

CHAPTER – II

Revenue Shared by Tata Teleservices Limited and Tata Teleservices (Maharashtra) Limited

2.1 Introduction

Tata Teleservices Limited (TTSL) was incorporated as a company in 1996. It commenced operations as Basic Service Provider in the state of Andhra Pradesh in the year 1999. In December 2002, TTSL acquired 50.38 *per cent* of the paid up equity capital of Hughes Telecom India Limited (HTIL). On 13 February 2003, the name of HTIL was changed to Tata Teleservices (Maharashtra) Limited (TTML), which is an associated company of TTSL. Subsequently, the company migrated to *Unified Access Service license (UASL)* regime in November 2003. It had also got National Long Distance (NLD) Service Provider license (also called NLDO) on 30 July 2007 and it was launched effectively on 12 November 2007. The licensee was primarily providing services with Code Division Multiple Access (CDMA) technology under Tata Indicom brand. It started providing service on Global System for Mobile Communications (*GSM*) technology in March 2008 under Tata DOCOMO brand and launched services in 2009. TTSL and TTML hold UAS License in all Licensed Service Areas (LSAs).

TTSL and TTML were taken up for audit and the findings covering the period from 2006-07 to 2009-10 were included in Comptroller and Auditor General of India's Report No. 4 of 2016. It was pointed out in the Report that the Gross Revenue (GR)/Adjusted Gross Revenue (AGR) was understated by ₹ 12017.36 crore which resulted in short payment of Licence Fee and Spectrum Usage Charges by ₹ 1019.16 crore and ₹ 338.52 crore respectively. The findings of the present audit covers the period from 2010-11 to 2014-15.

2.1.1 Licences Issued to TTSL and TTML

Tata Teleservices Limited was allotted the Basic License in Andhra Pradesh LSA in September 1997 and in August 2001, it was awarded Basic Licenses for five more Service Areas viz., Delhi, Gujarat, Karnataka, Tamil Nadu and Chennai. Subsequently, during January 2004, 12 more licenses were granted to the company in West Bengal, Bihar, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh – West, Uttar Pradesh – East and Kolkata. Three new UAS Licenses for Assam, Jammu & Kashmir and North East were obtained in 2008. The company obtained (March 2008) amendment to UAS license to use GSM technology. However, licenses in respect of Assam, J&K and North East were cancelled by Hon'ble

Supreme Court and services were terminated with effect from midnight of 18 January 2013. The original Basic License in Maharashtra and Mumbai LSAs were awarded to Tata Teleservices (Maharashtra) Limited (erstwhile HTIL) in September 1997 which migrated to UASL regime in November 2003.

2.1.2 Spectrum Allotted to TTSL and TTML

TTSL & TTML are operating on dual technology viz., Global System for Mobile communication (GSM) and Code Division Multiple Access (CDMA). LSA wise quantum of spectrum allotted to TTSL and TTML as on 31 March 2015 is furnished in Table 2.1 below:

Table 2.1

Sl. No	Names of LSA/Circle	GSM Spectrum	CDMA Spectrum	No of carrier of MW Access spectrum	No of carrier of MW Backbone spectrum
1	Andhra Pradesh	2x4.4	2x2.5	3	0
2	Assam	NA	NA	NA	NA
3	Bihar	2x4.4	2x2.5	4	1
4	Chennai,	2x4.4	2x2.5	4	-
5	Delhi	0	2x3.75	4	-
6	Gujarat	2x4.4	2x2.5	4	1
7	Haryana	2x4.4	2x2.5	3	1
8	Himachal Pradesh	2x4.4	2x2.5	3	2
9	Jammu & Kashmir	NA	NA	NA	NA
10	Karnataka	2x4.4	2x2.5	4	-
11	Kerala	2x4.4	2x2.5	4	-
12	Kolkata	2x4.4	2x2.5	5	-
13	Madhya Pradesh	2x4.4	2x2.5	3	2
14	North East	NA	NA	NA	NA
15	Orissa	2x4.4	2x2.5	3	2
16	Punjab	2x4.4	2x2.5	3	1
17	Rajasthan	2x4.4	2x2.5	3	2
18	Tamil Nadu	2x4.4	2x2.5	3	-
19	UP East	2x4.4	2x2.5	3	1
20	UP West	2x4.4	2x2.5	2	2
21	West Bengal	2x4.4	2x2.5	4	2
22	Maharashtra	2x4.4	2x2.5	5	2
23	Mumbai	2x4.4	2x3.75	8	-

TTSL had got 3G Spectrum in eight LSAs viz., Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Punjab, Rajasthan, UP (W) and TTML in one LSA of Maharashtra and it has launched 3G Services from November 2010.

2.1.3 Gross Revenue (GR) and Adjusted Gross Revenue (AGR) reported by TTSL and TTML

The combined GR/AGR reported and revenue share paid by TTSL and TTML for the five years from 2010-11 to 2014-15 is as shown in Table 2.2 below:

Table 2.2

(₹ in crore)

Year	Subscriber base at year end (in crore)	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share paid (LF+SUC)
2010-11	9.04	11192.20	2802.17	8390.03	74.96	1206.79
2011-12	8.32	13598.68	3724.71	9873.97	72.61	1247.44
2012-13	6.79	14008.86	5336.83	9575.98	64.21	1229.48
2013-14	6.45	13960.36	4644.03	9316.33	66.73	1127.27
2014-15	6.80	15132.20	4714.03	10418.18	68.85	1196.51
Total		68796.25	21221.76	47574.49	69.15	6007.49

Gross Revenue reported under all licenses of TTSL & TTML was in increasing trend during the years from 2010-11 to 2012-13 and 2014-15 when compared with the previous years.

M/s. TTSL claimed deductions on actually paid basis as per agreement and reported AGR on which Revenue Share (LF/SUC) had been computed for payment. Whereas M/s. TTML had claimed deductions on Accrual Basis instead of actual basis in contrary to the License Agreement conditions during the years 2010-11 to 2011-12 and on actually paid basis during 2012-13 to 2014-15 and reported AGR on which Revenue Share (LF/SUC) have been computed for payment.

2.2 Under Reporting of Revenue

Audit examination of records/Books of accounts of TTSL and TTML revealed that these companies had not adhered to the provisions of the License Agreement on the following issues:

2.2.1 Under Reporting of Revenue Due to Netting Off of Discounts/Commission Given to Dealers/ Distributors

During audit scrutiny of the records of TTSL for the years from 2010-11 to 2014-15, it was observed that the commission paid to the distributors/franchisees/agents/dealers, etc., was netted off from the revenue. Since the

commission/margin paid to the distributors/franchisees/dealers was in the nature of business expenses (marketing expenses), therefore, set-off of such expenses with revenue was against the licence condition. Further, commission paid to dealers/distributors was also netted off resulting in the revenue being understated by the same extent.

Total amount of discounts paid to dealers/distributors netted off from revenue during the years 2010-11 to 2014-15 was ₹ 1,701.63 crore and ₹ 263.96 crore in respect of TTSL and TTML respectively. Similarly, amount of commission paid to dealers/distributors netted off from revenue during the years 2010-11 was ₹ 161.96 crore and ₹ 4.86 crore in respect of TTSL and TTML respectively.

Management stated that

- The relationship with distributor is on Principal to Principal basis (P2P) and the company offers trade discount to distributors for the Recharge Voucher (RCV)/Electronic Recharge Value (EVD). The Invoice generated by the company is having the Maximum Retail Price (MRP) and trade discount offered on the same. Under the law, a person is entitled to sell a product at any price lower than but not exceeding MRP. Hence the trade discount or discount on bulk purchase on RCV/EVD and Start Up Kits (SUK) allowed to the distributors should not be added back for the purpose of computing license fee.
- For SUKs, the company receives the order from distributors and it offers trade discount to distributors for the sale of SUK's. The Invoice generated by the company is having the MRP and trade discount offered on the same. On sale of SUKs to the distributors, all rights, title, ownership and property in such SUK's are transferred to the distributors and all the risks including the risk of loss/damage are borne by the distributors.
- Accounting Standard 9 (AS 9) stipulates that discounts offered to customers be allowed for netting from Gross Revenue for determination of Revenue for the company.
- The definition under clause 19.1 of the UASL agreement is an inclusive definition and has specifically covered all the possible services which a UAS Licensee is supposed to provide. In this context it is worthwhile to make a mention of the regulation in regard to the pricing of the telecom services issued vide Tariff order No 303/8/2002- TRAI (Econ.) dated 6 September 2002. This regulation mentions that the cellular mobile telecom services, rental, airtime charges, roaming (includes regional and national roaming), refundable security deposit, International roaming, other matters related to roaming, tariff for prepaid service are placed on forbearance. It

is, therefore, left to the discretion of the licensee to decide the tariff for prepaid as well as post-paid service without any interference of the regulator. The discounts being given on the tariff, intimated to TRAI under the caption of forbearance is, therefore completely left to the discretion of the licensee.

Reply of the management is not convincing as

- The sale of prepaid products (RCV/EVD) and SUKs to distributors cannot be stated to be under Principal to Principal since the ultimate responsibility of rendering the service to the customer rests with licensee and not with the distributors. The distributors are mere channel partners between the service providers (licensee) and the service users (subscribers). Had TTL sold the cards directly to the subscribers, revenue would have been accounted for full value of service rendered and selling expenses would have been accounted as expenditure. On the same analogy, discount/commission given to distributors would be in the nature of Marketing Expenditure and thus, should not be deducted from Revenue for the computation of revenue share as stipulated under clause 19.1 of the UASL agreements.
- While the matter is sub-judice at Hon'ble Supreme Court, Audit view is that discount/margin paid to the distributors/franchises/dealers is in the nature of marketing expenses; therefore, set-off of such expenses with revenue was against the license condition.

Thus, netting off of Discounts to Distributors / Dealers in respect of TTSL & TTML resulted in understatement of GR/AGR by ₹ 1965.60 crore resulted in short payment of LF and SUC to Government of India by ₹ 167.40 crore and ₹ 73.54 crore respectively (**Annexure-2.01**). Similarly, netting off of Commission paid to Distributors / Dealers in respect of TTSL & TTML resulted in understatement of GR/AGR by ₹ 166.82 crore resulted in short payment of LF and SUC to Government of India by ₹ 14.80 crore and ₹ 6.14 crore respectively (**Annexure-2.02**).

2.2.2 Under Reporting of Revenue due to Netting Off of Discounts/Free Air Time and Full Talk Time given to Subscribers

TTSL/TTML netted off the value of free airtime (FAT) allowed to prepaid subscribers and volume discount given to postpaid customers (except Lease Line) from revenue. Details of such discounts netted off from revenue are given in Table 2.3 below:

Table 2.3

(₹ in crore)

SL	DESCRIPTION	Product	TTSL	TTML	Total amount
1.	DIS - VOLUME	Postpaid	385.53	269.16	654.69
2.	DIS- Recharge card discount	Prepaid	1047.20	160.19	1207.39
3.	DIS-3G FULL TALK TIME	Prepaid	7.52	1.52	9.04
4.	DIS - CASH DISCOUNT	Prepaid	11.79	0.84	12.63
TOTAL			1452.04	431.71	1883.75

*Excluding Leased line discounts

Management stated that

- Discounts offered to customers were a routine telecom product offering in the ordinary course of business and does not result in gross inflow of cash, receivables or other consideration for the company and the discount offered cannot and shall not be considered as a receivable.
- Free and full talk time offered to subscriber is not business promotion activity. These offerings are in line with the products offered to subscriber by any other operator which were duly filed with TRAI.
- DoT also vide its inter office memo dated 24 September 2008 clarified that “if a company has given the net figures, details of rebate/discounts allowed should be asked for and the amount of such discount/rebates not approved by TRAI be added to Gross Revenue”.
- the issue is sub-judice and hence the company is justified in not including notional revenue on account of extra talk-time in computation of AGR since adding back of value of extra talk time in computation of AGR will lead to payment of LF on notional revenue which is neither billed nor received and which is also against the principle laid by TDSAT. The same was re-emphasised by TDSAT in their judgement of 23 April 2015

The reply of the Management is not convincing as

- Free talk time and volume discounts given to subscribers were in the nature of business promotion and relation building activities. Further, the details of FAT/FTT/Promo, etc. offered as per the tariff and that offered as promotion to customers/agents were not furnished. Audit contends that Airtime is not a free commodity, had an intrinsic value and by giving

FAT/FTT/Promo offers etc., the licensees were foregoing the revenue resulting in avoidance of LF and SUC.

- While the issue is sub-judice, Audit is of the view that netting-off of pre-paid revenue on account of FAT/FTT/Promo offers etc. from GR was in violation of the licence conditions.

Thus, set off of value of FAT/Volume Discount given to customers by TTSL and TTML resulted in understatement of GR/AGR by ₹ 1883.75 crore for the years 2010-11 to 2014-15 and consequent short payment of LF and SUC to Government of India by ₹ 158.39 crore and ₹ 71.87 crore respectively (**Annexure – 2.03**).

2.2.3 Under Reporting of Revenue Due to Netting Off of Waiver Allowed to Subscribers

As per UASL agreement, the Gross Revenue shall be inclusive of Installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.) revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other misc. revenue, without any set-off for related item of expense, etc.,

During the years 2010-11 to 2014-15, TTSL/TTML netted the amount of collection and settlement waivers as well as goodwill gestures waivers from the revenue. Total amount of such waivers netted off during these years by TTSL and TTML worked out to ₹ 159.12 crore and ₹ 27.25 crore respectively.

While confirming the above facts and figures, Management stated that

- such waivers do not form part of Revenue as per the definition of revenue as per Accounting Standard -9
- Waivers are not an expense and accordingly adjusted in Revenue.

The reply is not convincing as the waivers granted as collection and settlement waivers as well as goodwill waivers were rebates given to customers at post billing stage and cannot be netted off from revenue for the purpose of computation of revenue share in terms of clause 19.1 of the UASL agreement.

Thus, netting off of waivers by TTSL and TTML resulted in understatement of GR/AGR by ₹ 186.37 crore for the years from 2010-11 to 2014-15 leading to short payment of LF and SUC to Government of India by ₹ 15.95 crore and ₹ 7.01 crore respectively (**Annexure-2.04**).

2.2.4 Under Reporting of Revenue from Infrastructure Sharing

In terms of clause 19.1 of the UASL agreement, the Gross Revenue shall be inclusive of revenue from permissible sharing of infrastructure without any set-off for related item of expense, etc.,

Review of Audited AGR statements along with Notes on Statements of TTSL revealed that during the years from 2010-11 to 2014-15, the amount towards “Opex Receipt for Infra Sharing” from other operators amounting to ₹ 107.52 crore was not considered for Gross Revenue.

Management stated that

- the payment was made by TTSL for the operating expenditure as a single point of contact only to facilitate on-time payment to the local authorities and reduction in the coordination time involved through various operators;
- the recoveries are at cost and thus, in the nature of reimbursement and not in the nature of revenue since there are no services charges to other operators. Also, there were no services provided under the license terms and conditions and hence, the recoveries cannot be added to the AGR;
- These reimbursements are billed on a cost-to-cost basis and are not at a profit/mark-up and hence the company is of the view that reimbursement of Opex expenditure should not be part of AGR.
- As per AS-9 since the reimbursement by the operators does not result in gross inflow of cash to the Company arising in the course of the ordinary activities of an enterprise from the sale of goods, etc. such reimbursements cannot be considered as revenue and should not form part of AGR.
- Further, the Hon’ble TDSAT in its judgment dated 23 April 2015 held that “Reimbursement of Infrastructure Operating Expenses” has clearly laid down that a payment in the nature of reimbursement of an expense may not be taken as revenue.
- The figures as per audit observation is ₹ 107.52 crore while as per AGR certificate it was only ₹ 107.09 crore after considering reversal of Opex recovery of ₹ 0.43 crore.

Audit views on the reply are as follows:

- Based on the reply, the amount to be considered for revenue share has been modified to ₹ 107.09 crore;
- Definition of GR as per license agreement specifically include revenue from permissible sharing of infrastructure without any set-off for related item of expense;

- DoT filed an appeal before Hon'ble Supreme Court against the TDSAT Judgment dated 23 April 2015 as referred in the reply. While the matter is sub-judice at the Apex Court, Audit view is that as UASL does not provide for any deductions from revenue other than those permitted under Clause 19.2, deducting OPEX from infrastructure sharing revenue was not in conformity with the UASL agreement.

Thus, netting off infrastructure site sharing revenue by the amount of OPEX recovery during the years from 2010-11 to 2014-15 resulted in understatement of GR/AGR by ₹ 107.09 crore leading to short payment of LF and SUC to Government of India by ₹ 9.15 crore and ₹ 3.85 crore respectively (**Annexure-2.05**).

2.2.5 Non Consideration of Forex Gain for GR/AGR

Review of data/records furnished by TTSL/TTML for the period from 2010-11 to 2014-15 revealed that though there was realised gain under forex account codes on account of foreign exchange fluctuations accounted in the books of the accounts, the same was not considered for GR /AGR.

Considering only the realised gains of account heads operated for forex for the years 2010-11 to 2014-15, it was seen that realised forex gain amounting to ₹ 887.38 crore and ₹ 476.66 crore for TTSL and TTML respectively was not considered for AGR.

Management stated that

- Forex gain had not accrued from the primary or supplementary services of the company i.e. providing telecom services to its customers/subscribers. Foreign exchange fluctuations do not arise from licensed activity and, therefore, need not be included in AGR. Forex gains generally result on account of revaluation of foreign exchange assets & liabilities, revaluation of provisions made for overseas vendors/lenders etc. and their gains or losses are notional and remain unrealized and therefore should not be included in the AGR.
- The foreign exchange differences arise when rates differ from those at which they were initially recorded in the books. In case payments are to be made to the foreign vendor and rupee depreciates against the foreign currency then it is recognized as expense in the annual financial statement and if it appreciates, it is recognized as gain.
- Also, no set off is given in the eventuality of loss on account of foreign exchange fluctuation.

- Hon'ble TDSAT in its judgment dated 23.04.2015 held that any gain or loss due to foreign exchange fluctuation should have no bearing on the license fee.

The reply of the Management is not convincing as:

- Audit has considered only realized gains;
- In terms of the licence agreement GR shall be inclusive of any other miscellaneous revenue and audit is of the view that any gain incidental to PSPs should be considered for GR since Forex gain is accounted as income in P&L account;
- The judgement of TDSAT dated 23 April 2015 was challenged in Hon'ble Supreme Court by DoT. While the matter is sub-judice, audit view is that as forex gain is accounted as income in P&L account, realized gain arising from foreign exchange fluctuations should be included in GR/AGR for computation of revenue share as per the terms of Licence Agreement.

Thus, non consideration of realized forex gain resulted in understatement of GR/AGR by ₹ 1364.04 crore leading to short payment of LF and SUC to Government of India by ₹ 115.22 crore and ₹ 14.16 crore respectively (**Annexure-2.06**).

2.3 Under Reporting of Revenue in the Statements of Revenue and License Fee (AGR Statements) though reported in the Books of Accounts

2.3.1 Non Consideration of Profit on Sale of Investment

In terms of licence agreement, the Gross Revenue shall be inclusive of revenue accrued on all services offered by the licensee including interest, dividend, etc. and any other miscellaneous revenue without any set-off for related item of expense, etc. Scrutiny of AGR Statements, P&L Accounts and reports from SAP, revealed that Profit on Sale of Investments during the years from 2010-11 to 2014-15 in respect of TTSL and TTML works out to ₹ 240.67 crore and ₹ 16.40 crore respectively, which was not considered for computation of GR/AGR.

Management stated that

- The Company has earned profit on investment in debt mutual funds which was out of investment of undeployed funds borrowed from banks and temporarily invested in short term liquid investments, to minimize the interest cost burden which is payable to banks on loans, till such time the payments are required for construction of the network; and

- As per Accounting Standard 3 (AS-3), cash flows from the investing activities are treated separately from the cash flows from the operating activities. Following the dictum of AS-3, we can conclude that the income from such short term investments does not form part of the ordinary activities of the Company.

Reply of the Management is not convincing as the License agreement stipulates that Gross Revenue shall be inclusive of any other miscellaneous revenue without any set-off for related item of expense and Profit on Sale of Fixed Asset was accounted as income in P&L Account.

Thus, non-inclusion of Profit on Sale of Investments pertaining to period from 2010-11 to 2014-15 resulted in understatement of GR/AGR by ₹ 257.07 crore leading to short payment of LF and SUC to Government of India by ₹ 21.52 crore and ₹ 9.50 crore respectively (**Annexure-2.07**).

2.3.2 Non Consideration of Interest Income

As per the licence agreement, GR for the purpose of payment of Revenue Share shall be inclusive of revenue on account of interest. Scrutiny of AGR Statements, P&L Accounts and reports from SAP revealed that the Interest Income of ₹ 326.08 crore and ₹ 11.63 crore for the period from 2010-11 to 2014-15 accounted in the P&L accounts of TTSL and TTML respectively was not considered for computation of GR/AGR.

Management stated that

- The Company operates in a capital intensive industry which requires huge investment in the network which is funded partially by loan funds and partly by equity inflows. The funds drawn-down out of loan funds available which are not immediately required are invested temporarily in mutual funds and bank deposits to help the company minimize interest burden. Therefore such income should not be treated as revenue out of telecom activities of the Company;
- TTSL does not have surplus funds generated out of internal accruals and these are temporary balances of loan withdrawals yet to be deployed in the business;
- As per Accounting Standard 3 (AS-3), cash flows from the investing activities are treated separately from the cash flows from the operating activities. Following the dictum of AS-3, we can conclude that the income from such short term investments does not form part of the ordinary activities of the Company;

- Also, the interest income earned during the construction of the assets through investment of undeployed loan funds, was earlier also considered as a part of the indirect project cost and capitalized net of the interest cost incurred on the loan funds. This is also in line with the present accounting standard 16 – Borrowing cost, Para 10 which states that “To the extent that funds are borrowed specifically for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalization on that asset should be determined as the actual borrowing costs incurred on that borrowing during the period less any income on the temporary investment of those borrowings.” Hence, the guidance under Indian accounting standards also consider the interest income on the undeployed funds out of project funding as a part of and linked to the interest cost incurred on the loan funds for the project;

The Company funds investment through a combination of loan funds and contribution from equity shareholders.

Reply of the Management is not convincing as the License agreement clearly prescribes the inclusion of interest, dividend and any other miscellaneous revenue for computation of GR/AGR for revenue share purpose.

Thus, non-inclusion of interest income pertaining to period from 2010-11 to 2014-15 resulted in understatement of GR/AGR by ₹ 337.71 crore leading to short payment of LF and SUC to Government of India by ₹ 29.50 crore and ₹ 12.45 crore respectively (**Annexure-2.08**).

2.3.3 Non Consideration of Profit on Sale of Fixed Assets

In terms of licence agreement, the Gross Revenue shall be inclusive of revenue accrued on all services offered by the licensee including interest, dividend, etc. and any other miscellaneous revenue without any set-off for related item of expense, etc. Audit observed that Profit on sale of Fixed Assets amounting to ₹ 8.11 crore and ₹ 41.71 crore during the years 2010-11 to 2014-15 was not considered for computation of GR/AGR by TTSL and TTML respectively leading to AGRs getting understated by the same extent.

Management stated that

- In terms of AS-9, profit on sale of assets/scrap is revenue and such incomes are also not in the nature of ordinary activity of an enterprise from the sale of goods and rendering of services. This is also supported by Accounting Standard 3 on Cash Flow Statements which consider the sale proceeds on disposal of fixed assets as an investing activity and not an operating activity.

- Since, these are mere replacement of older assets to maintain the productivity, such adjustments on sale of scrap, reflecting as book gains should not be subjected to AGR. The Company is not in the business of selling of scrap and as such not a part of normal operations of the company. Sale of scrap is an activity which does not require any license and anybody could carry such an activity.
- TDSAT in the Judgment dated 23 April 2015 held that “Gain on sale of capital asset and receipts from sale of scrap can be of two types, a gain over and above the gross book value and a gain over the net book value. A gain over and above the net book value may also be shown as income in the profit and loss account. Nonetheless, it cannot be considered for computation of gross revenue even if the stand of the respondent is to be accepted.”

The reply is not convincing due to the following:

- Definition of GR in license agreements expressly provides for inclusion of miscellaneous revenue in GR/AGR for computation of revenue share.
- Regarding TDSAT judgment of 23 April 2015, an appeal was filed by DoT before Hon’ble SC against the judgment. While the matter is sub-judice at the Hon’ble Supreme Court, Audit view is that profit from sale of fixed assets should be a part of the GR of the company as per the conditions of UASL agreement.

Thus, non-inclusion of Profit on Sale of Fixed Assets resulted in understatement of GR/AGR by ₹ 49.82 crore and short payment of LF and SUC to Government of India by ₹ 4.86 crore and ₹ 2.10 crore respectively (**Annexure-2.09**).

2.3.4 Non Consideration of Miscellaneous Income

In terms of licence agreement, the Gross Revenue shall be inclusive of revenue accrued on all services offered by the licensee including interest, dividend, etc. and any other miscellaneous revenue without any set-off for related item of expense, etc. Audit observed that Miscellaneous Income due to Sale of Scrap amounting to ₹ 9.08 crore and ₹ 2.54 crore during the years 2010-11 to 2014-15 was not considered for computation of GR/AGR by TTSL and TTML respectively leading to AGRs getting understated by the same extent.

Management stated that

- In terms of AS-9, sale of scrap is revenue and such incomes are also not in the nature of ordinary activity of an enterprise from the sale of goods and rendering of services. This is also supported by Accounting Standard 3 on Cash Flow Statements which consider the sale proceeds on disposal of fixed assets as an investing activity and not an operating activity.

- Since, these are mere replacement of older assets to maintain the productivity, such adjustments on sale of scrap, reflecting as book gains should not be subjected to AGR. The company is not in the business of selling of scrap and as such not a part of normal operations of the company. Sale of scrap is an activity which does not require any license and anybody could carry such an activity.
- TDSAT in the Judgment dated 23 April 2015 held that “Gain on sale of capital asset and receipts from sale of scrap can be of two types, a gain over and above the gross book value and a gain over the net book value. A gain over and above the net book value may also be shown as income in the profit and loss account. Nonetheless, it cannot be considered for computation of gross revenue even if the stand of the respondent is to be accepted.”

The reply is not convincing and Audit views are given in para 2.2.3 above.

Thus, non-inclusion Income from Sale of Scrap resulted in understatement of GR/AGR by ₹ 11.62 crore and short payment of LF and SUC to Government of India by ₹ 1.04 crore and ₹ 0.44 crore respectively (**Annexure-2.10**).

2.4 Short/Non-Payment of Revenue Share due to other Issues:

2.4.1 Irregular Deduction Claimed for Bad Debts Written Off from GR to arrive at AGR

In terms of Clause 19.2 of the UASL agreement, the following deductions shall be excluded from the Gross Revenue to arrive at Adjusted Gross Revenue.

- (i) Public Switched Telecom Network (PSTN) related call charges (Access Charges) actually paid to other eligible / entitled telecommunication service providers within India.
- (ii) Roaming revenues actually passed on to other eligible / entitled telecommunication service providers and
- (iii) Service Tax on provision of services and Sales Tax actually paid to the Government if Gross Revenue had included as component of Service Tax and Sales Tax.

Thus, Bad Debts are not eligible for deduction from the Gross Revenue.

Review of SAP ERP system as well as Annual Trial Balances of TTSL and TTML for the year 2010-11 to 2014-15, revealed that bad debts written off was adjusted from Revenue from Services while considering the preparation of the statements for the computation of AGR.

The total amount of Bad Debts adjusted from the respective revenues in respect of TTSL and TTML worked out to ₹ 664.79 crore and ₹ 361.22 crore respectively during the years 2010-11 to 2014-15.

Management stated that

- The license fee was paid on accrual basis without considering whether the subscriber ultimately pays for the services or not. While the Company makes earnest efforts to collect for services rendered, few subscribers fail to pay and the company ends up without realizing money for services genuinely rendered;
- The company therefore submits that such written off bad debts are not in any form revenue in the hand of the company, in fact, it amounts to loss of revenue to the company. As this amount which is not recovered has been considered for payment of revenue share, the company faces double jeopardy, one at the hand of subscriber who fails to pay and other at the hand of the licensor in not allowing deductions on such billing on which money has not been realized.

The contention of the Management is not convincing as the license agreement permits only three deductions from the Gross Revenue, deduction of bad debts from the Gross Revenue to arrive at AGR was not in conformity with the license conditions. Further, bad debts written off are not added back to revenue for computation of revenue share on the amounts being recovered at a future date.

Thus, adjustment of Bad Debts from the respective revenues pertaining to period from 2010-11 to 2014-15 has resulted in understatement of GR/AGR by ₹ 1026.01 crore and short payment of LF and SUC to Government of India by ₹ 88.59 crore and ₹ 39.49 crore respectively (**Annexure – 2.11**).

2.4.2 Irregular Deduction claimed on account of Lease Line and Port Charges resulting in Understatement of AGR

Leased Line and Port charges paid to other carriers are not eligible for deduction from the Gross Revenue to arrive at AGR in terms of Clause 19.2 of the UASL agreement.

Review of records of TTSL and TTML for the years 2010-11 and 2011-12 revealed that Access charges considered for computation of AGR did not include Leased Line charges and Port charges actually paid to other carriers as the company believed it to be wholesale interconnect cost. The total amount claimed as deduction works out to ₹ 123.61 crore in respect of TTSL and ₹ 38.65 crore in respect of TTML.

Management stated that

- As per definition, PSTN consists of telephone Lines, fiber optical cables, microwave transmission links, cellular networks, communications satellites, and undersea telephone cables, all inter-connected by switching centers, thus allowing any telephone in the world to communicate with any other. Port Charges means Charges payable for access points into a communication network and lease Line Charges are basically Charges paid for technology transparent transmission capacity between network termination points. Based on these definitions, the Company submits that PSTN Charges includes Port Charges and lease Line Charges as the same are in the nature of access Charges.
- Since, revenue earned from the subscriber for calling on BSNL network are offered for AGR, Port Charges should also be allowed as deduction from AGR as this is fees which has a direct linkage to the revenue and also similar to access Charges for terminating the calls to the other operators network. Lease Line is used by the Company for telephone, data and internet services. Since, the company has disclosed the telephone and data revenue in the AGR, the company submits that the Lease Line Charges which are directly related to service delivery should also be allowed as deduction in the similar way as that of access Charges.
- The payments on account of Port Charges and leased Lines for providing connectivity to the customers are a part of & similar to interconnection costs.

The contention of the Management is not convincing as Lease Line Charges and Port Charges are fixed cost in the nature of infrastructure cost and not related to inter-operators actual calls made. In view of this, Audit contends that Lease Line Charges and Port Charges are not permissible deductions.

Thus, deduction of Lease Line and Port charges from the Gross Revenue during the period from 2010-11 to 2011-12 resulted in understatement of GR/AGR by ₹ 162.26 crore and short payment of LF and SUC to Government of India by ₹ 14.32 crore and ₹ 6.20 crore respectively (**Annexure-2.12**).

2.4.3 Non Consideration of Revenue from Sharing /Leasing of Bandwidth Links

Format of Statement of Revenue and License Fee (AGR Statement) prescribed as Appendix II to Annexure II as referred in Clause 20.4 of the UASL agreement is an integral part of the License Agreement. In the Statement, item 1 A has been prescribed to reflect the “Revenue from Wire line Subscribers”, and item 8 has been prescribed to reflect the “Revenue from sale/lease of bandwidth, links, R&G

cases, turnkey projects, etc.” Clause 18.3 of UASL agreement provides that while calculating AGR for limited purpose of levying Spectrum Usage Charges based on revenue share, revenue from Wire line Subscribers shall not be taken into account.

Scrutiny of AGR statements of TTSL and TTML the year 2010-11 to 2014-15 revealed that revenue from sale/lease of bandwidth, links, R&G cases, turnkey projects, etc., amounting to ₹ 2461.47 crore and ₹ 470.75 crore were considered in the AGR Statements for computation of License Fee (LF) but not considered for payment of Spectrum Usage Charges (SUC).

Management stated that Lease Line Service was offered as part of Wire line Services and not a Wireless Service. It does not use any spectrum resource. SUC is paid on the wireless revenue which uses the spectrum. Hence, these revenues are not considered for the purpose of SUC.

The reply of the management is not convincing as revenue from sharing/leasing of bandwidth comes from transmission network which were generally common for both wireline and wireless network and hence, this item was kept separately in the AGR statement format. Further, in terms of license agreement, revenue from wireline subscribers only should be excluded for computation of SUC.

Thus non-inclusion of revenue from sale/lease of bandwidth, links, etc. amounting to ₹ 2932.22 crore in AGR for computation of SUC resulted in short payment of SUC to Government of India by ₹ 104.26 crore (**Annexure-2.13**).

2.4.4 Non Consideration of Profit for computation of GR /AGR by TTML on sale of its holding in subsidiary having Passive Infrastructure Assets

TTML sold its holding in subsidiary (21st Century Infra Tele Limited) to WTTIL for a net consideration of approximately ₹ 956 crore in May 2010 and accounted the profit of ₹ 834.93 crore earned on sale of its holding in 2010-11 accounts. However, this profit was not considered for computation of AGR for the year 2010-11 by TTML.

While confirming the above facts and figures the management stated that profit of Sale of Investment should not be included as part of Revenue Share since, it is a non-licensed activity supported by various pronounced Judgments & tax laws.

The reply of the management is not convincing as in terms of license agreement, miscellaneous revenue should be included in GR/AGR for computation of revenue share and profit on sale of its holding in the subsidiary was accounted as income in the P&L account.

Thus, non-inclusion of profit amounting to ₹ 834.93 crore for computation of AGR for the year 2010-11 by TTML resulted in short payment of LF and SUC to Government of India by ₹ 83.49 crore and ₹ 35.99 crore respectively.

2.4.5 Interest on Short/Non-payment of LF and SUC

On issues raised above (from Para 2.2.1 to 2.4.4), short/non-payment of LF and SUC worked out to ₹ 724.23 crore and ₹ 387.00 crore respectively. The interest on this short/non-payment of LF and SUC was ₹ 782.37 crore (**Annexure- 2.14**). The calculation of interest was based on the rate prescribed in the Licence agreement i.e. 2 per cent above the Prime Lending Rate of State Bank of India existing as on the beginning of the financial year and the period considered for the calculation was from the end of the concerned financial year up to March 2016. The interest has been compounded monthly as prescribed in the licence agreement.

2.4.6 Non Submission of Details as required under Annexure III of the UAS/CMTS Licence Agreement

Clause 20.7 of the UAS/CMTS license agreements provide that the Annual Financial Account and the Statements of Revenue and license Fee (AGR Statement) shall be prepared following the norms as prescribed in Annexure. Annexure III of the UAS/CMTS license agreement provides norms for preparation of Annual Financial statements. Scrutiny of AGR statements, Annual Financial statements and related accounting records furnished to audit indicates that all these norms had not been complied in full. In particular, norms relating to Service Tax, Sales Tax, Discount/rebate, Sale of goods, Inventory, Set off of income against expenditures and unbilled numbers had not been complied.

Management stated that they submit in their Notes on accounts forming part of audited AGR for respective years wherein it is mentioned that there are certain deviations from applicable disclosure norms as indicated in note 5 in annexure-I, notes to the statement of revenue and license fee as required by the Annexure-III to the UASL Agreement 842-1017/2008-AS-IV dated 20.10.2008. However, this does not have any impact on the computation of adjusted gross revenue and license fee dues.

Instances of understatement of revenue as brought out in the report would confirm that the revenue recognized for payment of license fee were not in line with the license conditions nor the preparation of accounts was fully compliant with the norms prescribed by DoT. Few such instances are given below:

- As per the norms, gross revenue was to be shown without any deductions. However, as detailed in paragraph of this report it can be seen that Discount/Commission/Waivers, Free airtime etc., were netted off from revenue and not disclosed to DoT.
- DoT was asked for its response on non-compliance of these conditions of the contract by the PSPs. DoT has not given any response till date (May 2017).
- In view of the above DoT has over the years failed to issue and enforce instructions to the Service Providers to comply with the norms for preparation of Annual Financial Statement as required under Annexure-III of the License Agreement which were vital. Consequently during the years 2010-11 to 2014-15, the Company understated its GR/AGR and DoT could not detect the same.

Further, Audit observed that during the years 2010-11 to 2014-15 the GR of Tata group was ₹ 68,796.25 crore, the deductions claimed were ₹ 21,221.76 crore and the average deduction percentage works out to 31 *per cent* of the GR. Though the deductions claimed by Tata Group were subject to verification by Offices of Controllers of Communications Accounts (CsCA), 69 *per cent* of the Gross Revenue is merely assessed based on self-declaration made by the Company at DoT Level.

Also, the LF Wing of DoT has failed to obtain the information as required to be maintained by the TSP in accordance with Annexure-III of the License Agreement and absence of these data would render the process of verification and assessment ineffective.

Thus, the entire verification and assessment of Revenue Share of the Service Provider is focused on the verification of deductions claimed by the Service Providers instead of on their GR.

2.5 Response of DoT/TTSL to the Audit Observations

Audit observations on the revenue share payable by M/s TTSL were communicated to DoT as well as TTSL and TTML during January 2017 for their further comments. TTSL and TTML reiterated once again (February 2017) most of their submissions made in reply to audit observations issued during the course of premises audit.

DoT stated (February 2017) that

- The basic definition of GR and AGR was challenged by the TSP's in 2002-03. Since then, there has been protracted litigation and is continuing till date.

- DoT is presently in appeal against the TSPs in the Supreme Court and as per the orders of the SC the department had been permitted to issue demands to the TSPs based on its understanding of the Licence Agreement.
- Demands would be raised based on the final figures reported by CAG, as per the Licence agreement and Policy decisions of DoT.

The response of DoT proves that though the revenue share regime was introduced as part of NTP-1999, the Department has not been able to realise its due revenue share as envisaged in the Licence agreement even after more than 17 years of its implementation.

It would be pertinent to mention here that when the Government decided to reduce the LF for all operators by two per cent effective from April 2004, DoT expected that the reduction would prompt operators to withdraw the challenges against the Government. However, the reduction in LF did not have the expected impact and the operators continue to institute litigations against the Government challenging the definition of GR/AGR and demand notes. Thus the PSP got the benefit of reduction in rate of LF but the Government didn't get the reciprocal benefit of reduction in litigations.