IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No. 610/PUN/2004	**:**	(Assessment Year: 2000-01)
ITA No. 1103/PUN/2005	**:**	(Assessment Year: 2001-02)
ITA No. 256/PUN/2007	**:**	(Assessment Year: 2002-03)
ITA No. 144/PUN/2007	**:**	(Assessment Year: 2003-04)
ITA No. 896/PUN/2008	**:**	(Assessment Year: 2004-05)

M/s. Coca Cola India Pvt. Ltd. 1107-1110, Pirangut Tal Mulshi, Pune	Vs.	DCIT, Circle - 1(1) Pune

PAN: AAACB8573G

Appellant **Respondent**

ITA No. 1015/PUN/2004	**:**	(Assessment Year: 2000-01)
ITA No. 1162/PUN/2005	**:**	(Assessment Year: 2001-02)
ITA No. 356/PUN/2007	**:**	(Assessment Year: 2002-03)
ITA No. 357/PUN/2007	**:**	(Assessment Year: 2003-04)
ITA No. 825/PUN/2008	**:**	(Assessment Year: 2004-05)

DCIT, Circle - 1(1) PMT Building Shankar Seth Road Swargate, Pune 411037	Vs.	M/s. 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

Date of Hearing: 26.04.2022
Date of Pronouncement: 29.04.2022

O R D E R

Per S.S. Godara, JM

The instant batch of ten cross appeals pertains to the single assessee, M/s. Coca Cola India Pvt. Ltd. All other relevant details pertaining to the same read as under: -

Sr.No	AY	ITA No	Appellant	Order appealed against	Proceeding under Section
1	2000-01	610/Pun/2004 1015/Pun/2004	Assessee Revenue	CIT(A)-1, Pune order dated 15.03.2004 Case No. PN/CIT(A)-1/DC.Cir. 1(1), Pn/50/03-04	143(3)
2	2001-02	1103/Pun/2005 1162/Pun/2005	Assessee Revenue	CIT(A)-1, Pune order dated 14.02.2004 Case No. PN/CIT(A)-1/ Addl. CIT.Rg.1, Pn/31/04-05	143(3)
3	2002-03	256/Pun/2007 356/Pun/2007	Assessee Revenue	CIT(A)-1, Pune order dated 12.12.2006 Case No. PN/CIT(A)-1/DC.Cir. 1(1), Pn/70/05-06/No. PN/CIT(A)-1/DC.Cir. 1(1), Pn/108/05-06	143(3)
4	2003-04	144/Pun/2007 357/Pun/2007	Assessee Revenue	CIT(A)-1, Pune order dated 12.12.2006 Case No. PN/CIT(A)-1/DC.Cir. 1(1), Pn/70/05-06/No. PN/CIT(A)-1/DC.Cir. 1(1), Pn/108/05-06	143(3)
5	2004-05	896/Pun/2008 825/Pun/2008	Assessee Revenue	CIT(A)-1, Pune order dated 15.03.2004 Case No. PN/CIT(A)-1/DC.Cir. 1(1), Pn/318/06-07	143(3)

Heard both the parties and case files perused.

2. It emerges during the course of hearing at the outset that we do not need to adjudicate upon all the issues raised herein as the learned coordinate bench's earlier order(s) have already disposed the same. Both the parties are ad idem that we need to decide only three identical issues in all these cases i.e. disallowance of service charges, travelling expenditure and depreciation claims; as the case may be, involving varying sums. We thus treat the first and foremost assessment year herein AY 2000-01 involving assessee's and the Revenue's cross appeals ITA Nos. 610 & 1015/Pun/2004 as the "lead" year.

3. We now advert to the foregoing twin "lead" cases and note that the assessee's substantial ground Nos 2(a) to (i) as well as the Revenue's pleadings in its 1st to 4th grounds challenge correctness of the CIT(A)'s action partly confirming assessment findings disallowing services charges payments of Rs.52,92,79,442/- to the extent of 30% only. It is in this factual background that the assessee seeks to delete the entire service charges disallowance whereas the Revenue's endeavour is to restore the assessment findings rejecting this entire claim.

4. Both the learned counsel reiterated their respective stands against and in support of the assessee's and the Revenue's pleadings. We find that there is hardly any need for as to delve much deeper in the relevant factual matrix. Suffice to say, the very issue had arisen between the parties in earlier assessment years as well. This tribunal's very recent order dated 20th April, 2022 has decided the same in assessee's appeals ITA No. 1258/Pun/2003 and ITA No. 182/Pun/2004 (AYs 1998-99 & 1999-2000) with the Revenue's cross appeals ITA No. 237/Pun/2004 for latter assessment year; respectively against the department and in taxpayer's favour as under: -

> *"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."

5. Mr. Meena vehemently sought to pin-point the change in factual position since the assessee had stopped its bottleling activity in the impugned assessment year(s). And also that the corresponding service agreement had undergone a sea change and therefore, we need to independently examine its claim than following the preceding detailed discussion by the learned coordinate bench, We find no merit in the Revenue's instant argument as it is clear from a perusal of the assessment findings in par 6.1, page 27 dated 31st March, 2003 that the assessing authority had itself admitted the relevant factual position herein to be similar as in AY 1999-2000 wherein the taxpayer has already succeeded. We therefore adopt judicial consistency to accept assessee's impugned service charge claim of Rs.52,92,79,442/- in entirety and allow its corresponding ground Nos 2(a) to (i) in appeal ITA No. 610/Pun/2004. The Revenue's corresponding 1st to 4th substantial grounds in its cross appeal ITA 1015/Pun/2004 as well the main case itself stand dismissed to this limited extent.

6. Next comes the assessee's third substantive ground that both the learned lower authorities have erred in law and on facts in disallowing travelling expenditure of Rs.9,59,49,374/- in both the lower proceedings. Both the learned counsel invited our attention to the CIT(A)'s detailed discussion regarding the instant issue as follows: -

> *"6. The grounds no.18 to 20 taken by the appellant is with respect to disallowance of traveling expenses amounting to Rs.9,59,49,374/-. The assessing officer has discussed this issue in Para 8 of the assessment order. During the assessment proceedings, the assessing officer noticed that out of the total traveling expenditure of Rs.10,09,52,522/-, Rs.50,03,148/- belonged to the appellant's own traveling expenses and Rs.9,59,49,374/- represented reimbursement of traveling expenses of CCI Inc. The perusal of details of traveling expenditure reimbursed reveal that the persons traveled were employees of CCI Inc. and in the absence of any resolution of the company or agreement for reimbursing expenditure, the assessing officer held the Rs.9,59,49,374/- was considered as having been not incurred wholly and exclusively for the purpose of appellant's business by the assessing officer and he disallowed the same.*
>
> *6.1 During the appellate proceedings, the appellant submitted that though the persons who had traveled were employees of CCI Inc., they had traveled for the purpose of appellant's business. The fact of reimbursement of certain expenses incurred by CCI Inc. in providing*

services to the appellant company was mentioned in the Service agreement and this expenditure reimbursed to CCI Inc. was not claimed as expenditure under any other head including service charges. It has been submitted by the appellant as under:

"20.1. The A.O has disallowed traveling expenses amounting to Rs.9,59,49,374 reimbursed by the appellants to CCI on the following grounds:

- *Travelling expenditure is on account of person not on the payroll of the Appellants.*
- *There is no resolution or agreement for reimbursement of travelling expenditure. Payment on account of travelling is thus non contractual payment.*
- *Appellant did not file evidence that the travelling expenditure was incurred for the purposes of its business.*
- *Sample vouchers as mentioned in the assessment order do not explain how the Appellant's business interests were served.*

Our Submissions:

20.2. The Assessing Officer's contention that the Appellants did not file details of travelling expenses is factually incorrect.

20.3. The appellants filed details of travelling expenditure on 511-February 2003. Supporting vouchers giving complete details of person travelling, place visited, purpose for which he travelled and signature of person authorizing such travel were also filed. The Assessing Officer had then required the appellants to file the said details in the following format:

Name
Educational qualification
Salary
Purpose of travel
Date of travel
Amount spent:

It was submitted to the A.O that all details except education qualification and salary had already been submitted. Data on salary had been separately produced in the form of Form 24 -"Annual TDS Return for Salaries". Notwithstanding the fact that details of educational qualification would have to be compiled from individual personnel files and was not really relevant to the issue on hand, sample data on the same was provided. Based on the fact that the appellants could not provide this one piece of irrelevant data for all the persons travelling, a sweeping statement has been made that evidence as desired was not provided.

20.4. The contention of the A.O at page 43, that the travelling expenses should be disallowed because it has been incurred by persons who are not on the payroll of the appellants is also without any basis. It is respectfully submitted that for the purpose of claiming deduction on travelling, the person travelling need not be on the payroll of the company. The person whose travelling expenses had been claimed had

in fact traveled on the appellant's business and the expenses have been incurred by the appellants in the course of its business and claimed as per provisions of the Income Tax Act.

20.5. The Assessing Officer's contention that there is no agreement for reimbursement of travelling expenditure incurred by Coca Cola India Inc is gravely erroneous. The reimbursement of certain expenses incurred by Coca Cola India Inc in providing services to the appellants is covered in the Service agreement between the two companies. The service agreement is part of the records with the Assessing Officer. The terms of the service agreement have also been approved vide the Board Resolution dated 20th June 2000. The appellant had also vide its letter dated 29th March 2003, clarified to the Assessing Officer that this expenditure reimbursed to Coca Cola India Inc had not been claimed as expenditure under any other head including service charges.

20.6. The business purpose served in respect of the travel expenditure claimed in the sample vouchers had also been explained to the Assessing Officer.

The same are reproduced below for your kind consideration:

"Voucher no 76661 - Travel expenses of K. V Nair, on retail marketing convention.

A retail marketing convention was held in Delhi. The purpose of the convention was to tap new sources of distribution and marketing and to undertake specific negotiations with large customers (key accounts). As explained earlier, the growth of large customers that transcend bottler territories has increased the need for negotiations between the assessee and these customers to arrange chain wide promotions. Because bottler territories are usually smaller than the areas served by large customers, CCI, on behalf of the assessee negotiates with multiple bottlers to obtain their mutual participation in a chain wide promotion.

During the retail marketing convention, plans and strategies for expanding business are discussed. Bottlers are informed of the various promotions planned along with these retail customers, and the buy-in of the bottlers is secured. This is a very important convention as it smoothens business relationship and ensures that the retail customers do not switch loyalty to competitor's products.

The convention is also an important platform to booster goodwill among the customers of your assessee and strengthen business relationship. It is for this reason that the spouses of the bottlers and key customers were also invited to join the convention. Certain key managers of CCI were also required to travel with their spouse to ensure social interaction.

2. Voucher no 96406

These are moving and relocation expenses of a manger of CCI from Delhi to Bangalore. Your assessee's business interests are spread through out the length and breadth of the country. It has however only one plant at Piran gut and 50 odd employees. Its business interests are looked after totally by CCI Depending on the business needs of the

assessee, CCI transfers its managers to different places in the country. The voucher relates to the relocation expenses of one such manager who was transferred from Delhi to Bangalore. It is to be noted that if CCI had not been there, your assessee would have had to incur the same expenditure for transferring its employee.

3. Voucher no 94856

These are expense of T. V S Krishnan. Mr. Krishnan advises the assessee on environment management. These are his travel expense from Delhi to Pune. Mr. Krishnan advises the assessee and its customers on matters such as environment management, recycling waste and pollution control.

It is to be noted that any non compliance in this field, by either the assessee or its customers will have a severe impact on the reputation of the assessee. The recent newspaper articles on the painting of advertisement on rocks in the Himalayan mountain range is a case to point. The painting was allegedly done by a local distributor. However your assessee received show cause notices from the Government authorities for defacing the natural beauty of the mountains.

The AO's contention that explanations were not given on the sample vouchers is thus gravely erroneous. It is submitted that the only way to find out the purpose of expenditure incurred under any voucher is to enquire, as vouchers cannot have detailed and lengthy narrations on them. It is also submitted that no queries raised by the AO on examination of the vouchers submitted during the proceedings remained unanswered.

20.7. These vouchers as well as all the other vouchers submitted in support of travelling expenses have to be seen in the light of the following background:

- *The business interests of the appellants are spread throughout the country. It however has only one office at Pune and about 53 employees.*
- *-It is CCI who has incurred expenses which your appellants would have otherwise incurred for running such a vast business.*
- *If CCI would not have been there, similar expenses would have been incurred by the appellants.*
- *The entire arrangement between CCI and your appellants, formalized in a service agreement has been approved by the RBI.*

20.8. The appellants respectfully submits that the travel expenses have been incurred by Coca Cola India Inc for running the business of the appellants, and reimbursed to Coca Cola India in terms of the service agreement."

6.2 I have considered the facts of the case. It is an admitted fact that the appellant has not considered the traveling expenses reimbursed to CCI Inc. employees as a part of the service agreement. There is no other contractual obligation on record which justifies the reimbursement of the traveling expenses of CCI Inc. employees who visit different places for the business of the appellant as well as for the business of HCCBPL and other matter of the Coca Cola group as a

> *whole. In such a situation, it could not be stated that the reimbursement of the traveling expenses has been done only and exclusively for the purpose of business of the appellant and the appellant's claim that these have been reimbursed in terms of the service agreement is neither proved nor is acceptable in the light of the fact that service charges have separately been debited and disclosed in schedule 14. Ground nos. 18 to 20 are, therefore, decided against the appellant."*

7. We have given our thoughtful consideration to rival pleadings and found no reason to accept either party's stand in entirety. We make it clear first of all that the CIT(A) himself held in his detailed discussion in para 4.5 that the assessee had been including these travelling charges as part and parcel of service charges only till AY 1999-2000 which have been separately accounted in the impugned assessment year onwards. We reiterate that the assessee's service agreement issues have already been decided against the department all along as well in the preceding paragraphs (supra). That being the case, we find no substance in the Revenue's vehement arguments supporting the impugned disallowance in principle since the very claim stands accepted all along in principle.

8. Next comes equally important aspect of quantification of the impugned travelling expenses disallowance. Learned counsel referred to the assessee's service agreement(s) with the recipient group entity to reiterate the point that the latter had been incurring these travelling charges wholly and exclusively for the purpose of its business which in turn would be reimbursed by the former. We observe that such an argument deserves to be accepted only in principle and it does not result in acceptance of the entire claim amount. Learned counsel at this stage invited our attention to the assessment findings that the Assessing Officer had examined only three payment vouchers pertaining to S/Shri K.V. Nari, M. Paul Pinto with family and T.V. S. Krishnan (supra). All these sufficiently indicate that although the assessee had to indeed perform its reimbursement obligation regarding travelling expenditure to payee group, we hardly see any reason for the latter entity's employees right to claim the same regarding their family members as well. This is coupled with the fact that there is no complete reconciliation between the corresponding travelling expenses vis-a-vis the assessee's business requirement involving the group company employees' travel to sufficiently

discharge its onus of having incurring this expenditure wholly and exclusively for the purpose of the business. Faced with this situation, we find that a lump sum travel expenditure disallowance of 10% on estimation basis would be just and proper. Ordered accordingly. The assessee succeeds in the remaining 90% travelling expenditure component. Necessary computation shall follow as per law.

9. Lastly come the assessee's fourth substantial ground challenging depreciation disallowance on coolers amounting to Rs.2,01,90,507/- made in both lower proceedings. The CIT(A)'s detailed discussion confirming the impugned disallowance reads as under: -

> *"5. Grounds no. 13 to 17 taken by the appellant is with respect to disallowance of depreciation on coolers amounting to Rs.2,01,90,507/-. The assessing officer has discussed this issue in Para 7 of the assessment order. The appellant had claimed 25% depreciation on coolers. The assessing officer did not allow the claim of depreciation holding that the appellant's business is manufacture and sale of beverage base and not manufacture and sale of beverages (soft drinks). Though the appellant was owner of cooler, coolers were provided either to the bottlers or vendors and thus utilized by others and as such not for the purposes of business of the appellant. As the appellant failed to fulfill the conditions stipulated uls.32, the assessing officer disallowed the claim of depreciation on .. coolers and added Rs. 2,01,90,507/- to the total income.*
>
> *5.1 During the appellate proceedings, the appellant vide submission dated 23.10.2003 submitted as under:*
>
> *"19.1 The appellant's business is inextricably linked with the growth of the bottling industry, as the concentrate manufactured by the appellants has no other commercial use, except as raw material in the manufacture of cool drinks. As the name suggests, cool drinks are meant to be served in a chilled condition. Market research undertaken in India has shown that the sale of cool drinks increased by almost 43% if sold in a chilled condition. Cool drinks cannot be produced without concentrate. The increase in sale of cool drinks thus directly benefits the appellants as it results in a proportionate increase in demand for concentrate.*
>
> *The A.O has failed to appreciate the sound business reasoning employed in placing these coolers by the appellants. Instead he has fully disallowed the claim for depreciation on coolers.*
>
> *It is important to note here, that the claim for depreciation on coolers by the appellants has never been in dispute in the past. '*
>
> *19.2 The A.O has disallowed the depreciation on coolers on the ground that 'coolers are utilized by the parties other than the assessee".*

Our submissions

19.3 The appellant submits that there is no requirement under section 32 that the asset should be used directly by the assessee. Section 32 only stipulates that asset should be used for the purpose of business.

19.4. In similar industries, e.g. the frozen products industry, or in sale of milk and milk products, the manufacturer always places coolers and other sales generating equipments at the retail outlets. This is because it is necessary for the product to be reached to the consumer in a particular condition. It is the retailer who will be using these assets in all cases, but the benefit is received by the manufacturer as it creates a demand for his products.

19.5. The A O has also contended that the assets are not utilized within the premises of the Appellant, but placed at various shops and retail outlets.

Our submissions

19.6. The Appellants respectfully submit that there is no requirement u/s 32 of the Income Tax Act that assets must be within the business premises. These assets are meant to generate sales, by creating a demand for the products and have necessarily to be placed at the premises visited by the consumer. If these assets are kept in the business premises on the appellant they would not serve any business purpose and would in fact defeat the requirements of Section 32.

19.7. The A O has claimed that since the Appellants are no longer engaged in the business of manufacture and sale of beverage, deprecation cannot be claimed on these assets.

19.8. The AO has failed to appreciate that the business of the appellants is inextricably linked to the demand for bottled beverage.

The appellants participate in the activity of placing coolers purely for the furtherance of its own business interests and for earning more income. As explained above, market research has shown that the sale of cool drinks increase by almost 43% if sold in a chilled condition, The most important ingredient in the manufacture of cool drinks and the one from which the drinks derive their unique flavour is the concentrate manufactured by the appellants. Naturally such a huge increase in the sale of cool drinks creates a huge demand for the beverage base, as the cool drinks cannot be manufactured without this beverage base. The investment made by the appellants in these coolers thus gives the appellant a very good return, and is essential for its business growth.

19.9. The Appellants provide coolers at retail outlets for the purpose of meeting mutually agreed sales targets, as part of its efforts to achieve its own business plans. It may be noted that this placement of coolers by the appellant is over and above similar activities, which are undertaken by the bottlers themselves in their respective territories (See the audited accounts of the bottlers at page 67 to page 125 of the Paper Book I).

19.10. The coolers also serve as an advertising medium as they prominently bear the advertising logo and name of the Appellants. A

consumer entering the outlet would see the cooler and cool drinks displayed therein, and would be induced to consume the products. Hence it is beneficial for your appellant to undertake this activity, so as to ensure uniformity in the look and performance of the cooler and also to achieve economies of scale. If this activity is left solely to the bottlers, it is possible that each bottler in each territory will go in for different types of coolers. The coolers are also an important advertising tool and it is also important that they are immediately recognized and associated with the product.

19. 11. The coolers also create a sense of loyalty amongst the retailers and other intermediaries in the trade. A retailer at whose outlet the cooler is kept will be less inclined to push the sale of competitor manufacturer.

19.12. The A.O has also contended that there is no agreement for the placing of these coolers, and hence no contractual obligation cast on the appellants to undertake this activity.

Our Submissions

19.13. This contention of the A.O is factually incorrect. The A.O has himself at page 37 and 38 of the assessment order reproduced key terms and conditions of the agreement. As submitted during the assessment proceedings, the appellants enter into an agreement with all retail outlets where these coolers are placed. A copy of the agreement is annexed at page 1 to page 5 of the paper book III.

19.14. Some of the key terms and conditions on which the cooler are placed are as follows:

Ownership of the cooler vests with the Appellants at all times

The appellant has access to the outlets for the purpose of verifying its assets.

The appellants have the authority to move the cooler form one retail outlet to another, or change the cooler provided to an outlet for a bigger / smaller cooler.

The outlets cannot store anything in the cooler, other than finished products manufactured using the beverage base supplied by the appellants.

19.15. As can be seen, the ownership of the cooler vests at all times with the Appellants and the appellant has the right to move the cooler from one outlet to another as per its business needs. The coolers are thus an important asset used by the Appellant to achieve its business plans.

19. 16. The appellants further submit that contractual obligation may be one reason for incurring expenditure but need not be the only reason. It is the normal business practice in the industry in which the appellant operates to place coolers at the retail outlets to ensure chilled availability. There is thus an obligation cast by trade and industry practices on the appellant to provide such coolers. Further these coolers are placed as part of the joint promotion activity with bottlers in their areas"

> *5.2 I have gone through the assessment order, the submissions of the appellant. It is an admitted fact that there is an agreement with the bottlers but the assets remains as utilized for the purpose of the bottlers. These do not generate 'sales' of concentrate but directly help the bottlers linked to the Coca Cola group including HCCBPL. If these advertise any product, it is the product of the Coca Cola company or bottlers and the whole agreement relating to marketing expenses need not be repeated here. As such, the disallowance has rightly been made and on sound footing is upheld. Grounds nos. 13 to 17 are decided against the appellant."*

10. We have given our thoughtful consideration to vehement contentions and find no merit in the Revenue's stand. It emerges during the course of hearing that not only the learned lower authorities had accepted the assessee's identical depreciation claim pertaining to cooler provides to the bottlers/vendors by allowing the same in preceding years throughout but also the learned counsel sought to invite our attention that the accepted written down value thereon as on 01.04.1999 held as eligible for depreciation. And that the dispute therein is only for the coolers which have been added in the asset schedule of the relevant previous year. We thus observe that there is hardly any justification on the part of the learned lower authorities to adopt a different approach in the impugned assessment year's depreciation claim only for the newly added coolers installed at bottlers/vendors premises. We thus delete the impugned depreciation disallowance of Rs.2,01,90,507/- in this first and foremost AY 2004-05. This assessee's appeal ITA No. 601/Pun/2004 is partly allowed to this limited extent.

11. Next comes AY 2001-02 involving the assessee's and the Revenue's cross appeals ITA No. 1103 & 1162/Pun/2005. Both the parties make it clear during the course of hearing that their first and foremost issue is regarding disallowance of service charges made by the Assessing Officer in entirety which stands to 30% only in CIT(A)'s order. That being the case, we accept assessee's 10th to 15th substantive grounds seeking to delete the entire service charge disallowance of Rs.68,40,22,222/- in appeal ITA No. 1103/Pun/2005. The Revenue's first to fourth substantial grounds as well as its cross appeal ITA No. 1162/Pun/2005 fail accordingly.

12. The assessee's 16th, 19th and 20th to 26th substantive grounds challenging the twin issues of disallowance of travelling expenses of

Rs.7,12,27,270/- and depreciation of coolers of Rs.4,32,37,967/- are accepted to the extent of 90% and in entirety; respectively, in light of our detailed discussion in the foregoing lead cases. This appeal ITA No. 1103/Pun/2005 partly succeeds to this limited extent.

13. Third assessment year herein 2002-03 involves the assessee's and the Revenue's cross appeals ITA No. 256 & 356/Pun/2007. The assessee's 13th to 18th substantive grounds and the Revenue's second to fourth substantive grounds raise the common issue of disallowance of service charges made by the Assessing Officer to the extent of Rs.5,45,88,227/- as restricted to 30% only in the CIT(A)'s order. We draw support from our foregoing discussion to delete the impugned disallowance in entirety and accept and reject the assessee's and the Revenue's corresponding substantive grounds. Latter's appeal ITA No. 356/Pun/2007 fails accordingly.

14. The assessee's 19th to 22nd and 23rd to 28th substantive grounds raise the twin issues of reimbursement of travelling expenses and disallowance of depreciation on coolers to the tune of Rs.6,65,88,746/- which are allowed to the extent of 90% and in entirety; respectively in light of our foregoing detailed discussion in the corresponding lead case (supra). We make it clear that we have upheld the impugned disallowance of travelling expenses to the tune of 10% in above terms. This assessee's appeal ITA No. 256/Pun/2007 is partly allowed to this limited extent.

15. We now advert to the assessee's and the Revenues cross appeal ITA No. 144 & 357/2007 for AY 2003-04. Suffice to say, assessee's 13th to 15th substantive grounds and Revenue's first substantive ground raising service charge disallowance issue of Rs.15,28,78,125/- which has been restricted to 30% in CIT(A)'s order, is being decided in taxpayer's favour and against the department in light of or finding in preceding paragraphs. The assessee's corresponding substantial grounds stand accepted while the Revenue's first substantive ground as well as the main appeal ITA No. 357/Pun/2007 is rejected to this limited extent.

16. The assessee's 19th to 22nd and 23rd to 28th substantive grounds raising the twin issue of travelling expenses and depreciation on coolers involving

Rs.78,09,682/- and 9,90,81,175/- are accepted to the extent of 90% and in entirety; respectively in light of the detailed discussion hereinabove. Necessary computation shall follow as per law. This impugned appeal ITA No. 144/Pun/2007 is partly allowed in above terms.

17. Lastly comes AY 2004-05 involving the Revenue's and the assessee's cross appeals 825 & 896/Pun/2008. The formers sole substantive grievance and latter's 12 to 17 substantive grounds raising service charge reimbursement issues to the extent of Rs.15,40,95,639/- which has been restricted to 30% in CIT(A)'s order, stand decided against the department and in assessee's favour in entirety in light of our preceding detailed discussion. Necessary computation shall follow as per law. The Revenue's main appeal ITA No 825/Pun/2008 fails accordingly.

18. The assessee's cross appeal ITA No. 896/Pun/2008 also raises its 18th to 21st and 22nd to 26th substantive grounds of disallowance qua travelling expenses and depreciation of Rs.11,49,24,250/- which are accepted to the extent of 90% and in entirety; respectively in light of our foregoing detailed discussion in the lead case(s) herein above. This instant appeal ITA No. 896/Pun/2008 is partly accepted to this limited extent.

No other ground has been pressed before us.

19. To sum up, the assessee's five appeals ITA Nos. 610/Pun/2004, 1103/Pun/2005, 256/Pun/2007, 144/Pun/2007 & 896/Pun/2008 are partly allowed whereas the Revenue's cross appeals ITA Nos. 1015/ Pun/2004, 1162/Pun/2005, 356/Pun/2007, 357/Pun/2007 & 825/Pun/ 2008 are dismissed in above terms. A copy of this common order may be placed in the respective case files.

Order pronounced in the open court on 29th April, 2022.

Sd/-	Sd/-
(Dipak P. Ripote)	**(S.S. Godara)**
Accountant Member	**Judicial Member**

Pune, Dated: 29th April, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -1, Pune*
4. *The Pr.CIT - 1, Pune*
5. *The DR, "" Bench, ITAT, Pune*

By Order

//True Copy//

Assistant Registrar
ITAT, Pune Benches, Pune

n.p.