

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D': NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER,

ITA Nos. 5116/Del /2010  
[Assessment Year: 2007-08]

The I.T.O  
Ward 5(3)  
New Delhi

Vs.

M/s Konark Telelinks Pvt. Ltd  
B-10, Lawrence Road  
New Delhi  
PAN : AACCK 1250 B

ITA Nos. 5384/Del /2010  
[Assessment Year: 2007-08]

M/s Konark Telelinks Pvt. Ltd  
B-10, Lawrence Road  
New Delhi  
PAN : AACCK 1250 B

Vs.

The I.T.O  
Ward 5(3)  
New Delhi

[Appellant]

[Respondent]

Date of Hearing : 15.03.2016  
Date of Pronouncement: 13.06.2016

Assessee by : Shri O.P. Sapra, Adv  
Shri Sanjiv Sapra, FCA

Revenue by : Shri Shravan Gotru, Sr. DR

**ORDER**

**PER CHANDRA MOHAN GARG, JUDICIAL MEMBER**

The above captioned cross appeals by the Revenue as well as the assessee for A.Y 2007-08 are directed against the

order of the CIT(A)-VIII, New Delhi, dated 05/10/2010 passed in first appeal No. 152/2009-10.

Revenue's Appeal ITA No. 5116 /Del /2010  
[Assessment Year: 2007-08]

2. Ground Nos. 1 and 3 of the Revenue are general in nature which need no adjudication. Remaining effective Ground Nos. 2 and 2.1 read as under:

*“2. On the facts and circumstances of the case and in law the Id. CIT(A) has erred in deleting the addition of Rs. 2,18,86,000/- made by the AO u/s 68 of the Act being unexplained unsecured loans.*

*2.1 The Id. CIT(A) ignored the fact that the assessee did not discharge the onus of proving the genuineness of the loan transactions.”*

3. Apropos these grounds, we have heard the arguments of both the sides and carefully perused the relevant material on record. The Id. DR strongly supported the action of the AO and submitted that the AO provided ample opportunities to the assessee to explain the amount of Rs. 218.86 lakhs claimed to have been taken by the assessee as unsecured loans during the

period under consideration but there was no compliance. The ld. DR further pointed out that in view of the non cooperation of the assessee the AO had no alternative but to draw adverse inference and he rightly held that the assessee has failed to discharge its onus with regard to unsecured loans taken during the year as the assessee has failed to file any documents which could prove the genuineness of transaction, credit worthiness and identity of the parties from whom the assessee has claimed to have taken unsecured loans during the period under consideration. The ld. DR further pointed out that the AO was quite correct and justified treating the amount as assessee company's own company introduced in the books of accounts u/s 69C of the Income-tax Act, 1961 ['the Act' for short] . The ld. DR vehemently pointed out that the ld. CIT(A) was not correct and justified in deleting the addition made by the AO. Therefore, the impugned order may be set aside by restoring that of the AO.

4. Replying to the above, the ld counsel for the assessee reiterated the assessee's written synopsis and contended that assessee is in the business of distribution of channel signals to cable operators through cable wire. Return was filed on 31/10/2007

declaring loss of Rs. 2,23,19,385/-, which was accepted as mentioned by the AO u/s 143(1) of the Act. As regards various notices issued viz. 143(2)/142(1) as mentioned in **paras 1 & 2** of the assessment order and their alleged non-compliance, the assessee had explained the actual position vide its letter dated 25/01/2010 in response to notice u/s 271 (1 )(b) of the Act. No penalty had however been levied by the AO and the impugned assessment order had been passed u/s 143(3) of I.T. Act.

5. The AO made addition u/s 69C of the Act whereas Revenue's ground No. 2 alleges addition made u/s 68 of the Act on the ground that assessee failed to file any document to establish the genuineness of the transaction, creditworthiness and identity of the parties. The ld. AR took us through page 112 of the paper book and submitted that from the balance sheet as on 31/03/2007, it is evident that the unsecured loans amounting to Rs. 2,45,06,078/- of which the breakup is given at **page 116** forming part of the balance sheet as under:

List of unsecured loan	Closing balance as at 31/03/2007	Opening balance as at 01/04/2006
Ahmedabad Network System	4,15,967	4,15,967
Gujarat Telelink (P) Ltd.	34,71,554	—
Maninagar Network P Ltd.	4,74,520	4,74,520
Sabarmati Network P. Ltd.	2,01,44,037	17,29,860

Out of the above, the AO has picked up two creditors viz. Gujarat Telelink (P) Ltd and Sabarmati Network P. Ltd for making the impugned addition without any basis. The ld. AR further pointed out that in the case of Sabarmati Network P. Ltd, the amount of opening balance minus the closing balance as on 31/03/2007 has been picked up and in the case of Gujarat Telelink (P) Ltd the closing balance of secured and unsecured loans has been picked up for making additions. The ld. AR further pointed out that in para 3.1 of the impugned order, the ld. CIT(A) noted that the AO himself has not doubted the existence, identity and credit worthiness of M/s Sabarmati Network P. Ltd. Therefore, merely because the assessee could not file bank statement of a party which was not within the assessee's control, addition cannot be held as justified.

6. The ld. AR further pointed out that the ld. CIT(A) granted relief to the assessee on this ground by holding as under:

*“I find that the addition in question has been made by the ld. AO primarily on the ground that no confirmation and other*

*evidence in support of the credits appearing in the names of M/s Gujarat Telelinks and M/s Sabarmati Networks Pvt. Ltd. were filed by the appellant Co. in the course of assessment proceedings. However, a perusal of assessment records reveals that in the course of assessment, the appellant Co. vide its letter dated 21/12/2009 has filed duly confirmed detailed copies of accounts of both the parties.”*

7. The ld. AR further pointed out that the ld. CIT(A) granted relief to the assessee by relying on the order of his predecessor i.e. ld. CIT(A) for A.Y 2006-07 wherein the first appellate authority granted relief to the assessee. The ld. AR also pointed out that the order of the ld. CIT(A) for the assessment year 2006-07 dated 3.11.2009 has been upheld by the ITAT 'D' Bench vide order dated 31/03/2010 in ITA No. 249/Del/2010 and the order of the ld. CIT(A) and the Tribunal has been considered by the ld. CIT(A) while granting relief to the assessee for A.Y 2007-08.

8. The ld. DR, placing rejoinder to the above submissions of the ld. AR, contended that the AO made addition pertaining to unsecured loans shown by the assessee and by bonafide mistake mentioned section as 69C of the Act and the ld. CIT(A) has considered this bonafide mistake in the operative relevant para No. 4.4 to 4.6 of the

impugned order. However, on a specific query from the Bench, the Id. DR could not show us any contrary order establishing that the order of the Id. CIT(A) and Tribunal [supra] for A.Y 2006-07 has been modified, set aside or dismissed. Therefore, we are inclined to hold that this issue has attained finality in A.Y 2006-07 in favour of the assessee by the order of the Tribunal.

9. On a careful consideration of the above submissions, from the operative para 4.4 to 4.6 of the impugned order, we note that the Id. CIT(A) has granted relief to the assessee by following the order of his predecessor for A.Y 2006-07, which has been confirmed by the Tribunal vide order dated 31.3.2010. It is also pertinent to mention that the Id. CIT(A), in last operative para 4.6 has categorically noted that the assessee company has duly discharged the initial burden cast upon it by filing detailed copies of accounts of both the parties by authorized signatories and by showing that there is no question where by means of account payee cheques/drafts and by providing that the identity and existence of both the parties was not in doubt. The Id. CIT(A) finally concluded that no addition was called for in this case because the factual situation reveals that the genuineness of the transactions and credit worthiness and identity of the creditors cannot be doubted in view of the earlier first appellate order of the Id. CIT(A)

and the Tribunal for A.Y 2006-07. In the light of the above, we are unable to see any ambiguity or perversity or any other valid reason to interfere with the impugned order and thus we uphold the same. Consequently, Ground Nos. 2 and 2.1 of the Revenue being devoid of merits stand dismissed.

**Assessee's appeal ITA No. 5384/Del/2010**

10. Ground Nos. 3, 4 and 5 of the assessee are general in nature and require no adjudication. Remaining effective ground Nos. 1 and 2 read as under:

*“1. That the following additions/disallowances made by the ld. CIT(A) towards the assessable income of the appellant are arbitrary, unjust and illegal on various factual and legal grounds:*

- |    |                   |  |
|----|-------------------|--|
| a) | Rs. 1,05,01,777/- | <i>on account of alleged understatement of subscription fee</i>  |
| b) | Rs. 1,49,67,891/- | <i>being the disallowance on account of pay channel expenses</i> |

Rs. 2,54,69,668/-

*Various observations made by the ld. CIT(A) while making the above addition/disallowances on his own are either incorrect or are not tenable.*

*2. That no proper and legal enhancement notice had been issued by the ld. CIT(A) before making the above addition/disallowances and consequently the income enhanced by the ld. CIT(A) by Rs. 2,25,89,668 is wholly unjustified.”*

11. Briefly stated, the facts of the case are that the AO completed assessment u/s 143(3) of the Act by making addition of Rs. 218.86 lakhs on account of unsecured loans and adhoc disallowance of expenses @ 7.5% claimed by the assessee. Aggrieved, the assessee went in appeal before the ld. CIT(A) who granted part relief to the assessee on account of addition made pertaining to unsecured loans but while considering Ground No. 4 of the assessee, the ld. CIT(A) instead of deleting the addition, enhanced it by Rs. 2,25,89,668/- on account of under-statement of subscription fee and on account of any channel expenses and addition made by the AO on this count was adjusted to the total amount calculated by the ld. CIT(A) for making enhancement of income. Now the empty handed assessee is before the Tribunal challenging the addition made by the AO and enhanced by the ld. CIT(A).

12. The ld. AR submitted has furnished a synopsis on this issue which reads as under:

Ground No. 1(a): Documents relied upon and Assessee's submissions:

1. Copy of enhancement notice dated 07/09/2010 issued by Ld. CIT(A) is at **pages 5-6** of the paper book to which reply of the Assessee dated 24/9/2010 is placed at **pages 12 - 13** of the paper book.
2. The Ld. CIT(A) has misread/ misinterpreted **clause 4.1 of section 4 (page 70 of paper book)** of the Agreement between the Assessee Co. and M/s Siti Cable Network Ltd. (placed at **pages 67-75**) as reproduced below:

*“In consideration of the services rendered by the Distributor to SITI, Distributor shall be entitled to such service charges as may be mutually determined by the parties to this Agreement from time to time. Provided that such service charges shall not, at any time, exceed 90% of the collection effected against the bills raised on the subscribers during the preceding month(s) on or after 1<sup>st</sup> day of April, 2005.”*

3. *Therefore, the following observations of the Ld. CIT(A) in para 5.4 and 5.4.1 at page 9 of his appellate order are factually incorrect:*

*“As per section 4 of the distribution agreement, in consideration of the aforesaid services, the appellant company was to receive 90% of the service charges against the bills raised by SITI on the subscribers during the period starting with 1<sup>st</sup> April, 2005.*

5.4.1 Thus, as per the aforesaid arrangement, the appellant company was to receive 90% of the subscription charges as per the bills raised by SITI”.

4. The fact remains that as per **clause 4.1 of section 4 at page 70** of such Distribution Agreement dated 13/08/2005, the Assessee Co. was entitled to service charges from M/s Siti Cable Network Ltd. as mutually determined by the Parties to this Agreement from time to time but not exceeding 90% of the collections received by the said Co. and not 90% of the bills raised by the said Co. on the cable operators. In the immediately preceding assessment year viz. 2006-07 the Assessee had declared such receipts viz. 90% of the collections which were duly accepted and assessed to tax as is evident from copy of assessment order passed u/s 143(3) placed at **pages 78 - 79** of the paper book. Similarly for the assessment year 2008-09 also, the Revenue had accepted such income by passing an assessment order u/s 143(3) on 15/12/2010, copy enclosed as **Annexure I at pages G\_- °\** to these Synopsis.
5. Details/breakup of income from distribution charges of Rs. 1,60,65,485/- shown in the P & L A/c at **page 114** of the paper book is placed at **pages 124 - 125** of the paper book. Copy of A/c of the Assessee Co. in the books of M/s Wire & Wireless (I) Ltd. formerly known as Siti Cable Network Ltd. for the year under consideration is placed at **pages 24 - 28** of the paper book from which the month-wise collections as made by them are evident.

6. *The Assessee having duly declared collection charges as per clause 4.1 of the Agreement (kindly see page 70) as reproduced above, no justification subsisted on the part of the Ld. CIT(A) to make the addition of Rs. 1,05,01,777/- challenged by the Assessee vide ground No. 1(a).*

*Therefore, the Id. CIT(A) was incorrect in making enhancement of Rs.1,05,01,777/- because there was no understatement of subscription fee at all as recorded by the Assessee.*

*Consequently, the disallowance and enhancement of Rs. 1,05,01,777/- as made by the Id. CIT(A) deserves to be deleted.”*

Apropos Ground 1(b), the Id. AR submitted as under:

*“As regards disallowance of pay channel expenses of Rs.1,49,67,891/- pertaining to January - March, 2007, the Id. CIT(A) is wrong in making the following observations at page 10 para 5.4.3 of the appellate order:*

*“Therefore when the revenue for the months of January to March, 2007 has not been accounted for by the appellant company and the dispute is pending before the Delhi High Court, it will be only appropriate that the payments made to pay channels for the period from January - March, 2007 are also not allowed as no income has been recognized for the aforesaid period. Therefore, the payment of Rs.1,49,67,891/- made to Zee Pack- Rs. 44,54,704/-, Star Pack - Rs. 57,91,162/-, Sony Pack - Rs.24,94,655/- and Espn and Star Sports - Rs.22,27,370/- is being disallowed”.*

Submissions:

“1. As per the agreement dated 13/08/2005, copy placed at pages 67 - 75 of the paper book, section 2.2 at page 69 of this Agreement reads as under:

“Obligation of the Distributor to bear all the expenses including operational expenses and pay channel/broadcaster charges (but excluding monthly rents of the head- end/control room premises, pole rents and programming expenses) out of its own funds”.

2. The Ld. CIT(A) is factually incorrect in saying that “the revenue for the months of January to March, 2007 has not been accounted for” by the Assessee Co. The fact remains that the Assessee had duly accounted for revenue for the months of January to March, 2007 as is evident from copy of distribution charges shown in the books of the Assessee Co. copy placed at pages 124-125 of the paper book from which it is evident that the Assessee had duly accounted for distribution charges for such three months period as under:

January 31	Rs.3,92,370
February 28,	Rs.1,53,302
March 31,	<u>Rs. 59,618</u>
	<u>Rs.6,05,290</u>

3. Hence, there is no basis for the Ld. CIT(A) to presume and hold that since no revenue for the three months of January to March, 2007 was booked/recognized, therefore, the following payments made to pay channels for the same three months period are also not allowed:

	Rs.44,54,704	to M/s Zee Pack - kindly see <b>page</b> 159 of the paper book.
	Rs.57,91,162	to M/s Star Pack - kindly see <b>pages</b> 160-161 of the paper book.
	Rs.24,94,655	to M/s Sony Pack - kindly see <b>page</b> 162 of the paper book.
	Rs.22,27,730	to M/s ESPN & Star Sports - kindly see <b>page</b> 163 of the paper book
<b>Tota</b>	<b>Rs. 1,49,67,891</b>	
<b>Less</b>	<b>Rs. 28,80,000</b>	<b>Disallowance as made by AO</b>
	<b>Rs. 1,20,87,891</b>	<b>Enhanced disallowance made by CIT(A)</b>

As shown above, revenue for three months period ended March, 2007 was duly accounted for by the Assessee and hence, the very basis/rationale for making the disallowance of pay channel expenses for such three months period by the Ld. CIT(A) did not exist.

4. In **para 5.4.3 at page 10**, the Ld. CIT(A) has himself observed as under:

“However, a perusal of records maintained in the office of the AO reveals that Sh. Anirudh Singh Jadeja who controls M/s Gujarat Telelinks Pvt. Ltd. M/s Sabarmati Network Pvt. Ltd. and also has substantial stakes in the appellant company has taken over the entire cable network belonging to the SITI, now known as Wire and Wireless (I) Ltd. and has been running the cable TV business operations with the help of M/s Gujarat Telelinks Pvt. Ltd. and M/s Sabarmati Network Pvt. Ltd. and had prevented both the appellant company and SITI from operating within the territory of Vadodara and Ahmedabad. A perusal of records also suggests that owing to the dispute between the Wire & Wireless (I) Ltd. and Sh. Jadeja

*(which directly impacted the business prospects of the Appellant company also), the matter has been taken to Hon'ble Delhi High Court and an arbitrator has since been appointed. Thus, there is a situation here where one of the directors of the appellant company namely, Sh. Anirudh Singh Jadeja has forcefully taken over the business operations of SITI, also known as Wire & Wireless (I) Ltd. and is operating the same with the help of his group companies M/s Gujarat Telelinks Pvt. Ltd. and M/s Sabarmati Network Pvt. Ltd.”*

*It was due to the above dispute followed by litigation about which the Id. AO was informed vide Assessee's letter dated 21/12/2009, copy placed at pages 41 - 43 of the paper book - kindly see Sr. No. 20 at page 43 during which copies of the litigation as going on were also filed. Therefore, the Assessee had ultimately to close its business w.e.f. 31<sup>st</sup> October, 2007.*

*Consequently, the enhanced disallowance of Rs.1,20,87,891/- as made by the Id. CIT(A) under misconception of facts, deserves to be deleted.*

*5. Further, ad-hoc disallowance of Rs.28,80,000/- as made by the AO being 7.5% of total expenses claimed at Rs.383.99 Lacs (as per P & L A/c placed at page 113 of the paper book) and confirmed by the Ld. CIT(A) also deserves to be deleted. In this connection, ledger print outs of major heads of expenses were filed before the AO alongwith letter dated 13/11/2009 placed at pages 122-208 of the paper book. Such disallowance has been made without pinpointing any specific item of unvouched or unverifiable nature out of the expenses claimed.*

6. Moreover, ad-hoc disallowances have not been approved by the Courts as held in the following case laws:

**73 ITR 192. Jhandumal Tarachand Rice Mills vs. CIT (P & H High Court)**, in which it was held as under:

*“That even assuming that the proviso was attracted, the income-tax authorities, not having determined any basis or manner of computation of the true income, profit and gains of the assessee-firm, were not justified in arbitrarily adding Rs. 15,000 in round figure to the income of the assessee-firm. ”*

**94 TTJ 736, ACIT vs. Arthur Anderson & Co. (ITAT Mumbai Bench)**, in which it was held as under

*“Even though the AO has given categorical finding that the expenditure was for the purpose of the business and commercially expedient and the same was admissible as deduction, he made a token disallowance of 20 per cent of such expenses on the ground that element of excessiveness in such reimbursement cannot be ruled out - Not justified -AO has accepted that the accounts were duly admitted - Disallowance was inherently based on surmises and conjectures and devoid of a legally sustainable foundation - CIT(A) justified in deleting the disallowance”.*

*ITAT Delhi Bench judgment in the case of Duli Chand Narender Kumar Exports Pvt. Ltd Vs. ACIT”*

13 Replying to the above, the ld. DR first of all drew our attention towards audit report placed at pages 55 and 56 of the assessee's paper book and submitted that as per column II(a) at page 56, it is amply clear that the assessee itself has mentioned that it is following Mercantile system of account. The ld. DR further pointed out that when the assessee is following Mercantile system of accounting, then the Revenue recognition system adopted by the assessee that as soon as collection actually made, it is recognized as revenue receipts is not correct because this type of revenue recognized is followed by the assessee who has adopted cash system of account. The ld. DR supporting the action of the AO as well as the enhancement order of the first appellate authority drew our attention towards operative para 5.4 and 5.5 of the order of the ld. CIT(A) and submitted that while admittedly and undisputedly as per terms of agreement dated 13.8.2005 assessee company was appointed as distributor in order of carry on the business of distribution and retransmission of cable signals, to procure pay TV channels by executing contracts with pay TV channel broadcasters or their authorized distributors/agents to run and manage the cable network including the cable TV networking business of SITI through cable operators to collect the subscription charges from the cable operators and/or subscribers on behalf of SITI

and to protect, safeguard and maintain services provided/to be provided to the existing and future subscribers base. Then it has to be assumed that the collection of subscription charges was to be made by the assessee on behalf of SITI and further remittance was to be made to SITI cable. The ld. DR pointed out that as per clause 2.ii the assessee was entitled to bear all expenses including operational expenses and pay channel/broadcasters charges which shows that the payments to pay channels/broadcasters expenses was to be made by the assessee itself. The ld. DR further pointed out that when collection of service charges and payments to pay channels/broadcasting channels has to be made by the assessee then it is amply clear that the assessee had complete control over receipt from subscriber and payments to pay channels/broadcasters. Therefore, the litigation or dispute between the assessee and the SITI cable could not effect receipt and payments of the assessee in any way. The ld. DR strongly supporting the enhancement order of the ld. CIT(A) pointed out that the documents relating to subscription charges levied as per bills raised by the SITI cable during the period April to December 2006 were examined by the ld. CIT(A) and it was found that during the said period, total service charges/ subscription fees of Rs. 2.95,19,181/- excluding the service tax and other government levies

was to be collected from the cable operators/ subscribers and thus, as per the distribution agreement, the assessee company was to receive 90% of the said billed amount i.e. 2,65,67,262/- during the period April to December 2006 and as against Rs. 2,65,67,262/- the assessee company has shown only income of Rs. 1,60,65,485/- only. Therefore, it was rightly held that the assessee under stated the revenue collected by it during the period. The ld. DR also pointed out that the ld. CIT(A) from the perusal of assessee's account as appearing in the books of SITI cable, noted that the SITI cable has raised bills and debited the account of the assessee on a monthly basis and the amounts debited in the accounts of the assessee company represented the Revenue which had become due during the period under consideration and therefore, as per Mercantile System of Accounting, as adopted by the assessee, the assessee has to account for this Revenue, irrespective of the fact whether all the payments/dues have been cleared by debtors or not. The ld. DR strenuously pointed out that it is the settled position of law that in the case t company fails to recover/realize outstanding debtors, it will be allowed necessary deduction in the year of write off of the debts.

14. The ld. DR lastly contended that if the expenses pertaining to this period April to December 2006 was to be allowed, then the corresponding income has to be recognized as per the bills raised by SITI against the assessee. The ld. DR also drew our attention towards this fact that the assessee has not challenged that as per the Mercantile System of account, the revenue for the period April to December 2006 has to be taken at Rs. 2,65,67,262/- being 90% of subscription fees as per bills raised by SITI for corresponding period.

15. On the issue of disallowance of expenses claimed by the assessee, the ld. DR pointed out that for the year under consideration, the assessee has claimed total expenses of Rs. 3,83,99,743/- which includes payments of Rs. 3,55,62,164/- made to pay channels and the AO has made disallowance of Rs. 28,80,000/- being 7.5% of Rs. 3,83,99,743/- on account of unverified and unproved expenses. The ld. DR supporting the enhancement order elaborated that on careful examination of the documents placed before the ld. CIT(A), it was noticed that out of the expenses of Rs. 3,55,62,164/- representing the payments made to pay channels was made for the entire F.Y. 2006-07 i.e. from April 2006 to March 2007 whereas the assessee company recognized subscription fees only upto December 2006 and no income has been recognized for remaining months of January to March 2007.

16. Therefore, it was found appropriate that the payments made to pay channels for the period January to March 2007 was not allowable as no income was recognized for the said period. The ld. DR also took us through para 5.4.3 and contended that the ld. CIT(A) rightly disallowed payment for the period January to March 2007, made to Star Pack, Sony Pack, ESPN and Star Sports. The ld. DR contended that the ld. CIT(A) was justified enough in allowing set off of Rs. 28,80,000/- already disallowed by the AO for computing the final enhancement and disallowance on this count. Therefore, the order of the ld. CIT(A) may kindly be upheld.

17. The ld. AR also placed rejoined to the above submissions of the ld. Sr. DR and submitted that on one hand the ld. CIT(A) is alleging that the assessee understated the subscription fee and therefore, he made enhancement of Rs. 1,05,01,777/- and at the same time, the ld. CIT-DR alleged that the assessee made payment of pay channel fees for the period January 2007 to March 2007 i.e. for three months for which no subscription fees has been shown as collected. The ld. AR pointed out that the Revenue cannot blow hot and cold at the same time as the addition for understatement of subscription i.e. the Revenue receipt on one hand and disallowance on pay channel expenses for the same part of the financial period on the other hand

because when the understatement of subscription is there, and the addition is being made on this count, then pay channel expenses has to be allowed to the assessee. Therefore, the order of the ld. CIT(A) cannot be held as sustainable on facts and on the provisions of the Act.

18. On careful consideration of the above rival submissions, from the relevant part of the order of the ld. CIT(A) making enhancement of Rs. 2,25,89,668/- it is amply clear that the AO made disallowance of Rs. 28,80,000/- on account of expenses claimed by the assessee on the allegation that the same has remained unverified and hence he disallowed 7.5% of the expenses claimed by the assessee while calculating 7.5% of Rs. 383.99 lakhs of the total claim of expenses and worked out disallowance of Rs. 28.80 lakhs. Undisputedly, the said claim of expenses of 383.99 lakhs also included the pay channel expenses of Rs. 3,55,62,164/- which was alleged as excess claim by the ld. CIT(A) for making enhancement on account of pay channel expenses of Rs. 1,49,67,891/-. Be that as it may, further the ld. CIT(A) for making another enhancement held that the assessee has claimed expenses for the entire financial period whereas the assessee has shown subscription Revenue of Rs. 1,60,65,485/- and the assessee, following the Mercantile system of account has raised the bills against

SITI of Rs. 2,95,19,181/-, excluding the service tax and other government levies and on this basis the ld. CIT(A) alleged that the assessee company was to receive 90% of the bill amount which comes to Rs. 2,65,67,262/- for the period April to December 2006 and the assessee has not shown any Revenue for the rest period i.e. January to March 2007 of three months. In all fairness, from the operative para 5.4 of the ld. CIT(A), it is amply clear that the ld. CIT(A), for making the impugned enhancement on account of understatement of subscription fees has taken into account only bills raised against SITI by the assessee for the period April to December 2006 and on this basis subscription fees for next three months has been estimated for making enhancement and consequent addition.

19. On specific query from the Bench, the ld. Sr. DR could not controvert this fact that the assessee has also shown some meagre amount of receipt i.e. rs 6,05,290/- Revenue from distribution charges for the period of last three months of the year. In our considered opinion, we may not forget that neither the AO nor the ld. CIT(A) has considered the bills raised by the assessee against SITI for the period January 2007 to March 2007 which are relevant for proper calculation and estimation of the Revenue for the period under consideration in

the hands of the assessee as per Mercantile system of accounting. Finally, we are in agreement with the contention of the Id. DR that the assessee has not shown subscription fees/charges from the period January to March 2007 and the distribution charges shown by the assessee of Rs. 6,05,290/- cannot justify the actual amount of subscription received by the assessee for these three months because on one hand the assessee is paying huge charges of Rs. 1,49,67,891/- continuously for the period of last months i.e. January to March 2007 without collecting Revenue which is not an acceptable fact, even for a man of ordinary prudence, in the ordinary course of business. As we have noted earlier that collection of subscription fees as well as payment of pay channel charges was under the control of the assessee, then if due to some dispute between the assessee and the SITI the subscription charges was not allowed to be collected by the assessee for his period of three months, then it is not acceptable that the assessee continuously made payments for the last three months of the year despite the fact that he could not collect any subscription from respective clients for the same period of three months.

20. The bills raised by the assessee for this period against SITl have not been verified by the authorities below, which are necessary for estimation and calculation of actual subscription billed by the assessee against SITl for the whole financial period. In view of the above, we decline to accept the enhancement order made by the ld. CIT(A) on contrary, incorrect, incomplete and unsustainable allegations. We may further point out that the Revenue authorities could not verify the expenses claimed by the assessee. Therefore, the AO made addition of 7.5% of the total amount of expenses claimed by the assessee which was subsequently enhanced by the ld. CIT(A) during first appellate proceedings by making disallowance of pay channel expenses of Rs. 1.49 crores and also estimating understatement of subscription charges on the basis of earlier three months.

21. In view of the foregoing discussion, we are of the considered opinion that the issue requires detailed examination and verification at the end of the AO regarding actual amount of subscription claimed by the assessee by raising bills against SITl for entire financial period i.e. from April to 2006 to March 2007 because the assessee is following

Mercantile system of accounting. Further verification of actual expenses claimed by the assessee also requires verification at the end of the AO, which could not be done during the assessment proceedings and thereafter any conclusion as per the provisions of the Act may be drawn by the AO after verification of relevant bills/vouchers and other documents about the claim of expenses placed by the assessee. In view of the above order of the AO making addition and enhancement by the Id. CIT(A) are set aside and issue of verification of expenses claimed by the assessee and Revenue recorded by the assessee pertaining to subscription fees/ charges by way of raising bills against distributor SITI is set aside to the file of the AO for fresh adjudication and examination after affording due opportunity of being heard to the assessee and without being prejudiced from earlier assessment and impugned order and Id. CIT(A). Accordingly, Ground Nos. 3, 4 and 5 of the assessee are allowed for statistical purposes.

22. To sum up, in the result, the appeal of the department is dismissed whereas the appeals of the assessee are allowed for statistical purposes in the manner as indicated above.

**The order is pronounced in the open court on 13.06.2016.**

**Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER**

Dated: 13<sup>th</sup> June, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi