

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial member

ITA No. 3392/Del/2019 : Asstt. Year: 2013-14

Serco India Pvt. Ltd., 94-95, Udyog Vihar Phase-5, Gurgaon, Haryana-122001 (APPELLANT)	Vs	ACIT, Circle-4(1), Gurgaon. (RESPONDENT)
PAN No. AAJCS6704P		

Assessee by : Sh. Suraj Bhan Nain, Adv. &

Sh. Mahfuzur Rahman, CA

Revenue by : Sh. T. James Singson, CIT-DR

Date of Hearing: 31.08.2023

Date of Pronouncement: 08.11.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. CIT(A)-1, Gurgaon dated 21.01.2019.

2. Following grounds have been raised by the assessee:

"1. The Ld CIT(A) erred in enhancing the assessment by disallowing the expenditure of Rs.10,18,44,938/-, as not been incurred for the purpose of business.

2. The Ld. CIT(A) erred in not appreciating that the expenditure of Rs.10,18,44,938/- was incurred in connection with a new line of business from which revenues were generated from subsequent year(s).

3. The Ld. CIT(A) fell in error of law in confirming the addition of Rs.11,73,19,373/-, u/s. 68 of the Act. The Ld. CIT(A) failed to appreciate that the amount

of Rs.11,73,19,373/- was in the nature of Suppliers' credit/ provisions and NOT 'cash credit' and hence Sec. 68 had no application.

4. The Ld. CIT(A) failed to appreciate that the amount of Rs.11,73,19,373 was adjusted in the subsequent years by way of share purchase agreement."

3. Serco India Private Limited was a subsidiary of Serco Group PLC, UK, incorporated in India on 27-02-2006. The company was established as a captive service center with an objective to provide IT and IT enabled services to Serco Group. The assessee company filed its return of income for Assessment Year 2013-14 on 29.11.2013 declaring loss of Rs. 5,68,34,642/- which was processed u/s 143(1) of the Income Tax Act, 1961.

4. The assessment was completed u/s 143(3) of the Act vide order dated 15.12.2016 wherein addition u/s 68 of Rs. 11,73,19,373/- was made on account of difference between the opening balance and closing balance of sundry creditors, and ad-hoc disallowance of Rs. 4,43,77,875/- was also made on account of 20% of net 'other expenses' of Rs. 22,18,89,377/- debited in profit & loss account. The assessee company preferred an appeal before Ld. CIT(A), who has decided the appeal vide order dated 21.01.2019 wherein the Ld. CIT(A) has confirmed the addition u/s 68 of Rs. 11,73,19,373/- and enhanced the disallowance out of expenses at Rs. 10,18,44,938/- as against disallowance of Rs. 4,43,77,875/- made by the Assessing Officer.

5. Aggrieved with the order of Ld. CIT(Appeals), the assessee filed this appeal before the ITAT.

Ground Nos. 1 & 2:

Disallowance of Expenses:

6. The assessee company was a subsidiary of Serco Group PLC, UK, incorporated in India on 27-02-2006. The company was established as a captive service center with an objective to provide IT services to Serco Group. The assessee company entered into a Master Service Agreement (MSA) with Serco UK for providing IT services which contains the broad framework for the provisions of IT and IT enabled services. The assessee company was compensated for the services rendered to AEs on a cost-plus mark-up of 15%. Accordingly, the assessee company has been providing IT services and has also provided IT enabled as well as management services to Serco Group. The assessee company provided IT and IT enabled services to its AEs up to A.Y. 2010-11.

7. From A.Y. 2011-12, the assessee company discontinued IT services and has rendered ITES and Management Consultancy services to its AEs. In the year under consideration, the assessee had not rendered ITES services and rendered only management consultancy services to its AEs. Serco Group UK is an international service provider that manages people, processes, technology, and assets. The Group's work included effective management of facilities/projects/IT systems in relation to hospitals/ laboratories/transport systems/airports etc., operating Dubai Metro, Manchester Metro Link Tramway, Docklands Light Railways, Mersey Rail in UK etc.

8. The assessee company has also started during the year under consideration, exploring business for maintenance and

operation of road transport, metro rail projects etc. The assessee company had participated in bids/tenders for maintenance and operating road transport and metro rail projects, such as Chennai Metro Rail, BRT Indore etc. The assessee was also successful in getting a contract for maintenance and operations of BRT buses in Indore only during the year.

9. The assessee company has entered into the contract with Atal Indore City Transport Services Limited, Indore vide agreement dated 26-11-2012. From the F.Y. 2013-14, the assessee company has maintained and operated BRT buses in Indore and has not provided IT or IT enabled services to Serco Group. As the assessee company could not obtain more contracts for Maintenance and Operations of road transportation or metro rail despite incurring huge expenditure on manpower and other expenses and incurring losses.

10. It is relevant to note that the Board of Directors of the company in its resolution dated 27th August 2014 has decided to close down the operations of the company in the foreseeable future (as mentioned in Note No. 1(h) of Notes forming part of financial statements for the year ended 31st March 2014) (PB Volume-2 Page 974). Thereafter, all the shares of the assessee-company were sold to M/s Travel Time Car Rental Private Limited and M/s Mahalaxmi Automotives Private Limited by Serco Group vide Share Purchase Agreement executed on 11-03-2015 (PB Volume-1 Pages 661 to 704). Thus, the management & control of the assessee company was taken over by M/s Travel Time Car Rental Private Limited and M/s

Mahalaxmi Automotives Private Limited from Serco Group in March 2015.

11. The Assessing Officer made a reference to TPO to determine the Arm's Length Price (ALP) in respect of International Transactions and Specified Domestic Transactions undertaken by the assessee company with its AEs during the F.Y. 2012-13 under consideration. The TPO vide order u/s 92CA (3) of the Act dated 24.10.2016, has accepted the ALP shown by the assessee, observing that 'no adverse inference is drawn in respect of the International and Specified Domestic Transactions undertaken by the assessee during the F.Y. 2012-13'. Thereafter, the Assessing Officer issued notices u/s 142(1) of the Act.

12. It was submitted that when the assessment proceedings were taken up by the Assessing Officer in the year 2016 after receipt of TPO order, the present management was not able to produce books of account and supporting documents before the Assessing Officer as the same were not available with them.

13. Despite their best efforts to collect the documents from the earlier management, the new management could not obtain the relevant documents from Serco Group UK. In the absence of documents, the Assessing Officer completed the assessment u/s 143(3) of the Act wherein inter-alia an ad-hoc disallowance of Rs. 4,43,77,875/- on account of 20% of net 'other expenses' of Rs. 22,18,89,377/- debited in profit & loss account was made, observing as under:

*"4. On perusal of the financial statement, it is noticed that assessee has incurred a huge amount of other expenses amounting to Rs. 22,39,65,051/- out of which a sum of Rs. 20,75,674/- on account of loss on sale of fixed assets itself being disallowed by the assessee In his computation of income. Therefore, in respect of remaining amount of Rs.22,18,89,377/, the assessee was asked to furnish the details along with the necessary evidences. However, the assessee could not able to furnish the ledger, evidences to support its claim. In the scarcity of the evidences and keeping the nature of business activities in which the assessee is involve, the 20% of the expenditure was disallowed, being excessive nature which is not incurred wholly and exclusively for the purpose of business, keeping the principal of natural justice into the consideration.
(Addition under section 37 of the Act: Rs. 4,43,77,875/-)"*

14. The assessee company filed an appeal before the Ld. CIT(Appeals) against this assessment order. It is submitted that, thereafter, the present management of the assessee company again requested the earlier management, Serco Group UK to provide the necessary documents so that the assessee company can represent the case properly before the Ld. CIT(Appeals) but Serco Group UK has not provided the relevant documents, inter-alia, stating in the mail dated 20-01-2017 that "Your requests in respect to the above have come to the attention of the internal legal team and, as you can appreciate, we are sensitive to the disclosure of data to third parties." (PB Volume-1 Page 9). Thus, despite repeated mails, Serco Group UK has not provided the relevant documents.

15. During the appellate proceedings before the Ld. CIT(Appeals), the assessee company gathered documents in the form of copy of agreements, lease deeds, some invoices and

copy of bank statement of the relevant period evidencing payments against expenses and TDS certificates and furnished before the Ld. CIT(Appeals) (PB Volume-1 Pages 10 to 551) with the request to admit the same under rule 46A of the Income Tax Rules 1962 as the assessee was prevented by sufficient cause from producing these evidences before the Assessing Officer which are relevant to grounds of appeal. Ld. CIT(A) forwarded the additional evidence to the Assessing Officer who has submitted his report. The assessee further filed submissions dated 14.03.2018, 17.04.2018, 07.12.2018, 20.12.2018 and 15.01.2019 along with enclosures as placed in Paper Books Volume-1 & 2.

16. The assessee company has furnished details of other expenses of Rs. 22,18,89,377/- which are consisting of following expenses:

Particulars	Amount (Rs.)
Legal & Professional	4,61,31,711
Payment to Auditors	7,80,500
Rent & Hire charges	6,57,86,425
Repair & Maintenance - others	2,37,09,398
Travelling & Conveyance	4,86,52,982
Communication	48,17,904
Power & Fuel	1,08,87,689
Miscellaneous Expenses	56,12,396
Insurance	9,45,773
Rates & Taxes	6,20,718
Conference Expenses	1,39,43,881
Total	22,18,89,377

17. The assessee has furnished details of the above expenses containing the name and address of the parties, their PAN and

nature of services received along with copy of Form no. 16A, engagement letters, lease deeds, contracts, and some invoices. The assessee has also furnished a copy of the bank statement indicating the payments made to such parties to substantiate that these were actual expenses incurred by the assessee for its business.

18. The Ld. CIT(A) called for copy of ledger account of the assessee in the books of M/s DLF Cyber City Developers which has been furnished in support of rent, repair & maintenance, and electricity expenses.

19. The allocation of various expenses segment-wise was furnished before the Ld. CIT(A), are summarized as under:

Particulars	Management Consultancy Services (AMEAA Centre) - AE Segment	Subletting Segment Non-AE	Other items not allocated	Total	As per Audited Financial Statement - FY 2012-13
Sales					
Sales/Gross Revenue/Fees (15% of cost)	30,77,03,607			30,77,03,607	30,77,03,607
Sales - Total	30,77,03,607	-	-	30,77,03,607	30,77,03,607
Non-operating Income					
Income from Sub-letting	-	7,56,62,520	-	7,56,62,520	7,56,62,520
Net gain on foreign currency transaction			2,85,592	2,85,592	2,85,592
Interest Income	-		48,427	48,427	48,427
Non Operating Income- Total		7,56,62,520	3,34,019	7,59,96,539	7,59,96,539
Operating income	30,77,03,607	"	-	30,77,03,607	30,77,03,607
Total Income	30,77,03,607	7,56,62,520	3,34,019	38,37,00,146	38,37,00,146
Total Cost					

Personnel Expenses	15,07,08,871		4,85,98,973	19,93,07,844	19,93,07,844
Administrative and other expenses	11,54,81,465	7,49,61,474	3,35,22,112	22,39,65,051	22,39,65,051
Finance Cost	-	-	1,81,59,294	1,81,59,294	1,81,59,294
Depreciation	15,72,440	24,97,743	15,64,559	56,34,741	56,34,741
Operating Cost	26,77,62,775				44,70,66,930
Total Cost	26,77,62,775	7,74,59,217	10,18,44,938	44,70,66,930	44,70,66,930
Profit Before Tax	3,99,40,832	(17,96,697)	(10,15,10,919)	(6,33,66,784)	(6,33,66,784)

20. The Ld. CIT(A) has noted that the assessee company is primarily engaged in management consultancy services to its group companies. The assessee has incurred expenses of Rs. 10,18,44,938/- on items not allocated to management services and since, these expenses were also covered by the agreement with the related parties for providing management services and therefore, should have been charged to related parties at a mark-up factor of 15% i.e., Rs. 1,52,76,740/- (15% of Rs. 10,18,44,938/-). Initially the Ld. CIT(A) issued notice of enhancement u/s 251(2) of the Act proposing addition of Rs. 11,71,21,620/- (Rs. 10,18,44,938 + Rs. 1,52,76,740) as against the disallowance of Rs. 4,43,77,875/- made by the Assessing Officer out of other expenses.

21. In response, the assessee submitted that AO has never alleged that these expenses of Rs. 10,18,44,938/- were incurred for rendering management services and no adverse inference was also drawn by the TPO in this respect. Therefore, treating the said expenditure in the nature of management services to overseas group companies was unfounded and not the subject matter of appeal and, hence, the Id. CIT(A) is not

empowered to enhance an income on an issue which was not subject matter of assessment. It was also explained that the assessee has incurred expenditure for exploring new business during the year and participated in tenders/bids for contract of Maintenance and Operations of transport facilities. It was submitted that the assessee during the year participated in a bid for a proposal for maintenance and operation of BRT bus service in Indore and the assessee was awarded with a contract initially for a period of six years and it earned a revenue from the said contract in F.Y. 2013-14 onwards and enclosed copies of request for proposal and copy of agreement signed by the assessee with ATAL Indore City Service Transport Limited. It was brought to the notice of CIT(A) that during F.Y. 2013-14, the assessee earned income of Rs. 5,77,33,632/- from Maintenance and Operation of BRT bus service in Indore.

22. It was explained that the expenditure of Rs. 10,18,44,938/- incurred by the assessee was not connected with rendering management services to overseas group companies and was in connection with non-operative expenses and other business segments of the assessee. Hence, there was no question of charging a mark-up of 15% to the said expenditure.

23. Further, the assessee has explained before the Id. CIT(A) that globally Serco Group is into the transport business to a large extent. The assessee Serco India was also looking out for similar kind of contracts/projects. The assessee has invested time and efforts to get similar kind of projects in India. These expenses were purely incurred for marketing activity, bidding for new projects etc. and these include salary & wages,

allowances of marketing staff allocated for the purpose, hotel cost, conference fees, marketing expenses etc. These expenses were purely incurred to generate new business and to get new projects. Hence, these expenses were incurred for the business of the assessee.

24. After examination of the details filed, not satisfied with the submissions, the Ld. CIT(A) made disallowance of expenses of Rs. 10,18,44,938/- as under:

1. Personnel expenses	Rs. 4,85,98,937
2. Administrative and other expenses	Rs.3,35,22,112
3. Finance cost	Rs.1,81,59,294
4. Depreciation	Rs.15,64,559
Total	Rs.10,18,44,938

25. The Ld. CIT(A) mainly observed that these expenses were incurred in relation to management services provided by the assessee to its AEs and there was no evidence of any such expenditure having incurred for any other activities. It was inter-alia observed that the proposal for Maintenance and Operation of BRT bus services in Indore was floated by the Government Authorities and any such proposal/bidding does not require manpower or employees as claimed by the assessee.

26. During the hearing before us, it was submitted that Ld. CIT(A) is not justified in making disallowance of total non-operating and non-allocated expenses of Rs. 10,18,44,938/- without properly appreciating facts of the case and properly considering the documents furnished during appellate proceedings before him. The assessee company was maintaining

regular books of accounts Transfer Pricing Report was also accepted by the TPO, the Arm's Length Price (ALP) declared by the assessee observing in order that 'no adverse inference is drawn in respect of the International and Specified Domestic Transactions undertaken by the assessee during the F.Y. 2012-13. Thus, the expenses debited to the Profit & Loss Account were genuine expenses incurred wholly and exclusively for the purpose of business.

27. The position of ad-hoc disallowance made by the AO and Ld. CIT(A) is summarized as under:

S. No	Particulars	Disallowance by the AO (Rs.)	Disallowance by Ld. CIT(A) (Rs.)	Difference (Rs.)
1.	Personnel expenses	-	4,85,98,973	4,85,98,973
2.	Administrative and other expenses	4,43,77,875	3,35,22,112	(1,08,55,763)
3.	Finance cost	-	1,81,59,294	1,81,59,294
4,	Depreciation	-	15,64,559	15,64,559
	Total	4,43,77,875	10,18,44,938	5,74,67,063

28. We find that the AO in the assessment order has not disallowed any expense out of Personnel expenses, Finance Cost and Depreciation. Further, no adverse inference was drawn by the TPO with respect to these expenses. The power of Id. CIT(A) is confined to considering the matter which has been considered by the Assessing Officer and determined in the course of assessment. Thus, the Ld. CIT(A) was not justified in raising a new matter to make such disallowance. Therefore, Ld. CIT(A) acted beyond its power by directing the Assessing Officer to make such disallowance which was not subject matter of appeal before him.

29. We find that the Ld. CIT(A) has not properly appreciated the facts of the case and disallowed the expenses under various heads on irrelevant facts. It is pertinent to note that for rendering management consultancy services to its AEs, as per the agreement, the assessee charged mark-up of 15% on the "operating expenses" directly attributable to the services rendered.

30. We also observed that an organization incurs both operating expenses as well as non-operating expenses for running the business. There are certain expenses which are not allocable to a particular activity. Non-allocable expenses even for a management consultancy providing company are costs that cannot be directly attributed to specific projects or client engagements and therefore cannot be allocated on a project-by-project basis. These expenses are more general in nature and are incurred to support the overall operations of the company rather than any particular client work. Some examples of non-allocable expenses that a management consultancy company normally incur:

- (i) **Administrative Salaries**: Salaries of employees who handle administrative tasks such as human resources, accounting, finance, and general office management.
- (ii) **Office Supplies**: Expenses related to office supplies like stationery, printers, copiers, and other necessary equipment.
- (iii) **Marketing and Advertising**: Costs associated with marketing campaigns, website maintenance,

branding, and promotional activities that benefit the overall company rather than specific projects.

- (iv) **Insurance Premiums**: Payments for insurance coverage to protect the company against risks, such as liability insurance, property insurance, and workers' compensation insurance.
- (v) **IT Infrastructure**: Expenses related to maintaining and upgrading the company's IT systems, software licenses, and technology infrastructure.
- (vi) **General Travel Expenses**: Travel costs that are not directly associated with client engagements, such as attending industry conferences or internal company meetings.
- (vii) **Employee Benefits**: Expenses related to providing employee benefits like health insurance, retirement plans, and other perks.
- (viii) **Legal and Professional Fees**: Payments to lawyers, consultants, and other professionals for legal and advisory services that benefit the company as a whole.
- (ix) **Depreciation**: The gradual reduction in the value of the company's assets over time, such as office furniture and equipment.
- (x) **Bank Fees and Interest**: Charges related to banking services, loans, and interest paid on borrowed funds.

- (xi) **Audit Fee:** Charges related to statutory audit, Tax Audit Report, and other such reports for the company as a whole.

31. These non-allocable expenses are essential for the overall functioning and sustainability of the company, even though they cannot be assigned to individual client projects.

32. The details of operating expenses and non-operating non-allocable expenses incurred by the assessee in earlier two years and current year as submitted by the Id. AR are as under:

F.Y. 2010-11 (A.Y. 2011-12)

	ITES - Segment	Management Services	Other - Non allocated	Total
Personnel Expenses	1,79,93,138	3,94,75,617	4,27,56,174	10,02,24,929
<i>Percentage</i>	<i>18%</i>	<i>39%</i>	<i>43%</i>	<i>100%</i>
Administrative and other expenses	5,98,92,641	2,83,41,260	9,57,89,063	18,40,22,964
<i>Percentage</i>	<i>33%</i>	<i>15%</i>	<i>52%</i>	<i>100%</i>
Depreciation	9,04,087	8,23,579	19,33,683	3661349
Finance Expenses	-	560422	6,63,858	1224280
Total	7,87,89,866	6,92,00,878	14,11,42,778	28,91,33,522
<i>Percentage</i>	<i>27%</i>	<i>24%</i>	<i>49%</i>	<i>100%</i>

F.Y. 2011-12 (A.Y. 2012-13)

	ITES - Segment	Management Services	Other - Non allocated	Total
Personnel Expenses	2,39,01,784	10,21,91,892	4,62,81,722	17,23,75,398
<i>Percentage</i>	<i>14%</i>	<i>59%</i>	<i>27%</i>	<i>100%</i>
Administrative and other expenses	2,38,78,369	6,48,51,085	10,32,10,511	19,19,39,965
<i>Percentage</i>	<i>12%</i>	<i>34%</i>	<i>54%</i>	<i>100%</i>
Depreciation	-	18,76,632	34,87,532	53,64,164
Finance Expenses	-	1962263	1,13,41,858	1,33,04,121
Total	4,77,80,153	17,08,81,872	16,43,21,623	38,29,83,648
<i>Percentage</i>	<i>12%</i>	<i>45%</i>	<i>43%</i>	<i>100%</i>

F.Y. 2012-13 (A.Y. 2013-14)

	Management Services	Other - Non allocated	Total
Personnel Expenses	15,07,08,871	4,85,98,973	19,93,07,844
<i>Percentage</i>	<i>76%</i>	<i>24%</i>	<i>100%</i>
Administrative and other expenses	11,54,81,465	10,84,83,586	22,39,65,051
<i>Percentage</i>	<i>52%</i>	<i>48%</i>	<i>100%</i>
Depreciation	15,72,440	40,62,301	56,34,741
Finance Expenses	-	1,81,59,291	1,81,59,291
Total	26,77,62,776	17,93,04,151	44,70,66,927
<i>Percentage</i>	<i>60%</i>	<i>40%</i>	<i>100%</i>

33. From the above, it can be found that there have been non-operating non-allocable expenses in the range of 40% to 49% in these years and the position of the current year is also consistent with that of earlier years.

34. Therefore, even on merits, we hold that the Ld. CIT(A) is not justified in allowing only 'operating expenses' allocable to the segment of rendering management consultancy services and direct expenses on sub-letting and disallowing all the non-operating and non-allocable expenses incurred by the assessee company.

35. Further, it is essential to note that during the year under consideration the assessee company has also started expansion of its business activities towards maintenance and operation of transport such as road transport, rail transport etc. It is evident from the details of expenses furnished by the assessee that the assessee has incurred expenses as fees for professional services for bidding for Metro Rail projects and Road Transport projects, such as Chennai Metro Rail Project-legal fee paid to India Law Partners (refer PB Volume-1 Page 12, 59 & 60), BRT Bus projects. It is also noted from the Indore BRTS Bus Operations and Maintenance Agreement dated 26.11.2012 (refer PB

Volume-2 Pages 962 to 965) entered by the assessee that ATAL Indore City Transport Services Limited, Indore (AICTSL) had issued a request for proposal (RFP) in May 2012 for maintenance and operation of BRT buses in Indore and Serco India along with other interested bidders submitted bid proposals in August 2012. Pursuant to the evaluation of technical and financial bids submitted by various parties, AICTSL awarded the Letter of Acceptance dated 05.09.2012 in favour of the assessee company. The agreement for Indore BRTS Bus Operation and Maintenance was executed on 26.11.2012. These activities clearly demonstrate that the assessee had incurred expenses for preparing technical and financial bids for obtaining contracts for maintenance and operation of BRT buses in Indore. Similarly, assessee had incurred expenses in preparing bids for metro rail and other road transport projects. The assessee was also successful in getting contract during the year related to Indore BRT Bus Operations and Maintenance of 50 buses for an initial period of six years.

36. Hence, it is hereby held that the CIT(A) was not justified in disallowing non-operating non-allocated expenses and expenses incurred for exploring new business in the line of Maintenance and Operations of Transportation by the assessee.

37. Having held so, we find it relevant to discuss each disallowance of expenses made by the Ld. CIT(A) hereinunder:

Personnel Expenses of Rs. 4,85,98,973/-:

38. The Ld. CIT(A) has disallowed Rs. 4,85,98,973/- out of personnel expenses mainly observing that there was a marginal increase in salary and wages from Rs. 15,66,32,538/- in F.Y. 2011-12 to Rs. 17,74,23,534/- in F.Y. 2012-13 and further that the proposal for maintenance and operations of BRT bus services in Indore was floated by the Government Authorities and any such proposal of bidding does not require manpower or employees as claimed by the assessee for which the assessee would have paid Rs. 4,85,98,973/- and that there was no evidence of any such expenditure having been incurred on any other activity.

39. The marginal increase in salary & wages from earlier year that as mentioned above, in earlier years also there were non-operating and non-allocable personnel expenses of about 43% in F.Y. 2010-11 and about 27% in F.Y. 2011-12 respectively whereas in the year under consideration, non-allocable personnel expenses were 24% only. The observation of Ld. CIT(A) that for getting contract of BRT bus services does not require manpower or employees is not tenable. The assessee has to prepare technical bid and financial bid to file tender for obtaining contract of BRT bus services in Indore which were required to be competitive with other bidders/parties and therefore, the assessee has to employ special manpower and lot of time and effort was involved in preparing the bids. These activities also required availing of consultancy services as well as traveling and other expenses.

40. The Indore BRTS Bus Operations and Maintenance Agreement dated 26.11.2012 that ATAL Indore City Transport Services Limited, Indore (AICTSL) had issued RFP in May 2012 for maintenance and operation of BRT buses in Indore and Serco India along with other interested bidders submitted bid proposals in August 2012.

41. The Letter of Acceptance was dated 05.09.2012, loans issued in favour of the assessee company was executed on 26.11.2012. These activities clearly demonstrate that the assessee had incurred expenses for preparing technical and financial bids for obtaining contracts for Maintenance and Operation of BRT buses in Indore. Further, the assessee had also participated in bid for Maintenance and Operation of Chennai Metro Rail. The assessee was successful in getting one contract during the year related to Indore BRT Bus Operations and Maintenance of 50 buses for an initial period of six years.

42. It is a fact on record that the assessee company has received income from BRT Indore in subsequent years as under:

	<i>(Amount in Rs.)</i>				
	F.Y. 2013-14	F.Y. 2014-15	F.Y. 2015-16	F.Y. 2016-17	F.Y. 2017-18
Service income from ATAL Indore	5,77,33,632/-	11,20,94,413/-	10,44,51,559/-	10,46,29,867/-	10,13,71,802/-

43. There were other employees also who were looking after the general administration of the company and their salary & wages were not allocable to a specific segment.

44. It is also a trite law that Income Tax Authorities cannot step into the shoes of the businessmen to determine as to how

much expenditure should have been incurred for the purpose of business.

45. In view of the above, we hold that the Ld. CIT(A) was not justified in disallowing total non-operating and non-allocable personnel expenses of Rs. 4,85,98,973/-.

Administrative and other expenses of Rs, 3,35,22,112/-:

46. The Ld. CIT(A) has disallowed Rs. 3,35,22,112/- out of Administrative and other expenses as against disallowance of Rs. 4,43,77,875/- made by the Assessing Officer. Ld. CIT(A) observed that the assessee did not furnish evidence regarding the genuineness of the claim that these expenses were at all incurred or were related to particular business activity other than the management consultancy services being provided to the AEs.

47. It was argued that the Ld. CIT(A) were not justified in making disallowance out of "other expenses" on the grounds that the assessee did not furnish any evidence regarding genuineness of these expenses. The assessee submitted that proceedings before the Ld. CIT(A), they have furnished details of other expenses along with Name, Address, and PAN of the Parties, Amount paid, TDS deducted, copies of Form No. 16A, copy of Engagement Letter, copy of Lease Deed, copy of Contracts and also copy of bank statement highlighting the payments on various dates to these parties demonstrating that all the expenses incurred on various items under the head 'Other expenses'. The assessee has also furnished copy of account of the assessee company as appearing in the books of

DLF Cyber City Developers Limited and sample copy of invoices raised by M/s DLF Cyber City Developers Limited and M/s Rentworks India Private Limited.

48. From the details of expenses furnished, it is clear that certain expenses were incurred for expansion of the business other than the main segment of Management Consultancy services such as the assessee has engaged the services of KPMG to assist the assessee company in reaching out to other potential target companies in sectors namely Transportation, Healthcare and Education and paid fee for such advisory services (refer PB Volume-1 Page 12 and Pages 40 to 58). Another payment of fees for professional services for Chennai Metro Rail Projects was given to M/s Indian Law Partners (refer PB Volume-1 Page 12 and Pages 59 & 60). These instances clearly prove that the assessee has incurred 'other expenses' on business activities other than the main segment of rendering management consultancy services.

49. It is noted that no material has been brought on record by Ld. AO or Ld. CIT(A) to hold that the expenses debited by the assessee company were not genuine.

Finance Cost of Rs. 1,81,59,294/-:

50. The Ld. CIT(A) has disallowed total finance cost of Rs. 1,81,59,294/- observing that these expenses were on account of inter-corporate deposits and finance lease obligation outstanding for a number of years and have nothing to do with business development activities related to maintenance and operation of BRT bus services Indore which were claimed to

have been carried out during the current year and therefore, it is evident that these expenses are related to management services being provided by the assessee to its AEs. It was also observed that some of the expenses were reimbursed on a cost basis and therefore, these expenses were reimbursed at cost and thus, no net expenditure was incurred by the assessee on this account.

51. The assessee has incurred finance cost in respect of the following:

(a) Interest on Inter-Corporate deposit of Rs. 1,61,40,274/-

The assessee company has obtained inter-corporate deposit from its related party Serco BPO India Private Limited in earlier years and paid interest @12% during the year at Rs. 1,61,40,274/-. These funds were utilized for business purposes.

(b) Interest on Finance Lease of Rs. 20,19,020/-

The assessee had entered into finance lease with OAIS Auto Financial Services Ltd. for the cars taken on finance lease and has incurred interest expense of Rs. 20,19,020/-. These cars were used for general business purposes of the company.

Depreciation of Rs. 15,64,559/-:

52. The Ld. CIT(A) disallowed non-allocable depreciation of Rs. 15,64,559/- observing that the assessee has merely filed consolidated depreciation schedule pertaining to total assets owned by the company and the allocation of depreciation

pertaining to management services being provided to the AEs was not genuine.

53. It was submitted that depreciation allocable to the main segment of rendering management consultancy services was allocated at Rs. 15,72,440/- and to sub-letting segment of Rs. 24,97,743/- out of total depreciation as per books of Rs. 56,34,741/-. The balance depreciation of Rs. 15,64,559/- was on other items not allocable to any particular segment. Therefore, the Ld. CIT(A) was not justified in disallowing depreciation of Rs. 15,64,559/- on the assets used for the purpose of business.

54. However, it is pertinent to mention that the total depreciation of Rs. 56,34,741/- was as per books and which was added back in the computation of income and the assessee has claimed depreciation as per Income Tax Act of Rs. 14,97,543/- only, which is less than the amount of depreciation of Rs. 15,72,440/- charged from AEs for management consultancy services (refer PB Volume-2 Page 1094). Therefore, on this account, no disallowance was required to be made. Hence, disallowance out of depreciation of Rs. 15,64,559/- be deleted.

Ground Nos. 3 to 5

Sundry Creditors:

55. These grounds are against the addition of Rs. 11,73,19,373/- made u/s 68 of the Act on account of difference in opening balance and closing balance of sundry creditors (Trade Payables).

56. In this case, the AO noted that the assessee company has shown closing balance of sundry creditors (trade payables) at Rs. 21,17,67,393/- as against opening balance of Rs. 9,44,48,020/-. Hence, there was a difference of Rs. 11,73,19,373/-. The Assessing Officer observed that the assessee failed to furnish the details of creditors along with confirmations and therefore, the AO made addition of Rs. 11,73,19,373/- u/s 68 of the Act.

57. During the appellate proceedings before Ld. CIT(A), the assessee has furnished details of sundry creditors (trade payables) outstanding as on 31.03.2013 as under:

Particulars	Amount (INR) (Closing balance of	Particulars
Salary payable to Indian employees (for the month of March 2013)	39,43,649	Table B.1
Inter-company payables	17,51,45,528	Table B.2
Other trade creditors	3,39,566	Table B.3
Provision for expenses made at the end of the year	3,22,02,348	Table B.4
Liability on account of stale cheques	5,16,603	
Foreign exchange fluctuation on inter- company payable	1,36,302	
Total	21,17,67,393	

58. In Table B.1 to B.4, party-wise details were also submitted before the CIT(A) (refer PB Volume-1 Pages 22 to 31). The assessee has also furnished details of subsequent payments made to the parties against provision of expenses of Rs. 3,22,02,348/- highlighting in the bank account statement of subsequent financial year (refer PB Volume-1 Pages 554 to 557 and Pages 769 to 785) along with copies of TDS certificates

wherever applicable. It was explained that trade payables to M/s Serco UK (Inter-corporate payables) was on account of reimbursement of part-salary of assessee's expatriate employees paid by Serco UK on behalf of the assessee. The assessee has also furnished evidence regarding payment of trade payables on 26.02.2015 and furnished copy of Form No. 15CA along with relevant copy of bank account statement (refer PB Volume-1 Pages 552 & 553 and 709 to 712; PB Volume- 2 Pages 806, 807 & 843).

59. The Ld. CIT(A) confirmed the addition u/s 68 of the Act of Rs. 11,73,19,373/- made by the AO observing that no supporting evidence to prove the genuineness of credit balance was furnished by the assessee. He further noted that as per the agreement between the assessee and its AEs to which the assessee had provided services, the expenses were reclaimed by the assessee on cost plus basis with a markup factor of 15%. In these circumstances any salary payable to expats was recoverable by the assessee with a markup factor of 15%. There is, therefore, no net liability in the hands of the assessee for payment of salary payable to expats to its AE. Moreover, these creditors on account of company payables have been shown to be accumulating from F.Y. 2010-11 onwards and continued as such in the accounts of the assessee upto the year 2014 and were thereafter claimed to have been settled through and in accordance with the terms of the share purchase agreement dated 11.03.2015. The Id. CIT(A) held that it is highly improbable that no payment was adjusted by the AE against this liability when the assessee raised its bills on cost plus basis.

60. Regarding the credit balance on account of provisions created amounting to Rs. 3,22,02,348/-, Ld. CIT(A) stated that no evidence was submitted to prove the genuineness of these creditors and on what basis these provisions were created. The Id. CIT(A) held that mere claim of payment of these creditors through bank does not prove that the creditors were in fact genuine. The genuineness of the sundry creditors claimed by the assessee was therefore not established. It was also mentioned that the assessee failed to furnish confirmations from creditors. With these observations, Ld. CIT(A) confirmed the addition of Rs. 11,73,19,373/- u/s 68 of the Act made by the Assessing Officer.

61. It is submitted that Assessing Officer erred in making addition of Rs. 11,73,19,373/- u/s 68 of the Act on account of difference in opening balance and closing balance of sundry creditors during the year without properly appreciating the facts of the case and legal position on the issue and Ld. CIT(Appeals) also erred in confirming the addition u/s 68 of the Income Tax Act.

62. The addition is not sustainable on account of the following factors:

(i) Factually, sundry creditors as on 31.03.2013 of Rs. 21,17,67,393/- were genuine.

(ii) Legally, no addition can be made u/s 68 of the Act on account of difference in opening balance and closing balance of sundry creditors.

63. First, it was submitted that sundry creditors payable as on 31.03.2013 of Rs. 21,17,67,393/- were genuine. The assessee has furnished details of sundry creditors before the Ld. CIT(A). The major amount of Rs. 17,51,45,528/- of sundry creditors (trade payables) was towards Serco UK. It is submitted that the assessee company had recruited some expatriate employees who were released by Serco UK. The assessee company had also entered into a Salary Reimbursement Agreement with Serco UK in January 2010 (PB Volume-3 Pages 1120 to 1125). As per this agreement, for administrative convenience only and at the request of the assessee company, Serco UK agreed to pay to Serco India employees' part of salary in foreign currency on behalf of Serco India. The foreign currency salary paid by Serco UK to assessee's employees on behalf of the assessee shall be reimbursed by the assessee to Serco UK on cost-to-cost basis. Accordingly, Serco UK has been paying part salary to the expatriate employees recruited by the assessee company and it was payable as reimbursement of salary to Serco UK. It may also be pertinent to mention that salary reimbursement payable to Serco UK has been shown regularly by the assessee as international transaction between AE in the TP Reports and has been examined by the TPO. Thus, the observation of the Ld. CIT(A) that the assessee was providing services to its AEs on cost plus mark-up of 15% and there should be no liability in the hands of assessee for salary payable to expats to its AE is not based on proper appreciation of facts of the case. It may be noted that the assessee company has rendered Management Consultancy Services to other Associate Enterprises such as Serco Group Pty Limited Australia and Serco Limited Dubai. The assessee company had not made any payment to Serco UK for

reimbursement of part salary paid in foreign currency by Serco UK on behalf of the assessee and therefore, the amount payable to Serco UK has increased. Therefore, there was trade payables of Rs. 17,51,45,528/- to Serco UK as on 31.03.2013. This trade payables to Serco UK have increased in Indian Rupees to Rs. 19,21,00,000/- mainly due to the increase in the exchange rate of UK Pound.

64. It is also submitted that in para 4.12 of 'Share Purchase Agreement' (PB Volume-1 Pages 661 to 704) it is stated that "As per disclosure made in audited financial accounts of the Company for the financial year 2013-14, an amount of INR 19,21,00,000 (Indian rupees nineteen crores and twenty one lakhs) is due to Serco Limited, UK, which is a group company. The Company shall and the Sellers shall procure that the Company shall provide the Purchasers with proof of remittance indicating the discharge of liability to the group company."

65. Accordingly, the trade payables of GBP 1,923,958 in the case of Serco Limited, UK has been paid in February 2015 by remittance through HSBC Bank (refer PB Volume-2 Page 843 and Copy of Form 15CA evidencing such remittance are at PB Volume-1 Pages 705 to 712).

66. As regards Provision for expenses made at the end of the year of Rs. 3,22,02,348/-, that the assessee has been maintaining its books of accounts on accrual basis and therefore, the assessee has to make provisions for expenses accrued during the year. The assessee has furnished details of these provisions in Table B.4 (PB Volume-1 Page 31) and also details of subsequent payments made mainly in the next quarter

up to June 2013 to these parties from the statement of bank account (PB Volume-1 Pages 554 to 557 and Pages 769 to 785) along with TDS certificates (PB Volume-1 Pages 727 to 768). There is no contrary material on record to suggest that these were non-genuine expenses. The other liabilities of trade payables were also paid in the subsequent financial year.

67. It is also evident from the fact that trade payables as on 31.03.2015 were of Rs. 33,85,497/- only, as shown in the Audited Balance Sheet of the assessee company for F.Y. 2014-15 which was nominal (PB Volume-2 Page 852). This fact also establishes that the sundry creditors (trade payables) were subsequently paid and were genuine.

68. Hence, on consideration of above-mentioned facts, we hold that no addition is called for u/s 68 of the Income Tax Act 1961 of Rs. 11,73,19,373/- on account of unexplained increase in sundry creditors in the books of account during the previous year.

69. In the result, the disallowance of Rs. 10,18,44,938/- out of the expenses and addition u/s 68 of Rs. 11,73,19,373/- made on account of difference in opening balance and closing balance of sundry creditors is hereby deleted.

70. The appeal of the assessee is allowed.

Order Pronounced in the Open Court on 08/11/2023.

Sd/-
(Astha Chandra)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 08/11/2023

Subodh Kumar, Sr. PS