IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1258/PUN/2003 & ITA No.182/PUN/2004

निर्धारण वर्ष / Assessment Years : 1998-99 & 1999-2000

Coca Cola India Pvt. Ltd., 1107-1110, Pirangut Tal Mulshi,Pune PAN : AAACB8573G	Vs.	The Dy. Commissioner of Income Tax, Circle 1(1), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.237/PUN/2004

निर्धारण वर्ष / Assessment Year : 1999-2000

The Dy. Commissioner of Income Tax, Circle 1(1), Pune	Vs.	Coca Cola India Pvt. Ltd., 1107-1110, Pirangut Tal Mulshi,Pune PAN : AAACB8573G
Appellant		Respondent

Assessee by	Shri R. Murlidhar
Revenue by	Shri Sardar Singh Meena Shri Piyush Kumar Singh Yadav Shri S.P. Walimbe
Date of hearing	13-04-2022
Date of pronouncement	20-04-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This batch of three appeals comprising of the captioned assessment years has a checkered history. Pursuant to certain additions made by the Assessing Officer (AO), some of which were confirmed/enhanced/reduced in the first appeal, the assessee as well as the Revenue preferred respective appeals. The Tribunal disposed them off vide order dated 31-03-2010, *inter alia*,

restoring the issue of `Service charges' to the AO for fresh adjudication. The assessee approached the Hon'ble High Court through a Writ Petition contending that the Tribunal ought to have decided the issue itself rather than remitting it to the AO. The Hon'ble High Court, vide its judgment dated 14-08-2014, sent the matter back to the Tribunal for deciding the matter afresh at its own. In the second round of proceedings before the Tribunal, the issue of `Service charges' was thoroughly argued on behalf of the assessee urging that the same was covered in favour of the assessee by the order of the Tribunal for the immediately preceding A.Y. 1997-98. The Tribunal passed the order on 22-08-2019 enhancing the disallowance as sustained in the first appeal. The assessee moved Miscellaneous Applications. Vide order dated 29-10-2021, the Tribunal has recalled its order dated 22-08-2019, *inter alia,* on the issue of `Service charges' for the reasons stated therein. This is how, the matter has now come up before this Bench for consideration and decision.

2. We are espousing the factual panorama for the A.Y. 1998-99. Pithily put, the assessee, earlier known as Britco Company Ltd., is a 100% subsidiary of Coca Cola South Asia Holding Inc. with The Coca Cola INC, USA (hereinafter also

called as 'TCCC') as the ultimate holding company. The assessee is engaged in the manufacture of `beverage bases', which are also called `beverage Concentrates', made by beverage essence imported from TCCC. For manufacturing the beverage Concentrates, the assessee entered into an agreement dated 01-06-1993 with TCCC under which ordinary gratuitous non inclusive license was granted to it. The Concentrate manufactured by the assessee was sold to various unrelated bottling companies (all of whom were authorized by and had entered into agreement with TCCC for manufacturing beverages) and related four group companies that got amalgamated with the new entity called Hindustan Coca Cola Beverages (HCCB). During the year under consideration, the assessee also carried out bottling operations for a period of 8 months up to 30-11-1997 at two units, the Concentrate for which was transferred by the assessee from its own unit. The bottlers produce the beverages known in the market as Coca Cola, Fanta, Sprite etc. The extant dispute is anent to the `Service charges' paid by the assessee to CCI Inc. amounting to Rs.70.40 crore for rendering services to it and also the unrelated bottlers. The assessee company entered into a tripartite Service Agreement on 01-04-1995 with Coca Cola India Inc., USA ('CCI

Inc.'), which had set up its branch office in India and also TCCC. CCI Inc. is subsidiary of Coca Cola Holding India Inc., USA, which is a subsidiary of TCCC. CCI Inc. rendered services in the field of plant maintenance to the bottlers, which have been described as `Quality audit' in index of the assessee's Paper book. The assessee was also rendered such services in addition to some other management and other services exclusively. The Service Agreement 01-04-1995 was revised w.e.f. 01-04-1997. The assessee made a payment of Rs.70,40,73,989/- to CCI Inc. and claimed deduction for the same under the head 'Service charges'. On being called upon to justify the deductibility of the expenditure, the assessee ended up submitting some trivial sketchy details only. The AO observed that TCCC, the ultimate holding company, owned the brand, trademarks and trade secrets and licensed the same to the assessee for manufacturing the `Concentrates'. No apparent consideration was settled between the assessee and its ultimate holding company for allowing the use of its trademark. In the backdrop of the Service agreement, the AO held that the amount paid by the assessee to CCI Inc. was nothing but `Royalty' paid indirectly to TCCC for use of its trademark and technical know-how. Without prejudice to such a

view and in the absence of the assessee having furnished details about the nature of services allegedly received by it from CCI Inc., the AO disallowed 10% of the expenditure at Rs.7.04 crore. The matter was taken up in the first appeal. The assessee furnished necessary details and justification for the payment of Service charges before the ld. first appellate authority, who called for a remand report from the AO. In his report, the AO canvassed a view that entire `Service charges' amounting to Rs.70.40 crore were liable to be disallowed in full. The ld. CIT(A) conducted inquiry at the appellate level by discussing the matter with Sh. K.S. Nair, General Manager of the assessee company, whose statement was also recorded on 22-05-2003. Taking note of the detailed submissions filed by the assessee and all other relevant material/evidence, the ld. CIT(A) issued enhancement notice and thereafter concluded that 25% of service charges, as relatable to services rendered by CCI Inc. to the bottlers, were not allowable in the hands of the assessee, which implies that the Service charges paid by the assessee to CCI Inc. for services rendered to self have been allowed and that the part relating to the services rendered to unrelated bottlers amounting to Rs.17.60 crore,

quantified at 25% of total service charges, has been disallowed. The assessee has come up in appeal before the Tribunal.

SUBMISSIONS ON BEHALF OF THE ASSESSEE

3. The ld. AR submitted that the ld. first appellate authority failed to appreciate the correct legal position by holding that service charges for quality audit of the bottlers was not for the purpose of the assessee's business. He emphasized that the bottlers were procuring the Concentrate only from the assessee company for making the beverages in their manufacturing units. The quality audit of the bottlers' plants and manufacturing facilities conducted by CCI Inc. was meant to push up their productivity, thereby consequently increasing the volumes of the assessee's business as it was wholly dependent on them. The ld. AR relied on section 37(1) of the Income-tax Act, 1961 (hereinafter also called `the Act') by arguing that the Service charges disallowed are of revenue nature, other than those covered under sections 30 to 36 and not being a personal expenditure, which were incurred '*wholly and exclusively'* for the purpose of the assessee's business. The emphasis was laid on the key words used in the provision, namely, '*wholly and exclusively for the purposes of business'*. This expression indicates that the expenditure must be

incurred wholly and exclusively for the purpose of the business of the assessee. If the expenditure is so incurred, the same becomes eligible for deduction even if some incidental benefit is reaped by third parties. He relied on the judgment of the Hon'ble Supreme Court in *Sassoon J. David Company Pvt. Ltd. Vs. CIT (1979) 118 ITR 261 (SC)* in which the Hon'ble Court dealt with the expression '*wholly and exclusively*' used in section 10(2)(xv) of the Indian Income-tax Act, 1922, parallel to section 37(1) of the Act. It was held in that case that: 'the fact that somebody other than the assessee is also benefitted by the expenditure should not come in the way of an expenditure being allowed by way of deduction u/s.10(2)(xv)' if it satisfies otherwise tests laid down by the law. Applying this proposition to the facts of the case, the ld. AR submitted that the payment made by the assessee for quality audit of the bottlers' plants primarily helped the assessee in having business at a higher scale. The ld. AR further relied on a judgment of the Hon'ble jurisdictional High Court to contend that the allowability of expenditure incurred by the assessee, which is otherwise wholly and exclusively for its business, will not be disturbed even if third parties get substantial benefit.

4. The ld. Counsel for assessee submitted that Coco-Cola group entities were collectively working in India under TCCC having a common goal of producing Beverages. The activity of manufacturing the concentrate was done by the assessee; Bottling was partly done by the assessee as well as HCCB; and Services were rendered by another group, namely, CCI Inc. He submitted that the price charged by the assessee from the unrelated bottlers was inclusive of the service charges of their quality audit borne by the assessee. The fact that the revenue of assessee included compensation towards rendition of the services by CCI Inc., the deductibility of such expenses in the hands of assessee, on considering Coca Cola group as one unit, should not have been questioned.

5.1. The ld. AR stated that the issue of deductibility of the Service charges paid by the assessee to CCI Inc. for quality audit of the Bottlers' plants was fully covered in favour of the assessee by virtue of the Tribunal's order for the immediately preceding A.Y. 1997-98. He further highlighted that the ld. CIT(A) in the impugned order examined the nature of Service charges paid to CCI Inc. for both the years, viz., the expenses for the month of June, 1996 (relating to A.Y. 1997-98) at page 67 and expenses for

June, 1997 (A.Y. 1998-99) at page 68 onwards of the order and reached the conclusion about non-deductibility of service charges to that extent. He also pointed out that the order passed by the ld. CIT(A) for the year under consideration on 14.08.2003 is almost on same lines as his order for the A.Y. 1997-98 which was also passed on the same date.

5.2. He further submitted that the assessee claimed deduction of Marketing expenses amounting to Rs.98.46 crore for the year under consideration, out of which the AO disallowed Rs.32.69 crore. The ld. CIT(A) inquired into that issue also in the same manner as the Service charges and thereafter held that the Marketing expenses were not incurred wholly and exclusively for the purpose of the assessee's business as they also benefitted the Bottlers. *Ex consequenti,* he made enhancement of the disallowance of the Marketing expenses. Inviting our attention towards the order passed by the Tribunal for the year under consideration in the first round, he stated that the Tribunal was pleased to delete the disallowance of the Marketing expenses. Restoration of the addition of Service charges paid by assessee to CCI Inc. was made because certain details were not available. But for that, the reasoning that such expenditure was also wholly

and exclusively for the purpose of assessee's business, did weigh with the Tribunal. It was, ergo, submitted that the facts and circumstances of the issue under consideration were similar to those of the preceding year and also partly of the current year in the context of Marketing expenses.

SUBMISSIONS ON BEHALF OF THE REVENUE

6.1. The ld. DR opened his arguments by submitting that the applicability of section 37(1) of the Act to the Service charges can be better appreciated on ascertaining the nature of the services rendered to the bottlers. Clause (1) of the Agreement dated 1.4.1997 provides that CCI Inc. agreed to provide to the assessee company advisory services including but not limited to the following:

(a) Develop and promote the export activities of Britco
(b) Advise, monitor and co-ordinate the activities of Bottlers in the Country with Britco and provide :

(i) Technical support in sourcing Bottlers supplies;
(ii) Technical know-how and assistance to Bottlers in upgradation of production capabilities and quality of Products for which the beverage essence and beverage bases are manufactured by Britco;
(iii) Systems support to enable Bottlers to manage their business more efficiently and effectively;
(iv) Assistance and guidance to Bottlers and Britco, on advertising and promotion;

(v) Support in evolving effective storage, distribution and dispensing systems;
(vi) Advise and assist on recruitment, development and implementation of human resource management and procedures;
(vii) Advise Britco on all business procedures and practices;
(viii) Study the possibility of Indian business entities becoming Bottlers in the Country and to oversee and support the activities of potential customer of Britco;
(ix) Evaluate, qualify and assist in development or upgradation of potential sources of supplies, goods and equipment in India, so as to authorize the production/manufacture of such goods and equipment for supply to Bottlers in the Country and in other countries, and to assist such bottlers, in the purchase of the same;
(x) Actively look for and keep Britco informed of potential business opportunities and the general market situation in the Country as far as is relevant for its Products and its scope of activities, and advise them on applicable laws and regulations."

6.2. It was submitted that albeit the Agreement referrs to a basket of services, but the actual services were confined only to the upkeep and maintenance of the plants of the bottlers, which was overt from the report of inspection of Indore Bottling Unit conducted by CCI Inc. on 14.8.1997, whose copy has been placed at page 115 onwards of the assessee's Paper book. Referring to the very first page of the report, he submitted that inspection was restricted only to the plant of the bottlers as was manifest from the

mention therein of: `As requested, a Production Impact Team *has visited the above plant to carry out the assessment of the operation..*'. Objectives of the Inspection have been set out as: `1. Equipment performance analysis; 2. Bottle washer performance; 3. Paramix/Filler performance; 4. Date coder performance; and 5. Syrup/CO2 yield improvement'. There is an elaboration of the above five aspects in the report. CCI Inc. carried out Equipment performance analysis to ascertain the performance of individual machines to check the condition of Bottle washers, paramix and filler performance. The Inspection team also carried out analysis for material yield improvement, as discussed at page 122 of the paper book divulging "that lot of Syrup being wasted in Syrup line during the end production, reasons were the length of Syrup line from Syrup room to paramix was too long more than 150 ft with several ..., second; improper gradient of Syrup line". Thereafter, the Inspection team made: "recommendation to adjust the Syrup line to achieve the correct gradient and look to the possibility of short route of Syrup supply line from Syrup room to paramix, which would reduce the current high Syrup losses". The ld. DR submitted that the Inspection report deciphered that it was aimed at reducing production losses of Bottlers thereby enhancing

their production efficiency and the consequential profits. The said inspection had no association with the assessee's business. He read out further from the report that "plant was using excessive pressure for Syrup ... for faulty regulator and pressure Syrup. The pressure ... was revised and plant was advised for faulty regulator and to maintain a pressure.... in order to avoid CO_2 loss". He thus accentuated on the fact that services rendered by CCI Inc. to Indore Bottling Company were aimed at the upkeep and maintenance of their plant for achieving efficiency in production, reducing production losses and removing the bottlenecks in procedures so as to maximise their profits, which had absolutely no relation whatsoever with the assessee supplying Concentrate to them.

6.3. The ld. DR submitted that though the Agreement talks of a bouquet of services to be provided by CCI Inc. to the bottlers including co-ordination with the production of the assessee and their requirements etc., but no evidence worth the name has been placed on record *qua* the services other than inspection of plant of the bottlers either before the authorities below or the Tribunal even in the extant third round of proceedings. It was stated that the ld. CIT(A) was justified in disregarding the terms of the

Agreement effective from 1.4.1997 in the face of the fact that CCI Inc. provided only plant maintenance services to the bottlers and nothing more.

6.4. Coming to the contention of the ld. AR about the applicability of section 37(1) of the Act, the ld. DR submitted that the conditions attached for the deductibility, *inter alia,* were that the expenditure must be wholly and exclusively for the purpose of the assessee's business. He emphasized on the meaning of the word 'wholly' in terms of `quantum' and the word 'exclusively' in terms of `purpose' to highlight that the expenditure must be incurred fully for the purpose of business of the assessee and not for someone else. If an expense is incurred wholly and exclusively for the purpose of the assessee's business, its deductibility will not be affected simply because of the fact that some incidental benefit out of such expense also reached someone else. However, the decisive point is that the expenditure at the first instance must be wholly and exclusively for the purpose of assessee's business. If the expenditure is not wholly and exclusively for the purpose of the assessee's business, the deductibility is lost at the very first stage without further examining if the incidental benefit is arising to someone else.

6.5. Adverting to the facts of the instant case, the ld. DR submitted that the payment made by assessee towards services rendered by CCI Inc. to the Bottlers were wholly and exclusively for the business of the Bottlers. He stressed that no part of the `quantum' of such expenditure disallowed was for the purpose of the assessee's business, who simply paid it and claimed deduction. The first test of `wholly' for the purpose of the assessee's business failed in this case.

6.6. Coming to the second word of `exclusively' as a *sine qua non* for allowing deduction, the ld. DR stated that only the bottlers were benefited with such expenditure because of the upkeep and maintenance of their plants by CCI Inc. He laid emphasis on the fact that the plants served by CCI Inc. were of the Bottlers and not the assessee. On termination of the agreement between the Bottlers and TCCC for production of the beverages, such Bottlers were free to produce Beverages of competing brands, which evidenced that the upkeep and maintenance of their plant, for which service charges were paid by the assessee to CCI Inc, benefitted exclusively the Bottlers and not the assessee. Even though the assessee's contention was that it was getting higher orders by means of maintenance of plants of

Bottlers by CCI Inc., the primary object of expenditure was the upkeep and maintenance of plants of the Bottlers and not that of the assessee. It was only some incidental benefit flowing to the assessee from the services of plant maintenance of the Bottlers in terms of its more sales, which even did not ingrain any co-relation with such services. He drew a parallel between the services rendered by CCI Inc. to the assessee for upkeep and maintenance of its plant, which were wholly and exclusively for the assessee's business and the incidental benefit was flowing to the Bottlers because of smooth supply of Concentrate to them and on the other hand, the upkeep and maintenance services provided by CCI Inc. to the Bottlers which were wholly and exclusively for their businesses and the incidental benefit was percolating to the assessee in terms of increase in sale of Concentrate to them. He rather stressed that the plant maintenance services rendered by CCI Inc. were wholly and exclusively for the purpose of the business of Bottlers much less any incidental benefit reaching the assessee.

6.7. The ld. DR then espoused the contention of ld. AR about substantial benefit going to some third party as not an impediment in the deductibility of the expenditure in the hands of an assessee

who incurs it wholly and exclusively for its business. He submitted that the extent of incidental benefit to the third parties - substantial or minimal - does not come in the way of the deductibility in the hands of assessee, but the primary condition of the expenditure being incurred wholly and exclusively for the purpose of assessee's business, must be invariably satisfied. It was thus underlined that the plant maintenance services to the bottlers, paid for by the assessee, were neither wholly nor exclusively for the purpose of the assessee's business.

6.8. The ld. DR highlighted one more aspect that services rendered by CCI Inc. to HCCB were admittedly similar to those rendered to unrelated Bottlers. Price of such services rendered by CCI Inc. to HCCB was borne by HCCB and not the assessee. Thus, there was a clear dichotomy between the assessee bearing costs of services rendered by CCI Inc. to unrelated Bottlers *vis-a-vis* HCCB bearing its own service charges under similar circumstances, when the projected common purpose was the promotion of the assessee's business in terms of increased demand of its concentrate. He submitted that HCCB rightly claimed deduction for the Services availed by them which were meant wholly and exclusively for their business and not the

assessee and on the same parity of reasoning the service charges paid for unrelated bottlers were also neither wholly nor exclusively for the assessee's business.

6.9. The ld. DR stressed on the fact that the entire show of Coca Cola was run in India by TCCC. The assessee is one of its organs, which was set up only for manufacturing Concentrates to be supplied to Bottlers with whom the assessee had no agreement. It was only TCCC which had entered into agreements with the Bottlers for manufacturing Beverages under their strict standards. There was no agreement between the assessee and the bottlers for upkeep and maintenance of their plants. The costs incurred on such upkeep were pursuant to mutual agreement between TCCC and the Bottlers, with which the assessee had no connection. Referring to the correspondence of TCCC with Reserve Bank of India (RBI), the ld. DR submitted that a letter dated 23.05.1994 was addressed by Coca Cola India to RBI stating that it was permitted by RBI to operate liaison offices in Bombay and Delhi and the "chief function of the liaison office is to provide technical and systems support to authorised bottlers in India, licensed to bottle Beverages of TCCC". This letter further indicates that "TCCC is desirous of housing the two activities, viz. the

manufacturing and support activities respectively, in two separate entities, as has been done by it in 195 countries it conduct its operations in". Based on this letter dated 23.05.1994 written by Coca Cola India to RBI, the ld. DR submitted that TCCC set up the assessee as a manufacturing entity and CCI Inc. as a services rendering entity. This was emphasized to demonstrate that TCCC was controlling the operations of CCI Inc. as well as the assessee. With a further reference to another letter dated 26.09.1994 addressed by Coca Cola to RBI, the ld. DR submitted that the assessee in para 1 of the same has been described `in essence a mere supply entity' set up for manufacturing Concentrates, to be supplied to the Bottlers, appointed directly by TCCC, who, in turn, were to manufacture the beverages in strict compliance with the directions of its ultimate company, TCCC. The ld. DR highlighted the fact that TCCC was operating in 195 countries on the same business model of doing manufacturing activity from one company and service activity from another company and both such companies were acting under the overall directions of TCCC.

6.10. He further argued that the bottlers were appointed and licensed only by TCCC in the same way in which the assessee

was set up by TCCC to manufacture Concentrate. There was no agreement between the assessee and the bottlers for rendition of any services concerning the maintenance of their plants or regulating the supply etc. The ld. DR submitted that the assessee was acting under the control of TCCC as was observed by the ld. CIT(A) from the Internal instruction authority chart submitted by the assessee itself. Drawing our attention towards the Agreement dated 01.06.1993 between TCCC and the assessee, copy placed at page 24 onwards of the Paper Book III, the ld. DR submitted that it was TCCC which authorized the assessee to manufacture concentrates in India and further that the entire manufacturing was regulated by TCCC itself, which was ostensible from clause 3(b) providing that "The company (TCCC) will furnish the Licensee (assessee) with instructions and other information necessary to enable it to manufacture the Products in conformity with the standards set up by the Company and the Company will inspect and supervise Licensee's or any sub-licensee's manufacturing plant(s), equipment and methods of manufacture to ensure the correct application and observance of the Company's instructions and standards; and the Licensee undertakes to abide by such standards and instructions." Referring to clause 3(d) of

the Agreement, it was shown that the "Licensee agrees to sell the Products only to Authorized Bottlers and to comply strictly with the Company's instructions given in connection with the sales of Products by the Licensee….'. Clause 4 of the Agreement states that "Licensee agrees that the Products prepared pursuant to this Agreement shall not be sold outside the Territory without the prior written permission of the Company". In the light of the above clauses, the ld. DR submitted that each and every activity carried on by the assessee was fully and strictly as per the directions of TCCC. Not only the Concentrate was to be manufactured as per specifications and instructions of TCCC, even the assessee was obliged to sell the same only to the Authorized Bottlers, namely, those who were appointed by TCCC.

6.11. Referring to the Agreement between TCCC and Parle Beverages Limited (one of the Bottlers), a copy placed at page 38 onwards of the Paper book- III, the ld. DR submitted that the Company (TCCC) issued license to the bottler to use trademarks in connection with the preparation and packaging of beverages. As per Part-II of the Agreement with the heading "Obligations of the Company', TCCC or the assessee were obliged to sell such

quantities of Beverage Bases as may be ordered by the Bottlers from time to time. TCCC or the assessee under clause 4(a) of the Agreement undertook to sell and deliver to the Bottler, only such quantities of the Beverage Bases as was necessary and sufficient to implement the Bottler's Agreement. Clause 4(b) provides that "Bottler will use the Beverage Bases exclusively for the preparation of Beverages as prescribed from time to time by the Company (TCCC)". Part-III of the Agreement refers to `Obligations of the Bottler...', which oblige the Bottler to manufacture and sell the Beverages as per the directions of the TCCC. Part-V of the Agreement provides under para 20(a) that Bottler agrees with the company to use "only the Beverage Bases purchased from the Company or the Authorized Supplier….". The bottler further agreed with the Company that in preparing each packaging and distributing the beverages: `*the Bottler shall at all times conform to the manufacturing standards, hygienic and otherwise, established from time to time by the Company and the Bottler shall permit the company, its officers, agents and designees at all times to enter and inspect plant, facilities, equipment and methods used by Bottler in the preparation, packaging, storage and handling of Beverages to ascertain*

whether the Bottler is complying with the terms of this agreement.' Clause 20(c) states that "in the event, the Company determines or becomes aware of the existence of any quality or other technical problems relating to any of the Beverages or Authorized Containers in respect of any Beverages, the Company may require the Bottler to take all necessary actions to withdraw immediately any such Beverages from market…". Clause 20(d) provides that in the event, the Bottler determines or becomes aware of the existence of quality or other technical problems relating to any of the Beverages or Authorized Containers in respect of any of the Beverages, then, the Bottler shall immediately notify the Company by telephone, cable…..". Clause 21 of the Agreement states that "the bottler shall submit to the company, ***at the Bottler's expense***, samples of the Syrups, of the Beverages and of materials used in the preparation of Syrups and the Beverages in accordance with such instructions as may be given in writing from time to time by the Company". In the light of above clauses, the ld. DR submitted that the Bottlers were obliged to act strictly in accordance with formulae laid down by TCCC who was entitled to inspect their plants at any point of time for ensuring that the parameters laid down by it were duly

complied with. Part-VI of the Agreement with the heading `Conditions of Purchase and Sale' provides through clause 26(a) that the Company reserves the right by giving notice to the Bottler to establish in its sole discretion the prices of Beverage Bases…..". Clause 26(b) provides that the Company reserves the right to establish and to revise, by giving written notice to the Bottler, maximum price at which each of the Beverages in Authorized Containers may be sold by the Bottler to retail outlets and the maximum retail prices for each of the Beverages. Clause 26(d) provides that "if the Bottler is unwilling to pay the revised price in respect of the Beverage Base, then the Bottler shall so notify the Company in writing and the company shall terminate the Agreement with the Bottler for manufacturing the beverages".

6.12. The ld. DR vociferously submitted that the assessee was manufacturing the Concentrates by means of the technical know-how and trademark supplied by TCCC; the manufacturing was to be done as per the standards set up by TCCC; personnel of TCCC could visit the assessee's plant and operations at any time; the Concentrate manufactured by the assessee was to be sold to the bottlers as per the directions of TCCC and even its pricing was determined by TCCC. He further stated that the operations of the

Bottlers were also in control of TCCC, who were deciding everything right from granting license to manufacture; to provide Concentrate through the assessee; fixing its price; regulating the manufacturing of beverage; sale in the fixed territory and also its pricing. There was no obligation of the assessee to inspect, upkeep and maintain plant of the bottlers, which entire issue was within the overall domain of TCCC. In the backdrop of such facts emerging from the respective agreements as discussed above and the communication with RBI, the ld. DR submitted that the assessee was a mere supply entity of TCCC and had neither any requirement nor an obligation to upkeep and maintain plant of the bottlers. As such, the expenditure incurred by the assessee on the upkeep and maintenance of the bottlers' plants was neither wholly nor exclusively for the purpose of its business.

6.13. Another point was highlighted by the ld. DR to the effect that the assessee failed to lead any evidence to demonstrate that CCI Inc. was rendering plant upkeep and maintenance services to the bottlers on the instructions of the assessee. Considering the entire position about the agreements between TCCC and the bottlers on one hand and agreement between TCCC and the assessee on the other, he submitted that the inference was clear

that TCCC was instructing CCI Inc. to carry out inspection and render plant maintenance services to the bottlers and it was neither the obligation nor in the business interest of the assessee to do so. He bolstered this point of view by referring to the Service Agreement dated 1.4.1995 under which the services were rendered also to the bottlers, which is a tripartite agreement having TCCC (described in it as a `Company') also as a party, in addition to the assessee and CCI Inc. If it were only between the assessee and CCI Inc. to render services to the bottlers, then there was no need to involve TCCC as a party to it. He further stated that TCCC was taking final call on plant maintenance service of the bottlers, which was evident from Clause 2 of the Agreement stating that: `Notwithstanding anything to the contrary, *without prior approval of the Company* CCI has no authority to negotiate or conclude contracts in any form or manner for or on behalf of the Company …'. He stated that the assessee, even at the insistence of the Bench during the course of the extant proceedings, could not furnish any evidence of maintaining a record regulating carrying out of inspection of the Bottlers by CCI Inc., which indicated that the assessee was nowhere in the loop *qua* the rendition of the services to the bottlers.

6.14. On the question of quantum of the addition sustained at 25% of the total service charges paid by the assessee to CCI Inc., the ld. DR submitted that ld. CIT(A) was extraordinarily generous in restricting the disallowance to this level. His *raison d'etre* was that there were more than 50 unrelated Bottlers and only four group companies engaged in the Bottling business apart from the assessee doing this activity at two units for few months of the year. Given the magnitude of number of outside Bottlers *vis-a-vis* consumption of Concentrate by the assessee for self and other related group companies, the ld. DR submitted that actual service charges paid by the assessee to CCI Inc. as pertaining to the bottlers should have been much more than 25%.

7. On the contention of the ld. AR about the deductibility of service charges on the cumulative approach of Coca Cola group companies, the ld. DR submitted that the assessee is liable to tax only qua its income unmindful of the activities of other group companies.

8. Replying to the contention of the ld. AR that the facts and circumstances of the case for the year under consideration were similar to the A.Y. 1997-98, which has already been decided in favour of the assessee by the Tribunal, the ld. DR submitted that

the facts for the current year were different inasmuch as a new service agreement between the assessee, TCCC and CCI Inc. came into force w.e.f. 01.04.1997 and substituted the earlier agreement, under which the preceding year was decided. It was thus urged that the year under consideration should be decided independent of the decision of the immediately preceding year.

9. We have heard the rival submissions and gone through the relevant material on record. The short question before this Tribunal is to decide as to whether the expenditure incurred by the assessee for upkeep and maintenance of the bottlers' plants (referred to as `quality audit' by the assessee) is deductible in its hands.

10. One of the contentions of ld. AR was that the deduction for the service charges towards plant maintenance of unrelated Bottlers should be allowed because the assessee is a part of the overall Coca Cola group of companies managing its business in India through various companies and that its revenue from sale of Concentrate was accordingly swelled. If this argument is taken to a logical conclusion, it would mean that the corporate veil of all the group companies should be pierced; revenues and expenses of each company should be aggregated and one assessment of the

group as a whole be made. This argument overlooks the separate legal entity concept of all the individual companies of Coca Cola group operating in India. The assessee is a separate and distinct entity from TCCC or HCCB or CCI Inc. Deductibility of expenses in the hands of each company is required to be judged with reference to the business activity carried on by it and not of all the group companies taken as a single unit. Only such expenses as have been incurred by the assessee in the business of Concentrates can be allowed as deduction and not the obligations of other group companies *suo motu* discharged by it or the expenses which are not incurred wholly and exclusively for its business purpose. This argument does not hold water and is accordingly jettisoned.

11.1. The next argument of both the sides – for and against - is about this issue being a covered matter. At this juncture, it is relevant to note that similar disallowance of Service charges was made by the AO in his order for the immediately preceding assessment year. As against the total expenditure of Rs.46.75 crore incurred by the assessee towards service fee to CCI Inc., the AO made disallowance of Rs.10.80 crore (nearly 25%) on similar grounds of the services rendered by CCI Inc. to the bottlers not

for the business purpose of the assessee. The ld. CIT(A) confirmed the addition by holding that such expenditure was not wholly and exclusively for the purpose of the assessee's business because that was benefitting the bottlers. When the matter finally came up for consideration before the Tribunal, the disallowance came to be deleted vide its order dated 30-06-2008, whose copy has been placed on record.

11.2. Here it is pertinent to mention that the immediately preceding year was governed by the Service agreement dated 1.4.1995. However, the year in question came to be covered by a new Service agreement effective from 1.4.1997, whose copy has been placed at page 1 of the paper book. While discussing the submissions of the ld. DR, we have reproduced hereinabove Clause (1) of the 1997 Agreement. There are fresh clauses 2 to 4 dealing with the nature of services to be provided. Clause 2 of the Agreement states that CCI Inc. shall: `Provide technical know-how, service and assistance to Britco in all its manufacturing operations including its manufacture of Products in Cans and PET bottles shall primarily comprise of:

> (a) Technical advice to ensure efficiency in all its manufacturing operations and advise on minimization of

materials usage consistent with production guidelines of the Company.
(b) Technical guidance of equipment maintenance and on sourcing of spare parts and other services.
(c) Assistance and monitoring the quality of finished products and package, in particular the Cans and PET packages and providing feedback to ensure consistently high standards of finished products and packaging are achieved by Britco.
(d) Guidance related to new plant and equipment purchase and operational expansion.
(e) Operational staff training.

11.3. Clause 3 states that CCI Inc. shall: `Provide Marketing Support to Britco including development of creative, development of the advertising campaign, media planning, media buying, development of market strategy and other ancillary activities related to selling of the products'.

11.4. Clause 4 of the Agreement records that CCI Inc. shall: `Provide Accounting Assistance including guidance and support on Budgeting, development and implementation of Management Information Systems (MIS) for financial analysis, Planning, costing and monitoring of the transaction with the bottlers and export transaction.'

11.5. It can be seen on a comparative study of the first Agreement dated 01.04.1995 and the second Agreement effective from 01.04.1997 that certain specific services (as per clause 1 of

the agreement) were mentioned in the agreement dated 01.04.1995 which were to be rendered by CCI Inc. In the latter agreement dated 01.04.1997, such services continued to exist but certain additional services were added through clauses 2 to 4, which are exclusively meant for the assessee and not the Bottlers. This divulges that the extent of services rendered by CCI Inc. to the assessee in the later Agreement dated 01.04.1997 increased *vis-a-vis* the services provided for in the Agreement dated 01.04.1995. Insofar as the rendition of services to the Bottlers is concerned, there is no change in their scope in the two Agreements. This establishes that the services rendered by CCI Inc. to Bottlers in the A.Y. 1997-98 were of similar nature as given in the assessment year under consideration. The point for determination is only the deductibility of service charges paid by the assessee to CCI Inc. for rendering services to the bottlers. Thus, even though there is some change in the facts from the preceding year to the current year by means of substitution of the Agreement expanding the scope of services, but such change has no impact on the issue for determination, being the services rendered to the bottlers. As such, we find it difficult to hold that the facts for the year under consideration have undergone change

vis-a-vis the immediately preceding year *qua* the issue of deductibility of service charges paid for the plant maintenance of the unrelated bottlers. This very issue has been examined by the Tribunal in its order for A.Y. 1997-98 and a decision has been rendered that such expenses are allowable in terms of section 37(1) of the Act. Albeit there is a massive force in the contentions of the ld. DR, but we do not wish to accord our imprimatur to the same by disturbing the consistency of the Tribunal's conclusion on the issue because the matter is already *sub judice* before the Hon'ble High Court. Respectfully following the Tribunal order for the immediately preceding year, we hold that the disallowance of service charges paid by the assessee to CCI Inc. at 25% is unwarranted. The same is, ergo, directed to be deleted.

12. The only issue raised in the cross appeals for the assessment year 1999-2000 is about the extent of deductibility of service charges paid by the assessee to CCI Inc. For this year also, the assessee claimed deduction of service charges amounting to Rs.45,27,29,472/- after adjustment of certain debit notes with the gross amount at Rs.54,22,93,800/-. The AO, following the parity of reasoning given for the earlier years, disallowed the full

amount of service charges. The ld. CIT(A), however, restricted the disallowance to 30%. Both the assessee as well as the Revenue have come up in cross appeals on their respective stands.

13. We have heard both the sides and gone through the relevant material on record. At the very outset, the rival parties fairly conceded that the facts and circumstances of the appeals for the instant year are *mutatis mutandis* similar to those of the preceding year, which was argued by them at length. In fact, the parties simply adopted their arguments made for the assessment year 1998-99. The only distinguishing feature brought to our notice was that the assessee did not carry out any bottling activity in the instant year. Having regard to the fact that there is no distinction in the facts and circumstances of the case *qua* the Service charges paid by the assessee to CCI Inc., following the view taken by the Tribunal for the preceding years, we direct to allow the deduction for service charges in full. At the cost of repetition, it is once again made clear that the deduction is being allowed so as to maintain consistency in the view of the Tribunal as the matter is *sub judice* before the Hon'ble High Court notwithstanding the fact that the Department has a good arguable case.

14. In the result, the appeals of the assessee for the assessment years 1998-99 and 1999-2000 are allowed and the appeal of the Revenue for the A.Y. 1999-2000 is dismissed.

Order pronounced in the Open Court on 20th April, 2022.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 20th April, 2022
Satish/GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	13-04-2022	Sr.PS
2.	Draft placed before author	20-04-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
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11.	Date of dispatch of Order.		

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