

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The appeal by the Revenue in ITA No. 2158/DEL/2011 and cross objection by the assessee are preferred against the order of the CIT(A)- 13, New Delhi dated 17.02.2011 pertaining to A.Y 2006-07. The Revenue has also filed an appeal against the order of the CIT(A) dated 2.5.2013 pertaining to A.Y 2006-07. Since the underlying facts and issues involved in these appeals and cross objection are identical and pertain to same assessee, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. Briefly stated, the facts of the case are that upto 31.12.2004, the assessee was providing the Customer Premises Equipment (CPE) which consists of set top box, dish antenna LNB and cable to the consumers by way of outright sale of the equipments. Accordingly, the result, as reflected in the accounts of the assessee was that the sales of CPEs were booked as and when these were sold to the consumer /subscriber. The unsold CPEs were shown as closing stock of the assessee at the end of the year.

3. However, with effect from 01.01.2005 a new scheme was announced by the assessee whereby the company shifted its policy from selling CPE to the subscriber to leasing this equipment to the customer on payment of refundable security and a lease rent of Rs. 500/- for five years. The assessee adopted this change in policy in the business model with a view to boost the revenue due to competitive prices in the assessee's line of business.

4. This change in method of accounting also resulted in reducing the rate of the unsold CPEs lying with the distributors which had been earlier supplied on consignment basis for installation at customer premises on outright sale basis. On the date of conversion of the scheme, 2,834 set top boxes alongwith accessories were lying with the distributors and since with the change in policy, the prices of these equipments were reduced by Rs. 57,52,391/-.

5. In the interest of its business, the assessee compensated this fall in prices and debited the same in its Profit and loss account as related to excess/short amount received from the consignees on account of scheme conversion. The Assessing Officer treated this as a non

Revenue expenditure, whereas the first appellate authority has directed the Assessing Officer to allow the same as business loss.

6. As explained above, the change in the policy was accepted by the Assessing Officer and no malafide intention has been brought on record on the part of the assessee. Any loss incurred by the assessee in respect of trading goods has to be allowed as business loss. We, therefore, do not find any reason to interfere with the findings of the CIT(A). This ground is dismissed.

7. With the new policy, the distributors were now engaged for services rendered for leasing out and installing the CPEs at the customer's premises on behalf of the assessee. In lieu of such services, the assessee paid distributor's commission and distributor's incentive. The Assessing Officer was not convinced with the claim of the assessee. The Assessing Officer was of the firm belief that these expenses have been incurred in connection with set top boxes and related accessories which have since been capitalised as lease assets. Therefore, such expenditure should also be capitalised.

8. The CIT(A) considered this issue from a different angle. The CIT(A) was of the opinion that since the set top boxes are leased for a period of five years and any lease rent received by the assessee shall be offered for taxation on annual basis only, therefore, $1/5^{\text{th}}$ of the commission and incentive payable to the distributors during the year should be allowed. The CIT(A) accordingly directed the Assessing Officer to allow $1/5^{\text{th}}$ expenditure and balance amount would be allowed for the next four financial years.

9. We are of the considered opinion that once the CIT(A) has accepted that distributor's commission and distributor's incentive are revenue expenditure, there is nothing like deferred revenue expenditure. Moreover, the distributor's commission and incentive paid by the assessee will not be recovered if the lessee i.e. the customer cancels the lease after one year. Therefore, any commission/incentive paid by the assessee has to be charged to the profit and loss account as revenue expenditure in the year of incurring the same. We, accordingly, modify the findings of the CIT(A) and direct the Assessing Officer to allow distributor's commission and distributor's incentive as revenue expenditure.

10. Ground Nos. 1 and 2 of the cross objections of the assessee are allowed and related grounds in Revenue's appeal are dismissed.

11. The next grievance of the Revenue's appeal relates to freight and cartage outward holding it as capital loss/capital expenditure in nature.

12. It appears that the Assessing Officer has misunderstood the facts of the issue. He was carried away by the capitalisation of freight inward expenses and accordingly, treated freight and cartage outward as capital expenditure. At this stage, we would like to make it clear that freight inward is paid when the goods are unloaded and transferred to the godown. Such expenditure is definitely part of the goods so unloaded and the same needs to be capitalised. Freight outward, on the other hand, is expenditure incurred when the goods are loaded to transport to the destination of the customer. Such expenditure is directly related to the sales and have to be allowed as Revenue expenditure. We, accordingly, set aside the findings of the CIT(A) and allow Ground No. 3 of the cross objection of the assessee.

13. Next issue in the cross objection relates to disallowance of handling charges of Rs. 14.91 lakhs as capital expenditure.

14. Facts on record show that these expenses have been incurred for dispatching set top boxes to various destinations during the course of normal business activity of the assessee. In our considered opinion, such expenditure has not resulted in any acquisition of any capital asset by the assessee. On the contrary, such expenditure has been incurred for despatch of trading stock of the assessee. We, accordingly, direct the Assessing Officer to delete the impugned addition. Ground No. 4 is allowed.

15. In the result the appeal of the Revenue is dismissed whereas the cross objection of the assessee is allowed.

ITA No. 4538/DEL/13

16. Sublato Fundamento Cadit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the

foundation [assessment] has been removed, the super structure i.e. penalty must fall. Accordingly, the penalty is directed to be deleted.

17. In the result, the appeal of the Revenue in ITA Nos. 2158/DEL/2011 & 4538/DEL/2013 are deleted, whereas the cross objection of the assessee in CO No. 190/DEL/2011 is allowed.

The order is pronounced in the open court on 18.01.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 18th January, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date of dispatch of the Order	