IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.2756/M/2017
Assessment Year: 2011-12

M/s. AGC Networks Ltd. (Earlier known as Avaya Global Connect Ltd.), Equinox Business Park, Tower 1 (Peninsula Techno Park), Off. Bandra Kurla Complex, LBS Marg, Kurla West, Mumbai – 400 070 **PAN: AAACT3992M**	Vs.	ACIT, RG-14(1)(1), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

ITA No.2382/M/2017
Assessment Year: 2011-12

DCIT, RG-14(1)(1), R.No.460, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s. AGC Networks Ltd. (Formerly known as Avaya Global Connect Ltd.), Equinox Business Park, Off. Bandra Kurla Complex, LBS Marg, Kurla (W), Mumbai – 400 070 **PAN: AAACT3992M**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Nitesh Joshi, A.R.
Revenue by : Shri Michael Jerald, D.R.

Date of Hearing : 23.10.2020
Date of Pronouncement : 29.10.2020

O R D E R

Per Rajesh Kumar, Accountant Member:

The above titled cross appeals one by the assessee and the other by the Revenue have been preferred against the order dated 12.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

ITA No.2756/M/2017 (Assessee's appeal)

2. The issue raised in 1st ground of appeal is against the order of Ld. CIT(A) wrongly applying the percentage criteria for disallowing the provision for expenditure amounting to Rs.6,69,68,954/-.

3. At the outset, the Ld. Counsel of the assessee pointed out that the issue is covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.8674/M/2011 & 5157/M/2011 & ors. A.Y. 2005-06 vide order dated 30.08.2019 wherein the identical issue has been decided in favour of the assessee by directing the AO to delete the part disallowance sustained by Ld. CIT(A). The ld DR fairly agreed to the submission of the assessee on this issue but relied on the order of authorities below.

4. We have considered rival submissions and perused the material on record including the decision of the co-ordinate bench of the Tribunal in ITA No.8674/M/2011 A.Y. 2005-06 & ors. There is no dispute between the parties with regard to the basic facts relating to the disputed addition. Since the issue before us is identical to one as decided by the co-ordinate bench

of the Tribunal as stated hereinabove, we are therefore inclined to hold that part disallowance sustained by the Ld. CIT(A) is also to be deleted. Accordingly, this ground of appeal is allowed.

5. The issue raised in 2nd ground of appeal is against the order of Ld. CIT(A) confirming the disallowance of renovation expenses for office premises of Rs.18,57,625/-.

6. The Ld. Counsel of the assessee submitted that this issue is also covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.8674/M/2011 A.Y. 2005-06 vide para No.20 and the issue in current year may also be decided in favour of the assessee accordingly.

7. After hearing both the parties and perusing the material on record, we observe that in ITA No.8674/M/2011 A.Y. 2005-06 the co-ordinate bench of the Tribunal has decided identical issue in favour of the assessee. The operative part is reproduced as below:

> "20. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. The issue before us is, whether the expenditure incurred by the assessee towards repair/renovation of leased premise is of capital or revenue nature. On a perusal of the details of expenditure incurred, as submitted in the paper book, we are of the view that by incurring such expenditure, the assessee has not brought into existence any capital asset of enduring nature. A reference to Explanation-1 to section 32(1) of the Act, would reveal that it speaks of capital expenditure incurred towards construction of any structure or renovation or extension or improvement to the building. Thus, on a reading of the aforesaid provisions, it becomes clear that if any expenditure is incurred for construction of any structure or extension or improvement of the building taken on lease would be treated as capital expenditure. The nature of expenditure incurred by the assessee in respect of the leased premises and more particularly the premises at Hyderabad and Bangalore are not of the nature of constructing new structure, extension or improvement of building. Therefore,

Explanation-1 to section 32(1) of the Act would not be applicable to the facts of the present case. Though, there cannot be any quarrel with regard to the proposition laid down in the decisions cited before us, however, the nature of expenditure incurred by the assessee with reference to facts of each case would decide whether it is capital or revenue in nature. In the facts of the present case, after examining the details of expenditure incurred by the assessee, we are of the view that it is of revenue nature, hence, has to be allowed. Accordingly, we do so. The decision of learned Commissioner (Appeals) on this issue is, therefore, set aside. Ground raised is allowed."

8. The facts before us are identical and we, therefore, respectfully following the co-ordinate bench of the Tribunal in the earlier year we allow this ground No.2 raised by the assessee.

9. The issue raised in 3rd ground of appeal is against sustaining the addition of Rs.2,61,40,340/- as made by the AO on account of change in revenue recognition policy.

10. The Ld. Counsel of the assessee pointed out that the issue is squarely covered in favour of the assessee in above ITA vide para No.41, 42, 43, 44 & 45 wherein the issue was restored to the file of the AO to decide the issue independently and directly in accordance with law and jurisdictional precedent afresh and if the assessee can establish the change in the revenue recognition policy is for bonafide and valid reasons, the question for any addition on this count would not arise. The Ld. Counsel submitted that the current year may also be decided by restoring the same to the file of the AO.

11. After perusing the decision of the co-ordinate bench of the Tribunal and facts of the case, we find that the issue is squarely covered in favour of the assessee vide ITA No.8674/M/2011 A.Y.

2005-06 in para No. 41 to 45. The operative part is reproduced as under:

"41. We have considered rival submissions and perused the material on record. We have also carefully applied our mind to the decisions relied upon before us by both the parties. The factual matrix clearly reveals that the assessee has not changed mercantile system of accounting consistently followed by it from the past years. However, it has changed its revenue recognition policy in the impugned assessment year. It is evident, in the past years, the assessee was recognising revenue on the basis of invoices raised for sales effected and service rendered. However, in the impugned assessment year, the assessee has adopted a new system under which it recognizes revenue on the basis of completion of project and on receiving completion certificate from the customers. Undisputedly, due to the change in revenue recognition policy as aforesaid, quite a substantial part of the revenue, which otherwise would have been shown in the impugned assessment year as per the revenue recognition policy consistently followed, has been deferred to subsequent assessment years which resulted in less profit shown of ` 22.83 crore. To justify the change in revenue recognition policy, it is the contention of the assessee that in the year under consideration it has shifted its focus from providing specific voice equipment solutions to converged communication solutions as per the business strategy adopted by its Head Office in USA. It is also submitted that the new revenue recognition policy adopted by the assessee is in tune with similar policy adopted by the Head Office and which is also followed by various other reputed organizations/entities. As per section 145(1) of the Act, income chargeable under the head profits and gains of business and profession has to be computed by employing either cash or mercantile system of accounting regularly employed by the assessee. Of course, sub-section (2) of section 145 of the Act prescribes the Accounting Standards to be followed by any class of assessee or any class of income has to be notified by the Central Government. Whereas, sub- section (3) of section 145 of the Act prescribes that if the Assessing Officer is not satisfied with the correctness or completeness of the accounts of the assessee or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee or income has not been computed in accordance with Accounting Standard notified under sub-section (2), he may proceed to make an assessment to the best of his judgment as provided under section 144 of the Act.

42. It is evident, after examining the factual aspect and the submissions of the assessee the Assessing Officer has observed in the assessment order, though, the assessee to justify with valid reasons the change in revenue recognition policy, however, it was not able to furnish any satisfactory reason for such change except stating that accounts are to be prepared as per global standard. Further, he has observed that the assessee has not produced any documentary evidence regarding the global standards allegedly followed by it and how it is relevant in the context of Indian Accounting Standard. It is also crucial to bear in mind, as regards Sales Tax and Service Tax the assessee is complying to the statutory requirement in terms with the earlier practice followed by it. In other words, it is paying Sales Tax and Service Tax on the basis of invoices raised towards sales and services."

12. Accordingly following the coordinate bench decision as discussed above, we restore the issue to the file of the AO to decide in terms of the order of the co-ordinate bench of the Tribunal. The ground is allowed for statistical purpose.

13. The issue raised in 4th ground of appeal is against the confirmation of addition of dividend distribution tax of Rs.1,23,696/-.

14. After hearing the rival contentions and perusing the materials on records we find that ld. CIT(A) has given a direction to the AO to verify the computation of dividend distribution tax after verifying the claim of the assessee from records. It appears that AO has not complied with the direction. Therefore we direct the AO to verify the claim of the assessee and compute the dividend distribution tax payable applying the correct rate of surcharge thereon. The ground is allowed for statistical purpose.

15. The issue raised in ground No.5 is against the order of Ld. CIT(A) not considering the assessee's appeal on the issue of short credit of TDS deducted at source to the tune of Rs.27,540/-.

16. After hearing both the parties and perusing the material on record, we are of the considered view that the issue is required to be examined at the level of AO. Accordingly, the same is restored to the file of the AO with the direction to verify the records of the assessee and take a decision as per the facts and law. Needless to say that in case the TDS deducted is

Rs.12,80,14,148/- then the AO is directed to allow the credit of Rs.27,540/- as the credit of Rs.12,79,86,608/- has already been allowed. The ground is allowed for statistical purposes.

17. The issue raised in ground No.6 is against the initiation of penalty proceedings under section 271(c) of the Act which is premature and is accordingly dismissed.

18. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No.2382/M/2017

19. The first issue raised by the Revenue is against the order of Ld. CIT(A) deleting the disallowance of Rs.6,69,68,954/- out of Rs.8,05,34,558/- on account of provision of expenditure to the total income of the assessee.

20. We have already decided the issue in assessee's appeal in ground No.1 wherein we have deleted the complete disallowance which has been sustained by Ld. CIT(A). Accordingly, our decision in ground No.1 would render the ground No.1 of Revenue's appeal as infructuous. Hence, this ground raised by Revenue is dismissed accordingly.

21. The issue raised in ground No.2 is against the deletion of disallowance of Rs.18,57,627/- on account of renovation expenses for office premises.

22. We have perused the ITA No.8674/M/2011 A.Y. 2005-06 and observed that identical issue has been decided by the co-

ordinate bench of the Tribunal in favour of the assessee. The operative part is as under:

> "20. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. The issue before us is, whether the expenditure incurred by the assessee towards repair/renovation of leased premise is of capital or revenue nature. On a perusal of the details of expenditure incurred, as submitted in the paper book, we are of the view that by incurring such expenditure, the assessee has not brought into existence any capital asset of enduring nature. A reference to Explanation-1 to section 32(1) of the Act, would reveal that it speaks of capital expenditure incurred towards construction of any structure or renovation or extension or improvement to the building. Thus, on a reading of the aforesaid provisions, it becomes clear that if any expenditure is incurred for construction of any structure or extension or improvement of the building taken on lease would be treated as capital expenditure. The nature of expenditure incurred by the assessee in respect of the leased premises and more particularly the premises at Hyderabad and Bangalore are not of the nature of constructing new structure, extension or improvement of building. Therefore, Explanation-1 to section 32(1) of the Act would not be applicable to the facts of the present case. Though, there cannot be any quarrel with regard to the proposition laid down in the decisions cited before us, however, the nature of expenditure incurred by the assessee with reference to facts of each case would decide whether it is capital or revenue in nature. In the facts of the present case, after examining the details of expenditure incurred by the assessee, we are of the view that it is of revenue nature, hence, has to be allowed. Accordingly, we do so. The decision of learned Commissioner (Appeals) on this issue is, therefore, set aside. Ground raised is allowed."

23. Since the facts before us are materially same to the one as decided by the co-ordinate bench of the Tribunal, we are, therefore, inclined to dismiss the ground raised by the Revenue. The ground is dismissed.

24. The ground No.3 & 4 are general in nature and needs no adjudication.

25. Appeal of the Revenue is dismissed.

26. In the result, the appeal of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 29.10.2020.

Sd/-	**Sd/-**
(Ram Lal Negi)	**(Rajesh Kumar)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated: 29.10.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.