IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI
(Through Video Conferencing)

BEFORE
SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.1883/Del/2017
(ASSESSMENT YEAR-2011-12)

Nokia India Pvt. Ltd., TEC, Level 18, DLF Cyber City, Phase-III, Building No.5, Tower A, Gurgaon-122 002 PAN:AAACN 2170R	Vs.	Add. CIT, Special Range-6, New Delhi
(Appellant)		**(Respondent)**

Appellant By	**Sh. Deepak Chopra, Adv.** **Sh. Ankul Goel, Adv.**
Respondent by	**Ms. Paramita M. Biswas, CIT-DR**
Date of Hearing	**02.07.2020**
Date of Pronouncement	**17.08.2020**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal has been preferred by the assessee against the final assessment order dated 28.08.2015 passed u/s 144C read with section143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') for Assessment Year: 2011-12.

2.0 The brief facts of the case are that the assessee company was incorporated in 1995 and is a wholly owned subsidiary of Nokia Corporation, Finland. The company is primarily engaged in the business of trading and manufacturing of mobile handsets, spare parts and accessories. In addition to this, the company also undertakes contract software development for its associated enterprises.

2.1 The return of income for the year under consideration was filed declaring a total income of Rs. 6,94,99,29,995/-. Subsequently, the return was revised due to assessee claiming additional TDS credit. The case was selected for scrutiny and during the course of assessment proceedings, the assessee was directed vide order dated 28.03.2014 to get its account audited u/s 142(2A) of the Act (Special Audit). The assessee's case was also referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price in respect of the international transactions entered into by the assessee during the year under consideration. The draft assessment order was passed wherein the assessee's income was

proposed to be assessed at Rs.97,87,82,85,371/- as against the returned income of Rs.6,94,99,29,995/-. Against the draft assessment order, the assessee filed objections before the Ld. Disputes Resolution Panel (DRP) and subsequent to the directions of the Ld. DRP the final assessment order was passed against which the assessee is now in appeal before this Tribunal.

2.2 It is also to be noted that a survey u/s 133A of the Act was conducted on the assessee at the Gurgaon Corporate Office and the Chennai factory premises on 08.01.2013 and it was noted during the course of survey that ever since the commencement of operations at the manufacturing facility in Chennai i.e. in the period from Assessment Year: 2007-08 to Assessment Year: 2010-11, the assessee had been incurring expenditure on account of software and had been making payments for the same to Nokia Corporation, Finland totaling to USD 3,362,631,484/- (approximately Rs.18,495 Crores) for use in manufacturing operations. The Department was of the opinion that the payment towards software was in the nature of royalty on which the assessee was liable to deduct withholding tax as per the provisions of the

Income Tax Act, 1961. On the basis of the survey report, the jurisdictional TDS Assessing Officer passed an order u/s 201(1)/201(1A) of the Act holding that the software remittances were in the nature to royalty and that the assessee was liable to deduct tax at source at the time of remittance as per Sec.9 (i)(vi) read with section 195 of the Act and India Finland Double Taxation Avoidance Agreement (DTAA). The Assessing Officer, vide order dated 31.03.32014, held the assesee to be Permanent Establishment (PE) of the Nokia Corporation, Finland and further it was held that remittance on account of software payments were taxable in India as royalty income in the hands of Nokia Corporation, Finland both u/s 9(i)(vi) of the Act and under Article 12(3) of the India Finland DTAA.

2.3 The Grounds raised by the assessee in the present appeal are as under:

> 1. *The order dated January 31, 2017, passed by the Learned Assessing Officer ("Ld. AO") under Section 143(3) read with Section 144C of the Act pursuant to the directions of the Hon'ble DRP dated December 2, 2016, is bad in law and on the facts and circumstances of the case and the same is liable to be set aside.*

2. *The Ld. AO and Hon'ble DRP have erred in relying upon evidence collected during illegal survey and summons proceedings; and in not relying upon the VTT Report and the Software Supply Agreement dated January 1, 2006.*

3. *The Ld. AO and Hon'ble DRP have erred in disallowing expenses amounting to INR 35,20,87,23,000/- incurred by the appellant, for purchase of software from Nokia Corporation ("Nokia Corp"), under Section 40(a)(i) of the Act.*

4. *The Ld. AO and Hon'ble DRP have erred in disallowing expenses amounting to INR 25,43,20,06,000 incurred by the appellant, for purchase of mobile phones and accessories from Nokia Corp, under Section 40(a)(i) of the Act.*

5. *The Ld. TPO / Ld. AO/ Hon'ble DRP have erred on facts and in law in enhancing the income of the appellant by INR 2,88,12,58,598 by making a transfer pricing adjustment on account of 'alleged excessive' / 'non-routine' Advertising, Marketing and Promotion ("AMP") expenses incurred by the appellant. The sub-grounds in this respect are as under:*

5.1 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in not accepting the arm's length analysis carried out by the appellant, for the NMP Sales segment as a whole, by applying Transactional Net Margin Method ("TNMM") and carrying out separate benchmarking in respect of AMP expenses.

5.2 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in concluding that the AMP expenses incurred by the appellant amount to international transaction under Section 92B of the Act.

5.3 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in presuming the existence of an agreement between the appellant and its Associated Enterprise ("AE"), Nokia Corp, in respect of AMP expenditure incurred by the appellant.

5.4 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in re-characterizing the AMP expenditure incurred by the appellant for its own business as expenditure incurred for providing brand promotion services to its AE, Nokia Corp, thereby warranting separate compensation.

5.5 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in inferring the existence of an international transaction of brand promotion services by holding that the AMP expenses incurred by the appellant are "high", without any valid basis.

5.6 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in imputing a value to the alleged brand promotion services by arbitrarily classifying certain AMP expenses (amounting to INR 2,74,40,55,808/-), out of total AMP expenses of INR 4,166,867,176/- incurred by the appellant, as non-routine, without any basis.

5.7 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in not appreciating the fact that due to its compensation model, the appellant has already been reimbursed in respect of the alleged non-routine AMP expenses along with a mark-up of 3.77% and therefore the additions, if any, should be restricted to shortfall in actual return as compared to arm's length return.

5.8 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in not making any adjustment for royalty free use of brand by

the appellant, while making adjustment on account of alleged brand promotion services.

5.9 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in carrying out benchmarking of AMP expenses by using an unlawful approach which is not in accordance with any of the methods prescribed under Section 92C(1) of the Act.

5.10 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in ignoring significant legal principles laid down in recent judicial decisions regarding AMP expenses, especially the decision of the Jurisdictional High Court of Delhi in the case of Maruti Suzuki India Ltd.[1], Bausch and Laumb Eyecare (India) (P) Ltd.[2] and Whirlpool of India Ltd.

5.11 The Hon'ble DRP has erred in rejecting the 'alternate approach' to benchmark AMP expenses by erroneously concluding that there is a lack of comparables for benchmarking AMP segment, despite making a detailed analysis in favour of such alternate approach.

5.12 The Ld. TPO / Ld. AO have erred in passing orders which are in violation of DRP directions such as directions with regard to not using bright line method, adopting alternate approach (i.e. carving out a separate AMP segment to benchmark AMP expenditure) and computation of mark-up.

6. The Ld. TPO/ Ld. AO/ Hon'ble DRP have erred in disallowing a portion of the expense incurred by the appellant amounting to INR 450,259,687/- in respect of software purchased from Nokia Corp. by treating it to be excessive under the transfer pricing regulations. The sub-grounds in this respect are as under:

6.1 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in not accepting the arm's length analysis undertaken by the appellant, for the NMP Sales segment as a whole, by

applying TNMM and in separately benchmarking the purchase price of software

6.2 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in not appreciating that due to its compensation model, the appellant has already been reimbursed in respect of the alleged excessive software expenses, if any, along with an arm's length mark up.

6.3 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in making an adjustment on the basis of the assumption that software payments made by the appellant were a tool to shift profits outside India using information obtained by the tax authorities during survey proceedings which provided information / data pertaining to a different year i.e. Financial Year 2011-12.

6.4 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in determining the arm's length price ("ALP") in respect of software by adopting a method which is not prescribed under Section 92C(1) of the Act.

6.5 The Ld. TPO /Ld. AO / Hon'ble DRP have erred on facts and in law in making additions by selectively considering transaction of only those months where transaction value is higher than the ALP.

6.6. The Hon'ble DRP has erred in disposing off the various objections raised by the appellant in a summary manner, without providing any reasons.

7. The Ld. TPO/ Ld. AO/ Hon'ble DRP have erred in making transfer pricing adjustment amounting to INR 570,000,000/- in relation to provision of contract software development services by the appellant to its AE. The sub-grounds in this respect are as under:

7.1 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in rejecting the economic analysis undertaken by the appellant in its transfer pricing documentation, to determine the ALP.

7.2 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in rejecting certain quantitative filters adopted by the appellant while carrying out economic analysis in its transfer pricing documentation, to determine ALP.

7.3 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in introducing certain inappropriate quantitative filters to carry out economic analysis, for determining ALP.

7.4 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in not rejecting comparables having turnover in excess of five times the turnover of the appellant, despite a ruling in favour of the appellant for AY 2002-03 by Hon'ble ITAT, which has also been confirmed by the Jurisdictional High Court of Delhi.

7.5 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in applying the quantitative filters proposed by the Ld. TPO over the final set of comparables chosen by the appellant instead of the initial set of potential comparables / full population of potential comparables.

7.6 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in resorting to 'cherry picking' of comparables by arbitrarily selecting comparables from the list of companies rejected by the appellant without analysing all the companies rejected by the appellant.

7.7 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in rejecting the comparables, chosen by the appellant, on the basis of incorrect reasons and

introducing certain additional, inappropriate, comparables while determining the ALP.

7.8 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in accepting comparables engaged in diverse activities even though sufficient segmental information is not available.

7.9 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in not making an adjustment to account for differences between the risk profile of the appellant and comparables, while determining the ALP.

7.10 The Ld. TPO / Ld. AO / Hon'ble DRP have erred on facts and in law in not making an adjustment to account for difference in depreciation rates charged by the appellant vis-a-vis the comparables, while determining the ALP.

7.11 The Ld. TPO / Ld. AO / Hon'ble DRP have erred in treating 3 line items in the financials of comparables (i.e. foreign exchange gain and loss, provision for bad and doubtful debts and bank charges) as non-operating while computing operating margins of the comparables, for determining ALP.

7.12 Hon'ble DRP has erred in disposing off the various objections raised by the appellant in a summary manner, without providing any reasons.

8. The Ld. AO and Hon'ble DRP have erred in disallowing expenses amounting to INR 7,16,24,39,495 incurred by the appellant on trade offers provided by it to its distributors (HCL Infosystems Ltd. as well as other distributors), under Section 40(a)(ia) of the Act.

9. The Ld. AO and Hon'ble DRP have erred in disallowing an amount of INR 61,00,11,882 incurred by the

appellant on account of trade price protection paid to distributors (HCL Infosystems Ltd. as well as other distributors) as compensation for reduction in prices of the handsets, and in ignoring a the evidence (including confirmations from dealers) submitted by the appellant in this regard.

10. The Ld. AO and Hon'ble DRP have erred in disallowing marketing expenditure incurred by the appellant amounting to INR 37,54,59,000 by way of issuance of handsets on a free of cost ("FOC") basis to employees, dealers and After Marketing Service Centres ("AMSC's") on the ground that its same would give enduring benefit and cannot be claimed as revenue expenditure.

11. The Ld. AO and the Hon'ble DRP have erred in disallowing expenditure incurred by the appellant by way of issuance of FOC handsets when the Ld. TPO has already made an adjustment on account "alleged excessive" AMP expenses, which includes the handsets issued on FOC basis and this has resulted in double disallowance of the same amount.

12 The Ld. AO and the Hon'ble DRP have erred in not allowing current year depreciation in respect of the FOC phones given to AMSC's for warranty purposes and to dealers for promotional purposes even though these expenses were treated as capital expenses. The Ld. AO has also erred in not allowed earlier years' depreciation in respect of the FOC phones, despite the Hon'ble DRP's directions in this regard.

13 The Ld. AO, Ld. TPO and the Hon'ble DRP have erred in disallowing the part of the expense incurred by the appellant for purchase of software under transfer pricing regulations, and in simultaneously disallowing the entire expense under Section 40(a)(i), resulting in double disallowance of the same amount.

14 The above grounds of appeals are independent and without prejudice to one another.

15. The appellant craves leave to add / withdraw or amend any ground of appeal at the time of hearing."

3.0 At the time of hearing, it was brought to notice of the Bench by the Ld. AR that in addition to filing the appeal before this Tribunal, the assessee had also filed an application under Article-24 of the India Finland Double Taxation Avoidance Agreement for initiation of Mutual Agreement Procedure (MAP) before the Indian and Finnish Competent Authorities on the following issues:

(i) Disallowance u/s 40(a)(i) of the Act on the issue of withholding tax on payments made to Nokia Corporation towards purchase of end user operating software and purchase of finished Mobile Phones.

(ii) Transfer Pricing Adjustment on account of contract research and development activities, advertising marketing and promotion expenditure (AMP) and excessive software purchase price.

3.1 The Ld. AR submitted that a resolution has been arrived at between Indian and Finnish Competent Authority on these issues which were also before the Tribunal in the present appeal. It was also submitted that the resolution under Article - 24 of India Finland DTAA has been accepted by the assessee vide letter dated 28th February, 2018. It was also submitted by the Ld. Authorized Representative that as per Rule-44H of the Income Tax Rules, 1962 (the Rules), the order given effect to the MAP resolution has to be passed by the Assessing Officer once all appeals are withdrawn by the assessee on the issues so resolved under MAP. The Ld. AR submitted that in line with the condition precedent as prescribed under Rule-44H of the Rules, the assessee seeks permission to withdraw ground Nos. 2, 3, 4, 5, 5.1 to 5.12, 6, 6.1 to 6.6, 7, 7.1 to 7.12, 11 & 13 in the captioned appeal. The Ld. AR also submitted that revised Form-36B has been filed.

4.0 The Ld. CIT-DR had no objection to the assessee in withdrawing the above said grounds of appeal. Keeping in view

the submissions of the Ld. AR, we permit the withdrawal of the above mentioned grounds in the original Form-36B.

5.0 The remaining grounds now surviving before us, as contained in the revised Form-36B, are as under:

> *"1. The order dated January 31, 2017, passed by the Learned Assessing Officer ("Ld. AO") under Section 143(3) read with Section 144C of the Act pursuant to the directions of the Hon'ble DRP dated December 2,2016, is bad in law and on the facts and circumstances of the case and the same is liable to be set aside.*
>
> *2. The Ld. AO and Hon'ble DRP have erred in disallowing expenses amounting to INR 7,16,24,39,495 incurred by the appellant on trade offers provided by it to its distributors (HCL, Infosystems Ltd. as well as other distributors), under Section 40(a)(ia) of the Act,*
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> *3. The Ld. AO and Hon'ble DRP have erred hi disallowing an amount of INR 61,00,11,882 incurred by the appellant on account of trade price protection paid to distributors (HCL. Infosystems Ltd. as well as other distributors) as compensation for reduction in prices of the handsets, and in ignoring all the evidence (including confirmations from dealers) submitted by the appellant in this regard.*
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> *4. The Ld. AO and Hon'ble DRP have erred in disallowing marketing expenditure incurred by the appellant amounting to INR 37,54,59,000 by way of issuance of handsets on a free of cost ("FOC") basis to*

employees, dealers and After Marketing Service Centres ("AMSC's") on the ground that the same would give enduring benefit and cannot be claimed as revenue expenditure.

5. The Ld. AO and the Hon'ble DRP have erred in not allowing current year depreciation in respect of the FOC phones given to AMSC's for warranty purposes and to dealers for promotional purposes even though these expenses were treated as capital expenses. The Ld. AO lias also erred in not allowed earlier years' depreciation in respect of the FOC phones, despite the Hon'ble DRP's directions in this regard.

6. *The above grounds of appeals are independent and without prejudice to one another.*

7. *The appellant craves leave to add/withdraw or amend any ground of appeal as the time hearing."*

6.0 Arguing for the surviving grounds after the MAP proceedings, it was submitted by the Ld. AR that ground No.2 challenges the disallowance made u/s 40(a)(ia) of the Act on account of trade offers amounting to Rs.7,16,24,39,495/- provided to the distributors. The Ld. AR submitted that Department had held these trade offers to be liable to the provisions of withholding tax u/s 194H of the Act on the ground that they were in the nature of commission. The Ld. AR

submitted that, however, this disallowance was identical to the disallowance made in Assessment Year: 2010-11 which has since been deleted by the ITAT in assessee's own case in ITA No.5791/Del/2015 in order dated 20.02.2020. Our attention was drawn to the relevant paragraphs of the said order placed on record and it was submitted that in view of the ITAT ruling in Assessment Year: 2010-11 in assessee's own case in assessee's favour, on similar facts, this disallowance also deserves deletion.

6.1 Arguing for ground No.3 challenging the disallowance on account of trade price protection extended to the distributors against reduction in prices of handsets to the tune of Rs.61,00,11,882/-, the Ld. AR submitted that this disallowance had been made on the ground that the assessee had failed to justify the commercial expediency of the expenditure. The Ld. Further submitted that this disallowance has also been made on the same ground as in assessment year 2010-11 which was also deleted by the Tribunal in assessee's own case vide order dated 20.02.2020 in ITA No.5791/Del/2015. Our attention was drawn to the relevant paragraphs of the said order and it was prayed

that on identical facts, this year's disallowance also needs to be deleted.

6.2 Coming to ground No.4 challenging the disallowance of marketing expenditure incurred on account of issuance of handsets on free of costs basis, the Ld. AR submitted that this disallowance had been made on the ground that handsets given as free costs were in the nature of capital assets and the same could not be treated as Revenue expenditure. The Ld. AR submitted that this disallowance has also been deleted by the ITAT in assessee's own case in the immediately preceding assessment year 2010-11 vide order dated 20.02.2020 in ITA No.5791/Del/2015 as aforesaid and it was submitted that on identical facts the disallowance in this year also required to be deleted.

6.3 The Ld. AR also submitted that ground No.5 of the assessee's appeal challenged the action of the Lower Authorities in not allowing current year depreciation in respect of free of costs phones given to the distributors and dealers even though the expenditure was treated as capital expenditure. The Ld. AR

submitted that if ground No.4 of the assessee's appeal is allowed, this ground will not survive.

7.0 Per contra, the Ld. CIT-DR placed extensive reliance on the directions of the Ld. DRP and vehemently argued that the Ld. DRP had give its directions after due consideration of all the relevant facts and the law and, therefore, these direction could not simply be brushed aside. The Ld. CIT-DR, however, could not controvert the fact that these issues had been decided in favour of the assessee and against the Revenue in the immediately preceding assessment year 2010-11 by this Tribunal.

8.0 We have heard both the parties and have also perused the material on record. We have also perused the order of the Tribunal in the immediately preceding year in the assessee's own case for Asst. Year: 2010-11 in ITA No.5791/Del/2015 vide order 20.02.2020 and we are in agreement with the contention of the Ld. AR that the issues are squarely covered in favour of the assessee on the issues now surviving before us by the said order of the Tribunal. With

respect to ground No.2 relating to disallowance 40(a)(ia) on account of trade offers amounting to Rs.7,16,24,39,495/-, we find that this issue has been decided in favour of the assessee vide paragraph 8 of the said order and the same is reproduced herein under for a ready reference:

> *"8. We have heard both the parties and perused all the relevant material available on record. It can be seen from Clause 2, 7, 8, 9, 14 and 19 of the "Agreement for the Supply of Cellular Mobile Phones" between HCL and the assessee that relationship between the assessee and HCL is that of principal to principal and not that of principal to agent. The discount which was offered to distributors is given for promotion of sales. This element cannot be treated as commission. There is absence of a principal-agent relationship and benefit extended to distributors cannot be treated as commission under Section 194H of the Act. As regards to applicability of Section 194J of the Act, the Assessing Officer has not given any reasoning or finding to the extent that there is payment for technical service liable for withholding under Section 194J. Marketing activities have been undertaken by HCL on its own. Merely making an addition under Section 194J without the actual basis for the same on part of the Assessing Officer is not just and proper. The Ld. DR's contention that discounts were given by way of debit notes and the same were not adjusted or mentioned in the invoice generated upon original sales made by the assessee, does not seem tenable after going through the invoice and the debit notes. In fact, there is clear*

mentioned about the discount for sales promotion. Thus, on both the account the addition made by the Assessing Officer does not sustain. Ground No. 2 is allowed."

8.0.1 Respectfully following the order of the Co-ordinate bench in assessee's own case in the immediately preceding year, on identical facts, we delete the impugned disallowance. Thus, ground No.2 stands allowed.

8.1 Regarding ground No.3 relating to disallowance on account of trade price protection extended to distributors against reduction in prices of hands amounting to 61,00,11,882/-, we note this issue has also been decided in faouvr of the assessee in assessee's own case for Asst. Year: 2010-11 by this Tribunal. The relevant observations of the Tribunal are contained in paragraph 11 of the said order which is reproduced herein under for a ready reference:

"11. We have heard both the parties and perused all the relevant material available on record. It is market practice that if there is any change in prices of handsets by competitors, change in life of mobile model, change in market demand of particular model which affects the sales, the distributor is protected by the Trade Price Protection. This is actually a commercial expediency in modern day technological changes which are very fast and vast. Besides, Trade Price Protection is offered to distributors on handsets

which have not been subject to trade offers/ discounts. This is evidenced by specific clause in the Trade Schemes filed before the Assessing Officer vide submission dated 10.03.2014 trade scheme. In-fact, it was pointed out during the course of hearing that in Assessment Year 2008-09, even the Assessing Officer has allowed the deduction for the instant like expenditure. In Assessment Year 2008-09, the matter was remanded back to the file of the Assessing Officer, who has allowed the deduction with respect to the expenditure, where confirmations have been obtained from the recipients. In any case, so far as the instant year is concerned, we have already noted in the earlier paragraph that the requisite confirmations were filed before the Assessing Officer. Thus, this expenditure is allowable as revenue expenditure under Section 37(1) of the Act since it has been incurred wholly and exclusively for business and same cannot be questioned by the Assessing Officer. Ground No. 3 is allowed."

8.1.1 Respectfully the following the Tribunal's order for Asst. Year: 2010-11 in assessee's own case, we delete this disallowance also.

8.2 Ground No.4 relates to the disallowance of marketing expenditure incurred on account of issuance of handsets on

free of cost basis and Ground No.5 relates to depreciation to be allowed on such handsets as an alternate plea if the free of cost handsets are held to be in the nature of capital expenditure. This issue has also been decided in favour of the assessee by the Tribunal in assessee's own case for Asst. Year: 2010-11. The relevant observations of the Tribunal are contained in paragraphs 17 of the said order:

> *"17. We have heard both the parties and perused all the relevant material available on record. In the present assessment year, the assessee is engaged in manufacture, import and sale of mobile handsets. The assessee has given mobile handsets to its employees, dealers, sale personnel etc. for free of cost and thus no longer owned the said handsets. Thus, the said cost was rightly taken as business expenditure by the assessee and was rightly reduced from the inventory. This issue is decided in favour of the assessee for A.Ys. 2003-04 by the Tribunal in ITA No. 2445/Del/2010 order dated 30.01.2018 which was also affirmed by the Hon'ble High Court in ITA No. 955/2018 order dated 31.08.2018. Thus, Ground No. 5 is allowed. Since we held that it is business expenditure Ground No. 6 becomes infructuous, hence Ground No. 6 is dismissed."*

8.2.1 On similar facts, respectfully following the order of the Co-ordinate Bench in assessee's own case as aforesaid, we direct the deletion of this disallowance, thus ground No.4 stands allowed.

8.3 Since, we have allowed ground No.4 and have held the impugned expenditure to be Revenue in nature, ground No.5 becomes *in fructuous* and is dismissed as such.

8.4 Ground Nos.1, 6 & 7 do not require any separate adjudication.

9.0 In the final result, the appeal of the assessee stands partly allowed.

Order pronounced on 17/08/2020.

Sd/-	Sd/-
(G.S.PANNU)	**(SUDHANSHU SRIVASTAVA)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 17/08/2020
PK/Ps
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI