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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No.6908/M/2013
Assessment Year: 2005-06

DCIT CIR 3(2), Room No.609, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Idea Cellular LTd. (Successor to Idea Mobile Communication Ltd., previously known as Escotel Mobile Communication Ltd.), 5th Floor, Windsor, Off. CST Road, Near Vidyanagari, Kalina, Santacruz (E), Mumbai – 400 098 **PAN: AAACE 1646D**
(Appellant)		(Respondent)

ITA No.6573/M/2013
Assessment Year: 2005-06

M/s. Idea Cellular LTd. (Successor to Idea Mobile Communication Ltd., previously known as Escotel Mobile Communication Ltd.), 5th Floor, Windsor, Off. CST Road, Near Vidyanagari, Kalina, Santacruz (E), Mumbai – 400 098 **PAN: AAACE 1646D**	Vs.	DCIT CIR 3(2), Room No.609, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:
Assessee by : Shri J.D. Mistry, A.R.
Revenue by : Ms. Shreekala Pardeshi, D.R.

Date of Hearing : 26.03.2020
Date of Pronouncement : 07.06.2021

O R D E R

Per Rajesh Kumar, Accountant Member:

The above titled cross appeals have been preferred against the order dated 29.08.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2005-06.

ITA No.6573/M/2013 (Assessee's appeal)

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

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the claim of assessee for deduction u/s. 35ABB of Rs.40,24,22,970/- as against Rs. 16,28,41,776/- allowed by the AO in assessment."
(i) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of amortized license fees of Rs.23,95,81,194/- without appreciating the fact that when NTP 1999 had been enunciated and accepted by the assessee; assessee's claim u/s.35ABB under earlier telecom policy was not in accordance with law."
(ii) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the appeal and allowing the entire deduction u/s. 35ABB of Rs.40,24,22,970/- claimed by the assessee contrary to the order of Ld. CIT(A)-XIII, New Delhi in assessee's own case for A.Y.2000-01 which in fact was relied upon by the Ld. CIT(A)-V New Delhi."
(iii) "Whether on the facts and circumstances of the case and in law, the Ld. C1T(A) was right in allowing the entire deduction u/s. 35ABB of Rs. 40,24,22,970/- claimed by the assessee contrary to the order of ITAT "I" Bench, New Delhi, in assessee's own case for A.Y.2001-02 which in fact was relied upon by the Ld. CIT(A)-V New Delhi."
2. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in allowing claim of the assessee for deduction u/s. 37(1) in respect of revenue License Fees of Rs. 19,25,06,859/- ignoring the fact that such license fees was capital in nature and only deduction u/s. 35ABB was allowed as per I T Act."
(i) "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in holding that the Revenue Sharing license fees paid by assessee was revenue expenditure allowable u/s.37(1) despite the fact that the same was fees paid by assessee for acquiring rights of enduring nature and was therefore capital in nature."
3. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right allowing the loss on foreign currency loss of Rs.96,80,000/- without appreciating the fact that the same was notional loss not allowable as held by the Hon'ble Supreme Court of India in the case of M/s. Arvind Mills Ltd."
(i) "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right allowing the loss on foreign currency only on the basis of accounting

policy followed by the assessee and without verifying the correctness of the claim of the assessee in absence of any material evidence."

4. "The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."

5. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The issue raised in ground No.1 is against the confirmation of disallowance by Ld. CIT(A) of Rs.21,78,491/- as made by the AO towards advertisement and publicity expenses on account of being relating to prior period.

4. The facts in brief are that the assessee has incurred certain advertisement and publicity expenses during the year which were duly disclosed in the schedule 14 of the financial statement .A note was appended at the bottom of the schedule 14 that the said expenses of advertisement and publicity included prior period expenses of Rs.21,78,491/-. According to the assessee the said expenditure has crystallized during the year as the invoices pertaining to these expenses were received during the year only but these invoices were dated of earlier year i.e. F.Y. 2003-04 and was classified as prior period expenses upon the insistence of auditors of the assessee. These prior period expenses were also disclosed in tax audit report in form 3CD for A.Y. 2005-06 a copy of which is filed at page No.36 of the paper book. The AO during the assessment proceedings has wrongly treated these expenses as repair and maintenance expenses and accordingly called upon the assessee vide order sheet entry dated 12.11.2007 as to why these should not be added back to the income of the assessee which was replied by the assessee vide letter dated 04.12.2007 submitting that the details of repair and maintenance and further submitted that prior period

expenses can not be disallowed as these are not in fact prior period but expenses crytalised during the year as the assessee is following mercantile system of accounting.

5. In the appellate proceedings, the appeal of the assessee was dismissed by the Ld. CIT(A) by observing and holding as under:

> "5.1. Finding on Ground of appeal No.III
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> In facts of the case the A.O. has disallowed the foregoing prior period expenses (described as Repair and Maintenance expenses in the Order) on the ground that since the assessee is following the Mercantile System of accounting, therefore any expenditure in the nature of prior period will not be allowable expenditure during the year under consideration. In doing. so, the AO placed reliance on the decision of Madras High Court in the case of Madras Fertilizers Limited v. CIT (209 ITR 174). The basic argument of the appellant for allowability of such admittedly prior period expense is that the liability to pay such expenses has crystallized during the relevant previous year . The reliance on the case laws made by the appellant also approve allowance of such expenses on proof of crystallization of liability in the previous year. As the appellant has expressed it's inability in substantiating the crystallization of the claim in the present previous year therefore the appeal on this ground is dismissed."

6. After hearing both the parties and perusing the material on record, we observe that both the authorities below have confused the expenses to be on account of repair and maintenance whereas as a matter of fact these expenses were incurred on account of advertisement and publicity. We find merit in the contentions of the assessee that since the bills pertaining to these expenses were received during the year though these bills related to the earlier year, therefore these expenses have to be allowed as pertaining to the current year as the crystalisation has happened during the year. Without prejudice, the assessee has submitted that the year of allowability of expenses should be of no consequences so long as the rate of tax for both the years is uniform. The assessee has

placed reliance on the decision of CIT vs. Nagri Mills Co. Ltd. (1958) 33 ITR 681 (Bom.) and also 3 other decisions. We have perused the decisions and found that the case of the assessee is squarely covered by the ratio laid down in the said decisions. We also find that the addition made by the AO is tax neutral. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance of Rs.21,78,491/-.

7. The issue raised in ground No.2 is against the order of Ld. CIT(A) rejecting the additional ground whereby the assessee has claimed deduction for provisions for bad and doubtful debts amounting to Rs.1,97,50,000/- on the ground that claim by the assessee was an afterthought.

8. The facts in brief are that the assessee suo-moto disallowed provisions for bad and doubtful debts amounting to Rs.1,97,50,972/- in the computation of income for A.Y. 2005-06 at the time of filing the return of income, a copy of which is filed at page No.56 to 57 of the paper book and the assessment was completed accordingly. Subsequently, during the appellate proceedings before the Ld. CIT(A), the assessee has raised an additional ground requesting the Ld. CIT(A) to allow the provisions for bad and doubtful debts since the assessee has not only debited the profit & loss account under the head “provision for bad and doubtful debts” but also reduced the same from the sundry debtors in the balance sheet and thus it amounted to write off of debts of the assessee. However, the Ld. CIT(A) rejected the additional ground raised by the assessee by holding that the assessee has correctly added back the amount of

Rs.1,97,50,000/- being provisions for bad and doubtful debts and now the claim vide additional ground is a an afterthought.

9. The Ld. A.R. submitted before the Bench that the assessee has debited the said amount of provisions for bad and doubtful debts amounting to Rs.1,97,50,000/- in the financial statement, schedule No.14 and simultaneously reduced the said provisions for bad and doubtful debts from sundry debtors in the balance sheet in schedule 5 a copy of which is filed at page No.12 to 15 of the paper book. The Ld. A.R. submitted that in view of the Hon'ble Apex Court decision in the case of Vijay Bank vs. CIT (2010) 323 ITR 166 the said amount may kindly be allowed. The Ld. A.R. also placed reliance on the decision of Hon'ble Bombay High Court also in the case of CIT vs. Tainwala Chemicals and Plastic India Ltd. (2013) 215 taxmann.com 153.

10. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A).

11. In the rebuttal, the Ld. A.R. relied on the decisions already cited by him. The Ld. A.R. also countered the arguments presented by the Ld. D.R. that since the decision of the Apex Court was rendered in the context of a bank and ratio applies to the banking company only and has no application to non banking company. The Ld. A.R. submitted that in para 8 of the decision it has been made amply clear that 36(1)(vii) applies to both banking and non banking companies.

12. Having heard the rival submissions of both the parties and perusing the material on record, we find that the issue raised by

the assessee is squarely covered by the decision of the Apex Court in the case of Vijay Bank vs. CIT (supra) wherein the Hon'ble Apex Court has held that for the purpose of claiming the deduction under section 36(1)(vii) of the Act it is sufficient to debit the profit & loss account and correspondingly reduce the amount from sundry debtors and it is not necessary to close the individual account of all debtors in the books. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to allow the deduction. Ground No.2 is allowed.

13. Ground No.3 is without prejudice ground and therefore need not to be adjudicated as we have allowed the ground No.2 in favour of the assessee.

14. The issues raised in ground No.4 is against the order of Ld. CIT(A) confirming the action of the AO in adding back the provisions for bad and doubtful debts amounting to Rs.1,97,50,000/- and provisions for the doubtful advances amounting to Rs.70,60,000/- to the book profit computed under section 115JB of the Act by treating it as provisions for unascertained liability within the meaning of clause 'c' of explanation to 115JB of the Act.

15. The facts in brief are that the assessee had made provisions in the books of account towards bad and doubtful debts and advances and debited the same to the profit & loss account as provisions for bad and doubtful debts and doubtful advances amounting to Rs.1,97,50,000/- and Rs.70,60,000/- respectively. The AO during the course of assessment observed that provisions for bad and doubtful debts and doubtful

advances are not allowable while computing book profit under section 115JB of the Act for the reason that these provisions are created towards unascertained liability. The AO observed that there is no correlation between the provisions made and actual write off of debts and advances. Besides, the AO also noted that the assessee could not furnish the specific details as to the period and amount for which the provisions were actually made and consequently added the same to the income of the assessee.

16. In the appellate proceedings the Ld. CIT(A) upheld the order of AO by holding that provisions for bad and doubtful debts and doubtful advances amounted to provisions for diminution in the value of assets as per clause 'i' of Explanation 1 to section 115JB of the Act and were rightly disallowed.

17. We have already decided the issue of provision of bad and doubtful debts in favour of the assessee in ground No.2 directing the AO to allow the same. This grounds is consequential ground and accordingly we are inclined to hold that assessee is entitled to deduction of provisions for bad and doubtful debts and provision for advances while computing book profits. Accordingly, the ground is allowed.

18. The appeal of the assessee appeal is allowed.

ITA No.6908/M/2013 (Revenue's appeal)

19. The grounds raised by the Revenue are as under:

"GROUND NO. I:

1. On the facts and circumstances of the case and in law, Hon'ble CIT(A) erred in confirming the action of the Deputy Commissioner of Income-tax, Circle 11(1), New Delhi ("the AO") in disallowing advertisement and publicity expenses amounting to

Rs. 21,78,491/- on the ground that such expenses are prior period in nature and the liability to pay such expenses did not crystallized during the relevant previous year.
2. The Appellant prays that the AO be directed to delete the disallowance of aforesaid expenses amounting to Rs. 21,78,491/-.
3. Without Prejudice to the above, the Appellant prays that the AO be directed to allow the aforesaid expenses in the previous years to which the expenses are related.

GROUND NO. II:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in disallowing the Additional ground raised by the Appellant, claiming deduction for Provision for Bad and Doubtful Debts amounting to Rs. 1,97,50,000/- on the ground that the claim made by the Appellant was an *'afterthought'.*
2. The Hon'ble CIT (A) failed to appreciate the fact that the appellate authorities can admit and adjudicate the additional claim raised by the assessee during the course of Appellate proceeding.

WITHOUT PREJUDICE TO GROUND II GROUND NO. Ill:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in disallowing the deduction for Provision for Bad and Doubtful Debts amounting to Rs. 1,97,50,000/- u/s. 36(l)(vii) of the Act on the ground that deduction under section 36(l)(vii) is allowable only on the bad debt written off and not on provision made for doubtful debt.
2. The Appellant prays that the claim for the Provision for Bad and Doubtful Debt amounting to Rs. 1,97,50,000/- allowed u7s. 36(l)(vii) or 36(2) of the Act.

GROUND NO. IV:

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the AO of adding back the Provision for Bad Debt amounting to Rs. 1,97,50,000/- and provision for doubtful advances amounting to Rs. 70,60,000/- to the Book Profit computed u/s. 115JB of the Act by treating it as a provision for unascertained liability within the meaning of clause (c) of the Explanation to section 115JB of the Act.
2. The Appellant prays that the AO be directed to delete the addition of aforesaid amounts of Rs. 2,68,10,000/- made to Book Profit under clause (c) of the Explanation to section 115JB of the Act."

20. The issue raised in first ground of appeal is against the order of Ld. CIT(A) allowing the claim of the assessee for deduction under section 35ABB of the Act to the tune of Rs.23,95,81,194/-.

21. The facts in brief are that the AO observed on the basis of computation of income that assessee had added back a sum of Rs.18,53,22,781/- on account of license fee paid to DOT against

which a deduction of Rs.40,24,22,970/- have been claimed under section 35ABB of the Act and accordingly called upon the assessee to explain the same. The assessee vide letter dated 23.11.2007 filed the detailed working of license fee claimed under section 35ABB of the Act. The AO noted that in assessment year 2001-02 disallowance of claim in respect of variable license fee was made and the same was upheld by Ld. CIT(A). Following the said, the AO held that assessee is entitled to amortize Rs.16,28,41,776/- as against Rs.40,24,22,970/- claimed by it and hence made an addition of Rs.23,95,81,194/-.

22. In the appellate proceedings, the claim of the assessee was allowed by Ld. CIT(A) by following the decision of the co-ordinate bench of the Tribunal for A.Y. 2004-05 in its own case. The Ld. A.R. at the outset submitted that the issue is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.3665/M/2011 A.Y. 2004-05 and thus the Ld. A.R. prayed that the ground raised by the Revenue may kindly be dismissed.

23. The Ld. D.R., on the other hand, relied on the grounds of appeal.

24. We have heard the rival submissions of both the parties and perused the material on record and found that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in ITA No.3665/M/2011 A.Y. 2004-05. The relevant finding is reproduced as under:

> "4. We have considered and examined the contentions. As there is a change in Telecom policy enhancing license period from 10 to 20 years on payment of one time entry fee /migration fee, the deduction is to be allowed on revised basis. The

issue of revised claim was decided by Ld. CIT(A) in earlier years with certain directions to AO which are yet to be implemented. The basis of revised amount for deduction is required to be determined in the respective years by AO. Since the Revenue is not in appeal on the directions of CIT(A) in earlier years, whatever amount is quantified therein, similar amounts on that basis are to be allowed in this year, being consequential. AO is directed to determine accordingly the eligible amount in this year. With these directions, the assessee's alternate contention is treated as allowed for statistical purposes."

Respectfully following the decision of the co-ordinate bench of the Tribunal, we direct the AO to determine the eligible amount in this year also following the decision in A.Y. 2004-05 and allow the same. The ground is allowed for statistical purposes.

25. The issue raised in 2nd ground of appeal is against the deletion of disallowance of Rs.90,25,06,859/- by Ld. CIT(A) as disallowed by the AO in respect of Revenue license fee on the ground that the license fee was capital in nature and only deduction under section 35ABB was allowable as per Act.

26. During the course of assessment proceedings, the AO noted that assessee is eligible for deduction of Rs.7,18,89,454/- as against Rs.26,43,96,313/- claimed by it. The AO observed the said facts from the letter filed by the assessee giving details of amount to be allowed and disallowable on account of Revenue sharing license fee paid.

27. In the appellate proceedings, the Ld. CIT(A) allowed the claim of the assessee by following the decision of the co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2001-02, 2003-04 & 2004-05 and accordingly directed the AO to allow the

full amount of Rs.26,43,96,313/- paid towards RSLF under section 37(1) of the Act.

28. The Ld. A.R., at the outset, submitted that the issue is squarely covered by the decision of the Hon'ble Bombay High Court in ITA No.1551 of 2013 order dated 11.04.2016 A.Y. 2003-04. The Ld. A.R. therefore prayed that the ground of the Revenue may kindly be dismissed following the said order.

29. We have heard the rival submissions of both the parties and perused the material on record. We find that the issue is squarely covered in favour of the assessee by its own case by the decision of the Hon'ble Bombay High Court in ITA No.1551 of 2011 order dated 11.04.2016 A.Y. 2003-04 wherein the Hon'ble Bombay High Court has observed and held as under:

> "6. The Tribunal has also noted in paragraph 5 that in the Assessee's own case for the Assessment Year 2001-02 the identical issue was raised and which was decided in favour of the Assessee. The Tribunal reproduced the finding of fact and held that since the matter was decided in favour of the service providers and against the Revenue in the case of very Assessee before it for the previous Assessment Year, there is no reason to deviate or differ from those views. It found that the controversy is entirely identical to the one dealt with earlier. In such circumstances, the Tribunal did not interfere with the order of the First Appellate Authority and dismissed the Revenue's Appeal on 20th November, 2012.
>
> 7. In such circumstances, we are not in agreement with Mr. Malhotra that the question framed at page 6 is a substantial question of law. It being identical and covered by the Tribunal's own order in the case of identical service provider, we do not think that a different view was possible. The Tribunal's view cannot be said to be perverse or vitiated by any error of law apparent on the face of the record. Further, we find and as pointed out by Mr. Mistri, learned Senior Counsel appearing for the Assessee that the High Court of Delhi at New Delhi in Income Tax Appeal No.1336 of 2010 decided on 19th December,2013 in the case of "Commissioner of Income Tax Vs. Bharti Hexacom Ltd," and "Commissioner of Income Tax Vs. Bharti Cellular Ltd.", has dismissed the Revenue's appeal."

Since the issue before us is identical to one as decided by the hon'ble jurisdictional High Court, therefore, we are inclined to dismiss the ground raised by the Revenue.

30. The issue raised in ground No.3 is against the order of Ld. CIT(A) deleting the addition of loss on account of foreign currency amounting to Rs.11,96,80,000/-.

31. The facts in brief are that AO during the assessment proceedings found that assessee has debited a sum of Rs.96,80,000/- to the P&L account towards foreign exchange fluctuation loss. The AO held the said loss to be notional loss which has not been actually ascertained by the assessee and accordingly added the same to the income of the assessee.

32. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

> "**6.1 Finding on Ground Of Appeal No. IV**
> I have considered of the submissions of the appellant and the facts of the case. The appellant has pointed -that the foreign exchange loss amounting to Rs. 6,42,10,000/- is capitalized as part of the fixed Assets Block in Schedule -3 of the Audited Accounts . The appellant has further invited my attention to the Significant Accounting Polices of the Company pertaining to fixed Assets. As per this Policy foreign exchange loss/ gains are charged / credited to the P/L Account except when they relate to the fixed assets. Thus, from the above the appellant has shown that it has charged only that portion of foreign exchange loss which pertains to revenue items. Resultantly, the case of the appellant is covered by the decision of the Hon'ble Supreme Court in CIT Vs. Woodward Governor (312 ITR 254), discussed above. Accordingly, 1 agree with the appellant that the loss for Rs.96,80,000/- ought to be allowed as a deduction in computing it's business income. The AO is directed to allow the sum of Rs. 96,80,000/- in the computation of income of -the appellant. This ground of appeal is accordingly allowed."

33. After hearing both the parties and perusing the material on record, we observe that Ld. CIT(A) has allowed the appeal of the assessee by following the decision of the Apex Court in the case

of CIT vs. Woodward Governor 312 ITR 254 SC wherein it has been held that loss resulting from fluctuation in foreign currency is revenue loss as the same is recognised on the basis of accounting policy at the end of each year in respect of outstanding contracts of the assessee. We note that Ld. CIT(A) has allowed the appeal of the assessee following the decision of the Apex Court in the case of CIT vs. Woodward Governor (supra). We therefore find no reason to interfere with the order of Ld. CIT(A). Accordingly, we uphold the order of Ld. CIT(A) by dismissing the ground raised by the Revenue.

34. Accordingly, appeal of the Revenue is dismissed.

35. In the result, the appeal of the assessee is allowed for statistical purpose and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 07.06.2021.

Sd/-	**Sd/-**
(Mahavir Singh)	**(Rajesh Kumar)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai, Dated: 07.06.2021.

* 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.