CHAPTER – II

Revenue shared by M/s Bharti Airtel Limited and M/s Bharti Hexacom Limited

2.1 Brief Profile of M/s Bharti Airtel Limited and M/s Bharti Hexacom Limited

Bharti Airtel Limited (BAL), formerly known as Bharti Televenture Limited (BTVL), was one of the first private telecom companies who was awarded licences for providing cellular services in November 1994 (licence was issued to the then entity named as "Bharti Cellular Limited". BAL had only two CMTS licences till January 2000. By the year 2004 the company was having a pan India presence with licences in all 23 LSAs. BAL was the first Indian Telecom service provider (TSP) to obtain the Pan India CMTS/UAS licence. The turnover of the company also grew continuously. BAL maintained its leadership position in Indian private telecom sector since 2006.

2.1.1 Licences granted to M/s Bharti Airtel Limited and M/s Bharti Hexacom Limited

BAL was awarded licences for providing cellular services in metro Licenced Service Area (LSA) of Delhi in November 1994[1] and later on for Himachal Pradesh LSA in December 1995.

BAL further acquired CMTS licences as detailed below:

Table 2.1

Period	Details of licences acquired
1999-2002	CMTS licences in five service areas by acquiring three companies[2]
2001	CMTS licences in eight[3] service areas
2004	UASL licences in six[4] service areas

M/s Bharti Hexacom Limited (BHL), a subsidiary of BAL, acquired CMTS licences in North East and Rajasthan service areas in 2004. Hence, by the year 2004, BAL/BHL was having a pan India presence with licences in all 23 LSAs.

The details of other licences held by BAL and its subsidiaries as on 31st March 2015 are given below.

[1] Licence was issued to the then entity named as "Bharti Cellular Limited"
[2] JT Mobile (Punjab, AP, Karnataka) , Skycell (Chennai) and Spice Cell (Kolkata)
[3] UP(W), ,Maharashtra, Haryana, Gujarat, Kerala, Mumbai, MP and Tamil Nadu
[4] Orissa, J & K, Bihar, UP(E), West Bengal and Assam

Table 2.2

Sl No	Services	Remark
1	NLD	Original licence issued to Bharti Telesonic Limited (BTSOL) which merged with BAL.
2	ILD	Original licence issued to Bharti Telesonic Limited (BTSOL) which merged with BAL.
3	ISP-IT	Original licence issued to Bharti BT Internet Limited which merged with BAL.
4	VSAT	Original licence issued to M/s Wipro Infotech Limited which merged with BAL. On expiry of the licence, converted into UL from September 2014
5	ISP	Original licence issued to M/s Bharti Acquanet Limited (BAqL) which merged with BAL. On expiry of the licence, the same was converted into UL from March 2014

2.1.2 Spectrum allotted to BAL/BHL

BAL/BHL are Global System for Mobile communication (GSM) operators. LSA wise Main Radio spectrum in 900, 1800 and 2100 MHz bands, MW Access and Backbone Spectrum held by BAL/BHL as of March 2015 were as given below:

Table 2.3

Sl. No.	Licenced Service Area	Main Radio Spectrum allotted (MHz)	MW Access Spectrum	MW Backbone Spectrum
			(in MHz))[5]	
1	Andhra Pradesh	23.80	224	56
2	Assam	12.45	112	112
3	Bihar	14.20	168	112
4	Tamil Nadu (including Chennai)	19.20	336	112
5	Delhi	18.00	336	112
6	Gujarat	6.20	224	112
7	Haryana	6.20	168	56
8	Himachal Pradesh	21.40	112	112
9	Jammu & Kashmir	13.80	112	112
10	Karnataka	23.80	280	56
11	Kerala	11.20	224	56
12	Kolkata	12.00	280	0
13	Madhya Pradesh	12.00	224	56

[5] One carrier= 56 MHz

14	Maharashtra	8.20	280	112
15	Mumbai	25.20	448	0
16	Orissa	13.00	112	112
17	Punjab	16.00	180	56
18	UP East	7.20	180	112
19	UP West	11.20	224	56
20	West Bengal	15.60	112	112
21	North East	18.20	112	56
22	Rajasthan	21.40	224	56

In addition to the above, through auction process held during 2010, the company acquired 20 MHz BWA spectrum (in 2300 MHz band) in four LSAs viz. Karnataka, Kolkata, Maharashtra and Punjab.

2.1.3 Gross Revenue, Deduction, Adjusted Gross Revenue reported and revenue share paid by BAL/BHL

Telecom Service Providers are required to pay Licence Fee (LF) and Spectrum Usage Charges (SUC) at a percentage of AGR on quarterly basis on self-assessment basis. Gross Revenue (GR), Deductions, Adjusted Gross Revenue (AGR) reported and revenue shared (LF and SUC) by BAL/ BHL during the period 2010-11 to 2014-15 are as follows:

Table 2.4

(₹ in crore)

Year	Customer base (in crore)	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share paid (LF+SUC)
2010-11	16.70	48,923	14,962	33,961	69.42%	3,674
2011-12	18.60	53,910	16,860	37,050	68.73%	4,723
2012-13	19.29	60,400	20,730	39,670	65.68%	4,830
2013-14	21.03	66,902	22,010	44,892	67.10%	5,631
2014-15	23.10	73,296	20,807	52,489	71.61%	6,471
Total		**3,03,431**	**95,369**	**2,08,062**		**25,329**

2.2 Under reporting of revenue by BAL/BHL

In terms of licence agreement, the GR shall be inclusive of all types of revenue stated therein without any set-off for related item of expense, etc., service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

Audit examination of records/Books of accounts (Vouchers, General Ledger, Trial Balance, Profit and Loss Accounts, Balance Sheet, etc.) of BAL/BHL revealed that these companies had not adhered to the provisions of the Licence Agreement as brought out in the succeeding paras:

2.2.1 Under reporting of revenue due to netting off of revenue pertaining to Commission/offers/discounts to dealers/subscribers for prepaid services

From the examination of data/records pertaining to prepaid services furnished by BAL/BHL for the period from 2010-11 to 2014-15, it was observed that –

- The margin/commission given to distributors/agents was netted off from revenue pertaining to prepaid services.
- Offers to the subscribers viz. Free Air Time (FAT) to customers, Free of Cost (FOC) Coupons/Cards/SIMs to customers, Promotional offers to customers, Full talk time offered to customers, Adjustments offered to customers, etc., were set-off from the revenue pertaining to prepaid services.

The item wise details are furnished below-

A) Margin/Commission:

BAL/BHL markets various products/services in pre-paid segment through channel sales partners/agents/franchisees/dealers/distributors, etc. for which they are paid margin/commission. Such margin/commission etc. are in the nature of expense for the licencee.

On a review of accounts of BAL/BHL and relevant extracts from Oracle Financials for the FYs 2010-11 to 2014-15, it was observed that the commission/margin amounting to ₹ 5579.23 crore paid to the distributor/franchises/agents/dealers was debited to the revenue heads of prepaid services resulting in netting off of pre-paid revenue. This resulted in reduction of actual revenue considered in the AGR statements submitted by them to Controller of Communication Accounts (CCA)/Department of Telecommunications (DoT). As the commission/margin paid to the distributor/franchises/agents/dealers were in the nature of expenses, netting of such expenses with revenue was against the licence condition resulting in under reporting of GR to the extent of ₹ 5579.23 crore **(Annexure-2.01).**

Management replied (September 2016) that-

- The relationship between the company and distributors was on a Principal to Principal basis and accordingly the company was required to account for the transactions with such distributors as such on the amount realized from the distributors.
- TDSAT in its judgment dated 23 April 2015 held "In our view, the definition of "gross revenue" cannot be construed as to bar the licencee from fixing a wholesale price for the service which is lower than its MRP. The test is how the actual transaction takes place. If the sale and invoicing is on MRP and any discount is given separately, then in terms of clause 19.1, such discount is not deductible even if the revenue booked in the Profit and Loss account is after netting off the discount. On the other hand, if the sale is on a stated/agreed price, invoiced at that agreed price and booked under the revenue in the Profit and Loss account accordingly without netting

off any discount, the actual selling price would be the revenue and the difference between the MRP and this selling price cannot be added to "gross revenue".

- Out of margin computed by audit, contra entries appearing in the primary Commission amounting to ₹ 0.96 crore needs to be excluded.

Reply of the Management is not tenable as –

- BAL is rendering the services ultimately and had BAL sold the cards directly to the customers, revenue would have been accounted for full value of service rendered and selling expenses would have been accounted as expenditure. On the same analogy, discount/commission accorded to distributors would be in the nature of Marketing Expenditure and thus, should not be deducted from Revenue. This is in accordance with stipulation in clause 19.1. Further, Audit opines that this transaction is not covered under Principal to Principal since the ultimate responsibility of rendering the service to the customer rests with BAL/BHL and not with the distributors.
- While the matter is sub-judice at Hon'ble Supreme Court, Audit view is that commission/margin paid to the distributors/franchises/dealers is in the nature of marketing expenses, therefore, set-off of such expenses with revenue was against the licence condition.
- Further, regarding contra entries amounting to ₹ 0.96 crore, the contention of Management is not acceptable as the general ledger as well as journal voucher clearly shows that the said entries were "Revenue Entries Jan-13" and not as reversal of the primary commission.

Thus, netting off of commission/margin amounting to ₹ 5579.23 crore from pre-paid services resulted in understatement of GR/AGR and short payment of LF and SUC to Government of India by ₹462.01 crore and ₹312.85 crore, respectively **(Annexures – 2.01).**

B) Offers/Discount/Rebates to customers/dealers: -

BAL/BHL offers Free Airtime (FAT), Promotional offers, Full Talk Time, (FTT) etc. to its customers/dealers. A review of GL extracts and further verification of Journal Vouchers (JVs) extracted from Oracle Financials for the period from 2010-11 to 2014-15 revealed that the value of promotional offers extended to customers (under description FAT, Promo / Promotional Offer, FTT, IN Adjustments, Other airtime adjustments, upfront hit, etc.) amounting to ₹ 2385.35 crore was not recognised in the GR/AGR. Since offers to customers like free airtime is part of overall commercial strategy to enhance business, the costs of such offers/discounts/rebate were in the nature of expenses. Further as per licence agreement service revenue should be shown gross without any set-off. Thus deduction of FAT/FTT/Promo, etc. from prepaid revenue resulted in under reporting of revenue to the tune of ₹ 2385.35 crore for the purpose of LF/ SUC during the period 2010-11 to 2014-15.

Management stated (September 2016) that:-

- The company offers various promotional and relationship building schemes wherein additional talk time was provided to customers without any additional charge and such additional talk time was inbuilt in the tariff which was known to customers at the time of purchase. FAT was in the nature of Planned Discount and part of Tariff plan filed with TRAI. It was given upfront to customers and such notional amount cannot be subject to LF. Further, in terms of AS-9 – "Revenue is the gross inflow of cash, receivable or consideration arising in the course of the ordinary activities of the enterprise from the sale of goods, from the rendering of services, and ….."
- DoT before Hon'ble Supreme Court took stand "all discounts mentioned in the price list before TRAI are excluded" which was recorded in the order passed by Supreme Court (August 2011). TDSAT's judgment of April 2015 was also referred in this regard.
- Out of FAT/FTT/Promo offers, etc., computed by Audit, adjustment/partial entries in GL code 3132005 amounting to ₹ 20.60 crore needs to be considered/adjusted.

After verification of the reply of the company, the understated revenue on account of FAT/FTT/Promo offers, etc. has been revised to ₹ 2364.74 crore. As far as other issues, reply of the Management is not tenable since-

- The Management accepted that these are promotional and relationship building schemes wherein additional talk time is provided to customers. Since this was a part of overall commercial strategy to enhance business, therefore, they were in the nature of expenses and set-off for related items of expenses were not allowed as per the licence agreement. Further, the details of FAT/FTT/Promo, etc. offered as per the tariff and that offered as promotion to customers/agents were not furnished. Further, Audit is not questioning the accounting in accordance with AS-9 but contends that Airtime is not a free commodity, had an intrinsic value and by giving FAT/FTT/Promo offers etc., the licencees were foregoing the revenue instead of booking these as expenses resulting in avoidance of LF and SUC.
- While the issue is sub-judice at the Hon'ble Supreme Court, Audit view is that netting-off of pre-paid revenue on account of FAT/FTT/Promo offers etc. from GR was in violation of the licence conditions.

Thus, netting-off of offers/FTT/FAT etc. amounting to ₹ 2364.74 crore from pre-paid services has resulted in understatement of GR/AGR and short payment of LF and SUC to Government of India amounting to ₹ 195.17 crore and ₹ 133.33 crore respectively (**Annexures – 2.02**).

2.2.2 Under reporting of revenue due to netting off of waivers granted to post-paid subscribers

From the examination of statement of reconciliation of revenue between AGR statements and Financial Statements of the company for the period from 2010-11 to 2014-15, it was observed that ₹ 243.34 crore booked under expenditure heads pertaining to 'Waivers on account of goodwill gesture' pertaining to post-paid services was deducted from GR *ab-initio* to arrive at AGR.

In terms of licence condition, the definition for GR includes all revenue earned from services without netting-off any related expenditure. Hence deduction of "waivers on account of goodwill gesture" from GR was in deviation from licence agreement.

Management replied (September 2016) that Goodwill waivers (₹ 243.34 crore) were in the nature of discounts offered for customer retention and since these benefits were passed on to the subscribers with no money being realised by the company, such waivers/discounts should be netted-off from revenue so that revenue should be restricted to actual realised value.

Audit view on Management's reply is that as per Norms of preparation of annual financial statements under the Licence agreement, Service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately. This indicates that service revenue should be shown in gross. However, the Management netted off the discounts/rebate while preparing the annual financial statements which was against the licence agreement. Further, Management accepted that Goodwill waivers were in the nature of discounts offered for customer retention. Since this was a part of overall commercial strategy to enhance business, therefore, they were in the nature of expenses and set-off for related items of expenses were not allowed as per the licence agreement. Hence these should be added back to GR.

Thus, netting off of waivers amounting to ₹ 243.34 crore in respect of post-paid subscribers resulted in understatement of GR/AGR and short payment of LF and SUC to Government of India amounting to ₹ 20.01 crore and ₹ 8.39 crore respectively (**Annexures – 2.03**).

2.2.3 Under reporting of Roaming Revenue due to set-off of Inter Operator traffic (IOT) Discounts paid/credited to other Operators

Volume discount is a financial incentive for individuals or businesses that purchase goods/service in multiple units or in large quantities. In telecommunications scenario, roaming agreements between operators provide for allowing discounts in case of the subscribers of a particular service provider using the 'sellers' network in bulk. Mutual allowance of discounts results in net payment of the incentive.

BAL and BHL have arrangements with other International Operators for providing roaming services and roaming agreements provide for volume discounts for bulk usage of BAL / BHL network. Review of data extracted from Oracle Financials of BAL/BHL revealed that during the period from 2010-11 to 2014-15, Inter Operator Traffic (IOT) Discounts paid to these Operators' accounts were debited to/deducted from the revenue heads.

Roaming arrangement with other operators was a matter of mutual agreement between two operators and part of commercial strategy to enhance business between the two operators. As such these discounts were in the nature of expenses and hence in terms of licence agreement should not be deduced from revenue.

Review of data / records pertaining to BAL/BHL revealed that an amount of ₹ 467.77 crore have been debited to roaming revenue during the period from 2010-11 to 2014-15 which was in deviation from the licence agreement.

Management replied (September 2016) that:-

- International roaming transactions were in nature of agreed volume based discounts. International Roaming Revenue was generated based on negotiation adopted by business. Further, the Operators agree on volume of traffic to be provided amongst them on any of the methodology based on volume discount. It was in the nature of trade/volume discounts and the same should not be considered as an expense.
- As per Indian Accounting Standard AS-9 "Trade discounts and volume rebates given should be deducted in determining revenue". As per International Accounting Standard IAS-18 "revenue arising on a transaction is usually determined between entity and buyer or user measured at fair value of consideration received or receivable taking into account amount of trade discount and volume rebates"

The response of Management is not tenable since

- Discounts over and above the agreed charges were part of overall commercial strategy to enhance business and hence these discounts were in the nature of expenses.
- Further, regarding revenue recognition as per AS-9/IAS-18 stated by Management, Audit is not challenging the accounting methodology adopted by the company but for the purpose of Licence fee, the revenue is to be recognized "Gross" without set-off of related expenses as mandated under licence agreement.

Thus, Netting off of IOT discounts amounting to ₹ 467.77 crore in respect of international roaming operators resulted in reduction of GR/AGR and short payment of LF and SUC by ₹40.32 crore and ₹ 26.86 crore respectively **(Annexure-2.04)**.

2.2.4 Under reporting of revenue from Infrastructure sharing with other telecom operators for GR/AGR by BAL/BHL

In terms of licence agreement, the GR shall be inclusive of revenue from permissible sharing of infrastructure and any other miscellaneous revenue without any set-off for related item of expense, etc.

Telecom infrastructure (towers, network equipment's etc.) owned by BAL/BHL were being shared with other telecom companies. BAL/BHL entered into agreements with other telecom companies for infrastructure (cell site) sharing. In terms of the agreements entered with the

other operators, charges for sharing sites recoverable from other operators was based on a percentage of CAPEX[6] cost of the sites and OPEX[7] cost incurred by BAL/BHL. CAPEX revenue comprises recovery towards cost of Room/Shelter, Air Conditioning, Diesel Generator Set, AMF panel, AC/DC Power Plant, Transmission Rack, Stabilizer Battery, other Electrical Towers, etc. and OPEX cost includes expenditure of recurring nature such as fuel, security, power, etc.

Review of book of accounts of BAL/BHL for the period from 2010-11 to 2014-15 revealed that while a portion of rental revenue on account of infrastructure sharing were booked under revenue heads operated for infrastructure sharing, some part of rental revenue along with revenue on account of fuel, power, maintenance, security, etc. was netted-off from the respective expense heads. This had adverse impact on GR/AGR as an amount of ₹ 246.44 crore credited to the expenditure account codes on account of site sharing revenue received/receivable from other telecom operators. Licence agreement doesn't provide for any set off of related expenses against the revenue. As this forms revenue on account of infrastructure sharing this amount should have been considered for GR/AGR for payment of LF and SUC.

Management replied (September 2016) that

- the "consideration for site sharing" has two elements-
    - (a) OPEX Reimbursement- Commercial Power, Fuel (Diesel), Security and AMC which was in the nature of reimbursement of actual expenses incurred was credited under the respective head.
    - (b) CAPEX Recovery- This amount which was in the nature of rent was recognized by Bharti Airtel under "Infrastructure Sharing Income" and this component is subject to LF and the company was duly paying LF on such income.
- TDSAT in its judgment of April 2015 held that "Payment towards usage of facility had to be taken as revenue and a payment in the nature of reimbursement of an expense and which is indicated separately in the invoice may not be taken as revenue provide that it is not booked in the P & L account as revenue".

Reply of the Management is not tenable due to following reasons:

- In terms of licence agreement GR specifically includes revenue from permissible sharing of infrastructure without any set-off for related item of expense and licence agreements do not distinguish between CAPEX and OPEX revenue on account of sharing of infrastructure. Hence set-off of revenue from Infrastructure sharing against the expenses is not allowed.

[6] Capital Expenditure
[7] Operating Expenditure

- Further, licence agreement permitted only three permissible deductions and no such deduction (i.e. on account of reimbursement of costs of Infrastructure sharing) was allowed.
- While the issue is sub-judice at the Hon'ble Supreme Court, Audit view is that set-off of revenue from Infrastructure sharing against expenditure was in violation of the licence conditions.
- Audit is of the view that revenue towards diesel expenses, security expenses, repair and maintenance expenses and electricity charges did not constitute reimbursement since they had to be incurred irrespective of whether the towers were shared or not. In fact, by sharing the expenditure, the Company benefited through additional income.

Thus, netting off site sharing revenue received/receivable from other telecom operators from the cost during the period from 2010-11 to 2014-15 resulted in understatement of GR/AGR by ₹ 246.44 crore BAL/BHL and short payment of LF and SUC to Government of India amounting to ₹ 19.75 crore and ₹ 13.23 crore respectively by BAL/BHL (**Annexure-2.05**).

2.2.5 Under reporting of revenue from Forex gain for GR/AGR by BAL/ BHL

In terms of license agreement, GR shall be inclusive of any other miscellaneous revenue. Review of GL of BAL and BHL for the period from 2010-11 to 2014-15 revealed that an amount of ₹ 528.31 crore was booked as realized gain on Forex transactions (**Annexure-2.06**). However, on verification of reconciliation/mapping for AGR, it was noticed that the revenue earned on forex gain was not considered for GR/AGR for the purpose of revenue share payable to DoT.

It is pertinent to mention here that the above realised gain calculated from the data extracted from the reports generated from Oracle Financial System did not represent the actual gain of that particular item since the company recasts the value of all the items included under the foreign exchange gains/losses head every year, the matured items are accounted under realised gains and the un-matured items remain under unrealised gain. Thus, the realised gain of a particular item in that year would not be the actual gain due to accounting of the gains /losses of that item during the intermediate period under unrealised. Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item. The operator should calculate the gain of each item with reference to its initial value of accounting and include the total forex gain in GR/AGR.

Management replied (September 2016) that:-

- The company records its foreign currency liabilities at the exchange rate prevailing on the transaction date and at the end of the month reinstated at prevailing exchange rate as per AS-11. Such reinstatement results in gain or loss and at the time of discharge of liability, the company unwinds notional gain or loss and records such realised gain or loss.

- **Forex Gain was not Revenue:** As per the Accounting Standard 9 on Revenue Recognition, Foreign Exchange Gain has been specifically excluded from the definition of Revenue.
- **Forex Gain was Notional:** The realized forex was nothing but an overall business risk which each company would assume in foreign currency transactions. Such notional gains/losses on account of reduction/increase in the liabilities/loans cannot be considered to be revenue from operations and should not be included in the GR/AGR.
- **Forex Gains and losses was dynamic and indeterminable:** TRAI Recommendations dated 6 January 2015 on Definition of Revenue Base (AGR) states that the revenue/profit arising on account of fluctuation of foreign exchange should not be part of AGR for the purpose of computation of LF and SUC. Also TDSAT (August 2007) did not view forex gain/loss differently from TRAI.
- **Not related to Telecom activities:** The Notional foreign exchange fluctuation was a contingency which had impact on every business and was not specific and unique to telecom business. Also, as per TRAI recommendation dated 13 September 2006 on the AGR matter, forex was not related to telecom activities.
- The company had prepared AGR statement pursuant to TDSAT judgment (August 2007) and accordingly has not included forex gain in gross revenue.
- TRAI recommendation dated 6 January 2015 on definition of AGR states that revenue/profit arising on account of fluctuation of foreign exchange should not be part of AGR.
- While Audit considered quarterly gain on forex during the previous spell, during the period from 2010-11 to 2014-15 all gains on forex fluctuations have been taken into consideration.

Reply of the management is not tenable as -

- In terms of the licence agreement GR shall be inclusive of any other miscellaneous revenue and audit is of the view that any gain incidental to PSPs should be considered for GR.
- The company has been following mercantile method of accounting and as per commercial principle of accounting, "the profit/loss" is to be arrived after taking into account all accrued receipts and expenses and comparing of trading assets between two different dates. Under the mercantile system of accounting a forex gain (revenue)/loss (expenditure) incurred as a result of exchange differences are rational and cannot be considered as contingent/notional in nature. Further, audit has considered the realised gain only.

- Even as per accounting policy adopted by BAL/BHL, the resultant foreign exchange differences arising on payment or conversion of liabilities are recognized as income or expense in the year in which they arise. Further, company was reporting exchange differences (on net basis) in their financial statement.
- TDSAT judgment dated 30 August 2007 and TRAI recommendation dated 13 September 2006 referred in the reply has no relevance in the light of the Hon'ble Supreme Court judgement dated 11 October 2011 which stated "the TRAI and the Tribunal had no jurisdiction to decide on the validity of the definition of AGR in the licence agreement and to exclude certain items of revenue which were included in the definition of AGR in the licence agreement between the licensor and the licensee". Audit is of the view that forex gain is incidental to telecom activity for telecom operators.
- TRAI Recommendation dated 6 January 2015 referred to in the reply has not finally been accepted by DoT.
- Forex gain/loss result from individual transactions which cannot be clubbed. Further forex gain/loss can undergo changes depending upon the mechanism of individual contracts. Therefore loss cannot be netted off.

Thus, non-inclusion of foreign exchange gains pertaining to period from 2010-11 to 2014-15 resulted in understatement of GR/AGR by ₹ 528.31 crore. Resultantly, LF and SUC amounting to ₹ 42.65 crore and ₹ 22.25 crore respectively was not paid by BAL/BHL **(Annexure – 2.06).**

2.2.6 Non consideration of Interest Income for GR/AGR

As per the licence agreement, GR for the purpose of payment of Revenue Share shall be inclusive of revenue on account of interest**.** Review of data/records furnished by BAL/BHL for the period from 2010-11 to 2014-15 revealed that interest income accounted in the books of accounts of BAL/BHL was not considered for the purpose of GR/AGR.

During the period from 2010-11 to 2014-15 an amount of ₹ 193.32 crore was accounted as income from interest on lease/bonds/non-investment and ₹ 395.32 crore was accounted as interest from loans and advances granted to Subsidiaries /Associate companies/JVs/ related parties in the books of BAL and BHL. Though the licence agreement provides for considering interest income for GR/AGR for the purpose of licence fee, BAL/BHL had not included the interest income earned during the period from 2010-11 to 2014-15 for GR/AGR.

Management in its reply stated (September 2016) that

- LF is payable only on income arising from telecom services and income included in the corporate office books was earned by the company from deployment of surplus funds/borrowed funds on which licence fee was already paid.

- The company prepared AGR statement considering the effect of TDSAT judgment of August 2007 and had impugned orders from Kerala and Tripura High courts on demands received from DoT and issue was pending in appeal before Supreme Court
- Interest Income-Interest received (GL Code 3418012) by BHL during the FY 2012-13 amounting to ₹ 3.91 crore has been offered for AGR and debit/contra/adjustment entries (GL code 341802) amounting to ₹ 0.12 crore need to be ignored as they are adjustment entries.
- Balance pertaining to other corporate code viz. BU code 192 & 201 amounting to ₹1.12 crore not considered.

After verification of the reply of the company, the understated income from interest on lease/bonds/non-investment has been revised to ₹ 189.29 crore after excluding ₹ 3.91 crore offered for AGR by BHL and contra entries amounting to ₹ 0.12 crore. Further, the understated interest from loans and advances granted to Subsidiaries /Associate companies/JVs/ related parties has also been revised to ₹ 394.20 crore. As far as other issues, reply of the Management is not tenable since-

- Definition of GR in licence agreement expressly provides for inclusion of interest income for GR/AGR for computation of revenue share.
- TDSAT judgement dated 30 August 2007 has become null and void after Hon'ble Supreme Court judgement dated 11 October, 2011. While the issue is sub-judice at the Hon'ble Supreme Court, non-inclusion of interest in GR was in violation of the licence conditions.

Thus non-inclusion of Interest income pertaining to period from 2010-11 to 2014-15 resulted in understatement of GR/AGR by ₹ 583.49 crore. Impact on short payment of LF and SUC due to non-consideration of interest income in GR/AGR was ₹ 47.13 crore and ₹ 25.50 crore respectively (**Annexures – 2.07 and 2.08).**

2.2.7 Non Consideration of revenue accounted under Global Operations (BILGO) for AGR/GR

Bharti Airtel Ltd under brand name BILGO had set up its own branch at USA which carries the hubbing of traffic and does switching of traffic arising out of bilateral agreements between BAL (ILD division) and various other foreign operators located across the globe. BILGO switch hands over outgoing traffic originating from other operator's at USA to BAL-ILD's network for terminating anywhere in the world for which BILGO retains five *per cent* and transfers 95 *per cent* of the amount billed to the foreign telecom operators to BAL – ILD. For call traffic terminating in the USA – BILGO switch handles the call traffic from BAL-ILD and hands over the same to other operators in the USA. For this service BILGO charges to BAL-ILD at 105 *per cent* of what is payable by BILGO to the foreign terminating operators and retains five *per cent.*

BAL maintains a separate TB to account for income/expenses relating to global operations under BILGO. The service revenue/access charges booked under Trial Balance during the period from 2010-11 to 2014-15 were as under:

Table 2.5

(₹ in crore)

Year	Total Service revenue	Total Access Charges	Excess revenue over access charge(Margin)
2010-11	464.89	442.00	22.89
2011-12	679.33	645.84	33.49
2012-13	841.06	799.57	41.48
2013-14	1089.55	1035.90	53.65
2014-15	890.04	846.32	43.72
Total	**3964.87**	**3769.63**	**195.23**

BILGO was only a technical arrangement made by BAL to manage its ILD traffic and as it was BAL which had got ILD licence from the Indian authorities, the transactions accounted in BILGO's books of accounts were part of telephone traffic of BAL's ILD network and thus, included in the financial statements of BAL. Since the definition of GR as per licence agreement include all revenue accruing to the licencee without any set-off for related item of expense the revenue accrued from services of BILGO to the tune of ₹ 195.23 crore should have been included under BAL's ILD AGR.

Management stated (September 2016) that –

- BILGO was set up by BAL in US and obtained licence under Communication Act issued by Federal Communication Commission of USA which carries hubbing of traffic and does switching of traffic arising out of bilateral agreements between Bharti Airtel and various foreign operators located across globe.
- BILGO was operating on a foreign soil (USA) as a gateway station (Point of Presence) for which licence/permission had been obtained from USA authorities not from Indian authorities and it had a separate identity from US Tax and regulatory perspective.
- This five per cent retention by BILGO was taxable in the USA as per Tax and regulatory laws. As such revenue and access charges accounted in BILGO's books of accounts should not be considered for GR/AGR for LF since licence/permission obtained from USA authorities.
- TDSAT's order dated 23 April 2015 on AGR matter stated "revenue from operating licence in USA arises not from licence granted by DoT and hence this revenue shall not be part of AGR unless DoT is able to establish that there is technical managerial and financial interconnection interlacing between company's operation in USA and in India".
- The company had impugned orders from Kerala and Tripura High courts on demands received from DoT and the matter was also pending in appeal before Supreme Court.

Management's contention is not tenable as:

- Setting up of the BILGO was only a technical arrangement made by BAL to manage its ILD traffic and BAL had got ILD licence from the Indian authorities. BAL was providing telecom service under the name of BILGO and was not a separate legal entity. Even the transactions accounted in BILGO's books of accounts were part of telephone traffic of BAL's ILD network and included in the financial statements of BAL. It is also pertinent to state that BAL had offered the Access charges booked in BILGO TB for revenue share under ILD Licence. Further as per the definition of GR, it shall include all revenue accruing to the Licencee without any set-off for related item of expense. Hence the revenue of BILGO should be included for GR.
- Audit does not dispute the taxability of five per cent retained by BILGO in USA as per Tax and regulatory laws but contends that since this constituted the income of BAL, the same should be a part of the sharable revenue under ILD licence.
- While the issue was sub-judice at the Hon'ble Supreme Court/ Kerala and Tripura High courts, Audit view is that non-inclusion of revenue of BILGO in GR was in violation of the licence conditions.

Accordingly BAL's ILD AGR was under reported by ₹ 195.23 crore during the period from 2010-11 to 2014-15 which should be added back to AGR for computation of LF for BAL's ILD licence. Impact on short payment of LF due to non-consideration of revenue of BILGO in GR/AGR was ₹ 13.97 crore **(Annexure – 2.09).**

2.2.8 Non consideration of dividend income by BAL/BHL for GR/AGR

As per licence agreement, the Gross Revenue shall include all service revenue, miscellaneous revenue and other income including dividend without any set-off for related item of expense, etc. Review of GL revealed that the income in the form of dividend received from subsidiaries of BAL and other investments during the period from 2010-11 to 2014-15 was ₹ 2265.08 crore. This was not included in GR for LF purpose in the respective years which was a deviation from the licence agreement.

Similarly, dividend income of ₹ 0.43 crore received and accounted by BHL during the year 2010-11 was also not offered for GR/AGR for the purpose of payment of LF.

Thus, even though the licence agreement clearly stipulates that dividend income received by the licencee shall be offered for GR/AGR, dividend income of ₹ 2265.51 crore was not offered for GR/AGR for payment of LF and SUC.

Management stated (September 2016) that:

- Dividend income cannot be attributed to any licenced activity and does not form part of income accrued from the licenced activity since the Corporate Income (Dividend) is generated from treasury function which was a separate and distinct activity from

that of licenced services which is not attributable to particular service area for which licence was granted. LF was payable only on income arising from the activities for which licence was granted and it was case of double charging of LF since income was accrued on investment of surplus funds which was generated from licenced revenue on which LF had already been paid.

- The company had prepared AGR statement in accordance with TDSAT judgment dated 30 August 2007 on the components of the revenue for computation of AGR and accordingly, the company had not considered dividend income for the years 2010-11 to 2014-15. The company had impugned orders from Kerala and Tripura High courts on demands received from DoT and the matter was also pending in appeal before Supreme Court.

The reply of the Management is not tenable as

- Licence agreement clearly prescribes the inclusion of interest, dividend and any other miscellaneous revenue in GR/AGR.
- TDSAT judgment dated 30 August 2007 was set aside by the Hon'ble Supreme Court in its judgment dated 11 October 2011 and while the issue is sub-judice at the Kerala and Tripura High courts, Audit view is that non-inclusion of dividend in GR was in violation of the licence conditions.

In view of the above non-inclusion of dividend income as stated above have resulted in understatement of GR/AGR by ₹ 2265.51 crore. Impact on short payment of LF and SUC due to non-consideration of dividend Income in GR/AGR was ₹ 181.67 crore and ₹ 98.98 crore respectively **(Annexure – 2.10).**

2.2.9 Non consideration of income from sale of Investments for AGR

In terms of licence agreement, the Gross Revenue shall be inclusive of revenue accrued on all services offered by the licencee including interest, dividend, etc. and any other miscellaneous revenue without any set-off for related item of expense, etc. Further item No. 4 of statement of Revenue and Licence Fee (AGR Statement) which was also an integral part of UASL agreement reflect the "Income from Investment".

Review of book of accounts of BAL/BHL and data extracted from Oracle Financials for the period from 2010-11 to 2014-15 revealed that though the company had accounted income from sale of Investments amounting to ₹ 4636.34 crore in their book of accounts, the same was not considered for GR/AGR resulting in short payment of revenue share payable to Government.

Management stated (September 2016) that

- Corporate Income is generated from Treasury Income which was separate and distinct from licenced activity of the company and does not form part of AGR. Treasury

income cannot be attributed to any particular service area and since corporate income was accrued on investment of surplus funds generated after netting off operating cost from licenced revenue on which LF was already paid.

- TDSAT in its April 2015 Judgment, stated that "*proceeds of disinvestment in a company, should not form part of AGR unless it is proved that the stake was the company's stock-in-trade"*. Since, the company is not in the business of trading in shares and stock the same would not be subject to LF and WPC. AGR statement was prepared pursuant to the August 2007 TDSAT judgment on components of AGR and have impugned orders from Kerala & Agartala High Court on the demands received from DoT on this account.
- Final amount related to sale of investment for BAL and BHL (after adjustment of contra & debit-credit adjustments) reported under financials are ₹ 4056.62 crore and ₹ 552.45 crore respectively.

After verification of the reply of the company, the understated income from sale of Investments was revised to ₹ 4609.07crore (₹ 4056.62 crore – BAL and ₹ 552.45 crore - BHL). As far as other issues, reply of the Management is not tenable since-

- licence agreement provides for inclusion of "Income from Investment" for GR/AGR
- TDSAT judgment of August 2007 has been set aside by Hon'ble Supreme Court in October 2011. While the issue is sub-judice at the Hon'ble Supreme Court/ Kerala and Tripura High courts, Audit view is that non-inclusion of "Income from Investment" in GR was in violation of the licence conditions.

Thus, BAL/BHL had not considered ₹ 4609.07 crore being income from sale of investments for GR/AGR during the period from 2010-11 to 2014-15. Impact on short payment of LF and SUC due to non-consideration of income from sale of investments for GR/AGR was ₹ 368.95 crore and ₹ 205.76 crore respectively **(Annexure – 2.11).**

2.2.10 Non consideration of miscellaneous income for AGR for computation of LF/SUC by BAL

In terms of conditions under licence agreement, the Gross Revenue shall be inclusive of revenue on account of interest, dividend and any other miscellaneous revenue without any set-off for related item of expense, etc. From the AGR statements and data/records shared with audit, it was observed that during the FYs from 2010-11 to 2014-15, other income grouped under miscellaneous income was partly considered for AGR. Miscellaneous income such as income from Infrastructure Network sharing, scrap sale, Management support service, miscellaneous receipt/income, Profit share on Blackberry sale, lease rental, etc. amounting to ₹ 403.98 crore (BAL - ₹ 392.86 crore and BHL- ₹ 11.12 crore) have not been considered for payment of LF.

Management replied (September 2016) that –

- Miscellaneous income includes scrap sale, Management support service and liabilities written back. It was in the nature of capital receipt and it cannot be termed as revenue in ordinary course of business. It was an income from non-licenced activity.
- Company prepared AGR statement as per TDSAT judgment of August 2007.
- The company had impugned orders from Kerala and Tripura High courts on demands received from DoT and the matter was also pending in appeal before Supreme Court.
- Miscellaneous income of ₹ 9.06 crore was offered for AGR, ₹ 403.98 crore includes ₹ 12.90 crore pertaining to liability written back, CENVAT reversals and contra/adjustment entries amounting which need to be excluded.

After verification of the reply of the company, the miscellaneous income understated has been revised to ₹ 382.02 crore. As far as other issues, reply of the Management is not tenable since-

- Licence agreement provides that miscellaneous income should be included in GR for computation of revenue share.
- TDSAT judgment of August 2007 was set aside by the Hon'ble Supreme Court of India (October 2011).
- While the issue is sub-judice at the Kerala and Tripura High courts, Audit view is that non-consideration of miscellaneous income in GR was in violation of the licence conditions.

Non-consideration of miscellaneous income of ₹ 382.02 crore for computation of GR/AGR resulted in short payment of LF and SUC by ₹ 30.48 crore and ₹ 10.46 crore respectively **(Annexure – 2.12).**

2.2.11 Non consideration of Income from profit on sale of fixed assets for AGR for payment of revenue Share by BAL

In terms of conditions under licence agreement, the Gross Revenue shall be inclusive of revenue on account of interest, dividend and any other miscellaneous revenue without any set-off for related item of expense, etc. Review of book of accounts of BAL/BHL for the period from 2010-11 to 2014-15 revealed that profit on sale of fixed assets of ₹ 57.34 crore was not considered for GR/AGR.

Management replied (September 2016) that –

- This revenue was in nature of capital revenue and it was not derived from licenced activity and hence it should not be included in AGR for computation of LF
- GR to be computed in accordance with generally accepted accounting principles and Accounting Standards and receipts which are in capital nature cannot possibly be treated as revenue for LF

- Assets are created from revenue on which LF has already been paid and while loss on sale of assets is not allowed to be set off from AGR for the purpose of LF, profit on sale of assets ought not to be included in such computation.
- Considering the TDSAT judgement dated 30 August 2007, the revenue on account of profit on sale of fixed assets had not been considered for AGR.

The contention of the BAL's Management is not tenable since-

- Licence agreements did not differentiate between licenced activity and non-licenced activity. In terms of definition of GR as per licence agreement, GR shall include all revenue accruing to the Licencee without any set-off for related item of expense and the company had also considered profit on sale of fixed assets for computation of AGR in the year 2006-07.
- TDSAT judgement dated 30 August 2007 has become null and void after Hon'ble Supreme Court judgment dated 11 October 2011.

Thus, income of ₹ 57.34 crore on account of profit on sale of fixed asset accounted in the books of accounts of the company should be included in GR/AGR for computation of Revenue Share. Impact on short payment of LF and SUC due to non-consideration of profit on sale of fixed asset in GR/AGR was ₹ 4.61 crore and ₹ 2.75 crore respectively **(Annexure – 2.13).**

2.2.12 Irregular Deduction of Bad debts written off from GR to arrive at AGR by BAL/BHL

UASL agreement provides for deduction of only three items from GR viz. PSTN related call charges actually paid to other service providers within India Roaming revenue actually passed on and Service Tax/Sales Tax actually paid to government to arrive at "Adjusted Gross Revenue"

Review of data/records furnished by BAL/BHL for the period from 2010-11 to 2014-15 revealed that the amount of "Bad debts Written Off" accounted by the company to the tune of ₹ 1313.38 crore have been deducted from GR to arrive at AGR in contravention of the Licence Agreement.

Management replied (September 2016) that

- Bad debts refers to an amount which service provider does not recover from the subscriber/pass through operators and hence bad debts are revenue which are not realized by the company
- As per AS-9 revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account and as per AS-9 revenue is to be recognised only when "it is not unreasonable to expect ultimate collection"

- Basic principle is that licence fee should be payable on realised revenue capable of being realised and since bad debts are written off as unrealisable should not form part of revenue.
- Considering the TDSAT judgement dated 30 August 2007, the amount of "Bad debts Written Off" was deducted from GR.
- Demands received from DoT on this account have been impugned before Kerala and Tripura High Court and the issue is also pending in appeal before Supreme Court.

The reply of the company is not tenable since.

- The licence agreement does not provide deduction of bad debt from GR to arrive at AGR.
- While audit does not question accounting as per AS-9, it contends that any amount of revenue becoming unrecoverable is treated as bad debts which form part of Administrative and other expenses in the Profit and Loss Account.
- TDSAT judgement dated 30 August 2007 has become null and void after Hon'ble Supreme Court judgment dated 11 October 2011.
- While the issue is sub-judice at the Kerala and Tripura High courts, "Bad debts Written Off" was an expenditure and hence, deduction from GR was in violation of the licence conditions.

Thus, bad debts written off amounting to ₹1313.38 crore and deducted from GR to arrive at AGR for computation of Revenue Share payable by the companies to DoT resulted in short payment of LF and SUC by ₹ 117.74 crore and ₹ 72.20 crore respectively **(Annexure – 2.14).**

2.2.13 Non consideration of revenue from sale/lease of bandwidth charges for AGR for payment of SUC.

Format of Statement of Revenue and Licence Fee (AGR Statement) prescribed as Appendix II to Annexure II as referred in Clause 20.4 of the UASL agreement is an integral part of the Licence Agreement. In the Statement item 1 A has been prescribed to reflect the "Revenue from Wire line Subscribers" and item 8 has been prescribed to reflect the "Revenue from sale/lease of bandwidth links R&G cases turn key projects etc."

For the purpose of AGR for Spectrum Usage Charges (SUC), revenue from Wire line Subscribers should not be taken into account.

Audit observed that during the period from 2010-11 to 2014-15, an amount of ₹ 1577.42 crore being revenue from sale of bandwidth/links was considered for computation of LF but not considered for computation of Spectrum Usage Charges which was in deviation from provisions of the licence agreement.

Management stated (September 2016) that DoT had established a principle according to which no spectrum charges shall be levied on wire line revenue. Further, it was also stated that format of AGR statement of licence agreement has an anomaly on separation of common revenue items as the respective group does not have a sub-group of wireline and wireless separately.

Management contention is not tenable as in terms of clause of 18.3 of UASL agreement, revenue from wireline subscribers only needs to be excluded for spectrum charges. As provided in the AGR statement, revenue from wireline subscriber was item 1A and Revenue from sale/lease of bandwidth, links, R and G cases, turn key projects, etc. was item 8. Thus, revenue from sale/lease of bandwidth was different from revenue from wireline subscribers. As such, above revenue should be considered for computation of spectrum charges also.

Thus, revenue from sale/lease of bandwidth, links, etc. amounting to ₹ 1577.42 crore should be added back in AGR for computation of SUC. Resultantly, SUC amounting to ₹ 92.56 crore was not paid on the said revenue by the company **(Annexure-2.15).**

2.2.14 Non Consideration of revenue of erstwhile SBEL

Satcom Broadband Equipment Limited (SBEL), a subsidiary of BAL, got amalgamated with BAL effective from 1 October 2005. During the year of amalgamation, a separate P&L account and Balance Sheet of SBEL was prepared and the revenue from SBEL had not been considered in GR/AGR for Licence Fee. From the year 2007-08 onwards, two trial balances bearing No 321 & 903 have been maintained for accounting transactions relating to erstwhile SBEL domestic and international transactions respectively.

Review of TBs, financial Statements and the mapping provided to audit revealed that an amount of ₹ 59.72 crore booked under Trial Balance No.321 & 903 during the period from 2010-11 to 2014-15 on account of bandwidth charges, installation charges, as well as sales of hardware to foreign/domestic telecom companies, etc.. However, this revenue was not offered for payment of licence fee for any segment during the period. As the said amount forms part of revenue of BAL as per the definition of GR, the said revenue should have been offered for GR/AGR.

Management stated (September 2016) that

- SBEL was incorporated as a separate legal entity and prior to its merger with BAL, it was engaged in activities not governed by telecom licence such as trading telecom/VSAT equipment and turn-key project for VSAT installations.
- Post-merger activities were continued to be carried on by Satcom under BAL as were being carried on prior to merger and the accounts of BAL included the accounts for activities undertaken by Satcom for which separate books of accounts were maintained

- The activities carried on by Satcom are not linked with the telecom services being provisioned by units of BAL.
- Merger changed the structure of the entity but it did not change the nature of transaction being carried on. An activity which was a non-licenced activity cannot become a telecom service post-merger. Thus just because two companies have merged does not make a non-telecom activity a telecom activity thereby subjecting it to LF. Post-merger its business (which is non-telecom in nature) was being carried on by BAL. Thus, the company is under no obligation to pay LF on such activities/transactions as were carried on by Satcom.
- ₹ 0.32 crore need to be excluded as they pertain to unrealised forex gain.

After verification of the reply, the understated revenue from Satcom has been revised to ₹ 59.40 crore. As far as other issues, reply of the Management is not tenable as SBEL was a separate legal entity prior to 1 October 2005 and it had not got any licence from Government of India for its activities which were primarily dealing in VSAT equipment. However it got merged with BAL with effect from 1 October 2005 and transactions recorded in its books of accounts show that revenue accounted was due to bandwidth charges, IRU charges, installation charges, data services, equipment rental, sales of hardware to foreign/domestic telecom companies, etc. and this income should be included for computation of GR as per the Licence Agreement.

Non-inclusion of ₹ 59.40 crore resulted in short payment of LF (VSAT) by ₹ 3.57 crore. **(Annexure-2.16)**

2.2.15 Non consideration of revenue accounted under Infrastructure Provider (IP)-1 service for computation of revenue share by BAL

BAL had obtained registration for Infrastructure Provider 1 (IP1) from DoT for providing infrastructure services such as Dark Fibre, Right of Way, Duct Space and Towers on lease/rent out/sale basis to Telecom licencees. BAL had maintained separate Trial Balances (TBs) for recording transactions of IP1 services. Revenues booked under IP1 include Service Revenue, Interest Income and Other Income which form part of P& L Account of BAL.

During the period from 2010-11 to 2014-15, an amount of ₹ 1073.12 crore had been booked as revenue under IP1. This included ₹ 0.07 crore being other miscellaneous income apart from service revenue of ₹ 1073.05 crore booked during the period. Further, it was also noticed that out of the above revenue, ₹ 669.98 crore was from NLD segment of BAL.

As revenue from NLD division included in IP1 revenue was not subject to LF, the remaining revenue from IP1 service amounting to ₹ 403.14 crore was required to be considered for LF but not considered by BAL.

Management stated (September 2016) that the IP1 registration had nothing to do with the licence agreement and the activities taken there under. The IP1 registration enables any

company incorporated in India to install and provide passive infrastructure to the Telecom Service Providers and as per the existing policy, there was no imposition of LF on the companies having IP1 registration. The income earned from these services was accounted for separately which therefore resulted in separate trial balances maintained by the company so as to distinguish the same from other licenced income.

Audit accepts that the revenue from NLD division included in IP1 revenue is not subject to LF but contends that income from ISP division and other operators should be considered for revenue sharing in accordance with Clause 31 of Annexure – II of the NLD Agreement. Accordingly, ₹ 403.14 crore should have been considered in AGR for the calculation of LF. Impact on short payment of LF (NLD) due to non-consideration of IP1 revenue was ₹ 29.09 crore **(Annexure-2.17).**

2.2.16 Interest on short/non-payment of LF and SUC

On issues raised above (from para 2.2.1 to 2.2.15) short / non-payment of LF and SUC worked out to ₹ 1577.12 crore and ₹ 1025.12 crore respectively. The interest on this short/non-payment of LF and SUC is ₹ 1245.91 crore **(Annexure- 2.18).** The calculation of interest was based on the rate prescribed in the Licence agreement i.e. 2 *per cent* above the Prime Lending Rate of State Bank of India existing as on the beginning of the financial year and the period considered for the calculation was from the end of the concerned financial year up to March 2016. The interest has been compounded monthly as prescribed in the licence agreement.

2.3 Disclosures in the Statement of Revenue and Licence fee (AGR statements)

Distinct and specific norms for recognition of revenue by the licencees, from the particular licenced activity are detailed in the Annexure –III of UAS Licence agreement. The norms specified that the annual financial statements/Statement of Revenue and Licence fee (AGR statement) should show -

- Gross Revenue (amount billable/from service) with details of discount/rebates indicated separately and also
- Item-wise details of income that has been set-off against corresponding expenditure
- Any category of accrued revenue, the amount of which exceeds 5% of the total accrued revenue, shall be shown separately and not combined with any other item
- Service Tax billed, collected and remitted to the Government shall be shown separately
- Sales Tax billed, collected and remitted to the Government shall be shown separately
- Income from interest and dividend shall be shown separately without any related expenses being set off against them on income side of P & L Account.
- Item-wise details of income that has been set off against corresponding expenditure

During the course of audit of BAL/BHL it was observed that some of the above norms have not been considered while preparation of annual financial statements. Instances of understatement of revenue as brought out in the report would confirm that the revenue recognised for payment of LF and SUC by BAL/BHL were not entirely in line with the licence conditions nor the preparation of accounts was fully in compliance with the norms prescribed by DoT. The annual accounts of both the entities even though generally contained information mandated by DoT, critical data which impact the correctness of the revenue recognized by the Companies for payment of revenue share were found missing in the annual accounts submitted along with the AGR statement. For instance, the details of discount/rebate to be indicated separately along with Gross Revenue, information on total Airtime Units for home and visiting subscribers and unbilled numbers which were required to be presented separately and credits in expenditure which affect the correctness of AGR etc., were not disclosed in the Annual accounts. Yet the Statutory Auditors had always certified that the accounts were prepared in accordance with the guidelines/norms contained in the Licence Agreement.

On being pointed out by audit, the Management stated that the above requirement have been complied with as they are either available in the billing system, book of accounts or disclosed in their annual financial statements / balance sheet. While the Management replied that no items of income have been set off against any corresponding expenditure, it was observed that in cases such as Commission/Margin/Offers, Infrastructure sharing etc. revenue have been netted off against expenditure resulting in under reporting of GR/AGR.

The Management also accepted that Roaming airtime charges collected for external network for home subscribers, Total Airtime Units for home and visiting subscribers and unbilled numbers, Roaming Commission Retained and Paid (Network wise) were not disclosed due to the fact that either they are non-financial data (Airtime Units) or since they could not be directly retrieved.

It is also pertinent to mention that inspite of non-compliance to above requirement, DoT never insisted on adherence to the above requirement. Audit feels that the above disclosures as required by DoT, shall facilitate agencies entrusted with the task of ascertain the correctness of the GR reported by the licencee companies to ensure completeness in verification process.

2.4 Response of DoT/BAL to the audit observations

Audit observations on the revenue share payable by M/s BAL were communicated to DoT and BAL during August 2016 for their further comments. BAL had reiterated once again (September 2016) their submission made in reply to audit observations issued during the course of premises audit.

The DoT stated (February 2017) that

- The basic definition of GR and AGR was challenged by the TSP's in 2002-03. Since then, there has been protracted litigation and is continuing till date.
- DoT is presently in appeal against the TSPs in the Supreme Court and as per the orders of the SC the department had been permitted to issue demands to the TSPs based on its understanding of the Licence Agreement.
- Demands would be raised based on the final figures reported by CAG, as per the Licence agreement and Policy decisions of DoT.

The response of DoT proves that though the revenue share regime was introduced as part of NTP-1999, the Department has not been able to realise its due revenue share as envisaged in the Licence agreement even after more than 17 years of its implementation.

It would be pertinent to mention here that when the Government decided to reduce the LF for all operators by two per cent effective from April 2004, DoT expected that the reduction would prompt operators to withdraw the challenges against the Government. However, the reduction in LF did not have the expected impact and the operators continue to institute litigations against the Government challenging the definition of GR/AGR and demand notes. Thus the PSP got the benefit of reduction in rate of LF but the Government didn't get the reciprocal benefit of reduction in litigations.