

Nortel Networks India Pvt. Ltd., New ... vs Addl. Cit, Circle-18(2), New Delhi on 31 August, 2020

INCOME TAX APPELLATE TRIBUNAL		
DELHI BENCH "E": NEW DELHI		
(Through Video Conferencing)		
BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT		
AND		
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER		
ITA No. 5205 /Del/2017		
(Assessment Year: 2013-14)		
Nortel Networks India Pvt. Ltd,	Vs.	Addl. CIT,
G - 41, ground floor		Special Range-6, Room NO.
West Patel Nagar		352, CR Building, IP Estate,
		New Delhi
New Delhi 110008		
PAN: AABCN1424B		
(Appellant)		(Respondent)
Assessee by:	Shri Nageshwar Rao, Adv	
Revenue by :	Ms. Pramita M. Biswas, CIT DR	
Date of Hearing	08/07//2020	
Date of pronouncement	31/08/2020	

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by Nortel Networks India Private Limited (The appellant, assessee) against the order of The Commissioner Of Income Tax (Appeals) - 37, New Delhi [The Ld. CIT (A)] dated 23 June 2017 , who dismissed appeal filed by the assessee against the assessment order passed u/s 143 (3) of The Income Tax Act, 1961 (The Act) on 21st of March 2016 for Assessment year 2013-14 by The Deputy Commissioner of Income Tax, Circle - 18 (2), New Delhi (The Learned AO) determining the total assessed loss of Rs. 158,076,996 against the returned loss of Rs. 533,036,855 was determined. This appeal is heard through videoconferencing as per the consent of the assessee.

2. The assessee has raised the following grounds of appeal:-

Page | 1 "Ground no. 1: Deduction of payment to Vista Information Systems Pvt Ltd („Vista) 1.1. On facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the order of the learned AO in disallowing payment of INR 33,92,00,000 made to Vista, claimed by Appellant in the return of income for the subject year.

1.1.1. On the facts and in the circumstances of the case and in law, the learned CIT(A)

as well' as the learned AO failed to appreciate that the liability for the aforesaid expense accrued in the subject year and hence, the Appellant had rightly claimed the deduction for the same in the return of income for the subject AY.

Ground no. 2: Deduction of Actual Usage of Provision of Obsolescence 2.1. On facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not holding that there has been violation of principles of natural justice as the learned AO did not provide a show-cause opportunity before making the aforesaid addition, and hence, the addition made by the learned AO is bad in law and void ab initio.

2.2. Without prejudice to Ground 2.1 above, on facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the learned AO in disallowing the amount of INR 2,58,51,322 claimed by the Appellant on account of actual usage of provision for obsolescence which has already been offered to tax by the Appellant at the time of creation of provision in AY 2011-12.

Ground no. 3: Enhancement of Interest income Page | 2 3.1. On facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not holding that there has been violation of principles of natural justice as the learned AO did not provide a show-cause opportunity before making the aforesaid addition, and hence, the addition made by the learned AO is bad in law and void ab initio.

3.2. Without prejudice to Ground 3.1 above, on facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the learned AO in enhancing the interest income by INR 82,08,537, on account of difference in interest income as per profit and loss account („P&L account) and amount as per Form 26AS for the subject year. 3.3. Without prejudice to Grounds 3.1 and 3.2, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not considering the revised break up of interest income booked in the P&L account and its reconciliation with Form 26AS for the subject year, which was filed by the Appellant during the course of assessment proceedings. 3.4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the judicial precedents relied upon by the Appellant.

Ground no. 4: Non grant of TDS credit 4.1. On facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not directing the learned AO to grant credit of TDS as claimed by the Appellant in its return of income, amounting to INR 2,73,49,580.

Ground no. 5: Levy of penalty under section 271(l)(c) of the Act.

Page | 3 5.1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not holding that the learned AO has erred in initiating penalty proceedings u/s 271(1)(c) of the Act for the subject year."

3. Briefly, fact shows that the assessee is a subsidiary of Nortel Networks Mauritius Ltd, engaged in providing installation, testing, commissioning and repair and maintenance services in relation to

Telecom equipment supplied by Nortel group companies and marketing and after sale support services to Nortel group of companies.

4. Assessee filed its return of income on 30 November 2013 declaring loss of 533,036,855. The case of the assessee was selected for scrutiny by issue of notice u/s 143 (2) of the act. During the course of assessment proceedings the various issues were examined and ultimately the assessment order u/s 143 (3) of the act was passed on 21 st of March 2016 wherein the learned assessing officer made following additions which are the subject matter of dispute in this appeal :-

i. Disallowance of expenses of 33.92 crore claimed by the assessee through computation of total income though not accounted in this year but in preceding previous year as well as held by the assessing officer that the claim of the above deduction pertains to assessment year 2012

- 13 and not to the year under consideration. ii. Disallowance of deduction claimed by the assessee of Rs25,851,322/-

on account of usage of „provisions for obsolescence claimed to have been offered to tax in prior years by the assessee but disputed by the assessing officer Page | 4 iii. Addition on account of interest income of Rs. 8,208,537/- comprising of lesser income accounted for the year from ICICI bank account of Rs. 296,208/- and 7,912,329/- in case of Citibank N A then what is recorded in form no 26AS for the year

5. Against the order of the learned AO, assessee preferred an appeal before the learned Commissioner of Income Tax - Appeals - 37, New Delhi. Before her appeals were fixed on 15th of June 2017, 29th of May 2017 and 21st of June 2017, on all the dates the assessee received the notices. However, none appeared and therefore, she proceeded to decide the appeal on the merits of the case.

i. On the first issue of disallowance of claim of 33.92 crore, it was confirmed holding that assessee company is following mercantile system of accounting and as per the said system the amount was rightly disallowed in assessment year 2013 - 14 as said claim has already been allowed in assessment year 12 - 13 and the said sum in fact, pertained to assessment year 12 - 13 only.

ii. With respect to disallowance of provision for obsolescence of 25,851,322/-, she confirmed the disallowance as assessee could not show before the assessing officer that how this income has already been offered for taxation in earlier years and further it related to inventories. iii. With respect to the addition of interest income of 8,208,537, she confirmed the addition stating that appellant is following the mercantile system of accounting, majority of the tax-deductors are bank, as assessee itself has accepted that there is shortfall, which it offered in subsequent years. She further held that each assessment year is an Page | 5 Independent unit and the same has to be accounted for on accrual basis for the year, which it relates to, the interest income was liable for taxation under mercantile system of accounting.

iv. Assessee raised a ground before CIT A that AO has not granted credit for tax deduction at source of Rs 273,49,580/-. She dismissed the above ground holding that it is not arising from the assessment order. v. On the ground of initiation of penalty proceedings, the ground raised by the assessee, she held that it is premature and dismissed. Thus, appeal was dismissed. Thus, assessee aggrieved with the order of the learned CIT - A preferred this appeal before us.

6. First ground of appeal is with respect to the disallowance confirmed by the learned CIT - A of INR 33,92,00,000 of payment made to Vista Information Systems private limited. Facts show that assessee due to global bankruptcy of Nortel group, sold its various businesses to various entities. Some of its business was sold to kapsch. The AMC and sale of spares related to business sold to that group was given to Kapsch India entity Vista Information systems Limited. As the contract was for AMC and supply of parts post warranty period, the assessee was to pay Rs 33.92 Cr to Vista Information Pvt Ltd for performing the AMC and sale of parts to Telecom Consultants of India Limited. This sum was accounted for in the books of the assessee for the year ended on 31.3.2012. It was also claimed as deduction in that year i.e. AY 2012.13. The return for AY 2012-13 was not filed in time so LD AO disallowed the loss for that year. However, during assessment proceeding for that year assessee wrote a letter to AO that above liability did not pertain to AY 2012-13 but to AY 13-14 therefore the claim for the same in AY 2012-13 is withdrawn. Ld. AO did not Page | 6 consider it. Meanwhile, Assessee claimed above sum in computation of total income for AY 2013-14 though it was accounted for in AY 2012-13. The claim of the assessee was based on a tripartite agreement between Assessee, Singapore Affiliate of Nortel with TCIL. Ld AO and CIT (A) rejected the claim.

7. The learned authorized representative referred to the copies of the agreement with Vista Information Systems Ltd placed at page number 136 - 180 of the paper book. He specifically referred to page number 137 where the residual obligations are defined in clause number 3.1. He also referred to page number 139, which notes the requirement of TCIL approval for assignment process to be lawful in form of tripartite agreement placed at page number 181 to 190. He also referred to the order of the learned Commissioner of Income Tax Appeals for assessment year 2012 - 13 dated 11/11/2016 in case of the assessee where the assessee's submissions were recorded that the claim for deduction for provision of the liability towards Vista was withdrawn by submission dated 28 November 2013. He referred to that copy of the letter placed at page number 191 of the paper book. He stated that the learned CIT - A has accepted the withdrawal of the claim of deduction saying that it is not pertaining to this assessment year in Para number 5.3 of his order. Based on this, he submitted that the above claim was not allowable for assessment year 2012 - 13, as it did not crystallize in that year but in assessment year 2013 - 14. Referring to that order of the learned CIT - A, he stated that on reading of that order there is no dispute about the allowability of the claim but only issue is that in which year the deduction is allowable. He submitted that when in appeal for assessment year 2012 - 13 before the learned CIT - A, it is held that the above sum is not deductible in that assessment year, hence , deduction in assessment year 13 -

Page | 7 14 deserves to be allowed. He stated that the tripartite agreement entered into in May 2012 and payment happened in May 2012. Before that date, it was only a potential transaction that could come to life upon contingency of acceptance by TCIL. Therefore, according to him the sum is allowable as deduction in this year. He also referred to page number 111 and 112, which describes the

transaction for the financial statements. He also referred to the financial statement for assessment year 2013 - 14 and note number 36 to state that the claim of the assessee is allowable for assessment year 2013 - 14 only. He therefore stated that the lower authorities are not correct in disallowing the above claim.

8. The learned departmental representative vehemently supported the order of the learned assessing officer, referred Para number 3.5 of the assessment order, and stated that the above sum accrues in assessment year 2012 - 13. He further referred to the agreement dated 30 December 2011 placed at page number 136 - 180 of the paper book and stated that the claim of the assessee is allowable for assessment year 2012 - 13 only. As assessee has filed belatedly return of income for that year and therefore such sum could not have been allowed to be carried forward to the next year and therefore the assessee is claiming that the same should be allowed for assessment year 2013 - 14. He further referred to page number 256 of the paper book where the amount provided for in assessment year 2012 - 13 and in that year it accrued. Therefore he submitted that when the annual accounts of the assessee prepared by the assessee itself states that the above sum accrued in the assessment year 2012 - 13, claimed in the return of income for that year, files a belated return, now it cannot say that the sum accrued in assessment year Page | 8 2013 - 14 and not in AY 2012-13.. He further referred to the letter dated 28/11/2013 placed at page number 191 of the paper book and stated that the facts and reasons of the claim and submitted that it had loss which cannot be carried forward so it claimed in assessment year 2013 - 14. He further stated that when the loss of the assessee is determined but not allowed to be carried forward in the subsequent year because the assessee has filed the belated return of income, the loss related to the above expenditure has already been allowed to the assessee in assessment year 2012 - 13. He submitted that had the return for assessment year 2012 - 13 been filed in time by the assessee the above expenditure were duly accounted for in the year in which loss is incurred by the assessee and allowed to the assessee. He further submitted that for assessment year 2012 - 13 only the loss determined by the assessing officer is not allowed to the assessee to be carried forward for the reason that the return of income has not been filed by the assessee in time. He submitted that that does not mean that the expenditure pertains to the assessment year 2013- 14 and not to assessment year 2012 - 13. He specifically stated that the assessing officer has given a detailed reason that the above expenditure did not accrue to the assessee in assessment year 13 - 14 but in assessment year 2012

- 13. He stated that the assessee being a company is following the mercantile system of accounting and maintain its accounts on accrual basis. In the annual accounts of the company, the assessee has provided the above sum as expenditure in assessment year 2012 - 13 therefore, according to the assessee also the above expenditure has accrued in the assessment year 2012 - 13. On the Tripartite agreement, it was submitted that, there is no linkage between that agreement and the sum payable by the assessee to Vista as it accrued as Page | 9 per agreement with Kapsch. He also submitted that CIT (A) in his order for Ay 2012-13 does not say that it accrued in Ay 2013-14 but simply says that when assessee does not claim an expenditure the loss needs to be reduced. He also submitted that accounts were also not revised. He therefore submitted that there is no error in the orders of the lower authorities on this issue.

9. The learned authorized representative in rejoinder submitted that the assessee was in liquidation therefore the provision was made in assessment year 2012 - 13 but there is no reason for revision of accounts of the assessment year 2013 - 14 to incorporate the above entries. Even otherwise, he relied on the decision of the honourable Supreme Court in case of Kedarnath Jute mills Ltd 82 ITR 365 and Sutlej Cotton Mills Limited 116 ITR 01 to submit that the manner of treatment in the accounts of particular sum cannot be determinative of the allowability of the expenditure.

10. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also gone through a paper books submitted by assessee where in annual accounts, correspondences and agreements are placed. Brief facts of these expenditure is that assessee has entered into service contract with Telecommunications Consultant India Ltd [TCIL] for rendering services in connection with design, manufacture, supply, installation, testing and commissioning of Eastern Railways network. Nortel group companies performed most of the respective obligations under the telecommunication consultant India Ltd network contracts, which was for delivery, installation, and commissioning, final acceptance and warranty completion of the network. The Warranty period has expired. The AMC contract was to be renewed coupled with sale of spares to support original sale by Page | 10 Nortel Group companies. As the sales was made by Nortel Group and sales consideration was already received, in between Nortel Group sold its various business , so the AMC contract was given to Vista Information systems limited which is part of Kapsch Group for Rs 33.92 Crores. The straightforward and simple issue involved in this appeal is whether the amount of 33.92 crore is of expenditure incurred by the assessee has accrued as a liability in financial year 2011 - 12 or 2012 - 13. The same is allowable to the assessee in the year in which such expenditure has been incurred by the assessee. There is no quarrel between the revenue and assessee that manner of making an accounting entry is not determinative of allowability of expenditure.

11. The learned assessing officer discussed the about disallowance at Para number (3) of his order as Under:-

"3. Disallowance of expenses of 33.92 crore claims through computation of income
3.1 During the course of assessment proceedings, vide questionnaire dated 1.2.6 2016 the assessee was asked to justify its claim of consideration paid to Vista amounting to 33.92 crore is claimed as allowable expenditure, which was claimed by the assessee directly from the computation of income and similar expenses claimed in the last previous year and the assessee was also asked to furnish the complete details in respect of AMC income recognized and to provide details in respect of complete working of the amount of 33.92 crores. Further, the assessee was asked Page | 11 to explain as to why these expenses had not been routed to profit and loss account.

3.2 In response to show cause, the AR of the assessee furnished reply on 12.2.2016 stating that the assessee company had entered into a contract with telecommunications consultants India Ltd (TCIL) for the design, manufacture, supply, installation, testing and commissioning of mobile crane radio communication system and there were some publications pending to be performed in respect of the

said contract. These obligations included entering into an annual maintenance contract (AMC) with TCIL to supply and guarantee the availability of maintenance papers for the network. It was stated by the assessee that in the light of insolvency proceedings filed by the Nortel group and the subsequent sale of Nortel groups business across locations, the assessee company entered into a contract with Vista Information Systems private limited (Vista) whereby the assessee company was to pay to be stern amount of 33.92 crore is for taking over the residual obligation from the assessee company.

3.3 The assessee further intimated that the agreement between the Assessee Company and Vista was dated 30/12/2011 and the payment was made to Vista on 8/5/2012. It was stated that the assessee has claimed Page | 12 deduction of 33.92 crore is in assessment year 2012 - 13 but later sought to withdraw the claim vide written submission dated 28/11/2013 filed during the assessment proceedings for assessment year 2012 - 13, however, the AO allowed the said deduction, against which the assessee has filed an appeal before the learned CIT (A), which was pending.

3.4 The reply of the AR of the assessee has duly been considered. It is an undisputed fact that the pursuant to an agreement dated 30/12/2011 entered into by the assessee with Vista, the assessee had duly made the claim for the impugned deduction in its return of income for assessment year 2012 - 13, which claim was admittedly allowed by the AO. The assessee has stated that against the said allowance of claim, it has preferred in appeal before the learned CIT (A), which is pending. Thus, the position as it stands now is that the assessee s claim for 33.92 crore stands allowed in assessment year 2012 - 13. Accordingly, the assessee cannot be granted same claim again as deduction in the year under consideration. Moreover, the assessee is following mercantile system of accounting and therefore, the liability of the assessee accrued on 30/12/2011, i.e. the date of agreement with Vista.

Page | 13 3.5 It is pertinent to mention that the agreement dated 30.12.2011 is a complete agreement, which clearly specifies the role of each contracting party and clause 5 of this agreement (the payment clause) unambiguously provides for payment of 32.84 crore to Vista. Even the exchange rate of US dollar has been fixed at the forward rate of US dollar as on 28th of March 2012. Further, clause 3 of the agreement specifies that the basic terms and conditions will remain substantially the same; however, there may be changes in period and scope of AMC or in contractual structure for taking over the role of the assessee company by Vista. As per clause 7 of the agreement, the TCIL was required to execute the tripartite agreement on or before 29/2/2012, failing which the agreement dated 30/12/2011 would have been automatically cancelled/terminated. This crucial date of 29/2/2012 could only be extended by an agreement between all the parties in writing and it appears that the tripartite agreement dated 2/5/2012 was the result of such extension only, because clause G in the preamble of this agreement refers to the already existing agreement dated 30/12/2011.

3.6 from the above facts, it can be observed that the tripartite agreement dated 2/5/2012 was only an extension of the original agreement dated 30/12/2011 and as Page | 14 prescribed in the original agreement, the tripartite agreement had to be executed on or before 29/2/2012, i.e. within financial

year 2011 - 12 relevant to assessment year 2012 - 13 unless the date was extended by agreement in accordance with clause 7 of the agreement.

3.7 The assessee's claim of deduction of 33.92 crore could thus only pertain to assessment year 2012 - 13 and not to the year under consideration. The claim cannot be allowed to be shifted from assessment year 2012 - 13 to assessment year 2013 - 14 merely because of the fact that the assessee's return of loss for assessment year 2012 - 13 was not filed u/s 139 (3) of the act and the assessee could not avail the loss resulted from the impugned claim in assessment year 2012 - 13.

3.8 In view of the above facts and circumstances of the case, the assessee is impugned claim of deduction of 33.92 crore is not admissible for the year under consideration and the same is disallowed and added to the assessee is taxable income."

12. Aggrieved with the above addition, assessee challenged the same as per ground number [1] before the learned CIT - A. The learned CIT A in Para number 5.1 dealt with the whole issue as under:-

Page | 15 "5.1 The matter has been examined. The appellant has not attended the appellate proceedings, nor submitted any submissions, the reasons therefore lies embedded in the contention of the assessment order which reveals that the appellant has as regards claim of 33.92 crore and claimed the said sum in its return of income for assessment year 2012 - 13 which has duly been allowed by AO. Thus as the claim as made by the appellant has been allowed by assessing officer for assessment year 2012 - 13, the appellant still has chosen to file appeal for assessment year 12 - 13 and in the same breath also lodged appeal for assessment year 13 - 14, since the AO has disallowed the sum of 33.92 crore is in assessment year 13 - 14 as the said sum had already been allowed in assessment year 12 - 13. The reasoning and contentions made by AO are in order which this office, concurs and upholds the same. The appellant company is following mercantile system of accounting and is per se system the amount of 33.92 crore was rightly disallowed in assessment year

13 - 14 as the said sum had already been allowed in assessment year 12 - 13, since the said sum pertained to assessment year 12

- 13. The AO has rightly analyze the matter in accordance with law and appeal of the appellant on this ground is dismissed their by upholding the addition of 33.92 crore."

13. The fact shows that assessee is a company, which is maintaining its account on accrual basis. The assessee prepared its account for the financial year ended on 31st of March 2012 on 4 December 2012. In the profit and loss account the Page | 16 assessee has claimed an extraordinary item of expenditure amounting to 7 20505531/-. This amount has been explained as per note number 34 as Under:-

"34. Extra ordinary items include consideration paid/payable to Ericsson 381305531/- (net of taxes) and Vista Information Systems private limited 3392000000 per note 37. In the previous year extraordinary items include loss (net) on sale of business, which pertains to transfer of inventory is of multi-service which business and carrier VoIP and application solution business and the consequential write of/ write back off of balances relating to multiservice which business."

14. The note number 37 to the financial statements (31.3.2012) is as under

"37 a) As on January 14, 2009, Nortel Networks Corp, Canada, (the ultimate holding company) and its certain Canadian subsidiaries have sought creditors protection Under the Company s creditors arrangement act (CCAA) in Canada. Also certain US subsidiaries of Nortel network Corporation Canada including Nortel Networks incorporation and Nortel Networks capital Corporation, have filed voluntary petitions in the United States Under chapter 11 of the US bankruptcy code , and certain of Europe, Middle East and Africa subsidiaries of the ultimate holding company have also made consequential filings. Subsequently, on July 14, 2009, Nortel Networks (CALA) incorporation (NCCI), a U.S.-based subsidiary that operates in the CALA region, also filed a voluntary petition for relief Under chapter 11 in the United States bankruptcy Court for the District of Delaware (US court) and became a party to the Chapter Page | 17 11 proceedings. On July 17, 2009, this US court entered a further order of joint administration that provided for the joint administration of NN CALA s case with the pre-existing case of its debtor affiliates.

As part of business and financial restructuring plans, the ultimate holding company to date, has completed a number of divestitures including:-

i. the sale of substantially all of our code division multiple access (CDMA) business and long-term evolution (LTE) access assets to Telefonaktiebolaget LM Ericsson (Ericsson), ii. the sale of substantially all of the assets of our enterprise solution (ES) business globally, including the shares of Nortel government solution Incorporated (NGS) and Diamondware limited to Avaya Inc. (Avaya) iii. the sale of assets of our wireless networks (WN) business associated with the development of next-generation packet core network components (packet core assets) to Hitachi Ltd (Hitachi) iv. the sale of certain portion of our layer 4 - 7 data portfolio to Radware Ltd (Radware) v. the sale of substantially all of the assets of our optical networking and carrier Ethernet business to Ciena Corp.

(Ciena)

vi. the sale of substantially all of the assets of our global

system for mobile communication (GSM) /GSM for

Railways (GSM - R) business to Ericsson and

KAschCraiercOm AG (Kapsch)

vii. the sale of substantially all the assets of our carrier VoIP

and application solutions (CVAS) business to GENBAND US LLC and viii. The sale of substantially all of the assets of our multiservice Switch (MSS) business to Ericsson India private limited.

In addition, Nortel Networks Ltd completed the sale of its 50% plus one share interest in LG Nortel, our Korean joint venture with LGE to Ericsson.

-Pursuant to above and in order to implement the sale related to the enterprise solution business of the jurisdiction asset of the transferor, (the company), the transferor headed during the year 2009 - 2010 entered into an agreement with the transferee(Avaya India private Ltd) whereby the transferor had agreed to sale, transfer, and assigned to the transferee and transferee had agreed to purchase, be assigned and resume from the transferor all the rights, title and interest that transferor headed to the jurisdiction assets and zoom the liabilities set forth therein, in each case subject to the terms and conditions of the assets transfer agreement.

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- Pursuant to above and in order to implement the sale of inventory related to optical networking and carrier Ethernet business, the company had during the year 2009 - 2010 sold and transferred inventory to Ciena communications India PTE Ltd

- pursuant to above and in order to implement the sale of inventory related to CVAS business, the company has sold and transferred inventory to GENband for a consideration of Rs. 11036328/- which has been paid by Genband and received by the company in the previous year.

-Pursuant to above and in order to implement the sale of inventory and assignment of MSS contracts and purchase orders related to the MSS business of the company to the purchaser (Ericsson India private limited), the company had entered into an asset sale agreement dated March 31, 2011 (which is also the effective date), whereby the company agreed to sell inventory at a consideration of Rs. to 717000 to the purchaser. Further, as part of the said asset sale agreement the company agreed to pay 1 2616768 to the purchaser for accepting liabilities of assignment of M is as contracts and purchase order as per the details and terms contained in the asset sale agreement.

- Pursuant to above, the company discussed and entered into a tripartite agreement dated 9 December 2011 with Bharat Page | 20 Sanchar Nigam Ltd (BSNL) and Ericsson India private limited (Ericsson) whereby Ericsson has entered into new AMC contracts with BSNL for phase IV and phase IV.5 AMC with effect from first January 2012. Consequently, BSNL has released the company completely an irrevocable from all actions, damages, judgments, claims, demands, obligations and liabilities of whatsoever nature in connection with or arising out of BSNL s AMC contract for phase IV and phaseIV.5 arising on or after 1 January 2012. To facilitate the above, the company entered into an agreement dated 17th November 2011 with Ericsson whereby the company agreed to pay consideration of Rs. 420580000 to Ericsson and Ericsson agreed to enter into new AMC contracts with BSNL for their Phase IV and Phase IV 5 projects with effect from first January 2012. This amount has been paid by the company to Ericsson during this year.

- Pursuant to above, the company entered into discussion with Vista Information Systems private limited (Vista) and telecommunications consultants India Ltd (TCIL) which ultimately culminated with an agreement dated 2 May 2012 whereby the style agreed to take over pending obligations of Nortel entities Under TCI network contracts. Consequently, TCI has released Nortel entities from all residual obligations with effect from second of May 2012. To facilitate the above the company entered into an agreement dated 30 th Page | 21 December, 2011 (with further amendment dated second May, 2012) with Vista whereby the company agreed to pay consideration of 3 39200000 to withstand Vista has agreed to accept the same in full settlement of all matters including, without limitations, replacement, is required towards TCI held network contracts. This amount has been provided for in this year and has been paid by the company to Vista subsequent to this yearend.

b) The company has incurred substantial losses during the current year resulting in full erosion of its network. Further, the company has discontinued its business operations subsequent to the balance sheet date and in the process of progressively closing down its business activities.

In the view of above and on the ground of products, the financial statements have not been prepared based on the assumption of a "Going Concern Basis". The assets and liabilities as at 31 March 2012 are disclosed at their realizable value."

15. At page number 92 in note number (2) (i) in The Accounts, in the basis of accounting , assessee has stated that the company follows Mercantile system of accounting and recognizes income and expenditure on accrual basis except those with significant uncertainties.

16. Based on the above financial statements the assessee furnished its return of income and in the computation of total income claimed the above expenditure of 33.92 crore for assessment year 2012 - 13. The assessee filed his return of Page | 22 income on 2 January 2013 declaring total income at Rs. nil and also claimed the current year s loss of 735615769/- including unabsorbed

depreciation of Rs. 43720911/-. As the above return was filed belatedly i.e. not within the due date prescribed u/s 139 (1) of the act, the assessment order was passed u/s 143 (3) of the act on 24 th of March 2015 wherein the learned assessing officer after raising the query on the carry forward u/s 72 of the act of the losses, disallowed the business loss of 6 91894858/- and assessed the income of the assessee at a loss of Rs. 43720911/- (i.e. Unabsorbed depreciation) . Thus it is apparent that the learned assessing officer has allowed assessee carry forward of unabsorbed depreciation of Rs. 43720911/- and disallowed the business loss of 6 91894858/- i.e. to not to carry forward , in view of the provisions of Section 72 of The Act as assessee has filed return of income belatedly.

17. This order of the assessment was challenged by the assessee before the learned CIT - A for the reason that assessing officer has issued the notice of demand u/s 156 of the income tax act along with the assessment order dated 24 March 2015 wherein in the first paragraph a sum of Rs. 4234710/- was found to be payable. Therefore, the notice of demand was issued to the assessee asking assessee to pay the above demand, by which the assessee was aggrieved, and hence filed the appeal. However surprisingly as per ground number (2) of the appeal, assessee challenged that deduction of payment to Vista Information Systems private limited stating that on the facts and circumstances of the case and in law, the learned AO has erred in allowing in the subject assessment year the deduction of expenses amounting to 33.92 crore paid to Vista. It was further claimed in the grounds of appeal that the learned assessing officer has erred in ignoring the fact that the appellant had itself withdrawn the claim of Page | 23 the aforesaid expenses during the course of assessment proceedings on the basis that the liability for the same arose in the subsequent year. It was also submitted before the learned CIT - A in appeal for assessment year 2012 - 13 that assessee had erroneously claim the expenses of 33.92 crores in respect of payment made to Vista. Further, the appellant filed a belated return for the subject assessment year therefore the same could not be revised to withdraw the aforesaid claim. Therefore assessee as per letter dated November 28, 2013 filed with the learned assessing officer during the course of assessment proceedings for that assessment year, the appellant withdrew the claim of the aforesaid expenses paid or payable to Vista. The assessee submitted that it was further reiterated before the AO vide letter dated March 19, 2015 during the course of assessment proceedings, however, the learned assessing officer has completely ignored the aforesaid letter filed by the appellant and has continued to allow the deduction for the aforesaid expenses in assessment year 2012 - 13. The assessee was further aggrieved that no discussion or analysis was provided by the learned AO in this regard. Therefore in nutshell, after filing the return of income and claiming the above expenditure, the assessee claimed before the assessing officer that above expenditure of 33.92 crore does not relate to that year (i.e. AY 2012-13) as the liability with respect to the payment of in the subsequent financial year. Before us, also assessee produced the letter dated November 28, 2013, which was filed before the assessing officer on 29 November 2013. According to the paragraph number (1) of that letter about the claim of payment made to Vista Information Systems private limited, the assessee submitted as under:-

Page | 24 "In the return of income for the subject a while, Nortel India has erroneously claimed expenses of 33.92 crores in respect of payment made to Vista. Further, since Nortel India had filed a belated return for the subject AY, the same cannot be revised now to withdraw the aforesaid claim. Therefore, Nortel India hereby wishes to withdraw the claim of the aforesaid expenses in the subject

assessment year. Nortel India, however, reserves the right to claim the aforesaid expenses in the relevant subsequent year in which the liability of the said expenses actually arose."

18. The learned Commissioner Of Income Tax (Appeals) - 33, New Delhi passed an order for assessment year 2012 - 13 on 11/11/2016 and in Para number 5.2 and 5.3 held as Under:-

"5.2 During the present appellate proceedings the appellant had produced the copy of the assessment order for AY 2013 - 14 in which the claim of the appellant was held as not admissible by the AO. In the assessment order for assessment year 2013 - 14, the AO has recorded as under:-

"In view of the above facts and circumstances of the case, the assessee's impugned claim of deduction of Rs. 33.92 crore is not admissible for the year under consideration and the same is disallowed and added to the assessee's taxable income."

5.3 I have considered the submission of the appellant. After due consideration the claim of expenses in the return of income filed by the appellant for assessment year 2012 - 13 is rejected and appellant's Page | 25 request for disallowing the same in assessment year 2012 - 13 is accepted. The ground number two is allowed."

19. Thus, on careful reading of the order of the learned CIT - A for assessment year 2012 - 13, it is clear that he has confirmed the disallowance of above sum in 2012 - 13, but he has not held that it should be allowable in assessment year 2013 - 14. Therefore, for claiming the above sum in assessment year 2013

- 14 the order of the learned CIT - A for assessment year 2012 - 13 is of no help to the assessee.

20. Assessee filed his return of income for assessment year 2013 - 14 on 30 November 2013. In the return of income, in the computation of total income, assessee claimed above deduction being a consideration paid to Vista allowable as revenue expenditure of Rs. 33.92 crore. Along with the return of income, the assessee submitted the annual accounts for the year ended on 31st of March 2013 approved on 4 September 2013. The company did not account the above sum of Rs. 33.92 crore in this year, as the explanation of the assessee is that it has already been accounted in financial year ended on 31st of March 2012. For this year, i.e. 31st of March 2013 the assessee also maintains its books of accounts on mercantile basis of accounting and records income and expenditure based on accrual.

21. In note number 33 to the financial statement for the year ended on 31st of March 2013 while discussing the extraordinary items for that year assessee has shown that the amount of Rs. 33.92 crore is pertaining to previous year i.e. 31st of March 2012.

22. In note number 36 to the financial statement placed at page number 254 of the paper book there is no change as compared to the note number 37 for financial year 31/3/2012.

23. Now it is important to examine how the liability on the assessee has arose and in which year. The assessee has submitted the copy of the agreement between Nortel and Vista Information Systems Ltd dated 30 December 2011 placed at page number 136 - 180 of the paper book. This agreement has been entered into between Nortel Networks (India) private limited, Nortel Networks Singapore Pte Ltd and Vista Information Systems private limited. The preamble to the agreement shows that Nortel companies i.e. India and Singapore has entered into supply and service contract with Telecommunication Consultants India Ltd [TCIL] dated 28 September 2004 pursuant to tender issued by Eastern Railways for design, manufacture, supply, installation, testing and commissioning of mobile train radio communication system on Howrah Section of the Eastern Railway. Nortel Singapore was awarded supply contract whereas Nortel India was awarded service contracts. In the maintenance contract, warranty period has already expired, all associated obligations have been completed, and both the provisional acceptance and final acceptance certificates have been issued by Telecommunication Consultants India Ltd and Eastern Railway in respect of the above work. Even the warranty period also expired on 12 March 2009. However certain obligations of Norton entities remained under the „network contracts which were described in paragraph number (C) of the agreement as under:-

1) to enter into an annual maintenance contract with telecommunication India Ltd for a period of three years Page | 27

2) to guarantee that spare parts (at price to be agreed for the Eastern Railway network hardware shall be available for a minimum of eight years after the expiry of the warranty period Therefore only above two obligations were pending from the side of the assessee. On reading of the above conditions, it is apparent that a fresh annual maintenance contract with the buyer [TCIL] was to be entered for a period of three years and further the spare parts were required to be supplied to that party for a minimum of eight years after the expiry of the warranty period which has already expired on 12 March 2009.

24. It is also important to note that while this contract has been entered with the Vista information systems private limited. Vista Information Systems Ltd is a company incorporated into India, which is part of Kapsch group to whom GSMR business was transferred by the Nortel group. In agreement above facts are made clear that as Nortel business was sold to Kapsch group who has appointed partner in India by the name of Vista Information Systems Ltd who will take over the Nortel's residual obligation in place of Nortel India so that the Nortel entities are released by Telecommunication Consultants India Ltd. Therefore, the reasons for appointing the Vista Information Systems Ltd is very clear as it is part of Kapsch group who has taken over that particular business for which the contracts are already entered for supply and service with Telecommunication Consultants India Ltd by Nortel. In fact, at that, particular time warranty was expired, and only the annual maintenance contract was to be entered for further period of three years. Therefore, it is apparent that because of the sale of the business by Nortel group to Kapsch,

the necessary annual maintenance of that particular business are also to be transferred to Page | 28 that group through an Indian entity of that group i.e. Vista Information Systems Ltd. This was also necessary because Nortel has also filed for insolvency proceedings worldwide. Naturally, when Nortel group has sold certain products and also provided services with respect to those products then, if Nortel is exiting that business, somebody else who is reliable and capable of performing that work was required to be appointed for carrying out the annual maintenance etc and supply of spare for that particular product. Apparently, it was part of the global group's sale of the business of the assessee as it is evident as per the notes to accounts of the assessee for the year ended on 31 March 2012 and 2013.

25. On reading paragraph number [3] of the agreement which is titled as new AMC contract, it is apparent that a fresh contract are required to be entered into by the telecommunication consultants India Ltd with Vista which would be facilitated by Nortel group. The contract of annual maintenance would also be similar to what Nortel was performing till now. According to paragraph number 3.3 Vista was to agree if TCIL seeks minor modification. According to paragraph number 3.6, the Nortel was to provide handholding services for 45 days to Vista, being a transition period. The assessee also indemnified Vista for the period prior to the above agreement. For agreeing to provide an annual maintenance contract to Telecommunication Consultant Of India Ltd for a further period of three years and for committing supply of spare parts for a period of eight years, the assessee agreed to pay Vista ₹ 33.92 crore. It is a matter of common knowledge that such a kind of contract for sale of equipments, supply of spare parts, maintenance thereof etc, the selling price of the goods include such future obligations. That is the reason, the assessee Page | 29 transferred its obligation to Vista information is limited and paid consideration to it.

26. On looking at the schedule [4] of the agreement, it is clear that the AMC terms provided to the Nortel entities by the TCIL showing what kind of services are to be provided in the AMC contract finalized.

27. Now coming to the agreement executed on 2/5/2012 executed between Telecommunications Consultant India Ltd, Vista Information Systems private limited and Nortel Networks India Ltd as well as Nortel Networks Singapore Ltd. According to clause [B] in the preamble, it is acknowledged by the TCIL that both the maintenance supervision and warranty period set out in the original TCIL network contracts have already expired and all associated obligations have been completed by the Nortel entities. As per clause [C] only those two obligations, which were originally mentioned in the earlier contract, were referred to. The clause [G] of the contract also says that TCIL has already consented in principle to the arrangement contemplated by the Nortel entities and Vista. In para no 3 of that agreement separate consideration was decided to be paid by TCIL to Vista. Therefore, it is clear that all the terms and conditions relating to the original agreement were also consented by TCIL, therefore this agreement entered into by Nortel entities, Vista and TCIL is merely completing the formalities for annual maintenance contract and Underline supplied by us] agreement dated 30 December 2011. Thus, the accrual of the liability for payment to Vista Information Systems Ltd arose on that date i.e. assessment year 2012 - 13.

28. This finding of fact is also corroborated by the reason that the financial statements prepared by the assessee for that year has shown that above Page | 30 liability accrue on the assessee in assessment year 2012 - 13. Financial statements are always prepared by the assessee; auditor merely expresses an opinion on them. These accounts were never found to be or never stated by the assessee to be incorrect. Further, the claim made by the assessee is only required to be tested on the principle that whether the liability accrue during the year or not. The manner of payment of such accrued liability in subsequent year cannot defer the accrual of such liability. The payment is merely a discharge of the liability already accrued. Further, if the accounts are maintained as per the correct accounting principles, they cannot be disregarded. The accounting entries can only be rejected if they are not in conformity with the proper accounting principles. Mandate of the decision of the Honourable Supreme Court in case of Sutelej cotton mills Ltd versus CIT (116 ITR1) has also held that:-

"But it is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other."

[Underline supplied by us] Thus, in the present case on reading of the agreement executed by the assessee, disclosure of notes as discussed above in the financial statements, clearly shows that provision of expenses made by the assessee of 33.92 crore for assessment year 2012 - 13 is in conformity with proper accounting principles, where according to the assessee itself, the above liability arose in Page | 31 that year, correctly shows that expenditure was incurred by the assessee is accrued liability for assessment year 2012 - 13 and not assessment year 13 -

14. On perusal of the order of the learned assessing officer who has given the detailed finding that why the above liability did not accrue in assessment year 13 - 14 but in assessment year 12 - 13, based on the appreciation of the agreement shown by the assessee cannot be found fault with. In view of this, we confirm the actions of the lower authorities in disallowing the expenditure of 33.92 crore is claimed by the assessee in this assessment year i.e. assessment year 2013 - 14 as it does not pertaining to this year. Accordingly, ground number [1] of the appeal is dismissed.

29. Ground number [2] of the appeal is with respect to disallowance of utilization of the provisions for obsolescence amounting to Rs. 258,51,322/-. The assessee has reduced in the computation of total income sum of Rs. 25851322/- from its income on account of users of provision for obsolescence claimed to have been offered to tax in the prior years. The fact shows that assessee has created a provision for obsolescence of inventory as stated in note number 24 of the annual accounts for the year ended on 31 st of March 2012 which has closing balance in balance as on that date of Rs. 25851322/-. The assessee says that it has been utilized during the year. Therefore, assessee claimed the same in the computation of the total income. For the clarity of the facts the details of the provision made by the assessee is tabulated as Under:-

particulars 31st of March 2013 31st of March 31st of March 2012 2011 Page | 32
25851322 32283826 64061570 Opening balance Nil Nil 31000171 Additional
provisions made during the year 25851322 6432504 62777915 Usage of provisions
during the year Nil Nil Nil Release/reversal during the year Nil 25851322 32283826
Closing balance

30. The above provision was with related to inventory was dealt with by the assessee in its computation of total income for respective years as Under:-

particulars 31st of March 31st of March 31st of March 2013 (assessment 2012
(assessment 2011 (assessment year 13 - 14) year 2012 - 13) year 2011 - 12) nil Nil
31000171 Amount of provision added to the total income created during the year
Page | 33 25851322 6432504 55492445 Amount of provision utilized during the year
claimed as a deduction in the computation of total income Based on the above
statement it is apparent that assessee is creating a provision for obsolescence of
inventory, it is added back to the total income of the assessee for that year in which
the provision is created. The assessee claimed deduction of the provision utilized by
the assessee during the year. Accordingly, for assessment year 2013 - 14 the assessee
claimed deduction of Rs 25851322/- as the amount of provision is utilized during the
year, which was created in earlier years. The learned assessing officer questioned the
assessee about the allowability of the above claim and asked to intimate the
corresponding income on account of the provision returned back credited to the
profit and loss account with supporting evidence. The assessee submitted the copies
of the financial statement for assessment year 2012 - 13 and 2013 - 14. On the basis of
the above the learned assessing officer noted that in the computation of income for
assessment year 2012 - 13 the assessee has nowhere added back this amount of its
income. The AO further referred to note number 11 of the inventory is of notes to
account for assessment year 2013 - 14 that the assessee had used the entire provision
in assessment year 2012 - 13 and nothing was left to be carried forward. The
assessing officer noted that in absence of the above sum offered to tax in the earlier
years as claimed by the Page | 34 assessee, he denied the above deduction and made
the above addition. Assessee challenged the above addition before the learned CIT -
A, who noted that the AO has specifically asked the assessee to show with evidence of
the above income offered to tax in the earlier years but the evidence of above income
offered for taxation in earlier years was not shown, therefore, the addition made by
the learned assessing officer was upheld.

31. Assessee, aggrieved with that order of the learned CIT - A has challenged the above addition as per ground number [2] of appeal. The learned authorized representative referred the computation of the total income for assessment year 2011 - 12 placed page number 305 - 306 of the paper book and submitted that in the normal computation of the income the item number [4] has been added to the total income of the assessee amounting to 31000171 and similarly at page number 306 while computing the book profit u/s 115JB of the income tax act the above provision for obsolescence has also been added to the book loss of the assessee. He further referred to the letter dated November 4,

2015 submitted to the assessing officer, which is placed at page number 275 of the paper book where in item number [4] assessee has given the details and submitted that Nortel India did not create any provision for obsolescence further. Year wise movement of the provision for obsolescence was also submitted as per annexure seven. He referred to page number 277 of the paper book wherein the details of Year wise movement of provision for obsolescence made by the assessee from financial year 2008 - 09 to financial year 2012 - 13 was tabulated. In view of this he submitted that the provision created by the assessee of 3.10 crore was disallowed for financial year 2010 - 11 for Page | 35 assessment year 11 - 12 and therefore for assessment year 2013 - 14 the claim of the assessee should have been allowed.

32. The learned departmental representative vehemently supported the order of the learned assessing officer referring to Para number 4.2 of the order of the learned AO and stated that it is the valuation of inventory and it is not a provision made in assessment year 2011 - 12. He submitted that the valuation of inventory is allowable in the year in which the value is derived at. He submitted that the assessee should have valued the inventory at the cost or market value whichever is less and whenever there is a valuation below the cost; the relevant expenditure is pertaining to that year and cannot be considered as allowable in next year. He submitted that merely because the assessee wants to claim it in this year but the law does not allow the valuation of the inventory and in its definition or provision should be allowed in any other year then the year in which it is made. He therefore submitted that there is no infirmity in the order of the learned assessing officer and CIT - A has rightly confirmed the same. He further submitted that the assessee has not produced evidence of the amount offered for taxation in the earlier years and therefore the orders of the lower authorities are in order.

33. In rejoinder the learned authorized representative referred the provisions made by the assessee in its annual account and precisely at page number 247 of the paper book which is notes to the financial statement for the year ended on March 31, 2013 and submitted that provision for obsolescence has been considered in view of the accounting standard 29 provisions contingent liabilities and contingent assets. He therefore submitted that the claim of the assessee is allowable in this year.

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34. We have carefully considered the rival contention and perused the orders of the lower authorities. On perusal of the evidences produced before us it is apparent that the assessee has provided for loss on account of obsolescence of inventory Year wise. The assessee makes the provision and such provision is added back to the total income of the assessee. Out of the provisions of made, if such provisions are utilized during the year, assessee claimed the same in computation of the income. The unutilized provision is carried forward in subsequent years. In this year, assessee did not make any provision but utilize the provision made in earlier years. The AO asked the assessee to show that whether the provision utilized by the assessee during the year claimed as deduction in the computation of total income of Rs. 25851322/- has been offered for taxation in earlier years or not. The above claim of expenditure is dealt with by the learned assessing officer in Para number four of his order as Under:-

"4. Usage of provision for obsolescence 4.1 It was observed from the computation of income that the assessee has deducted on amount of Rs. 25851322/- from its income on account of usage of provision for obsolescence claim to have been offered to tax in the prior years. Accordingly, wide a questionnaire dated 1/2/2016, the assessee was asked to justify the admissibility of this amount along with supporting evidences and was asked to intimate the corresponding income on account of provision returned back credited to the profit and loss account with supporting evidence.

Page | 37 4.2 In response to show cause, the AR of the assessee furnished reply dated 12/2/2016 filed on 19/2/2016, wherein copies of relevant extracts of financial statements and computation of income for assessment year 2012 - 13 and assessment year 2013 - 14 were attached as annexure - 13. Perusal of the same reveals that in note 12 - inventory of notes to accounts for assessment year 2012 - 13, the assessee has reduced Rs 25851322/- from the value of inventory on account of provisions for obsolescence. In the computation of income for assessment year 2012 - 13, the assessee has nowhere added back this amount to total income. Further, it is observed from note 11 - inventory of notes to account for assessment year 2013 - 14 that the assessee had used the entire provision in assessment year 2012 - 13 and nothing was left to be carried forward. In the absence of offering the amount of Rs. 25851322/- tax in the earlier years is claimed by the assessee, the assessee is act of reducing the amount of Rs. 25851322/- from its income, in the computation of income for assessment year 2013 - 14, on account of usage of provision for obsolescence is not justified.

4.3 In view of the above, the assessee s impugned claim of Rs 25851322/- is disallowed and the same is added to the assessee s taxable income."

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35. Aggrieved with the above finding of the learned assessing officer assessee preferred an appeal before the learned CIT - A and challenged the above addition as per ground number [2] of appeal which was decided as per paragraph number 6.2 of the order of the learned CIT - A which is as Under:-

"6.1 The matter has been examined. The GOA of appellant is misconceived to start with as it raises an allegation that there is a violation of natural justice. This office finds that the AO has provided many opportunities to the appellant. The said issue was raised in questionnaire dated 1/2/2016 and AO had specifically requested the appellant to provide details with evidence of income of Rs 25851322/- which is claimed to have been offered for tax in earlier years as it had, in current assessment year sought to deduct from its income, the said sum. In response, thereto certain documents were filed before the AO. AO however found that, " perusal of the same reveals that in not number 12 - inventory is of notes to account for assessment year 2012 - 13, the assessee has reduced Rs 25851322/- from the value of inventory on

account of provision for obsolescence and In the computation of income for assessment year 2012 - 13, the assessee has nowhere added back this amount in its income. Further, it is observed from note number 11 inventories of notes to accounts for assessment year 2013 - 14 that the assessee has used the entire provision in assessment year 2012 - 13 and nothing was left to be carried forward. In absence of offering the amount of Rs. 2585322/- to tax in the earlier years as claimed by the assessee, the assessee s Page | 39 act of reducing the amount of Rs. 25851322/- from its income, in the computation of income for assessment year 2013 - 14, on account of usage of provisions for obsolescence is not justified."

6.2 Thus allegation of natural justice is misplaced and is rejected as arriving at any conclusion contrary to plea/contentions of the appellant does not result in cannot give rise to violation of natural justice. It is most disheartening to note and observe such grounds of appeal. Nevertheless, on merits of the matter, this office is of firm view that the addition made by the AO is in order. The appellant has also to note that once appellant claims that it s following any policy, the detection of anomaly therein by revenue cannot be wished away/explained showing/reflecting figures as net of utilization in next year s opening balance, as is being sought to be done by the appellant in instant case. The appellant would have done well by pinpointing and explaining as to how and where the income of Rs. 25851232/- was offered to tax instead of obfuscating the core issue in the garb of "showing opening balance net of utilization" of subjective. The core matter still lies unexplained as to where and how the said sum has been offered for tax (earlier) by appellant and AO has rightly treated and added back the said sum with which this office concurs. The appeal of the appellant is thus dismissed GOA no. 2.1 and 2.2" .

36. On careful consideration of the relevant information submitted before us by the learned authorized representative it is apparent that before the assessing officer the assessee has not furnished the details of treatment given to it to the Page | 40 provision of obsolescence created by the assessee and utilized by the assessee. Assessee also did not substantiate with adequate evidence about the disallowance of the provision made in the earlier years. It is also not established that how the utilization of provision of the inventory is allowable as deduction in this year. It is pertinent to note that the provision has been made by the assessee for obsolescence of inventory applying the provisions of the accounting standard 29 related to the provisions, contingent liabilities and assets. It is also required to be appreciated that the order passed by the learned CIT - A on the merits of the issue where the assessee could not represent its case before her. Therefore, it is apparent that the whole issue has not been examined by any of the lower authorities in the right perspective. Even the assessing officer has stated that in note number 11 - inventory being note to account for assessment year 2013 - 14 the assessee has used the entire provision in assessment year 2012 - 13 and nothing was left to be carried forward is completely erroneous. This is so because of the reason that as on 31 st of March 2012 the assessee has shown the closing balance of the above provision which was written off/utilized by the assessee in financial year 2012 - 13. Further, the computation of the total income produced before us for assessment year 2011 - 12 was also not submitted before the assessing officer order learned CIT appeal to show that provision of 3.10 crore was disallowed when it was created. In view of this, we set aside the whole issue back to the file of the learned assessing officer with a direction to the assessee to substantiate that the amount of 25,851,322/-

claimed by the assessee on account of actual users of provision for obsolescence is allowable for deduction and the original provision created by the assessee has not been claimed as a deduction in earlier years by the Page | 41 assessee. The AO may examine the issue after giving assessee proper opportunity of hearing and decided on merits. Accordingly, ground number two of the appeal of the assessee is allowed with above direction.

37. Ground number [3] of the appeal is with respect to the confirmation of the addition of 8208537/- on account of differential interest income as per profit and loss account and amount as per Form No 26 AS for the subject year. The learned assessing officer during the course of assessment proceedings examined form number 26 AS and directed the assessee to reconcile this income with income shown in the profit and loss account. Assessee furnished its reply on 24th of February 2016. The AO noted that interest income from ICICI bank and Citibank NA was shown at 20403911/- and 72449672/- respectively against the interest income and in form number 26AS at 2 0700119/- and 80362091/ respectively. Explanation furnished was examined by the AO and found to be general in nature. AO was of the view that assessee is following the mercantile system of accounting and in respect of income, the assessee is required to recognize such income on accrual basis. Form number 26 AS shows the accrued income from the respective banks paid/payable to the assessee. The AO found that there is a difference in interest income of Rs. 296208/- in case of ICICI bank and 7912329/- in case of Citibank -. Therefore the learned assessing officer made an addition of 8 208537/- on account of interest which has been accrued to the assessee during the year under consideration but not shown by the assessee as income.

38. Aggrieved, assessee preferred an appeal before the learned CIT - A who decided this issue as per Para number seven of the order. The learned CIT - A held that the appellant is following the mercantile system of accounting and majority of Page | 42 the tax-deductors are bank. Therefore, she confirmed the addition holding that the appellant itself has accepted that there has been a shortfall, which it offered for taxation in subsequent years. CIT - A held that each assessment year is independent unit and since interest income is required to be taxed in the year in which such income has accrued to the assessee on accrual basis, the above said interest income was liable for taxation for this year. Accordingly, the ground of appeal of the assessee was dismissed.

39. Learned authorized representative referred to serial number 22 and 23 of the paper book wherein two letters dated 24 February 2016 and 28 March 2016 filed before the assessing officer are placed at paper book page number 307 - 317 and 318 - 352. He referred to annexure number two placed along with that letter and submitted that the interest from ICICI bank was short booked by Rs. 296208 and such interest income appearing in form number 26 AS has already been offered to tax by the assessee for assessment year 2014 - 15. Similar explanation was given for Citibank NA where the interest income shown by the financial accounts of the assessee was of 7 2449762/- whereas the revenue recognized in form number 26 AS was 80362091/-. The assessee submitted that the excess interest income appearing in form number 26 AS has been offered to tax by Nortel India in subsequent years. The assessee also gave the explanation that excess interest income has been booked in subsequent year as per page number 311 of the paper book. While referring to the second letter dated March 28, 2016 it was submitted that incorrect party was details of interest income is booked in the profit and loss account for the year and was submitted by letter dated

February 24, 2016. The assessee submitted the correct party was details of interest showing that the interest income as per Page | 43 profit and loss account of ICICI bank was 20651703/- and the same interest income as per form number 26AS for that year is 20700119/-. Similarly it was submitted that for Citibank NA the interest income as per the books of account is 80362091/- and the identical amount has been shown in form number 26 AS. He further submitted that this letter was submitted before the assessing officer on 28th of March 2016 which was not considered by the AO and the learned CIT - A.

40. The learned departmental representative vehemently supported the order of the lower authorities and submitted that when there is a difference between the interest income paid by various banks to the assessee as per form number 26 AS which has been shown to have accrued to the assessee during the year and tax deduction at source thereon has been claimed, therefore the interest has accrued to the assessee and it is chargeable to tax in the year in which it has accrued and it does not help the case of the assessee if it has been offered to tax in the subsequent year. He submitted that the income should be chargeable to tax in the year in which it accrues. He submitted that when the assessee has been claiming for the tax deduction at source credit on such income towards his tax liability, the interest income should be also chargeable to tax. He submitted that there is no doubt that the above income has not accrued to the assessee as assessee is following the mercantile system of accounting. Therefore, lower authorities have correctly charged to tax the difference between the interest income shown in the books of account as well as shown in form number 26 AS.

41. We have carefully considered the rival contention and perused the orders of the lower authorities. We also gone through the relevant document submitted by Page | 44 the assessee before us in the form of a paper book. As per letter dated 24 February 2016, the assessee has submitted that the interest income earned by assessee from ICICI bank as credited in its profit and loss account is 20403911/-. The income shown in form number 26AA as for that year was 20700119/-. Further, as per letter dated March 28, 2016 the assessee submitted that interest income considered as per profit and loss account from ICICI bank is Rs. 206,51,703. Further, as per letter dated 24 February 2016 the assessee submitted that the interest credited in the books of account from Citibank NA is 72,449,762 whereas as per form number 26AS is 80362091/-. Similarly as per letter dated March 20 82,016 the assessee submitted that the interest credited in books of account from Citibank NA 80,362,091 and the income credited is performed number 26AS is also identical and there is no difference. We failed to understand that how the income credited in the books of account with respect to the respective parties such as ICICI bank and Citibank NA changed in letter submitted on 28 th of March 2016 whereas in the earlier letter dated 24th of February 2016 the assessee has stated that short interest booked in this year has been booked in subsequent year. Specific reference is required to be looked into at page number 310 of the paper book submitted by the assessee. It is also clear that neither the learned assessing officer nor the learned CIT - A examined the letter dated 28th of March 2016. Further, it is. That the interest income is chargeable to tax in the year in which it accrues. It cannot be an excuse that assessee has offered the income in subsequent assessment year. Therefore, as there is no clarity that what is the amount of interest income booked by the assessee with respect to all the parties from whom interest has been earned and which has disclosed in form number 26AS Page | 45 before the subject assessment year, we set aside the whole issue to

the file of the learned assessing officer with a direction to the assessee to show with proper evidence that what is the amount of income that has been credited in the books of account for the subject assessment year and what is the amount of interest shown in form number 26AS for the subject AY. The AO is directed to examine the same, after giving the proper opportunity of hearing to the assessee, decide the issue on the merits afresh. Accordingly, ground number three of the appeal is allowed with above direction.

42. Ground number [4] of the appeal of the assessee is with respect to the non-

granting of the tax deduction at source as claimed by the assessee in the return of income amounting to Rs. 27349580/-. This ground of appeal was not pressed because assessee has already been granted the credit of the sum. Therefore, this ground is dismissed.

43. Ground number five of the appeal is with respect to the levy of penalty u/s 271 (1) (C) of the act. The assessee is aggrieved with the order of the learned assessing officer where the penalty has been initiated. No specific arguments were advanced by the assessee on this issue. Even otherwise the initiation of the penalty proceedings u/s 271 (1) (C) of the act cannot make assessee aggrieved because the assessee would be granted proper opportunity of hearing before the penalty is levied or dropped. Therefore, this ground of appeal is premature, hence, dismissed.

44. In the result, appeal of the assessee is partly allowed with above directions.

Order pronounced in the open court on 31/08/2020.

-Sd/-
(SUSHMA CHOWLA)
VICE PRESIDENT

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

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Dated: 31/08/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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