

# Interest on telco tax dues waived

## OUR SPECIAL CORRESPONDENT

**New Delhi:** The Supreme Court of India has provided a substantial financial reprieve to telecom giants Bharti Airtel, Vodafone Idea and Tata Communications by waiving the interest on tax dues stemming from its October 2023 judgment. This move is expected to save the companies approximately ₹3,000 crore.

In a significant shift from a 2013 Delhi High Court ruling, the Supreme Court in October declared that annual license fees paid by telecom operators should be treated as capital expenditure, not revenue expenditure. This reclassification increases the taxable income of the telcos as capital expenditures are not

deductible from income under Indian tax law. The original High Court ruling had permitted the deduction of these fees, treating them as operational expenses.

The retroactive application of the Supreme Court's decision meant telecom companies had to reassess their tax liabilities going back to the implementation of the New Telecom Policy in 1999. This led to substantial tax dues and included significant interest on the delayed payments.

The Supreme Court's recent order, issued on May 17, acknowledged the undue financial burden this interest would place on the telecom sector.

"We have given our thoughtful consideration to the submissions advanced

## SC CALL TO SAVE ₹3000 CRORE

- Supreme Court in October said the annual licence fees of telcos are capex and not revenue expenditure
- Telcos are liable to pay tax as capex not deducted from income unlike revenue expenditure
- The tax liability dates back to the 1999 Telecom Policy
- Court has now waived the interest on tax dues. Action not to be seen as precedent
- Telcos can now save around ₹3000cr

at the Bar. We find that since the judgment of this Court is dated 16.10.2023, and having regard to the Telecom Policy, which commenced from the year 1999, the payment of interest for the period for which the tax demand is now to be met in respect of these cases stands waived," Justices B.V. Nagarathna and Ujjal Bhuyan

said in the order.

Following the October ruling, telcos started providing for the increased tax outgo. Bharti Airtel set aside ₹226.3 crore, Vodafone Idea ₹820 crore and Tata Communications around ₹200 crore. Without the waiver, the interest component alone could have ranged from ₹3,000 to ₹3,500

crore, a significant financial strain on these companies, analysts estimated.

The Supreme Court's order also clarified that this relief should not be a precedent. "The order shall not be cited as a precedent as it was passed on account of peculiar facts of the case," the Court specified, directing lower courts and tax authorities to consider this decision in related appeals.

Vishwas Panjiar, partner at Nangia Andersen LLP, said, "Considering the ramifications of its earlier order on telcos, it appears that the Supreme Court has exercised its extraordinary jurisdiction while passing the present order and has directed lower courts to keep this decision in mind while deciding on pending appeals".

Rahul Charkha, partner, Economic Laws Practice, said "presently, the telecom sector is already struggling to clear their pending AGR dues to the central government. In this regard, Vodafone Idea has filed a curative petition on October 9, 2023, against the Supreme Court judgment that rejected petitions of telecom companies seeking correction of AGR dues payable by them"

"The companies in question were compelled to reevaluate their financial structures to make provision for payment of taxes. The interest burden on the tax due by the telecom companies had accumulated since 1999-2000. The current decision of the Supreme Court shall undoubtedly reduce the financial burden of such companies," he added.

# Relief for telcos as SC waives interest on income tax dues

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In a big relief to telecom companies, the Supreme Court has waived off the interest on income tax dues payable by these companies pursuant to its judgment in October 2023 that held that licence fee payable by telcos should be treated as capital expenditure for the purpose of Income Tax Act.

The relief came after a miscellaneous application was filed to seek clarification about the court's October 16, 2023 ruling in the matter of Bharti Hexacom vs Commissioner of Income Tax.

The apex court held that the entry fee and variable annual licence fee under New Telecom Policy of 1999 that the telcos pay every year as a percentage of their profit should not be treated as revenue expenditure. That ruling held that payment of this fee is to be regarded as capital expenditure and amortised in accordance with Section 35ABH of the Income Tax Act.

Revenue expenditures are expenses companies incur operationally during the normal course of business. India's income tax law permits the deduction of revenue expenditure from total profits. Capital expenditures are those that businesses incur to acquire an asset or upgrading themselves, which are not deductible from income. Since the Supreme Court ruled that licence fee is a capital expenditure, the telcos may not be able to deduct the licence fee from their annual taxable income.

## TWO ISSUES

Subsequently, a miscellaneous application was filed in which two issues were raised. First, whether, there should be a waiver of interest on the dues payable by the telecom companies and the second, whether October 16

judgment may be given prospective effect.

The Court, in its order dated May 17, said: "We find that since the judgment of this Court is dated October 16, 2023, and having regard to the Telecom Policy, which commenced from the year 1999, the payment of interest for the period for which the tax demand is now to be met in respect of these cases stands waived."

Further, it clarified that this order shall not be cited as a precedent as the order is passed on account of pecu-



liar facts of the case. It also advised that all forums including the HC and the ITAT, while disposing of appeals, shall keep in mind the apex court order.

Commenting on the ruling, Vinhwas Panjari, Partner at Nangia Ananderni LLP, said that the fallout of the apex court's decision, dated October 16, 2023, was that telcos were required to reverse the accounting entries passed over the past two decades (from 1999 onwards), for tax purposes, leading to higher income in the year of expenditure. As a result, telcos were required to recompute taxes for all these years and also became liable for accrued interest on the delay in payment of taxes. As per

some estimates, the interest bill itself could run into millions of dollars.

"Considering the ramifications of its earlier order on telcos, it appears that the Supreme Court has exercised its extraordinary jurisdiction while passing the present order and has directed lower courts to keep this decision in mind while deciding on pending appeals. Further, the Supreme Court has made it abundantly clear that the present decision should not be used as a precedent, and rightly so," he said.