# CHAPTER – IV

## Revenue Shared by Idea Cellular Limited

### 4.1 Brief Profile of ICL

M/s Idea Cellular Limited (ICL) is a Company under Aditya Birla Group. It was initially incorporated as M/s Birla Communications Limited in 1995 and changed its name to M/s Birla AT&T Communications Limited after a Joint venture with M/s AT&T Corporation in 1996. Again the Company changed its name to Birla Tata AT&T (BATATA) in 2000 on acquiring Andhra Pradesh circle License from TATA. In 2002, the Company finally changed its name to Idea Cellular Limited and launched the brand IDEA. The Company acquired Escotel (Uttar Pradesh West, Kerala and Haryana) and Escorts (Uttar Pradesh East, Rajasthan and Himachal Pradesh) during the year 2004 and 2006 respectively. The Company achieved the pan India footprint in 2009. Spice Communications Limited was merged with IDEA (Punjab and Karnataka LSAs) with effect from 01 March 2010.

### 4.1.1 Licenses granted to Idea Cellular Limited (ICL)

ICL, as on 31 March 2015 held access service Licenses in 22 service areas. It has two NLD Licenses, one ILD License, one ISP License as well as IP I registration.

### 4.1.2 Spectrum allotted to ICL

ICL is a GSM operator holding spectrum in multiple frequency bands of 900 MHz, 1800 MHz and 2100 MHz which includes quantum of Spectrum acquired from Spice Communications Limited and also won in open auction through successive bidding. License area-wise quantum of combined Radio/Microwave Access/Microwave Backbone spectrum held by IDEA as on 31 March 2015 was as follows:

**Table 4.1**

| Sl. No. | License Service Area | Main Radio Spectrum Allotted (in MHz) | MW Access Spectrum | MW Backbone Spectrum |
|---|---|---|---|---|
| | | | (in MHz)[1] | |
| 1 | Andhra Pradesh | 19.00 | 224 | 56 |
| 2 | Assam | 5.00 | 112 | 56 |
| 3 | Bihar | 5.65 | 112 | 56 |
| 4 | Delhi | 13.60 | 448 | 0 |
| 5 | Gujarat | 12.80 | 168 | 112 |
| 6 | Haryana | 12.20 | 112 | 56 |
| 7 | Himachal Pradesh | 9.40 | 112 | 56 |
| 8 | Jammu & Kashmir | 10.00 | 112 | 56 |
| 9 | Karnataka (Spice) | 11.20 | 112 | 56 |

[1] One carrier = 56 MHz.

| | | | | |
|---|---|---|---|---|
| 10 | Kerala | 23.00 | 168 | 112 |
| 11 | Kolkata | 5.00 | 112 | 0 |
| 12 | Madhya Pradesh | 20.00 | 112 | 112 |
| 13 | Maharashtra | 23.80 | 168 | 112 |
| 14 | Mumbai | 6.40 | 168 | 0 |
| 15 | North East | 10.00 | 112 | 56 |
| 16 | Orissa | 5.00 | 112 | 56 |
| 17 | Punjab (Spice) | 20.80 | 112 | 56 |
| 18 | Rajasthan | 6.20 | 168 | 112 |
| 19 | Tamil Nadu | 5.00 | 112 | 56 |
| 20 | Uttar Pradesh (East) | 11.20 | 168 | 56 |
| 21 | Uttar Pradesh (West) | 13.00 | 168 | 56 |
| 22 | West Bengal | 6.25 | 112 | 56 |

### 4.1.3 Gross Revenue (GR), Deduction, Adjusted Gross Revenue (AGR) reported and revenue share paid by ICL:

Telecom Service Providers are required to pay License Fee (LF) and Spectrum Usage Charges (SUC) at a percentage of AGR on quarterly basis on self-assessment. GR, Deduction, AGR and Revenue shared (LF and SUC) by ICL along with subscriber base during the period under audit are as follows:

**Table 4.2**

*(₹in crore)*

| Year | Subscriber Base (as on 31st of each year) (in crore)) | Gross Revenue | Deduction | Adjusted Gross Revenue | License Fee (LF) | Spectrum Usage Charge (SUC) |
|---|---|---|---|---|---|---|
| 2010-11 | 8.95 | 17,859 | 4,993 | 12,866 | 1,108.53 | 560.36 |
| 2011-12 | 11.27 | 22,610 | 6,617 | 15,993 | 1,410.03 | 747.36 |
| 2012-13 | 12.16 | 26,153 | 8,138 | 18,015 | 1,593.08 | 857.16 |
| 2013-14 | 13.58 | 30,964 | 9,147 | 21,817 | 1,785.28 | 1,033.00 |
| 2014-15 | 15.78 | 36,797 | 10,301 | 26,496 | 2,167.28 | 1,258.05 |
| **Total** | | **1,34,383** | **39,196** | **95,187** | **8,064.20** | **4,455.93** |

## 4.2 Under reporting of revenue by ICL

As mentioned in Para 1.2 (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 1.3, service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

Audit examination of records/Books of accounts of ICL revealed that the Company had not adhered to the provisions of the License Agreement on the following issues:

### 4.2.1 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 for the period 2010-11 to 2014-15, it was observed that

- The margin/commission/discount in the nature of commission given to distributors/agents was netted off from the revenue pertaining to prepaid services.
- Offers to the subscribers viz., Promotional Airtime, Bonus Talk Time, Promo Bucket, Free Airtime/Flexi recharge, Free Talk Time/Recharge fee, PCO promotional Air Time/Recharge fee, Admin Fee Refund-prepaid and PCO and Free SMS/Minutes/expired cards/Non-moving coupons were netted off 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. But the rate at which the discounts were paid by the Company for prepaid services was not available either in the financial systems or in the distributor agreements provided to Audit. In the absence of the above information, taking into account the historic data available for the year 2009-10, Audit arrived at rate of discount as 4.34 *per cent* of its prepaid revenue. By applying this rate, the netted off amount was estimated at ₹ 3417.90 crore for the five years covered in Audit.

The Company stated (September 2016) that

- The Company sold the products to Distributor at a price after adjusting the Distributor margin and recognizes the revenue at the amount realized from the Distributor.
- As per AS9, "Gross inflow of cash" was the amount paid by the Distributor and not the MRP.
- TDSAT in its order dated 30 August 2007 held that the license fee was to be paid on the revenues actually realized by the Company. TDSAT in its order dated 23 April 2015 also held that the actual selling price would be the revenue and the difference between the MRP and selling price could not be added to GR.
- The difference between MRP and the agreed price with Distributor was a Trade discount and could not be called commission since the Distributor did not earn it.

The reply of the Company is not acceptable to the fact that:

- As per License agreement, GR should include revenues without any set off for related item of expense. Hence, Gross revenue should be reported and commission/margin/discount should be shown as expenditure separately.

- TDSAT judgment dated 30 August 2007 was set aside by the Supreme Court on 11 October 2011 and DoT appealed against the TDSAT order dated 23 April 2015 in the Supreme Court.

In view of the above, the GR/AGR of the Company was understated to the extent of ₹ 3417.90 crore resulting in short payment of LF and SUC amounting to ₹ 285.95 crore and ₹ 174.92 crore respectively (**Annexure 4.01**).

### B. Netting off of offers on prepaid revenue

Scrutiny of the accounting system of ICL for the period from 2010-11 to 2014-15 in respect of prepaid revenue it was seen that offers were given to prepaid subscribers in the nature of Promotional Airtime, Bonus Talk Time, Promo Bucket, Free Airtime/Flexi recharge, Free Talk Time/Recharge fee, PCO promotional Air Time/Recharge fee, Admin Fee Refund-prepaid and PCO and Free SMS/Minutes/expired cards/Non-moving coupons. The value of these offers amounting to ₹ 2798.65 crore were found to be deducted from prepaid revenue resulting in non-recognition of such revenue for GR/AGR.

These offers to subscribers were part of overall commercial strategy to enhance business and such offers were in the nature of expenses. The action of the Company in setting off the offers from prepaid revenue was not in tune with the License Agreement.

The Company replied (September 2016) that

- In case of certain prepaid tariff scheme, if free airtime was provided to subscribers on making recharges through specified recharge vouchers, denominations, in all such tariff scheme amounts which were actually paid by the subscribers were ultimately booked as revenue. All such tariff schemes were within the TRAI guidelines.

- Since the revenue was overstated at the monthly cut off for the free airtime usage to keep it in sync with the IN, there were debits in the ledger to bring it to the amounts actually paid by the subscriber.

- In some cases, debits were arising out of need that the credit should be reflected in some other revenue head. As such intra-revenue adjustments had no bearing on the AGR.

- As per AS9, revenue should be measured by the charges made to the customers and realised in nature.

- The Company offers various promotional tariff plans to subscribers for building business relationship. However, the common factor in these schemes is that additional talk time was provided without any additional charge. Such schemes were part of tariff plan and the additional/promotional talk time was in-built into the tariff itself. Such additional/promotional talk time was in the nature of trade discount only and thereby net realised rate from sale of particular recharge voucher was discounted. It would be inappropriate to charge license fees on free talk time or the additional talk time, which is notional and not realised by operators.

- TDSAT in its order dated 23 April 2015 held that '…. in order to be counted as "gross revenue", item of inflow must not be notional but real'.

The reply is not tenable to the fact that

- Promotional offers given to subscribers were a part of commercial strategy to enhance business and amount to expense. Further, Audit is of the view that Airtime is not a free commodity, had an intrinsic value and by giving FAT/FTT/ FOC etc., the licensees are foregoing the revenue instead of booking these separately as expenses resulting in avoidance of payment of LF and SUC.
- Intra revenue adjustments were not considered by Audit.
- The details of Promotional Airtime, Bonus Talk Time, Promo Bucket, Free Airtime/Flexi recharge, Free Talk Time/Recharge fee, PCO promotional Air Time/Recharge fee offered as per the tariff and that offered as promotion to customers/agents were not furnished.
- DoT appealed on the TDSAT order dated 23 April 2015 in the Supreme Court.

Non-consideration of an amount of being FAT/FTT/ FOC etc., resulted in understatement of GR/AGR by ₹ 2798.65 crore and short payment of LF and SUC by ₹ 234.65 crore and ₹ 147.44 crore respectively (**Annexure 4.02**).

### 4.2.2 Under reporting of revenue due to netting off of postpaid revenue

On Scrutiny of the accounting system of ICL for the period from 2010-11 to 2014-15 in respect of post-paid revenue, it was seen that the revenue GL codes were debited with the figures showing description as Adjustment, Waiver, promotional Air time P to P, Bulk SMS, SIMS billed to channels, Discount, BSCS adjustments, VAS discount, etc. These items were netted off from the revenue instead of booking the same separately as expenditure. The total amount so netted off from the revenue head worked out to ₹ 181.27 crore.

These offers/adjustments were part of overall commercial strategy to enhance business and were in the nature of expenses. The action of the Company in setting off the above items from post-paid revenue was not in line with the License Agreement and resulted in understatement of Gross Revenue.

The Company replied (September 2016) that

- Amounts which were credited in the bills on account of such waivers, discount and rebate are losses to the Company and could not be treated as revenue. The basic principle is that license fees should be paid on realisable revenues and it would be inappropriate to add such amounts notionally for the purpose of calculation of AGR.

- The Company follows a basis of reflecting the credits passed on to the subscribers in subsequent billing due to the incorrect charging in the relevant ledgers. These items did not make the amounts "related items of set off of expenses".
- As per AS 9 revenue is defined as the consideration received in cash from sale of goods or rendering services. There was no realisation of revenue in case of such rebate and waiver.
- Few contra entries, adjustments, reversal towards employee billing were also considered by audit for revenue share.
- As per TDSAT judgment dated 30 August 2007, 'discount, waiver or similar adjustment' should not form part of GR.

The reply of the Company is not convincing as Audit is of the view that waivers, discount and rebate were items of expense. TDSAT judgment dated 30 August 2007 was set aside by the Supreme Court on 11 October 2011.

Based on the reply, the understatement of GR/AGR was reworked as ₹ 174.26 crore and non-consideration of this amount for computation of revenue share resulted in short payment of LF and SUC by ₹ 14.20 crore and ₹ 8.81 crore respectively (**Annexure 4.03**).

### 4.2.3 Netting off of roaming revenue

Scrutiny of the accounting system of ICL for the period from 2010-11 to 2014-15 in respect of roaming revenue revealed that the revenue GL codes were debited/deducted with the Inter Operative tariff (IOT) discount. These items were netted off from the revenue instead of booking the same separately as expenditure. The total amount so netted off from the revenue amounting to ₹ 131.73 crore was not considered for GR/AGR.

Having roaming agreements with other national/international operators was a matter of mutual agreement between the two concerned 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. The action of the Company in setting off the above discount from roaming revenue was against the conditions of the License Agreement.

The Company replied (September 2016) that

- Such discounts are volume based and linked to the quantum of roaming duration by their subscribers on the Company's network. These discounts are slab based and the revenue actually realised by the Company from other operator is only after passing on the discounts. Hence such roaming discounts are trade discount and the Company's recognition of the roaming revenue net of trade discount was in line with the prescribed accounting standards.

- 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.
- The stand that such volume/trade discount netting off from revenue should be added back to GR was incorrect and against Accounting standards.

The reply of the Company is not tenable since giving discounts over and above the agreed charges for roaming was part of overall commercial strategy to enhance business between the two operators; hence these discounts were in the nature of expenses. Since the licence agreement does not permit any netting off, such expenditure cannot be deducted and therefore, have to be included in the GR.

Based on the reply, the amount of understatement of GR/AGR was reworked to ₹ 127.55 crore. Consequently, LF and SUC was short paid by ₹ 10.96 crore and ₹ 6.33 crore respectively (**Annexure 4.04**).

### 4.2.4 Non consideration of Infrastructure sharing revenue

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

Review of data/records through Oracle accounting system pertaining to Infrastructure Sharing Charges for the period from 2010-11 to 2014-15 revealed that Infrastructure sharing charges recovered on account of Rent, Fuel (Diesel), Electricity, Operational and Maintenance, Insurance, Security and Corporate Tax amounting to ₹ 437.11 crore were netted off from the expense heads and hence not included in the Gross revenue.

The Company stated (September 2016) that:

- Charges for Capex Cost invoiced for infrastructure use and were based on capital cost. These were rental revenues as per AS 9 and form part of AGR.
- Reimbursement of expenses were expenses incurred for operating the sites as rent, fuel, security, AMC cost and repairs and maintenance which require to be proportionately recovered from the sharing party based on actual cost incurred. Such reimbursement of expenses covered under Paras 46 and 47 of AS 29 could not constitute income.
- Re-imbursement of Operating Expenditure could not be considered as it was not a case where any revenue item and cost items were netted off and that revenue was short or not recorded. It was the case of reimbursement of incurred costs as operating costs paid by one operator but had to be shared by more than one operator and hence

such payment towards shared cost by one operator to another could not be treated as Revenue.

The reply is not tenable to the fact that:

- In terms of licence agreement GR specifically includes revenue from permissible sharing of infrastructure without any set-off for related item of expense and licence agreements do not distinguish between CAPEX and OPEX revenue on account of sharing of infrastructure. Hence set-off of revenue from Infrastructure sharing against the expenses is not allowed.
- Audit is of the view that revenue towards diesel expenses, security expenses, repair and maintenance expenses and electricity charges did not constitute reimbursement since they had to be incurred irrespective of whether the towers were shared or not. In fact, by sharing the expenditure, the Company benefited through additional income.
- In terms of License agreement, GR specifically includes revenue from permissible sharing of infrastructure without any set-off for related item of expense. Hence, set off of revenue from Infrastructure sharing against the expenses was not allowed. Further, License agreement permits only three permissible deductions and no such deduction on account of Infrastructure sharing is allowed.

Based on the reply, the amount of understatement of GR was revised to ₹ 403.14 crore and non-consideration of this amount for computation of revenue share resulted in short payment of LF and SUC by ₹ 34.92 crore and ₹ 24.03 crore respectively (**Annexure 4.05**).

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

Calls from one license area/circle to another area/circle of IDEA were carried by the IDEA NLD licensee. IDEA UASL/CMTS licensee shared the switches with NLD licensee and NLD licensee made payments to respective LSAs for the same.

On scrutiny of Oracle Financial System for the year 2010-11 and 2011-12, it was found that IDEA NLD paid ₹ 161.19 crore to all the 22 LSAs for sharing the switches. However, credited the payments received from the NLD against switch sharing expenses the LSAs, instead of accounting as revenue. Netting off revenue against expenditure was not in compliance with the license conditions and resulted in understatement of GR of ICL by ₹ 161.19 crore for the above two years. From 2012-13 onwards, the Idea NLD was utilizing its own switches.

Management replied (September 2016) that

- The NLD services were using switches of other LSAs for routing the long distance traffic. Since these switches are capitalized in respective LSA books, all maintenance, repair and depreciation expenses were also incurred and accounted in related LSA itself. Hence, to reflect the correct profitability of each segment, such LSAs were reimbursed for use of switches by NLD division.

- The Company added that the reimbursement could not be treated as revenue and it was not justified to mention that there was any contravention of licencing agreement by the Company.

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.

Non-consideration of the amount resulted in understatement of GR/AGR by ₹ 161.19 crore and consequent short payment of LF and SUC by ₹ 14.67 crore and ₹ 7.13 crore respectively **(Annexure 4.06).**

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

Scrutiny of the Trial Balance pertaining to Passive Infrastructure (PI) division and accounting entries of ICL for the period from 2010-11 to 2014-15 in respect of NLD services it was found that an amount of ₹ 109.24 crore was booked as Indefeasible Right to Use (IRU) revenue. This revenue was accruing from the Optical Fibre Cable (OFC) given to various other operators on IRU basis. However, this revenue was not considered for inclusion in GR/AGR.

Management stated (September 2016) that it was holding Infrastructure Provider Category-I registration. The revenue highlighted was pertaining to PI Division of ICL and accounted from sale of Optical Fibre Cable (OFC) to other Telecom Operators under IRU. As per the licensing condition, the Company is maintaining separate set of books for all licenses and accordingly transactions pertaining to IP-I license were being accounted under separate books naming “Passive Infrastructure Division” in Oracle Financial System. Such IRU revenue was shown under Service Revenue for preparation of P&L account for ICL but since license fees was not applicable on this revenue, it was not considered in GR/AGR for computation of revenue share (LF).

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.

Hence, non-consideration of IRU revenue of ₹ 109.24 crore is not in accordance with the license agreement and resulted in under reporting of GR/AGR and consequent short payment of LF of ₹ 8.08 crore **(Annexure 4.07).**

### 4.2.7 Under reporting of revenue from Forex gain for GR/AGR

In terms of license agreement, GR shall be inclusive of any other miscellaneous revenue. On scrutiny of the accounts through Oracle Financial system it was found that there was Realised Exchange Gain of ₹ 244.98 crore for the years 2010-11 to 2014-15. However, the gain on foreign exchange was not considered by the Company for inclusion in the GR/AGR computed for payment of revenue share as required under the license conditions.

As mentioned in para 2.2.5 of this report, Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item. 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.

The Company replied (September 2016)that:

- Audit referred Clause 19.1 of the LicenseAgreement to construe that foreign exchange fluctuation gain should form part of GR. 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 would go into invoicing of services and goods to get the consideration which form part of service revenue of the licensee.
- Foreign exchange gains arising out of difference between the foreign exchange rate as on the date of liability booking and date of payment could not 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. It was also stated that exchange gain and exchange loss in any given period could not be looked at isolation. If the term used was only gain, then mathematically losses must be recorded as negative gains.
- As per Accounting Standard 9 on revenue recognition, Foreign exchange gain was not revenue.

Reply of the Company is not tenable as:

- 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.
- The company has been following mercantile method of accounting and as per commercial principle of accounting, “the profit/loss” is to be arrived after taking into account all accrued receipts and expenses and comparing of trading assets between

two different dates. Under the mercantile system of accounting a forex gain (revenue)/loss (expenditure) incurred as a result of exchange differences are rational and cannot be considered as contingent/notional in nature. Further, audit has considered the realised gain only.

- AS-9 only states that realized or unrealized 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 AS-9. Treatment of forex gain/loss is covered under AS-11.

In view of the above, an amount of ₹ 244.98 crore was understated in GR/AGR resulting in short payment of LF and SUC by ₹ 21.30 crore and ₹ 10.97 crore respectively (**Annexure 4.08)**

## 4.3 Under reporting of revenue in the Statement of Revenue and LF (AGR statements) though reported in the books of accounts

### 4.3.1 Non consideration of Interest Income for GR/AGR

As per the license agreement, GR for the purpose of payment of Revenue Share shall be inclusive of revenue on account of interest**.** Scrutiny of accounts in Oracle system in respect of Interest Income GL codes of Corporate as well as LSAs for the period 2010-11 to 2014-15 revealed that an amount of ₹ 298.32 crore was booked as Interest Income but was not considered for inclusion in GR/AGR for computation of revenue share.

Management replied (September 2016) that these incomes earned by Corporate Office through Treasury function were not arising from subscribers of telecommunication activities. Separate accounts were maintained by the Company for Corporate Office transactions and these accounts were combined with accounts maintained for each service area for preparation of annual accounts as required by Companies Act. The Company further added that in line with the TDSAT judgment dated 30 August 2007, this amount was not included for computation of payment of LF and SUC.

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 provide for inclusion of interest income in GR/AGR for computation of revenue share.

Non-consideration of the revenue of ₹ 298.32 crore resulted in understatement of GR/AGR and short payment of LF and SUC by ₹ 24.30 crore and ₹ 13.19 crore respectively **(Annexure 4.09).**

### 4.3.2 Non consideration of Profit on sale of Investments for inclusion in GR/AGR

In terms of license 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. Further item No. 4 of statement of Revenue and License Fee (AGR Statement) which was also an integral part of UASL agreement reflect the "Income from Investment".

On perusal of Schedules forming part of Annual Accounts of ICL for the period 2010-11 to 2014-15, it was seen that an amount of ₹ 593.25 crore was shown as profit on sale of investments. These incomes are mainly on account of profit on sale of investments in Mutual funds and Bonds. But, the income was not considered for inclusion in GR/AGR.

The Company replied (September 2016) that these income earned by Corporate Office through Treasury function were not arising from subscribers of telecommunication activities. Separate accounts are maintained by the Company for Corporate Office transactions and these accounts are combined with accounts maintained for each service area for preparation of annual accounts as required by Companies Act. The Company further added that in line with the TDSAT judgment dated 30 August 2007, the payment of LF and SUC on Profit on sale of investment was not made.

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.

Non-consideration of the revenue of ₹ 593.25 crore on profit on sale of investments resulted in understatement of GR/AGR and also consequent short payment of LF and SUC amounting to ₹ 48.02 crore and ₹ 26.70 crore respectively **(Annexure 4.10).**

### 4.3.3 Non consideration of Miscellaneous revenue for inclusion in GR/AGR

In terms of conditions under license agreement, the Gross Revenue shall be inclusive of revenue on account of interest, dividend and any other miscellaneous revenue without any set-off for related item of expense, etc. On perusal of Schedules forming part of Annual Accounts for the period 2010-11 to 2014-15 and also scrutiny of the concerned GL codes in Oracle accounting system, it was found that under Miscellaneous income, Stale cheque credits, Miscellaneous receipts and Sales revenue-Inventory amounting to ₹ 19.39 crore were booked. However, this revenue was not considered for inclusion in the Gross Revenue for calculation of revenue share to Government of India.

Management replied (September 2016) that the Miscellaneous income was incidental to business such as scrap sale, stale cheque credit, etc. and did not have connection with telecommunications operations for which license was granted to the Company. The Company also stated that the TDSAT in its judgment dated 07 July 2006 held that the License fee could be paid only on revenue earned from licensed activities. The Company further added that as per TDSAT judgment dated 30 August 2007, Miscellaneous Income should not be a part of AGR.

The reply of the Company is not tenable since definition of GR provides that miscellaneous revenue should be included in GR for computation of revenue share. Further, the said TDSAT judgments were set aside by Supreme Court vide its judgment dated 11 October 2011.

Non consideration of miscellaneous income for revenue share resulted in under reporting of GR/AGR by ₹ 19.39 crore and consequent short payment of LF and SUC amounting to ₹ 1.70 crore and ₹ 0.98 crore respectively **(Annexure 4.11).**

### 4.3.4 Non consideration of Income from profit on sale of fixed assets for GR/AGR

In terms of conditions under license agreement, the Gross Revenue shall be inclusive of revenue on account of interest, dividend and any other miscellaneous revenue without any set-off for related item of expense, etc. An examination of data/records furnished by ICL for the period from 2010-11 to 2014-15 revealed that the gain on sale of fixed assets of ₹ 10.22 crore was not considered for computation of GR/AGR.

Management replied (September 2016) that as per TDSAT judgment dated 30 August 2007, "….revenue from sale of fixed assets which was in the nature of capital receipts and insurance claims should not be part of AGR…." and hence not accepting audit contention to treat the gain on sale of fixed assets to form part of GR. The Company also stated that it had duly recorded the gain/loss on sale of fixed assets and could be referred from respective years Annual Reports.

The reply of the Company is not tenable since Licence agreements provide that miscellaneous revenue/income should be included in GR/AGR for computation of revenue share and profit on sale of assets/scraps was in the nature of miscellaneous revenue. Further, the TDSAT judgment of 30 August 2007 was set aside by the Supreme Court vide its judgment dated 11 October 2011.

Non consideration of this amount resulted in understatement of GR/AGR by ₹ 10.22 crore and consequent short payment of LF and SUC by ₹ 1.08 crore and ₹ 0.66 crore respectively **(Annexure 4.12).**

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

### 4.4.1 Inadmissible deduction on account of bad debts written off

In terms license conditions stated in the Para 1.2, the bad debts written off was not allowable as deduction from GR to arrive at AGR.

On scrutiny of the audited Statements of Revenue and License Fee (AGR Statements) pertaining to the period from 2010-11 to 2014-15, it was found that during the year 2013-14, bad debts written off amounting to ₹ 113.68 crore was claimed as deduction from GR in 15 LSAs.

Management replied (September 2016) that based on TDSAT judgment dated 30 August 2007, the Company had taken deduction of Bad Debts written off during 2013-14 while preparing Annual Audited AGR for 15 LSAs. However, while making LF and SUC payment to DoT, the Company had not taken deduction of Bad Debts written off and to that extent LF and SUC were paid in excess. Accordingly claiming bad debt written off in Audited AGR did not have any adverse implication on Government.

The reply of the Company is not acceptable as exemption has been claimed for bad debts written off in the audited AGR statement and assessment of DoT would be based on the audited AGR statement. Adhoc payments made cannot be treated as payment made against this item.

Hence, an amount of ₹ 113.68 crore was understated in GR/AGR and resulted in short payment of LF and SUC amounting to ₹ 9.09 crore and ₹ 6.21 crore respectively **(Annexure 4.13).**

### 4.4.2 Interest on short/non-payment of LF and SUC

On issues raised above (from para 4.2.1 to 4.4.1) short/non-payment of LF and SUC worked out to ₹ 708.92 crore and ₹ 427.37 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 657. 88 crore **(Annexure 4.14).** The calculation of interest was based on the rate prescribed in the License 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 was compounded monthly as prescribed in the license agreement.

### 4.4.3 Non submission of details as required under Annexure III of the UAS/CMTS license 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 indicated that all these norms had not been complied in full. In particular, it appeared that 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.

On being pointed by audit, the item wise reply of the Company was furnished as under:

- Separate General Ledgers are maintained for Service Tax/Sales Tax Liabilities and Collection in Oracle Financial System (OFS).
- On Sale of goods, the Quantitative details as required by the Company's Act for goods traded in the respective financial year and the accounting policy of inventory valuation was already disclosed in the Annual Financial Statements.
- In respect of the item that Sales shall be shown gross and details of discount/rebate allowed and of sales returns shall be shown separately, the Company stated that the

accounts groups for service revenue reflect the requirements in their respective earmarked general ledger codes within that grouping.

Instances of understatement of revenue as brought out in the report would confirm that the revenue recognised 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.

For example, as per the norms revenue was to be shown as gross without any deductions. However, as detailed in paragraph of this report it could be seen that Discount/Commission/Waivers, Free airtime etc., were netted off from revenue and not disclosed to DoT though the Company replied that the service revenue reflect the requirements in their respective general ledger.

DoT had 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 ICL was ₹ 134383 crore, the deductions claimed was ₹ 39196 crore and the average deduction percentage works out to 29.17 *per cent* of the GR. Though the deductions claimed by ICL were subject to verification by Offices of Controllers of Communications Accounts (CCA), 70.83 *per cent* of the Gross Revenue is merely assessed based on self-declaration made by the Company at DoT Level.

The LF Wing of DoT had 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.

## 4.5 Response of DoT/ICL to the audit observations

Audit observations on the revenue share payable by M/s ICL were communicated to DoT and ICL during September 2016 for their further comments. ICL had reiterated once again (September 2016) their submission made in reply to audit observations issued during the course of premises audit. DoT reply is as mentioned in para 2.4.