

CHAPTER – VI

Revenue shared by Idea Cellular Limited (ICL) and Aditya Birla Telecom Limited (ABTL)

6.1. Brief profile of the company

M/s Idea Cellular Limited (ICL) was a company under Aditya Birla Group. It was among the first private sector companies that were awarded licences for providing cellular services. Though it was an early entrant, its growth was not at par with other contemporary telecom companies when telecom sector in India witnessed phenomenal growth. However, of late, ICL achieved remarkable gain in telecom market share.

6.1.1 Licences granted to Idea Cellular Ltd (ICL) and Aditya Birla Telecom Ltd. (ABTL)

M/s Idea Cellular Limited (ICL), initially incorporated as M/s Birla Communications Ltd., was among the first private telecom companies to be awarded licences in December 1995 for providing cellular services in Maharashtra and Gujarat LSAs. In 1996, M/s Birla Communications changed its name to M/s Birla AT&T Communications Ltd. following a joint venture with M/s AT&T Corporation. During the years 2000 and 2001, it got licences in Andhra Pradesh and Madhya Pradesh by acquiring M/s Tata Cellular Limited and M/s RPG Cellular respectively and changed its name to Birla Tata AT&T (BATATA) and also obtained licence for Delhi LSA in 2001. In 2002, the Company changed its name to Idea Cellular Ltd and launched “Idea” brand name. It got licences in six more LSAs¹ by acquiring M/s Escotel Communications Limited. In the year 2006, ICL obtained licence for Mumbai LSA and licence for Bihar was obtained by one of its the promoter companies, Aditya Birla Telecom Ltd (ABTL). ABTL became a 100 *per cent* subsidiary of ICL in 2007. During 2008, ICL obtained licences in seven more LSAs.² ABTL transferred its UAS licence of Bihar to ICL in 2009-10. Now ICL holds licences in Punjab and Karnataka LSAs after merger of Spice Communications Limited w.e.f. 01 March 2010.

Idea Cellular Ltd. holds two licences for National Long Distance (NLD) services and one licence for International Long Distance (ILD) services. The first NLD licence was obtained in 2006 by ICL and second NLD as well as ILD licences were obtained through acquisition of M/s Spice Communications Ltd which had obtained NLD and ILD licence in 2007. ICL got registered as an Infrastructure Providers- Category I (IP-I) in 2008 and as an Internet Services Provider (ISP) in 2010.

1 Haryana, UP (West), UP (East), Kerala, Rajasthan and Himachal Pradesh

2 Tamil Nadu, Orissa, Kolkata, North East, Jammu and Kashmir, Assam and West Bengal

6.1.2 Spectrum allotted to ICL/ABTL

ICL is a GSM operator. LSA wise GSM spectrum allotted to ICL as on 31 March 2010 was as follows:

Table 6.1

Sl No	Spectrum	Licensed Service Area
1	2 × 9.8 MHz	Maharashtra
2	2 × 8.0 MHz	Andhra Pradesh, Delhi, Kerala, Madhya Pradesh and UP (West)
3	2 × 7.8 MHz	Punjab
4	2 × 6.2 MHz	Gujarat, Haryana, Karnataka, Rajasthan and UP (East)
5	2 × 4.4 MHz	Assam, Bihar, Himachal Pradesh, J&K, Kolkata, Mumbai, NE, Orissa, Tamil Nadu and West Bengal.

6.1.3 Subscriber base of ICL/ ABTL

During the period under audit, subscribers of ICL grew from 1.40 crore as on 31 March 2007 to 6.38 crore as on 31 March 2010 registering a phenomenal growth of 450 *per cent*. ICL had a market share of seven *per cent* during 2006-07 which increased to 10 *per cent* during 2009-10.

6.1.4 Gross Revenue, Deduction and Adjusted Gross Revenue reported and revenue share paid by ICL/ABTL

As brought out in Para 1.5, Telecom Service Providers are required to pay LF and SUC at a percentage of AGR on quarterly basis on self-assessment basis. GR, Deductions, AGR reported and revenue shared (LF and SUC) by ICL/ABTL during the period under audit are as follows:

Table 6.2

(₹ in crore)

Year	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share (LF+SUC)
2006-07	4518	851	3667	81.16	446
2007-08	7150	1558	5592	78.21	681
2008-09	10728	2677	8051	75.05	1107
2009-10	13323	2723	10600	79.56	1319
Total	35719	7809	27910	78.14	3553

6.2 Under reporting of revenue by ICL/ ABTL

As mentioned in para 1.4 (a), the Gross Revenue shall be inclusive of all types of revenue stated therein without any set-off for related item of expense, etc, and as brought out in Para 1.5, service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

Audit examination of records/Books of accounts of ICL/ABTL revealed that these companies had not adhered to the provisions of the Licence Agreement on the following issues:

6.2.1 Under reporting of revenue due to netting off of revenue pertaining to Commission/offers/discounts to dealers/subscribers for prepaid services

From the examination of data/records pertaining to prepaid services furnished by ICL/ABTL for the period from FY 2006-07 to 2009-10, it was observed that -

- The margin/commission given to distributors/agents was netted off from the revenue pertaining to prepaid services.
- Offers to the subscriber viz. Free Air Time (FAT) to customers, Free of Cost (FOC) SIMs/Talk time/SMS facility to customers, Promotional offers to customers, Full talk time offered to customers, Adjustments offered to customers, PCO incentives were setoff from the revenue pertaining to prepaid services.

Item wise details are furnished below:

A) Margin/ Commission:

The licensee company appoints distributors/franchises/dealers for selling telecom services on commission basis. The company supplies to the distributors/franchises/agents the prepaid recharge coupons/e-top up for sale to subscribers and pay commission/margin to them. During review of data/records offered by ICL/ABTL for the period from 2006-07 to 2009-10, it was observed that the Primary commission/margin paid to the distributors/franchises/dealers at the time of sale of prepaid recharge coupons/e-top up were deducted from the revenue. This resulted in revenue getting set-off of commission/margin in the books as well as in the GR and as a result, Net Revenue was considered in AGR statements submitted to DoT.

Total amount deducted from revenue on account of commission/margin to the distributor/franchisees/agents/dealers during 2006-07 to 2009-10 was ₹ 698.70 crore (**Annexure - 6.01**).

Since, the commission/margin paid to the distributors/franchises/dealers was in the nature of business expenses (marketing expenses), therefore, set-off of such expenses with revenue was against the licence condition.

On being pointed out by Audit, it was stated by Management that-

- As per legal opinion obtained by ICL, the relationship between the Company and distributor was on a Principal to Principal basis and accordingly the Company was required to account for the transactions with such distributors as such on the amount realized from the distributor.
- In accordance with AS-9, the price at which the Company sells the product to the distributors was the consideration received and hence only this amount should be recognized as revenue. There was no inflow of cash, receivables or other consideration.

- As per TDSAT judgement dated 30 August 2007, the LF was to be paid on the revenues actually realised by the licensee.

Audit view on the reply of the Management is as explained in para 3.2.1 (A).

- Further, regarding revenue recognition as per AS-9 stated by Management, it is stated that audit is not challenging the accounting methodology adopted by the Company but for the purpose of licence fee, the revenue is to be recognised “Gross” without set-off of related expenses as mandated under licence agreement.
- TDSAT judgment dated 30 August 2007 referred in the reply was set aside by the Honourable Supreme Court vide judgement dated 11 October 2011.

Thus, the netting off of commission/margin to the distributor/franchises/agents/dealers during 2006-07 to 2009-10 to the tune of ₹ 698.70 crore has resulted in short payment of LF and SUC amounting to ₹ 59.93 crore and ₹ 29.74 crore respectively.

B) Free airtime/un-used airtime/ promotional offers/PCO incentives to customers

During review of data/records furnished by M/s ICL/ABTL for the period from 2006-07 to 2009-10, it was observed that in order to accommodate Offers to the subscribers viz. Free Air Time (FAT)/Unused air time (UAT) to customers, Free of Cost (FOC) SIMs/SMS/free talk time (FTT)/bonus talk time/adjustments to customers, the value of the same was deducted from revenue from prepaid services upfront and as and when the same was used by subscriber, the revenue was credited by the said amount. Resultantly, the revenue on account of these offers to subscribers was not recognised in the GR/AGR.

Since, offers to customers (FAT/UAT/FTT/FOC/Extra talk time, etc.) were part of overall commercial strategy to enhance business, the cost of such offers/discounts/rebate were in the nature of expenses. Further, as per licence agreement service revenue should be shown in gross without any set-off. Thus, the action of the Management in setting off the offers/discounts/rebate from revenue was against the licence agreement and resulted in short payment of LF and SUC as detailed below:

Table 6.3

(₹ in crore)

Free airtime/un-used airtime/ promotional offers/PCO incentives to customers	Under reporting of GR	LF Impact	SUC Impact	Remark
Free Airtime (FAT)/ Un-used airtime (UAT)	202.36	15.91	8.00	Annexure – 6.02
Free of Cost (FOC) SIMs/SMS to customers	4.62	0.42	0.20	Annexure – 6.03
Free talk time (FTT) to customers	344.13	30.74	13.45	Annexure – 6.04
Netting of refund of Admin fee etc.	7.09	0.47	0.31	Annexure – 6.05
Public Call Office (PCO) incentives	107.93	10.08	3.86	Annexure – 6.06
Total	666.13	57.62	25.82	

On being pointed out by Audit, it was stated by Management that -

- In certain prepaid tariff scheme, if free airtime was provided to subscribers on making recharge through specified recharge vouchers denominations, the tariff amounts which were actually paid by the subscribers were ultimately booked as revenue. These tariff schemes were within the TRAI guidelines.
- It was not possible to treat promotional offers as an expense since it was not an expense incurred by the company.
- TDSAT order dated 23 April 2015 holds that “in order to be counted as “gross revenue”, the item of inflow must not be notional but real”.
- The Company is giving recharge coupon with free airtime/ promotional offers to PCO operators which were normal voucher with higher denominations and tariff scheme for the same were already approved by TRAI.

Audit views regarding the netting are brought out in para 3.2.1 B. Further, reply of the Management is not tenable as-

- FAT included in audit observations did not include those tariff schemes in which free air time is provided to subscribers on making recharge through specified recharge voucher denominations.
- Annexure-III of the licence agreement states that “Service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately”. This indicates that service revenue should be shown gross, however the Management has set-off the promotional offers while preparing AGR statements, which was against the licence agreement.
- While noting that the appeal has already been filed by DoT before the Honourable SC against TDSAT Judgement of April 2015, Audit is of the view that offers to customers (FAT etc.) are part of overall commercial strategy to enhance business and the cost of such offers amount to expenses.
- Promotional offers for normal connections/ PCO operators were generally given to popularize new rate plans and to attract new subscribers etc. Therefore it was a part of overall commercial strategy to enhance business. Hence, it amounts to expenses.

Thus, netting off of offers/discount/rebate amounting to ₹ 666.13 crore given to pre-paid subscribers has resulted in understatement of GR/AGR, which ultimately resulted in short payment of LF and SUC to Government of India amounting to ₹ 57.62 crore and ₹ 25.82 crore respectively.

6.2.2 Under reporting of revenue due to netting off of discounts granted to post-paid subscribers

From the examination of data/records pertaining to post-paid services furnished by ICL for the period from 2006-07 to 2009-10, it was observed that promotional discounts were shown separately as debit figures under the post-paid revenue GL codes by one LSA (UP West) and netted off from AGR instead of booking the same separately as expenditure. Since no other LSA had shown the amount of promotional discount separately and booked the revenue net of such discounts, audit applied the similar percentage as that of UP (West) LSA to arrive at the total promotional discount offered to post-paid customers. The amount worked out to ₹ 202.79 crore in the remaining 21 LSAs.

Promotional discounts are part of overall commercial strategy to enhance business, therefore, such offers/discounts were in the nature of expenses and hence, in terms of licence agreements, should not be deducted from GR.

To an audit query, it was stated by Management that-

- As per AS-9, revenue was defined as the consideration received in cash from sale of goods or rendering services. There was no realization of such rebate and waiver in the hands of the Company and thus it could not be treated as revenue.
- As per TDSAT judgement dated 30 August 2007, amount of waivers and discounts could not be treated as revenue forming part of GR and licensees cannot be asked to pay licence fee thereon.
- Billable amounts form part of AGR and LF/SUC was computed on the same after reversal of the effects of incorrect/excess amounts billed earlier.
- It was customary in business to offer certain waivers/rebate to subscribers, the amounts of which were credited in the bills. Such waivers/discounts/rebates were losses to the company and could not be treated as revenue.
- Billing plan based discounts were those which were offered to subscribers as per agreed terms and billing plan at the time of acquisition. Due to system constraints the billing pattern cannot be changed and hence the customer cannot be charged zero towards rental in subsequent months. These discounts are only adjustments entries for amount charged extra due to system constraints.
- Subscribers are offered some minutes/ usage in every post-paid plan which was known as Usage Discount Package (UDP) and was part of billing plan duly filed with TRAI. Such UDP was applied at the time of running the bill cycle due to system limitations and such minutes/usage offered with plan cannot be rated on real time basis.

- In the adjustment figures available in GL of UP (West) LSA which was taken as base by audit for arriving at extrapolated amount for other LSAs is incorrect. However, for internal reporting purpose UP (West) LSA passed additional entry to the extent of minutes offered to subscribers by debiting GL code pertaining to Post paid promotional airtime and crediting GL code pertaining to post paid airtime revenue. Both the GL codes were under the revenue segment.

Audit view on the reply of the Management is as under-

- Considering the reply of the Management that both the GL codes were under the revenue segment and it was an additional entry passed for internal management reporting, the amount of promotional discount which earlier worked out to ₹ 479.52 crore was reworked to ₹ 202.79 crore (**Annexure - 6.07**) with only those debit figures in the revenue head which had corresponding credit entry in the Debtors GL code.
- Regarding revenue recognition as per AS-9 stated by Management, it is stated that Audit is not disputing the accounting methodology adopted by the Company but contends that for the purpose of licence fee, the revenue is to be recognised “Gross” without set-off of related expenses as mandated under licence agreement.
- TDSAT judgement dated 30 August 2007 mentioned in the reply has been set aside by the Supreme Court vide its judgement dated 11 October 2011
- In case of billing plan based discounts, all such debits in the revenue heads had a corresponding credit to the Sundry debtor heads thereby reducing the revenue to that extent. The advance rentals were accounted for through the liability heads and the contention of the Management that due to system constraints the customer was charged rental and the same was adjusted by promo pack is neither acceptable nor is in compliance with the existing norms.
- The amount worked out as promotional discount was taken from the Journal Vouchers wherein the revenue heads were debited with corresponding credit to the debtors thereby impacting the revenue to that extent.

Non consideration of promotional discounts, rebates and waivers offered to post-paid customers in GR/AGR in violation of the terms of licence agreement resulted in non-payment of LF and SUC amounting to ₹ 17.80 crore and ₹ 8.37 crore respectively.

6.2.3 Under reporting of Roaming Revenue due to set-off of Inter Operator traffic discounts paid/credited to other Operators

ICL had arrangements with other International Operators for roaming. It was noticed that the Inter Operator traffic (IOT) discounts paid/credited to these operators' accounts were debited/deducted from the revenue heads.

Having roaming arrangement with other national/international operators was a matter of mutual agreement between two operators and giving discounts over and above the agreed charges for roaming was part of overall commercial strategy to enhance business between the two operators. As such, these discounts were in the nature of expenses and hence, in terms of licence agreements, should not be deducted from revenue.

It was observed that IOT Discounts amounting to ₹ 28.74 crore during 2007-08 to 2009-10 were debited from roaming revenue.

On being pointed out by Audit, it was stated by Management that-

- IOT discounts were volume based and linked to the quantum of roaming duration by their subscribers on the company's network. Such roaming discounts were trade discounts and the company's recognition of the roaming revenue net of trade discount is in line with prescribed accounting standards. Such trade discounts passed on to other operators on roaming cannot be added back for calculation of AGR.
- Discounts when passed on reduce the quantum of roaming revenue. Similarly, when received, they reduce the pass through payable for out roaming leading to higher AGR. Hence, if the recipient operator is required to include gross roaming charges as revenue and the payer operator is only allowed deduction of net roaming charges, it will lead to double taxation to the extent of discount on roaming charges.
- As per AS-9, "trade discounts and volume rebates given should be deducted in determining revenue".

Audit view on the reply of the Management is as explained in para 3.2.3. Further view of the audit on the Management reply is as follows:

- The argument of double taxation is not tenable as the amount of licence fee paid was in effect a revenue share and not tax.
- Regarding revenue recognition as per AS-9 stated by Management, it is stated that Audit is not challenging the accounting methodology adopted by the Company but for the purpose of licence fee, the revenue is to be recognised "Gross" without set-off of related expenses as mandated under licence agreement.

Netting off of IOT discounts amounting to ₹ 28.74 crore given to international roaming operators resulted in reduction of GR/AGR which ultimately resulted in short payment of LF and SUC amounting to ₹ 2.72 crore and ₹ 1.21 crore respectively to DoT (Annexure – 6.08).

6.2.4 Under reporting of revenue from Infrastructure sharing revenue from other telecom operators for GR/AGR by ICL/ABTL

Telecom infrastructure (towers, network equipment's, etc.) owned by ICL/ABTL were being shared with other telecom companies. ICL/ABTL entered into agreements with other telecom companies for infrastructure sharing.

Review of data/records pertaining to Infrastructure Sharing Charges furnished by ICL/ABTL for the period from 2006-07 to 2009-10, revealed that Infrastructure sharing charges recoverable/recovered on account of rent, fuel (Diesel), Electricity, Operational and Maintenance, Insurance, Security etc. were netted off from the expense heads, hence not included in the revenue at all.

Total amount netted off from the expenses on account of site sharing revenue (rent, Diesel, Electricity, Operational and Maintenance, Insurance, Security etc.) during 2006-07 to 2009-10 was ₹ 344.72 crore. This amount should have been taken to GR/AGR.

To an audit query, it was stated by Management that-

- Some part of Operating Expenditure (OPEX) cost in the Infrastructure sharing charges, which was in the nature of Rent, fuel, security, AMC cost and repairs and maintenance were proportionately recovered from other operators sharing the infrastructure on actual cost incurred. Such re-imburement of expenses cannot be revenue since this was covered under paras 46 and 47 of AS-29 and cannot be disclosed as revenue in compliance with AS requirements and hence do not form part of AGR.

While charges for Capital Expenditure (CAPEX) costs were rentals and hence treated as revenue which was credited to the relevant income/revenue head and disclosed under revenues in the books of accounts, recovery of combined operation costs incurred for day to day running and maintaining such common passive infrastructure equipment by the host operator cannot be included for the purpose of AGR.

The cost incurred on the specific heads of expenditure by the principal owner was always more as compared to recovery of this expenditure made from the beneficiary party. Thus, re-imburement of operating expenditure cannot be considered for AGR. It was not a case where any revenue item and cost items were netted off and that revenue was recognized short or not recognized. This was the case of reimbursement of incurred costs as operating costs were paid by one operator but have to be shared by more than one operator and there was no way that such payment towards shared cost by one operator to another can be treated as revenue.

- In Maharashtra LSA, rectification entries, reversal of expenses and credit notes issued amounting to ₹ 17.79 crore was incorrectly considered as recovery towards infrastructure sharing. In Haryana LSA, rectification entries and reversal of expenses amounting to ₹ 1.57 crore was incorrectly considered as recovery towards infrastructure sharing. In Mumbai LSA, recovery amounting to ₹ 1.01 crore towards security service charges was not pertaining to Mumbai Circle.

Audit view on the reply of the Management on infrastructure sharing revenue is explained in detail in para 3.2.4. However, rectification/reversal/credit-note entries amounting to ₹ 20.37 crore which were not considered initially by audit and were brought to notice vide Management's reply have been considered. Accordingly, the figure of ₹ 344.72 crore initially pointed out was revised to ₹ 324.35 crore.

Thus netting off of infrastructure sharing revenue received/receivable from other telecom operators from the cost relating to 2006-07 to 2009-10 resulted in understatement of GR/AGR by ₹ 324.35 crore and consequent non-payment of LF and SUC amounting to ₹ 27.69 crore and ₹ 13.35 crore respectively (**Annexure – 6.09**).

6.2.5 Non consideration of revenue from Switch sharing between Idea (NLD) and Idea (LSAs) for GR/AGR

As mentioned in para 1.4 (a) above, the GR shall be inclusive of all types of revenue stated therein without any set-off for related item of expense, etc and AGR is arrived at by reducing GR by permissible deductions as stated therein.

ICL obtained licence to provide long distance services from December 2006. These services are basically to carry a call from one licence area/circle to another licence area/circle which requires switches.

Review of records of ICL for the period from 2006-07 to 2009-10 revealed that the Idea NLD division did not have its own switches and therefore it used the switches of all service areas for which NLD division paid an agreed amount of ₹ 0.07/0.10 per minute of call carried. Though these amounts were paid by Idea NLD to the respective LSAs, the same was not considered as revenue for determination of GR/AGR by the respective LSAs and this revenue was found credited under expenditure Head of NLD switch and other expenses. This resulted in understatement of revenue by ₹ 252.47 crore for the period under audit.

To an audit query, it was stated by Management that-

- NLD services were being used to carry calls from one service area to other service area. For speedy roll out of services and to achieve saving in CAPEX, the company integrated its NLD switch with CMTS/UASL switches as permitted under the NLD licence agreement.
- NLD services were using switches of other LSAs for routing the long distance traffic. Since these switches were capitalized in respective LSA books, all maintenance, repair and depreciation expenses were also incurred and accounted in respective LSA itself. Hence, such LSAs were reimbursed for use of switches by NLD division to reflect the correct profitability of each segment.

- The contention of considering such sharing of switch expense between LSAs and NLD as revenue of LSAs was against prescribed accounting norms and such notional transactions should not be considered as revenue for the purpose of calculation of AGR.

The reply of the Management itself states that the LSAs were being reimbursed by NLD for utilizing their switches and hence was in the nature of infrastructure sharing. In terms of licence agreement, GR includes revenue from permissible sharing of infrastructure without any set-off for related item of expense. Thus the actual amount received by LSAs from NLD division should be reflected in their accounts as revenue and taken into consideration of GR/AGR. Booking of revenue received from NLD division towards switch sharing as a credit under expenditure head of account by LSAs was not permissible under UASL agreement.

Thus non consideration of Switch sharing revenue received by the LSAs from Idea NLD division during 2006-07 to 2009-10 has resulted in understatement of GR/AGR by ₹ 252.47 crore and consequent non-payment of LF and SUC amounting to ₹ 22.63 crore and ₹ 9.78 crore respectively (**Annexure - 6.10**).

6.2.6 Non consideration of revenue by ICL from assets given on Indefeasible Right to Use (IRU) for GR/AGR

In terms of clause 19.1 of the UASL agreement and NLD licence agreement, revenue from permissible sharing of infrastructure and leasing of infrastructure respectively shall form part of GR for computation of revenue share.

A sum of ₹1.13 crore was accounted as revenue under a separate Trial Balance maintained for Passive Infrastructure Division of Idea Cellular Limited (ICL) for the year 2009-10 and it was included in the Service Revenue in the Profit and Loss Account of ICL.

Review of data/records pertaining to Infrastructure sharing charges offered by ICL for the 2009-10 revealed that this was revenue accruing from the Optical Fibre Cable (OFC) given to Tata Teleservices Limited (TTSL) on Indefeasible Right to Use (IRU) basis in the service areas of UP (W), MP, Bihar, AP and Gujarat. However, this revenue was not considered in GR/AGR for computation of revenue share for the year 2009-10.

To an audit query, it was stated by ICL Management that the Company was holding Infrastructure Provider Category-I registration issued by DoT and licence fee was not applicable on revenue arising out of provisioning of services under this registration. The revenue highlighted by audit during 2009-10 pertains to passive Infrastructure Division of ICL and accounted from sale of Optical Fibre Cable (OFC) to TTSL under IRU. This revenue was shown under service revenue for preparation of Profit and Loss Account of ICL but since licence fee was not applicable on this revenue, it was not considered in GR/AGR for computation of revenue share (LF and SUC).

The reply is not tenable considering the fact that revenue was from sale of OFC under IRU and hence akin to the activity covered under NLD licence. Thus non consideration of IRU revenue received by ICL during 2009-10 has resulted in understatement of NLD GR/AGR by ₹ 1.13 crore and consequent non-payment of LF amounting to ₹ 0.07 crore.

6.2.7 Under reporting of revenue from forex gain (revenue) for GR/AGR by ICL/ABTL

Review of data/records furnished by ICL/ABTL for the period from 2006-07 to 2009-10 revealed that the forex realized gain amounting to ₹ 53.58 crore was not considered for GR/AGR.

Above realised gain calculated from the data extracted from the reports generated from Oracle Financial System did not represent the actual gain of that particular item since the Company recasts the value of all the items included under the foreign exchange gains/losses head every year, the matured items are accounted under realised gains and the un-matured items remain under unrealised gain. Thus, the realised gain of a particular item in that year would not be the actual gain due to accounting of the gains/losses of that item during the intermediate period under unrealised. Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item. Further, audit has considered the quarterly net gain, head of account-wise and LSA-wise, as it was not possible for audit to segregate/collect the figures of gains only from the data made available. The operator should calculate the gain of each item with reference to its initial value of accounting and include the total forex gain in GR/AGR.

On being pointed out by Audit, it was stated by the Management that:-

- Audit has referred clause 19.1 of the licence condition relating to Gross Revenue and queried on why foreign exchange fluctuations should not be added for the purpose of AGR. The words used in clause 19.1 to define GR are those primarily from inflows of licensee i.e. revenue relating and inclusive of those charges, fees, proceeds and revenues which will go into invoicing of services and goods to get the consideration which form part of service revenue of the licensee.
- Foreign exchange gains, between the rate of forex when the liability was first recorded in the books and the rate of forex as and when such liability was finally discharged, cannot be said to have any meaning so as to form part of Gross Revenue mentioned under clause 19.1.
- Foreign exchange fluctuations arising out of re-statement of payables towards capital equipment and foreign currency loans for mark to market or hedged closing rates as of the end of any closing date was not revenue. Fluctuations in foreign exchange rates have nothing to do with the revenue of the service provider. The impact of forex fluctuations, whether upward or downward, on AGR must be ignored.

- As per Accounting Standard 9 on Revenue Recognition, Foreign Exchange Gain is not revenue.
- TDSAT in its judgement dated 30 August 2007 held that Foreign exchange gain should not be considered for AGR purpose.
- According to TRAI, impact of foreign exchange fluctuations, whether upward or downward, on AGR must be ignored.

Reply of the Management is not tenable as:-

- Audit view regarding clause 19.1 of the licence agreement has been brought out in para 3.2.5.
- Company had been reporting exchange differences (on net basis) in their financial statement. It is not true that foreign exchange gains/losses are neither covered in the definition of GR in the Licence Agreement nor disclosed in the Statement of AGR as Licence Agreement provides that “Gross Revenue shall be inclusive of any other miscellaneous revenue, without any set-off for related item of expense, etc.” and Forex gain was part of Miscellaneous revenue.
- AS-9 only states that realised or unrealised gains resulting from changes in foreign exchange rates and adjustments arising on the translation of foreign currency financial statements were not included within the definition of “revenue” for the purpose of this Standard (AS-9). Treatment of forex gain/loss is covered under AS-11.
- TDSAT judgment dated 30 August 2007 referred in the reply was set aside by the Honourable Supreme Court judgement dated 11 October 2011.
- TRAI recommendation referred to in the reply has not finally been accepted by DoT.

Thus non-inclusion of foreign exchange gains pertaining to period from 2006-07 to 2009-10 has resulted in understatement of GR/AGR by ₹ 53.58 crore, and consequent short payment of LF and SUC amounting to ₹ 4.45 crore and ₹ 2.00 crore respectively (**Annexure - 6.11**).

6.3 Under reporting of revenue in the Statements of Revenue and LF (AGR Statements) though reported in the books of accounts

6.3.1 Non consideration of Interest Income for GR/AGR by ICL/ ABTL

Review of data/records furnished by ICL/ABTL for the period from 2006-07 to 2009-10 revealed that interest income accounted in the books of accounts of ICL was considered for GR/AGR in the year 2006-07 but not considered at all in the years 2007-08, 2008-09 and 2009-10. Amount of interest income accounted in the books were ₹ 566.87 crore out of which ₹ 17.08 crore only was considered for GR/AGR during the years from 2006-07 to 2009-10 resulting in non-consideration of interest income amounting to ₹ 549.79 crore for the purpose of GR/AGR (**Annexure - 6.12**).

Likewise, interest income accounted in the books of accounts of ABTL amounting to ₹ 10.49 crore in the year 2008-09 was not included in GR/AGR.

Management in its reply stated that considering the TDSAT judgement dated 30 August 2007, interest income accounted under Trial balances of UASL/NLD/IP1/ILD/ISP/VSAT was not considered for AGR. Interest income accounted under corporate trial balances was not considered as it did not relate to telecom operations. It further stated that the interest accounted in the corporate TBs was earned from deployment of surplus funds/borrowed funds and it being non telecom revenue needs to be excluded from AGR. It also stated that sometimes funds borrowed for CAPEX were invested and interest earned and this interest being always less than the interest payable/paid on borrowings, no interest income was left for inclusion in AGR for levy of revenue share. Telecom services in Bihar LSA commenced in October 2008, the very first year of commercial operations for which service revenue for the year 2008-09 was ₹ 43.53 crore. ABTL had procured loans of over ₹ 300.00 crore to roll out CAPEX out of which ₹ 120.00 crore was from the Holding Company i.e. ICL. While the loan from ICL was interest free, interest was incurred on other loans. This was a project situation where services were just launched in few districts of Bihar, a major roll out was in progress. In such situations other than short term deployment of excess funds before the funds are used for CAPEX, there cannot be any excess funds. Project funding in telecom results in mismatch of loans disbursed and final use of proceeds, thereby resulting in treasury income as also treasury expenses. Cash surpluses generated by business are used for investing in other forms (other than in CAPEX) for business due to the loan conditions of the lenders. If at all interest incomes are to be included, it should be done only after taking the interest costs into consideration. Considering the above, interest income should not be included in GR/AGR.

The Management's contention for non-inclusion of interest income for AGR is not tenable as TDSAT judgement dated 30 August 2007 has become null and void after Hon'ble Supreme Court judgement dated 11 October 2011. Also definition of GR in licence agreements expressly provides for inclusion of interest income for GR/AGR for computation of revenue share.

Impact on short payment of LF and SUC due to non-consideration of interest income ₹ 560.28 crore in GR/AGR of ICL/ABTL during the years 2007-08, 2008-09 and 2009-10 is ₹ 44.59 crore and ₹ 20.47 crore respectively (**Annexure - 6.12**).

6.3.2 Non consideration of profit on sale of Investment for GR/AGR for payment of revenue share by ICL/ ABTL

Format of Statement of Revenue and LF (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 Licence Agreement. In the Statement, item 4 has been prescribed to reflect the "Income from Investment".

From the data/ records of ICL, it was found that there was income on account of “Profit on Sale of Investment” for ₹ 8.13 crore, ₹ 43.18 crore, ₹ 222.75 crore and ₹ 87.87 crore for the year 2006-07, 2007-08, 2008-09 and 2009-10 respectively. Above income had been accounted by ICL in the Corporate TB. Above income on “Profit on Sale of Investment” was considered for GR/AGR for computation of revenue share in 2006-07. However an amount of ₹ 353.80 crore (**Annexure - 6.13**) pertaining to “Profit on Sale of Investment” was not considered in GR/AGR for computation of revenue share for the years 2007-08, 2008-09 and 2009-10. Similarly in respect of ABTL, investment income of ₹ 45.03 crore for the year 2008-09 was not included in GR/AGR.

Management in reply stated that considering the TDSAT judgement dated 30 August 2007, income from investment accounted under Corporate TB was not considered for AGR. It further stated that this corporate income was generated from treasury function which was a separate and distinct function from licenced activity and this income was a non-licenced activity/non-operational income. Therefore such corporate income should not form part of GR. It was further stated that Telecom services in Bihar LSA commenced in October 2008, the very first year of commercial operations for which service revenue for the year 2008-09 was ₹ 43.53 crore. ABTL had procured loans of over ₹ 300.00 crore to roll out CAPEX out of which ₹ 120.00 crore was from the Holding Company i.e. ICL. This was a project situation where services were just launched in few districts of Bihar, a major roll out was in progress. In such situations other than short term deployment (investments) of excess funds before they are used for CAPEX, there cannot be any excess funds. Project funding in telecom results in mismatch of loans disbursed and final use of proceeds, thereby resulting in treasury income as also treasury expenses. Cash surpluses generated by business are used for investing in other forms (other than in CAPEX) for business due to the loan conditions of the lenders. Considering the above, profit on sale of investment should not be included in GR/AGR.

The Management’s contention for non-inclusion of income from investment for GR is not tenable as TDSAT judgement dated 30 August 2007 has become null and void after Honourable Supreme Court judgment dated 11 October 2011. Further, licence agreements provide for inclusion of income from investment in GR/AGR for computation of revenue share.

Thus, non-consideration of income from investment in GR/AGR for ₹ 398.83 crore by ICL/ABTL during the year 2007-08 to 2009-10 resulted in non-payment of ₹ 33.36 crore as LF and ₹ 14.49 crore as SUC (**Annexure - 6.13**).

6.3.3 Non consideration of miscellaneous income for AGR for computation of LF/SUC by M/s ICL

In the Profit and Loss Account of ICL, revenue/income grouped under the Schedule of “Other Income” is further sub grouped in two categories- (i) Liability/Provisions written back and (ii) Miscellaneous receipts. From the AGR statements, it was found that amount of other income grouped under first category was not considered for AGR in the years 2006-07 to 2009-10 whereas income grouped under second category (Miscellaneous receipt) was considered for AGR in the years 2006-07 and 2009-10 but partly considered in the years 2007-08 and 2008-09.

Amount of miscellaneous Income (excluding insurance claims) for the years 2007-08 and 2008-09 are ₹ 9.37 crore, out of which only ₹ 1.04 crore was considered for AGR and balance amount of ₹ 8.33 crore was not considered (**Annexure - 6.14**).

To an audit query, the Management stated that:-

- With regard to miscellaneous receipts, such receipts were incidental to business such as scrap sale, insurance claims etc. which do not have any connection with telecom operations under the licence agreement.
- As per TDSAT judgement dated 7 July 2006, the principle for computation of licence fee would be based on AGR. Licence fee would be paid only on revenue earned from licenced activities (and not from unlicenced activities). As per TDSAT judgement dated 30 August 2007, which was agreed with by DoT, revenue from sale of fixed assets which was in the nature of capital receipts and insurance claims should not be part of AGR and other items falling under the categories of miscellaneous/ other income would have to be decided for taking a view regarding its inclusion or exclusion on a case to case basis.

ICL’s Management reply is not tenable since

- Definition of GR expressly provides that miscellaneous income should be included in GR for computation of revenue share. Management contention that these miscellaneous income were from non-licenced activity and hence not liable to be included in AGR is not acceptable. These miscellaneous incomes were incidental to licenced activities only.
- The Company’s contention that DoT agreed with the TDSAT judgement dated 30 August 2007 was not correct as DoT challenged it and Hon’ble Supreme Court set aside the TDSAT judgement vide its judgement dated 11 October 2011.
- Insurance claim included in miscellaneous revenue was excluded by audit for arriving at the amount of miscellaneous income not considered for GR/AGR.

As such, items of miscellaneous income amounting to ₹ 8.33 crore not considered in respective AGR should be included in AGR for computation of LF/SUC. Impact on short payment of LF and SUC due to non-consideration of miscellaneous income in GR/AGR was ₹ 0.70 crore and ₹ 0.32 crore respectively (**Annexure-6.14**).

6.3.4 Non consideration of Income from profit on sale of fixed assets for AGR for payment of revenue share by ICL/ABTL

From the examination of data/records furnished by ICL for the period from 2006-07 to 2009-10, it was noticed that gain on sale of fixed assets of ₹ 16.00 crore (**Annexure - 6.15**) was found to be adjusted against other administrative expenditure in the Profit and Loss account of ICL during 2007-08, 2008-09 and 2009-10 and was not included in GR/AGR for consideration of LF/SUC.

Similarly, in case of ABTL, profit on sale of fixed assets of ₹ 0.12 crore was not included in GR/AGR for consideration of LF/SUC.

To an audit query, the Management stated that –

- The company's accounting treatment and presentation of accounts was in accordance with Schedule VI of the Companies Act. Any loss/gain on sale was capital receipt in nature. The investments made in assets were resulting in generation of revenue which was subject to licence fee. Sale proceeds from disposal of such assets resulting in either Gain/loss are nothing but the recovery of the amount higher than the Written down Value of Assets in the books. This gain was really not a gain since the benefit of depreciation was not availed earlier. This would also tantamount to charging licence fee on revenue from operations as well as the capital expenditure portion earlier put for business. This revenue was in nature of capital revenue and it was not derived from licenced activity and hence it should not be included in AGR for computation of LF.
- Considering the TDSAT judgement dated 30 August 2007, the revenue on account of profit on sale of fixed assets was not considered for AGR.

The contention of the Management is not tenable since-

- Definition of GR expressly provides that miscellaneous income should be included in GR for computation of revenue share. Further, licence agreements did not differentiate between licenced activity and non-licenced activity. In terms of definition of GR, Gross Revenue shall include all revenue accruing to the Licensee without any set-off for related item of expense and revenue earned as above was incidental to licenced activity only. The Company had also considered it for inclusion in AGR in the year 2006-07.

- TDSAT judgement dated 30 August 2007 has become null and void after Honourable Supreme Court judgment dated 11 October 2011.

Thus non-inclusion of income of ₹ 16.12 crore on account of profit on sale of fixed asset in GR/AGR for computation of Revenue resulted in short payment of LF and SUC by ₹ 1.54 crore and ₹ 0.69 crore respectively (**Annexure – 6.15**).

6.4 Short/ non-payment of revenue share due to other issues

6.4.1 Irregular Deduction of Bad debts written off from GR to arrive at AGR by ICL

Review of data/records provided by ICL for the period from 2006-07 to 2009-10 revealed that for 2009-10, ₹ 173.31 crore was included under Administration and Other Expenses as “Bad debts Written Off”. However, in the year 2009-10, an amount of ₹ 172.18 crore on account of “Bad debts Written Off” was deducted from GR while arriving at AGR pertaining to eight LSAs³.

To an audit query, Management stated that considering the TDSAT judgement dated 30 August 2007, the Company claimed deduction of “Bad Debts Written Off” during the 2009-10 while preparing the Annual Audited AGR for the aforesaid eight LSAs amounting to ₹ 172.18 crore. However, while making licence fee and spectrum charge payment to DoT, the Company had not taken deduction of “Bad Debt Written Off” and to that extent the Licence Fee and Spectrum Usage Charges amounting to ₹ 25.19 crore was paid in excess. It was further stated that during 2009-10, ₹ 173.31 crore was written off as Bad Debts resulting in the reversal of the provision for such doubtful receivable created earlier. The entry for effecting this write off of the receivables was passed by debiting the expense GL Code for provision and crediting respective debtors and Service Tax account in the circle books of accounts which resulted in re-grouping of ₹ 173.31 crore from provision for Bad and Doubtful debts/Advances (Expense) to Bad debts Written Off (Expense). However, the charge to Profit and Loss Accounts during 2009-10 was only ₹ 47.29 crore.

The contention of the Management is not tenable since the TDSAT judgement dated 30 August 2007 has become null and void after Hon’ble Supreme Court judgment dated 11 October, 2011. Further, the licence agreement does not provide deduction of bad debt from GR to arrive at AGR and the licensee itself did not deduct the bad debts written off from GR to arrive at AGR during the year 2006-07, 2007-08 and 2008-09. Though the Company stated that it paid LF and SUC on “Bad Debt Written Off”, Audit observed that in the audited AGR statement, the same was claimed as deduction which was against the licence agreement. Further, in the absence of documentary evidence to show that amount was paid, the reply was not verifiable. Quarterly payment made by the Company on the basis of unaudited AGR would be considered by DoT at the time of assessment which would be based on audited AGR statement only.

³ AP, Delhi, Gujarat, Haryana, Kerala, Maharashtra, MP and UP (W).

Thus deduction of bad debts from GR to arrive at AGR in audited AGR statement resulted in understatement of GR by ₹ 172.18 crore having impact on LF and SUC by ₹ 16.89 crore and ₹ 7.03 crore respectively (**Annexure - 6.16**).

6.5 Other issues

6.5.1 Transfer of infrastructure assets by Idea Cellular Ltd to its subsidiary at NIL consideration for ultimate transfer to a Joint Venture

ICL was initially promoted (March 1995) by Aditya Birla group of companies including ABTL. However, ABTL ceased to be the promoter from 29 August 2006 and became a subsidiary company of ICL from 28 February 2007. ABTL obtained UAS Licence for Bihar LSA (December, 2006) but commenced its telecom operations only in 2009-10.

ICL established three new subsidiaries namely, Idea Cellular Services Limited (ICSL) and Idea Cellular Infrastructure Services Limited (ICISL) (incorporated on 3 October 2007) and Idea Cellular Tower Infrastructure Limited (ICTIL) (incorporated on 3 December 2007). ICTIL was a wholly owned subsidiary of ICISL and hence the subsidiary of ICL.

A scheme of arrangement between ICL and ICTIL for demerger of passive infrastructure of ICL and transfer of these infrastructures to ICTIL in 9 LSAs⁴ with appointed date 1 January 2009 was approved by the High Courts of Delhi and Gujarat and the scheme became effective from 29 September 2009. Accounting entries in the books of accounts of ICL and ICTIL were made in the year 2008-09 as per the scheme. Accordingly in the books of ICL, book value of assets of ₹ 1622.78 crore was removed from books and investment in its subsidiary, ABTL, (holding company of ICTIL) was increased by the same amount. In the books of ICTIL, above assets were recorded at their book value with corresponding credit to General Reserve.

Another scheme of arrangement between ABTL and ICL for transfer of UASL and related assets and liabilities of ABTL (of Bihar LSA) with appointed date 1 April 2009 was approved by the High Courts of Bombay & Gujarat which became effective from 1 March 2010. Accounting entries in the books of accounts of ICL and ABTL were made in the year 2009-10 as per the scheme. Accordingly in the books of ABTL, net book value of asset of ₹ 2069.45 crore was written off and same amount was withdrawn from Reserve for Business Restructuring. In the books of ICL, assets & liabilities transferred were recorded at their book value and ₹ 2069.45 crore was credited to General Reserve.

Thus, it is apparent that the assets were transferred by ICL and ABTL at NIL value since the transferee companies (ICTIL and ICL) accounted the value of assets at book value with corresponding credit to General Reserve. The transfer of assets at NIL value was not a transaction at arm's length since all the three companies were different entities. Due to

⁴ AP, Delhi, Gujarat, UP (E), UP (W), Haryana, Kerala, Rajasthan and Mumbai.

accounting of assets at book value by the transferee companies and pending revaluation, the profit foregone by the transferor companies and its effect on LF and SUC could not be quantified.

6.6 Interest on short/non-payment of LF and SUC

On issues raised above (from paras 6.2 to 6.4) short/non-payment of LF and SUC worked out to be ₹ 289.99 crore and ₹ 133.27 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 541.63 crore (**Annexure - 6.17**). The calculation of interest was based on the rate prescribed in the Licence agreement i.e. two *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 2015. The interest has been compounded monthly as prescribed in the licence condition.

6.7 DoT's response to the audit observations

Audit observations on the revenue shared by ICL were communicated to DoT in November 2015. Reply of DoT is awaited (January 2016).