. The fact that RJIPL may necessarily deploy engineers or technical personnel to discharge its maintenance obligations cannot alter the character of the payment from the standpoint of the assessee. The relevant question is whether technical knowledge or capability is made available to the assessee; there is nothing on record to demonstrate any such transfer. The O&M payment, therefore, cannot be characterised as FTS merely because technical expertise is necessarily employed by RJIPL in maintaining its own service-delivery infrastructure.

58. At this stage, it becomes relevant to notice that the issue is not being examined by us in an uncharted field. The taxability of substantially the same categories of payments has repeatedly arisen in the assessee's own proceedings. In relation to bandwidth services rendered by RJIPL/RJIUK, the Tribunal has, in the earlier assessment years, consistently held that the consideration cannot be brought to tax as royalty/FTS and that the assessee consequently had no obligation to deduct tax at source. The record before us refers, inter alia, to the Tribunal's orders for AY 2016-17 in ITA No. 936/Mum/2026, AY 2018-19 in ITA No. 5780/Mum/2018, and AY 2019-20 in ITA No. 2866/Mum/2022. In the order relating to AY 2019-20, the Tribunal, following the earlier years and the higher judicial authorities, specifically concluded that there was no obligation on the assessee to deduct tax at source while making payment to RJIUK for bandwidth services. Thus, insofar as the payer-side withholding controversy concerning bandwidth is concerned, the issue has already received consistent consideration in favour of the assessee.

59. What lends greater significance to the assessee's case is that the issue has also been examined from the standpoint of the very recipients of these payments. In the case of Reliance Jio Infocomm USA Inc. for AY 2020-21 in ITA No. 2991/Mum/2023, the Tribunal examined receipts towards

voice termination services and held that such receipts were in the nature of business profits and could not be brought to tax in India either as FTS or as royalty under the Act and the India-USA DTAA. More importantly, in ITA Nos. 7827 & 7828/Mum/2025 for AY 2019-20, involving RJIPL and RJIUS, the Tribunal considered receipts arising from voice termination services, bandwidth services and O&M services and held that the same were not taxable as royalty and/or FTS under the provisions of the Act read with the applicable India-Singapore and India-USA DTAAs. These recipient-side decisions have a direct bearing on the controversy before us because the very receipts which form the substratum of the payer’s alleged withholding obligation have been examined in the hands of the recipients and held not chargeable to tax in India under the relevant treaty provisions.

60. This aspect cannot be regarded as merely collateral. The obligation under section 195 is inseparably linked with the chargeability of the corresponding sum in the hands of the non-resident. If the character of the very receipt has been judicially examined in the hands of the recipient and held not taxable in India, it would be incongruous, in the absence of any distinguishing feature, to proceed in the payer’s case on the contrary premise that the identical payment nevertheless contains income chargeable to tax in India and therefore attracts withholding. Of course, the legal consequences in the

payer and recipient proceedings operate within their respective statutory settings; nevertheless, where the nature of the transaction, the service and the receipt are the same, the recipient-side determination constitutes a compelling judicial consideration. Nothing has been brought before us to show any material factual distinction in the present payments which would warrant a departure from those findings.

61. The aforesaid conclusion is further fortified by the judicial development in DDIT (IT) v. Vodafone Idea Ltd. [2025] 173 taxmann.com 695 (SC). The Hon'ble Supreme Court dismissed the Revenue's Special Leave Petition against the judgment of the Hon'ble Karnataka High Court reported in 475 ITR 189, wherein payments made to non-resident telecom operators for interconnect services and transfer of capacity in foreign jurisdictions were held not to attract deduction of tax at source. This line of authority is consistent with the fundamental distinction which we have noticed hereinbefore: a telecom operator availing connectivity/interconnection from another operator receives a standard telecom service; the technological network and infrastructure employed for rendering that service remain those of the service provider and do not, merely by reason of the service arrangement, become equipment or process used by the customer in the sense contemplated by the royalty provisions.

62. We may also refer to the Tribunal's reasoning in the assessee's own earlier proceedings concerning the treaty treatment of O&M services. While examining Article 12 of the India-Singapore DTAA, the Tribunal noticed that once the principal bandwidth payment was held not to be royalty, the ancillary limb of the FTS provision dependent upon enjoyment of royalty ceased to apply. As regards the make-available limb, it was found that maintenance services did not involve any transfer of technology enabling the assessee to apply such technology itself. The Revenue was unable to demonstrate what technical knowledge or technology had actually passed to the assessee under the arrangement. The same factual position obtains before us. The O&M activity keeps the foreign operator's own infrastructure functional; it does not equip the assessee with the knowledge or capability to maintain that infrastructure independently. We see no basis for taking a different view.

63. The Revenue has nevertheless emphasised that the services are inseparable from the highly sophisticated technical network through which they are rendered. In our view, this argument overlooks the juridical distinction which lies at the centre of the controversy. The relevant distinction is not between a technologically simple service and a technologically sophisticated one; it is between the use of a

technology-enabled service and the use or right to use the technology, process or equipment itself. A customer may derive immense commercial benefit from sophisticated infrastructure without acquiring any legal right in that infrastructure. Similarly, a person may consume the output of an automated process without acquiring the process itself. If the Revenue's proposition were accepted in its unqualified form, virtually every service delivered through advanced servers, communication networks, cloud infrastructure or automated systems would risk being characterised as royalty merely because the provider necessarily employs sophisticated technology. That is neither the language nor the intendment of the treaty provisions.

64. Once the payments are held not to constitute royalty or FTS/FIS under the applicable treaty provisions, their character in the hands of the respective overseas telecom operators is that of business profits. There is no finding by the Assessing Officer that RJIPL, RJIUK or RJIUS had a permanent establishment in India to which these receipts could be attributed. In the absence of a PE, Article 7 does not permit taxation of such business profits in India. Further, by virtue of section 90(2), where the treaty is more beneficial to the non-resident, the treaty provisions prevail for determining chargeability. Therefore, once the payments fall outside the

royalty and FTS/FIS articles and no PE exists in India, the receipts cannot be brought to tax here.

65. This conclusion necessarily determines the operation of section 195. The withholding obligation under that provision is predicated upon the payment containing a sum chargeable to tax in India. It is not a mechanism for deduction from every payment made to a non-resident irrespective of chargeability. In the present case, once the consideration for voice termination, bandwidth and O&M services is found not taxable as royalty or FTS/FIS under the applicable DTAAs and, in the absence of a PE, is also not taxable as business profits under Article 7, there was no obligation upon the assessee to deduct tax at source under section 195.

66. The consequence under section 40(a)(i) follows inexorably. That provision cannot operate in isolation from the underlying withholding obligation. If tax was not deductible under section 195 because the payment was not chargeable to tax in India, non-deduction cannot result in disallowance of the expenditure under section 40(a)(i). In the present case, the reassessment addition was substantially founded upon the characterization adopted in the section 201 proceedings. However, quite apart from our independent analysis of the nature of these services, the corresponding categories of payments have repeatedly been examined in the assessee’s

own withholding proceedings and, more significantly, the receipts themselves have been held not taxable in the hands of RJIPL/RJIUS. The foundation on which the impugned disallowance rests, therefore, does not survive.

67. In view of the foregoing discussion, we concur with the conclusion of the learned CIT(A) that the payments made by the assessee towards voice termination services, bandwidth services and O&M services to the concerned non-resident telecom operators were not chargeable to tax in India as royalty or FTS/FIS under the applicable DTAAs. In the absence of any permanent establishment of the recipients in India, the receipts, being business profits, were also not taxable in India under Article 7. Consequently, there was no obligation upon the assessee to deduct tax at source under section 195 and the Assessing Officer was not justified in invoking section 40(a)(i). We accordingly uphold the order of the learned CIT(A) deleting the disallowance of ₹66,65,41,174 and dismiss the grounds raised by the Revenue on this issue.

68. This leaves the application filed by the assessee under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963, whereby it seeks to support the ultimate order of the learned CIT(A) on the ground that the reassessment itself is invalid. The assessee has specifically submitted before us that, if the Revenue’s appeal is dismissed on merits, it is not necessary

to adjudicate the Rule 27 grounds and the legal contentions concerning the validity of reopening may be kept open. Since we have upheld the deletion of the entire disallowance.

69.Thus, having regard to the nature of the services actually rendered and the consistent judicial view in the assessee's own cases as well as in the cases of the recipient entities, we find no basis to interfere with the conclusion reached by the learned CIT(A). The Revenue has also not brought before us any material distinction in facts or law warranting a different view for the year under consideration.

70.In the result, the grounds raised by the Revenue in ITA No. 3541/Mum/2026 are dismissed. Since the Revenue's appeal in ITA No. 3540/Mum/2026 has also been dismissed for the reasons recorded hereinabove, both appeals filed by the Revenue for Assessment Year 2019-20 stand dismissed.

71. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 21st August, 2026.

Sd/-	**Sd/-**
(ARUN KHODPIA)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 21/08/2026

KARUNA, *sr.ps*

Copy of the Order forwarded to :
1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai