INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 3897/Del/2015
Asstt. Year: 2010-11

DCIT, Circle 10(1), New Delhi.	Vs.	G4S IT Services India Pvt. Ltd., Panchwati, 82-A, Sector-18, Gurgaon 122016 PAN AAACG6561B
(Appellant)		**(Respondent)**

Department by:	Shri Surender Pal, Sr.DR
Assessee by :	Shri Arvind Rajan, Adv.
Date of Hearing	10/09/2018
Date of pronouncement	03/10 /2018

O R D E R

PER L.P. SAHU, A.M

This is an appeal filed by the revenue against the order of the Ld. CIT(Appeals)-15, Delhi dated 18.3.2015 for the assessment year 2010-11 on the following grounds :-

"1.Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 84,07,826/- made on account of excess claim of managerial remuneration.

2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 55,28,763/- made on account of inflation of loss."

2. Brief facts of the case are that assessee filed return of income declaring a loss of Rs. 2,90,42,912/- on 12.10.2010. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee is engaged in the business of providing IT services. During the course of scrutiny proceedings, the AO observed from the financial statements that the auditor has commented on the managerial remuneration which was excessively claimed by the assessee company. The auditor's comment is as under :-

"attention is drawn to note 1(b) of Schedule 17 where it is mentioned that the Company was set up as a subsidiary of G4S Holding India Limited, a private company incorporated in U.K. with G4S Plc. UK becoming holding company with effect from 8 July 2008. The remaining shares of the Company were being held by G4S Corporate Services (India) Pvt. Ltd. a subsidiary of the holding company until 14 March, 2010. The share so held were transferred to Group 4 Falck Finance PV Netherlands, on 15 March, 2010. The Company contends that the provisions of sub section (7) of Section 4 of the Companies Act 1956 did not get attracted until 8 July 2008, as the majority shareholders of the Company is held by G4S Holding India Ltd. which if incorporated in India would be a private limited company and therefore believes that such provisions were applicable for the period 8 July, 2008 to 14 March 2010. However, in our opinion, the provisions of sub section (7) of Section 4 of the Companies Act, 1956 are attracted till 14 March 2010 as G4S Plc. UK the holding company with effect from 8 July, 2008 (ultimate holding company prior to 8 July, 2008), if incorporated in India would have been a public company and some of the shares were being held by an India company until 14 March, 2010. Consequently the Company cannot avail the exemption and privileges of private companies under the Companies Act, 1956 until 14 March, 2010. We have verified compliance with the provisions of the Companies Act 1956 which have an impact on the Financial Statement of a subsidiary of the public company and have found the Company to be in compliance with such provisions during the period 1 April 2009 to 14 March, 2010 and for the year ended 31 March, 2009 except for managerial remuneration aggregating Rs. 84,07,826/- and Rs. 1,10,02,670/- paid during the period 1 April 2009 to 14 March, 2010 and for the year 31 March, 2009 respectively which is in excess of applicable limits specified in Schedule XIII of the Companies Act, 1956 and necessary Central Government approval in this regard is yet to be obtained.

Accordingly, personnel expense and loss before tax has been overstated for the year ended 31 March, 2010 and 31 March, 2009 by the above amounts respectively. Consequently, provision for tax as on 31 March, 2010 and 31 March 2009 on cumulative basis is understand by Rs.22,32,344/- respectively. Also loss after tax has been overstaed by Rs. 84,07,826/- and Rs. 1,10,02,670/- for the year ended 31st March, 2010 and 31 March, 2009 respectively. Further advances recoverable cash or in kind of cumulative basis as of 31 March, 2010 and 31 March, 2009 have been overstated by Rs. 3,44,64,331/- and Rs. 2,60,56,505/- respectively and debit balance to the Profit and Loss Account for the year ended 31 March, 2010 and 31 March, 2009 have been overstated by Rs. 3,22,31,987/- and Rs. 2,38,24,161/- respectively.

Further, we are unable to comment of the compliance with all other provisions which may be required of a subsidiary of a public company under the Companies Act, 1956 during the relevant period and during the year ended 31 March, 2009."

3. In this regard the assessee had submitted that the managerial remuneration has been correctly paid but from the submissions made by the assessee the Ld. AO was not satisfied and concluded that the payment of remuneration was not as per section 4(7) of the Companies Act, 1956. The Ld. AO observed that the holding company is a foreign company which is not incorporated in India and the status of subsidiary company which is incorporated in India shall be deemed public Limited company irrespective of the fact that interest of public is not substantially involved in that company. He also examined the share holding pattern of the company and as per section 4(7) of the companies Act held that the assessee is a deemed public limited company and as per actual status of the assessee company the benefits provided for a private limited company cannot be allowed to the assessee company. The share holding pattern in the company is as under.

Company Name	Shareholding upto 14-03-2010 (equity share of Rs. 10 each)	% of Share Holding	Shareholding from 15.3.2010 to 31.3.2010 (equity share of Rs. 10 each)	% of share holding
G4S Holding India Limited (formerly known as Group 4 Flack Investments Ltd.), Jersey	25000	0.71%	25000	0.71%
G4S Corporate Services (India) Pvt. Ltd.	10	0.00%		
G4S Plc, UK	3497800	99.29%	3497800	99.29%
G4S India Holdings (NL) BV (formerly known as Group 4 Falck Finance B.V.) Netehrlands			10	0.00%
	3522810	100	3522810	100

From the above table it is clear that the 99.29% shares were held by G4S Plc. UK the holding company of G4S Holding India Ltd. and only 0.71% shares were held by G4S Holding India Ltd. The G4S Plc. UK was incorporated in UK.

4. Further the ld. A.O. observed that the auditor of the company has also made comments regarding inflation of loss. In this regard assessee has submitted that he has rightly claimed that the assessee recognised the income amounting to Rs. 55,28,763/- in the assessment year 2009-10 as per its contract with the customer. During the year under consideration the assessee settled its dues with the customer and in that process, has written off bad debts amounting to Rs. 46,73,036/- and it has been considered at the time of finalising the income tax return for the assessment year 2009-10 but from the reply of the assesee he was not satisfied and he accepted the

comments made by the auditor of the company that the assessee has not followed the Accounting Standard-9 issued by the Institute of Chartered Accountant of India. He further observed that the assessee is maintaining mercantile system of accounting therefore excess remuneration of Rs. 55,28,763/- was added back to the income of the assessee.

5. Feeling aggrieved from the order of the Ld. AO the assessee appealed before the Ld. CIT(A) and he also filed detailed written submissions. Ld. CIT(A) after considering the submissions of the assessee, allowed the appeal of the assessee.

6. Feeling aggrieved from the order of the Ld. CIT(A) , revenue is in appeal before the Income Tax Appellate Tribunal.

7. Ld. DR submitted that the Ld. CIT(A) is not justified in deleting the additions made by the AO. The Ld. AO has examined the issue in detail. The assessee is a deemed public limited company in India as per section 4(7) of the Companies Act 1956. Therefore the assessee should have followed the procedures as laid down for the managerial remuneration as per Companies Act, 1956. He further submitted that the auditor of the company has also given adverse comments in regard to the payment of managerial remuneration whereas the Ld. CIT(A) did not examine this issue in detail. He simply allowed the appeal of the assessee as per section 37(1). Further in respect of ground No. 2, Ld. DR relied upon the order of the AO and submitted that the assessee has not followed the Accounting Standard 9 on revenue recognition issued by the Institute of Chartered Accountant of India. The company is bound to follow the Accounting Standard which are applicable in the relevant year. Therefore the finding of the AO should be restored.

8. On the other hand Ld. AR reiterated the submissions made before the Ld. CIT(A) and further submitted that on the similar facts and circumstances in the case of sister concern, the ground No. 1 has been allowed by the coordinate bench of the Tribunal in ITA No. 2086/Del/2014 for asstt. year 2010-11 vide order dated 28.11.2016 and further in respect of ground No. 2, Ld. AR of the assessee submitted that the same amount of Rs. 55,28,763/- had been considered while finalising income tax return for the assessment year 2009-10. Therefore the double addition is not warranted. Ld. CIT(A) has rightly discussed this issue in detail in his order and accordingly allowed the appeal of the assessee.

9. After hearing both the sides and the material available on record, we observe that the issue involved in ground No.1 has been decided by co-ordinate Bench of Tribunal in favour of the assessee in ITA No. 2086/Del/2014 (A.Y. 2010-11) in the case of DCIT vs. M/s. G4S Corporate Services (I) Pvt. Ltd. vide order dated 28.11.2016. The findings of the Tribunal are as under :-

> "5. We have heard the rival submissions and have perused the relevant material on record, we find that the CIT(A) has dealt with the issue elaborately and has arrived at his conclusion at paras 6 to 6.9 of his order which is being reproduced hereinbelow for ready reference :-
>
> *"6. I have carefully considered the facts of the case in the light of the above submissions made by the appellant, the provisions of Companies Act 1956 and the applicable provision of the Act. Accordingly, my decision in the matter is as*
>
> *6.2 On careful consideration of the facts of the case, I find that the Ld. AO has deemed the appellant as a Public Limited Company and held that the provision of Section 4(7) of the Companies Act 1956, squarely applied in its case and held that in view of the same as the appellant had not sought the approval of*

the competent authority under the Companies Act 1956, its claim for increase in managerial remuneration of Rs.1,54,04,980/- to the 2 managing directors was not allowable. In holding so, the Ld. AO has disregarded the plea of the appellant that 99.98% shares were held by M/s GHI, a foreign private limited company, while 02% shares were held by MSPL, an Indian private limited company, by holding that both GHI and MSPL were ultimately held by M/s G4S Plc.(UK), which is a public limited company. The Ld. AO, in view of the same, held that 'the benefit provides for a private limited company in India, cannot be allowed to the assessee company.'

6.3 Without prejudice to the rival claim in respect of applicability of provisions of Section 4(7) of the Companies Act 1956, in my view any claim of expense made under the head "Profits and gains of business or profession" need to pass through the basic tests laid down u/s 37(1) of the Act, subject to certain over-riding provisions such as Sections 43B, 40A(3), 40A(2)(b) and 40(a)(ia). There are a **few** *provisions where specific provisions of other statutes over-ride the* **provisions of** *the Income Tax Act. For example, the provisions* **of** *Section 36(l)(va) read with Section 2(24)(x) provide for allowing the claim* **of** *payment* **of** *employees' contribution to ESI and P.F., only if made within the due date as per those statutes. However, even in case of the same, it was held that by the Delhi High Court in the case of* **CIT Vs Aimil Ltd.** *and others* **(2007) 229 CTR (Del) 418** *and the Supreme Court of India in the case of* **CIT Vs Alom Extrusions Ltd. (2009) 227 CTR (SC) 470** *that such disallowance cannot be made where such contribution was not paid within the due date prescribed under the ESI and the PF Acts, if the payment has been made within the due date of filing the return of income. It is evidently clear that there is no specific provision under the Act which requires the managerial remuneration to be approved by the Central Government, in order to be allowed under the provisions of Section 37(1) and such claim has to pass through the commercial tests of business expediency and the condition laid down u/s 37(1).*

6.4 In the case of the appellant, it is undisputed that the appellant's income was shown under the head "Profits and gains of business or profession" and has been accepted by the AO as such without any difference of opinion. Therefore, the most important factor for allowing the claim is to see if the conditions

prescribed u/s 37(1) are satisfied. The provisions of Section 37(1) read as under:-

> ***"Any expenditure (not being expenditure of the nature described in Section 30 to 36 and not being in the nature of capital expenditure true or personal expenses of the assessee), laid out or expanded wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".***
>
> ***(Explanation - For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business: or profession and no deduction or allowance shall be made in respect of such expenditure."***

It is a settled law that for the purpose of the Income Tax Act, only 'real income' as taxed. Such an income is to be computed as per the provision of the Act. Under the Income Tax Act, 1961, there is no provision that in order to allow managerial remuneration, the amount of the claim shall be restricted to the extent the competent authority under the Companies Act,.1956 have granted the approval. Therefore, whether or not the appellant company is a Public Limited Company or otherwise, within the meaning of Section 4(7) of the Companies Act, is an extraneous criterion to determine the allowability of the claim of managerial remuneration u/s 37(1) of the Act. The Ld. AO in the detailed assessment order has not given any adverse finding whether the expenditure was the one which is of the nature described in 30 to 32 or was in the nature of a capital expenditure or a personal expenditure, which was not laid down or expending wholly and exclusively for the purpose of the business of the appellant. The Ld. AO has also not made the case that such a payment was unreasonable or excessive within the meaning of Section 40A(2)(b). The reasoning behind Ld. AO's the action of making the disallowance was that 'the benefit provides for o private limited company in India, cannot be allowed to the assessee company.' However, evidently, under the Income Tax Act, there is no benefit available to private limited company

regarding allowance of claim of managerial remuneration u/s 37(1) as compared to a private limited company. Therefore, this reasoning alone does not help in making disallowance.

Under the circumstances, the action of the Ld. AO of disallowing the managerial remuneration by deeming the appellant company as a Public Limited Company, based only on the observations made by the auditors in the notes to accounts, lacks the required legal force.

6.5 Moreover, in view of the settled legal position that the AO cannot sit in the , shoes of the businessman, the Ld. AO had no locus standii to hold that the appellant ought not to have increased the managerial remuneration. In view of the facts of the case, as evidenced by the terms of agreement of the appellant with its clients, it is evident that the appellant was to get 10% mark-up on the net expenses incurred by it. During the year as against the net **expenses** *of Rs.8,63,80,173, the appellant had earned an. amount of Rs.85,83,597 towards the 10% mark-up charges. Therefore, even though the appellant may have paid additional managerial remuneration of an amount of Rs.1,54,04,980 to its directors, its income has increased by 10% of the same amount. Accordingly, if comprehensively taken, the appellant's income has increased commensurately by increasing managerial remuneration and even the revenue stands benefited by such an increase in managerial remuneration. Therefore, the appellant in its business prudence took a view to increase managerial remuneration (which was fully recovered from its clients) and on which additional 10% mark-up was realized by it. In view of the same, the action of the AO based only on the auditor's comments without taking business prudence and commercial expediency is not sustainable.*

6.6 Without prejudice to the above, the observations made **by** *the auditors in the notes to accounts, which is the sole ground behind the disallowance made by the Ld. AO, are also not free from dispute. In any case, the auditor's notes are no more than mere compliance by them with the required due disclosure norms as the provisions of Companies Act, 1956, while finalizing accounts. However, these comments are not statutorily binding on the Ld. AO, who, in order to make the assessment of income, has to make independent investigation in order to reach to the conclusion for determining the taxable income by utilizing quasi-judicial powers*vested upon him. Moreover, the Ld. AO has not*

*brought any evidence on z o '**2** that the competent authority under the Companies Act, 1956, have taken any adverse cognizance of the aforesaid notes of auditors and have taken any penal actions under that Act or directed the directors to refund the excess - managerial remuneration to the company. Under the circumstances, the action of the AO in making disallowance under the Income Tax Act, 1961 appears unreasonable.*

6.7 On careful consideration of the facts of the case, I find that the appellant company is a body corporate incorporated as a private limited company under the Companies Act, 1956. The share holding pattern of the appellant company shows that 99.98 % of the share of the appellant company were held by G4S holding India Ltd. (hereinafter referred "GSI"), which is a foreign company registered in Jersey, while 0.02% of the share holding is held by an Indian Private Ltd. Company M/s Monitron Security Pvt. Ltd. (hereinafter referred to MSPL). The said M/s MSPL and M/s GSI were both wholly owned by M/s G4SPIc. (UK) a company which incorporated in India, would have been deemed as a public Ltd. company. The said M/s MSPL transferred the shares held by it in the appellant company to M/s Group 4 Falck Finance BV, Netherlands on 19.03.2010.

6.7.2 The relevant provision of Section 4(7) of the company Act, 1956 read as under:

> ***"(7) A private company, being a subsidiary of body corporate incorporated outside India, if incorporated in India, would be a public company within the meaning of this. Act, shall be deemed for the purpose of this Act to be a subsidiary of a public company, if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India."***

On a harmonious interpretation of the provision of said Sub-Section (7), it is evident that the said provision provide for deeming a private company being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India would have been a public company, as a subsidiary of the public company. However, from the preview of this Sub-Section (7), those private companies are excluded in whose case the entire share capital is not held by their holding company incorporated outside India, (whether alone or together with other companies

incorporated outside India). Thus from the purview of Sub- Section (7), only those private subsidiary companies are exempted, in whose cases the entire share capital is held by their foreign holding company, whether alone or together with other body corporates incorporated outside India.

6.7.3 In my view, the only key issue in question is whether M/s GHI, if incorporated in India would have been held as a Public Limited Company or not. If it were so, then the appellant company would have been considered for being held as a Public Limited Company, since the entire share holding in the appellant company is not held by M/s GHI (alone or alongwith other body corporate incorporated outside India) as 0.02% of the share were held by an Indian Company i.e. M/s MSPL.

6.7.4 The provisions of Sub-Section (6) of Section 4 of the Companies Act, 1956 read as under:

> ***"In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the low of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not."***

On the facts of the case, it is evident that the said M/s GHI (UK), a Private Limited Company, if incorporated in India would have been a Public Limited Company within the meaning of Companies Act, 1956 as it is a subsidiary of M/s G4S Pic. (UK), which, being a Public Limited Company in UK, if incorporated in India would have been a Public Limited Company. Further, the provisions of the. Second limb of Sub-Section (7) of Section 4 also do not limit the operation of its first limb, since the entire share capital in the appellant Company is not held by its foreign holding company (whether alone or together with other body corporate incorporated outside India). Thus, without prejudice to my decision on the allowability of the managerial remuneration u/s 37(1), I hold that the provision of Sub-Section (7) of Section 4 of the Companies Act, 1956 were applicable to the case of the appellant. However, any default made under that Act, cannot be a ground for making disallowance under the Income Tax Act, 1961, moreso when apparently no adverse cognizance thereof was taken under the Companies Act, 1956 itself.

6.8 I find that under the Companies Act, 1956, the provisions relating to payment of remuneration to directors are governed as under:

"309 Remuneration of directors — (1) the remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting [and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if—

(a) ***The services rendered are of a professional nature, and***

(b) ***In the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession]***

(2) ***A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him:***

Provided that where immediately before the commencement of the Companies (Amendment) Act, 1960, fees for meeting of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director whichever is less but no longer.

(3) ***A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of monthly payment or at a specified percentage of the net profits of the***

company or partly by one way and pertly by the other:

Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together]

(4) ***The net profits referred to in sub-sections (3) and (4) shall be computed in the manner referred to in section 198, sub-section (1)."***

The relevant provision of Section 198(1) read as under:

'S.198. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.-—(1) the total managerial remuneration payable be a public company or a private company which is a subsidiary of a public company, to its directors and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in sections 349, except that the remuneration of the directors shall not be deducted from the gross profits.

(2) ***The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309.***

(3) ***Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.***

(4) Notwithstanding anything contained in sub-section (1) to (3), but subject to the provisions of section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government".

It is also evident that the provisions of Section 198(4) provide for a remedy where the profits of the company are inadequate, and allow the Central Government to approve removal of the prohibition on the company to pay to its directors in spite of the same on satisfaction of conditions prescribed under Schedule-XIII. Further, the provisions of Section 309(3) of the Companies Act, 1956 provide for payment to a director or a managing director more than the prescribed ceiling, on approval by Central Government. Where such remedies are not availed or granted, the Companies Act, 1956 also provides for a general penalty provision u/s 629A, under circumstances, where a company or any other person contravenes any provision of the Companies Act or any condition, limitation, restriction subject to which any approval, sanction, consent, etc has been accorded, and in such a case, such a company or a person is liable to be punished with a fine of Rs.5000 and in case of continuing default, the penalty may extend to Rs.500 for every day of the default. As the Companies Act, **1956** *is a separate statute,* **it** *has separate remedial and penal provisions, therefore, if any compliance thereto has* **not** *been made, the corresponding remedy or the penalty is provided thereunder itself. Moreover, as held in the case of* **Karnataka Bank Ltd. Vs. ACIT (Supra)** *the RBI Act, the Companies Act and the Income Tax Act operate altogether in different fields and the question whether the assessee is entitled to particular deduction or not, will depend upon the provision of law relating thereto and not the way, in which entries are made in the books of accounts. The Ld. AO therefore was not bound under the Income Tax Act, 1961 to hold the alleged non-compliance of the ^provisions of Section 4(7) read with Section 198 of the Companies Act, 1956, as the sole ground for making disallowance of expenditure relating to managerial remuneration for computing the income of the appellant under the head profit and gains from business or profession' under the Income Tax Act,* **1961,** *without citing the relevant provisions of the Act under which such disallowance was made. As held by me, the appellant did not commit any default u/s 43B, 40A(3), 40A(2)(b) and 40(a)(ia) and no adverse observation in respect to the various conditions prescribed u/s 37(1) were made by the Ld. AO, nor noted by me*

6.9 Under the circumstances, even though in my view the appellant company **may** *be deemed as Public Limited Company under the Companies Act, 1956 and h***ad** *made default under that Act, within the meaning of Section 198(1) read with Section 309, it could not be the sole reason for making disallowance of managerial remuneration for computing the taxable income of the*

appellant under the Income Tax Act, 1961. In view of the above, the addition made by the Ld. AO is deleted.

6. After considering the above discussion and giving careful thought, we find that the CIT(A) was quite correct in deleting the addition so made by the AO and his well reasoned order needs no interference at our end. Therefore, we dismiss the sole ground raised by the revenue by upholding the order of the first appellate authority. Consequently, the sole Ground raised by the Revenue stands dismissed.

10. Respectfully following the judgement of the co ordinate bench of the Tribunal as stated above we dismiss the ground No. 01 raised by the revenue.

11. In respect of ground No. 02, after careful consideration of the order of the authorities below and submission of both the sides , we observe that Ld. CIT(A) has done good reasoned order in this regard. The findings reached by the Ld. CIT(A) are as under :-

"8.2.1. It was noticed by the AO that the auditor had commented adversely on the appellant's treatment in recognizing the service income in respect of one of its customers amounting to Rs. 55,28,763/- in the year ending on 31.03.2009. As per the auditor since the accounting standard 9 on revenue recognition had not been followed by the appellant in the year ending 31.03.2009, its consequential effect on the case results for the year ending 31.03.2010 are also affected. The auditor has categorically held that in AY 2009-10, the appellant has shown service income more by Rs.55,28.763/-, which was not as per AS-9. Had the appellant followed the accounting standard in respect of revenue recognition, the income for AY 31.03.2009 should have been reduced by Rs. 55,28,763/- and it would have resulted in increase of loss after tax in that year by Rs.70,52,578/- and correspondingly, sundry debtors should have been lowered by similar amount of Rs.70,57,578/-. The effect of such adjustment during the year would have been the decrease in loss after tax at Rs. 55,28,763/- and corresponding adjustment of bad debts of Rs.46,73,036/- written off by the appellant during the year. Taking the clue from auditor's such remark, the AO made addition of Rs.55,28,763/- in the appellant's income.

8.2.2. The appellant, on the other hand, has explained the effect of auditor's observation regarding recognition of income amounting to Rs.55,28,763/- in AY 2009-10 by bifurcating it into two parts namely Rs.23,79,543/-, resultant increase in

service income of Rs.31,49,2211- as resultant decrease in bad debts written off. The appellant has submitted that the entire amount of Rs. 55,28,763/- has been offered for taxation in AY 2009-10 which was scrutinized by the AO and such income was not reduced by the AO. Since the resultant increase of Rs. 23,79,542/- (out of Rs. 55,28,763/-) has already been brought to tax in AY 2009-10, it was submitted that the same cannot be taxed in the subsequent year. The appellant has highlighted that in AY 2009-10, the appellant had taxable income while in AY 2010-11, it is the resultant loss. Thus, had it followed the auditor's advice, the same should have been beneficial to the appellant in recognizing the service income in AY 20 I0-11 as no tax was due in the year under consideration. Regarding the writing off or debtors amounting to Rs. 31,49,221/-, it was submitted that the same were allowable as per section 36(1)(vii) read with section 36(2) of the Act. The appellant has relied upon various decisions in this regard.

8.2.3. On considering the facts of the case, it is observed that the appellant's case for AY 2009-10 was thoroughly scrutinized by the AO u/s 143(3) of the Act and the amount of Rs.55,28,763/- has been brought to tax in AY 2009-10. Therefore, it is not in dispute that the amount on which the appellant has already paid tax in AY 2009-10 should not be taxed twice. If at all, a portion of such income (Rs. 23,79,542/-) is to be taxed during AY 2010-11, the corresponding reduction in the income for AY 2009-10 should be made in appellant's case. Regarding the applicability of provisions in respect of bad debts written off, there is no dispute in law and admittedly the AO has also allowed the claim of bad debts of Rs. 46,73,036/- during the year under consideration which forms a portion (Rs. 31,29,221/-) of such already taxed income of Rs. 55,28,763/-. The appellant has highlighted that in AY 2009-10, it was showing taxable income while in AY 2010-11, loss has been claimed by the appellant. Therefore, no fruitful purpose will be served if such exercise is done in the appellant's case. The Hon'ble Jurisdictional High Court in the case of CIT vs. M/s Triveni Engineering Industries Ltd. 336 ITR 374 (Del) has time and again upheld that if the rates of taxation are uniform, it does not make a difference if a portion of income is taxed in either of the years as such exercise becomes revenue neutral. In appellant's case, the position is even in the favour of the appellant if such exercise of bifurcation of income is made. In my considered view, there is no need of doing such exercise and the results shown by the appellant should be treated as perfectly in order. Therefore, the AO's action in making the addition of Rs.55,28,763/- is not justified and the same is directed to be deleted. The appeal on this issue is allowed."

11. From the above order of the Ld. CIT(A) it is clear that the assessee had offered its income in the financial year 2009-10. Therefore the double taxation for the same issue is not justified. Ld. CIT(A) has rightly deleted the additions. We, therefore, find no infirmity

in the order of the Ld. CIT(A). In view of this, the order of the Ld. CIT(A) is upheld and the appeal of the revenue is dismissed on this count.

12. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 03/10/2018

sd/-	**sd/-**
(BHAVNESH SAINI)	**(L.P. SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 03/10/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi