

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-2' NEW DELHI**

**BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2445/Del/2010
Assessment Year: 2003-04**

Nokia India Pvt. Ltd., 1 st & 2 nd Floor, Tower A, SP Infocity, Plot No.243, Udyog Vihar pase 1, Dundahera, Gurgaon. PAN: AAACN2170R	vs	DCIT, Circle 13(1), New Delhi
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Assessee by	Sh Deepak Chopra, Advocate Sh Ankul Goyal, Advocate
Revenue by	Sh. H.K. Choudhary, CIT-DR

Date of Hearing	02.07.2019
Date of Pronouncement	08.07.2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Pursuant to the directions of the Hon'ble High Court in ITA No.955 of 2018 by order dated 31.8.2018 remitting this matter for a fresh decision in respect of Ground No.6, this appeal came before us for hearing.

2. Brief facts of the case are that the assessee, M/s Nokia India Ltd., is a 100% subsidiary of Nokia Corporation, Finland and is incorporated under the Companies Act, 1956. M/s Nokia India Ltd. has its registered

office at Delhi and branches at Bangalore, Mumbai, Hyderabad and Ahmadabad. Nokia is primarily engaged in the trading of mobile phones and their accessories and installation of networking equipments. In addition, it has a Research and Development Centre at Hyderabad and Bangalore.

3. For the Asstt. Year 2003-04, they have filed their return of income on 2.12.2003 declaring a total income of Rs.70,62,48,750/- by order dated 27.2.2006. Learned AO assessed the income at Rs.82,21,65,720/- by making the following additions:

(i)	Foreign travelling expenses	57,23,201/-
(ii)	Provision for warranty	5,48,86,377/-
(iii)	Marketing expenses	39,98,939/-
(iv)	Increase in value of closing stock	2,68,17,770/-
(v)	Provision for obsolescence of inventory	8,50,084/-
(vi)	Addition made as per TPO Order	2,36,40,603/-

4. Aggrieved by the same assessee preferred an appeal before the learned CIT(A). Learned CIT(A) by order dated 25.3.2010 deleted the addition in respect of the foreign travel expenses while confirming the other additions. Assessee preferred appeal to the Tribunal and the Tribunal by order dated 30.1.2018 allowed the claim of the assessee in respect of provision for warranty disallowed, marketing expenses and increase in value of closing stock while setting aside the issues relating to the provision for obsolescence of inventory and arm's length adjustment.

5. Revenue, therefore, preferred appeal before the Hon'ble High Court challenging the deletion of provision of warranty disallowed;

marketing expenses disallowed and increase in value of closing stock and also the question of obsolescence of inventory. Hon'ble High Court upholding the findings of the Tribunal in respect of provision for warranty disallowed, marketing expenses and the provision for obsolescence of inventory. However, in respect of the increase in value of closing stock, assessee prayed the Hon'ble High Court to remand the issue to the Tribunal for fresh decision as the reasoning given by the Tribunal was not correct and germane to the issue in question. Recording the same, the Hon'ble High Court remanded the issue with regard to the damaged handsets and their inclusion in the closing stock, for fresh decision.

6. It is the submission of the learned AR that the total revenue of the assessee from the sale of mobile phones and accessories in India is about Rs.800.35 crores whereas the value of mobile phones issued free of cost to the employees/dealers/operators and also the handsets damaged in transit and swapped is only Rs.2.86 crores, which is roughly 0.31% and, therefore, the claim for damaged handset is minuscule. According to the assessee that much damage occurs during the transit and usual to the business of the assessee. He further submitted that if valuation of the closing stock is changed than the value of the opening stock will also get changed on the same basis or method and the closing stock of a particular year is the opening stock of the earlier year and as the such it does not materially affect the accounts and profits disclosed by the assessee. He, therefore, submits that adjustment sought to be made is revenue neutral transaction.

7. He further brought to our notice that the Hon'ble High Court in the order dated 31.8.18 upheld the finding of the Tribunal that the assessee had transferred the title or ownership of the mobile handsets to the employees, dealers, sales personnel etc. who were given mobile handsets free of cost and were no longer owned by the assessee and therefore, their inclusion in the assets of the company does not arise. He also brought to our notice that the amount of Rs.2.68 crores is inclusive of the value of the damaged handsets.

8. Learned DR submitted that the mobile handsets provided to the employees and dealers of FOC constitute the property of the assessee. He further submitted that the value of the damaged sets should be included in the closing stock. He, therefore, justified the findings of the Id. AO on this aspect.

9. We have heard both the parties and gone through the record. Learned AO while following the orders for the earlier years held that the cost of FOC was to be added to the value of the closing stock and on this premise, he made the addition of Rs.2.68 crores. Learned CIT(A) while following the orders of his predecessor for the AYs 2000-01, 2001-02 and 2002-03 agreed with the Id. AO and held that expenditure incurred by the assessee on mobile phone handsets provided to employees, dealers, AMSCs is not a revenue expenditure and the assessee is entitled to claim depreciation as per the Act.

10. It is the submission of the Id. AR, as stated above, that the handsets provided to the employees/dealers etc. were no longer

belonging to the assessee and there is no question of treating them as the assets of the assessee so as to claim the depreciation thereon and the Hon'ble High Court for this very assessment year in ITA No.955 of 2018 upheld the findings of the Tribunal that the assessee was justified in treating these mobile handsets as expenditure and the question of capitalization does not arise. The issue of treatment of FOC has, therefore, attained finality.

11. Now coming to the question of addition on account of stock damaged during the transportation etc., the AO was of the opinion that the value of the mobile handset damaged during the transit should be included in the closing stock and it was supported by the Id. CIT(A). When a part of the stock was damaged during the transit and does not carry any worth, Id. AR submits that adding it in the closing stock does not arise. He submitted that this issue was dealt at length by a coordinate bench of this Tribunal in assessee's own case for AY 2001-02 and the Tribunal reached the conclusion that this addition has to be deleted. He submits that the facts are identical and, therefore, a consistent view has to be taken.

12. We have perused the order dated 9.1.2019 in ITA No.5744/Del/2015. In similar facts and circumstances, this issue was dealt at length and relevant portion reads as follows:

“11. Now coming to the addition to Closing Stock on account of handsets damaged in transit- Rs.80,03,258/- covered by Ground No. 3, 4 ,5 and 6, brief facts are that the closing stock of the appellant for the year ended 31st March, 2018 was arrived at after reducing the value of 990 handsets from the stock of the appellant on account of FOC

handsets and handsets damaged during transit, amounting to Rs.80,03,258/- which is also captured in the Tax Report of the appellant, duly certified by their auditors.

xxx	xxx	xxx
xxx	xxx	xxx

15. He further submitted that without prejudice to the above, even if the handsets damaged in transit are treated as stock owned by the appellant, the same should be allowed to be written off and reduced from total income of the appellant in view of the provisions under Section 145-A of the Act. Therefore, these handsets should be valued at lower of cost or net realizable value (“NRV”) in accordance with AS-2.

16. It is submitted by the Ld. AR that the sale of mobile handsets by the appellant was governed by high competition and constantly changing technology; that the value of damaged mobile handsets was also nil since it could not be sold further or utilized for the purpose of the business of the appellant; that, therefore, the value at which damaged handsets should be added back to closing stock is at their NRV, which is nil. Damaged handsets have been reduced from the stock of the appellant to arrive at its closing stock for the year; that the Closing stock has been disclosed in Annexure IX of the Tax Audit Report of the appellant, which is certified by their auditors and there cannot be a higher standard of proof in this regard; and that the Ld. AO was not justified in making additions to the closing stock of the appellant without rejection of books of accounts of the appellant.

17. He further submitted that the damaged handsets that have been reduced by the appellant from the closing stock in the AY 2001-02 are sold as scrap in the future years, the income from sale of scrap has been included in the taxable income of the appellant of that year. Hence, in case any damaged handsets reduced from the closing stock in AY 2001-02 are sold by the appellant in future years, the taxes are paid by the appellant at the time of sale of scrap.

18. He further submitted that the addition to closing stock would be revenue neutral in the long run as the addition made to the closing stock in one year will correspondingly lead to an increase in the opening stock of the next year and will not materially affect the profits of the appellant. Hence, such an adjustment should not be made when the appellant has consistently followed the same method for valuing its closing stock throughout the years.

19. Lastly, he submitted that such an adjustment was accepted by the Ld. AO in AY 2003-04 and the Ld. AO while making the addition for AY 2003-04 gave relief of adjustment made in closing stock in AY 2002-03. The Ld. AO in his order for AY 2003-04, while making an addition in closing stock of appellant for damaged handsets, reduced the addition made in the closing stock of the appellant in the preceding AY i.e. AY 2002-03 from the total addition in closing stock in AY 2003-04.

20. Ld. DR places reliance on the orders of the authorities below. Insofar as the grievance of the assessee that this particular amount of Rs.80,03,258/- is concerned, it includes the amount of Rs.44,53,700/- on account of disallowance of marketing expenditure. On this aspect record speaks that it is a fact. Now turning to the issue whether the assessee shall be allowed the direction on account of the handsets damaged in transit. The meaning of the fact that the damaged handsets, reduced from the closing stock during the year, amounted to Rs.20,64,911/- and this constitutes only 0.31 % of the assessee's turnover for the assessment year 2001-02 where the total turnover for the year was Rs.66,56,99,042/-. At the outset, we are of the considered opinion that the addition of the amount of Rs.80,03,258/- includes the amount of Rs.44,53,700/- decided (supra) vide first issue.

21. Even in respect of the value of the handsets damaged in transit is concerned, it comes only to Rs.20,64,911/- which constitutes only 0.31% of appellant's total turnover for the year and while respectfully following the order dated 21st of February 2014 of a coordinate bench of this tribunal in ACIT vs. Grohe India private limited in ITA No.1441/Del/2013, we hold that it is not unlikely that some of the items may have been damaged or lost during transit, therefore, such a shortage due to damage or loss has to be considered reasonably keeping in view the magnitude of such short is being 0.31% of the total turnover and hence cannot be held as an unusual loss. Further, we are convinced with the argument that if valuation of closing stock is changed then the value of opening stock should also be changed on the same basis or method and the closing stock of a particular year is the opening stock of the subsequent year as such it does not materially affected the accounts and profits disclosed by the assessee. As a matter of fact, the adjustment now sought to be made is revenue neutral and at best may result in requirement or postponement of revenue and in view of the concept of materiality which is well recognized both in accountancy and the law. Accounting standards notified by the CBDT under section 145(2) mandates that the concept of materiality be taken into consideration when finalizing the accounts of an assessee. Keeping in view all these things we are of the

considered opinion that no addition on account of the closing stock due to the handsets damaged in transit is warranted in this matter. We accordingly direct the Ld. assessing officer to delete the addition on this score.”

13. It is, therefore, clear that this issue has been considered at length by a coordinate bench of this Tribunal and facts being similar, we find it difficult to take a different view. While respectfully following the view taken by a coordinate bench, as extracted above, we answer the issue in favour of the assessee.

14. We, therefore, hold that no addition on account of closing stock due to the handsets damaged in transit is warranted and the addition are accordingly to be deleted.

15. In the result, Ground No.6 of assessee’s appeal is allowed.

Order pronounced in the Open Court on 8th July, 2019.

Sd/-

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 8th July, 2019
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

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