

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "E", MUMBAI

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA No. 5396/Mum/2024 (A.Y. 2011-12)
ITA No. 5395/Mum/2024 (A.Y. 2012-13)
ITA No. 5394/Mum/2024 (A.Y. 2012-13)
ITA No. 5393/Mum/2024 (A.Y. 2015-16)
ITA No. 5392/Mum/2024 (A.Y. 2018-19)

M/s. KPMG Advisory Services Private Limited 2nd Floor, Block T2 (B Wing), Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai PAN: AABCK 2895 D (Appellant)	Vs.	DCIT, Circle – 6(1)(2), Aaykar Bhavan, M.K. Road, Churchgate, Mumbai (Respondent)
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Present for:

Assessee by : Shri Ajit Jain a/w Shri Siddhesh Chaugule &
Shri Shabbir Motorwala
Revenue by : Shri Hemanshu Joshi, Sr. DR

Date of Hearing : 16.01.2025
Date of Pronouncement : 13.02.2025

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

All these appeals filed by the assessee are directed against the different order of First Appellate Authority passed u/s 250 of the Act. Since common issue on identical facts are involved in these appeals therefore for the sake of convenience these appeals are adjudicated together by taking the ITA 5396/M/2024 as lead and its finding will be applied to the other appeals wherever it is applicable.

ITA No. 5396/M/2024 (A.Y. 2011-12)

1. *On the facts and circumstances of the case and in law the National Faceless Appeal Centre [NFAC]/ Commissioner of Income Tax (Appeals) [CIT(A)] erred in upholding the disallowance under Section 40A(2)(b) of the Income Tax Act, 1961 [the Act] of Rs. 1,28,06,374, being 10% of facility costs aggregating Rs. 12,80,63,741 paid to KPMG Assurance and Consulting Services LLP [KACSL].*
 2. *On the facts and circumstances of the case and in law the NFAC/ CIT(A) erred in upholding the disallowance under Section 40A(2)(b) of the Act of Rs. 9,18,140 being 10% of professional indemnity insurance of Rs.91,81,397 reimbursed to KACSL.*
 3. *On the facts and circumstances of the case and in law the NFAC/ CIT(A) erred in upholding the disallowance under Section 40A(2)(b) of the Act of Rs. 94,57,392 being 10% of professional fees aggregating Rs. 9,45,73,924 paid to KACSL.*
 4. *On the facts and circumstances of the case and in law the NFAC/ CIT(A) erred in upholding the disallowance under Section 40A(2)(b) of the Act of Rs. 1,50,00,000 being 10% of professional fees aggregating to Rs. 15,00,00,000 paid to KACSL.*
 5. *The NFAC/ CIT(A) erred in upholding the disallowances without considering all the submissions of the Appellant and without giving an opportunity of being heard to the Appellant.*
 6. *The NFAC/ CIT(A) erred in passing the order just 1 day post uploading the Appellant's submission on the e-filing portal.”*
2. Fact in brief is that return of income declaring total income of Rs. 9,81,84,319/- was filed on 29.11.2011. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 07.08.2012. The assessee company is engaged in the business of consultancy in the field of strategy infrastructure, IT enabling technologies, system integration and software services. The assessment order u/s 143(3) of the Act was passed on

12.12.2013 by assessing the total income at Rs. 13,81,19,629/-.

The issue arised in the four ground of appeal filed by the assessee are pertained to disallowance made u/s 40A(2)(h) of the Act of 10% of financial cost, professional indemnity insurance, professional fees etc. paid by the assessee to its associate concern. Looking to the common basis of such disallowance all these disallowances are adjudicated together. During the course of assessment, the assessing officer noticed that assessee has paid facility costs of Rs. 12,80,63,741/- to KPMG, a partnership firm in which one of the shareholders is a partner. On query, the assessee explained that KASPL (assessee company) staffs operate from offices located at Mumbai, Gurgaon, Bangalore, Hyderabad, Pune and Kolkata. KPMG is a member firm of KPMG International a co-operative which is a mutual association of its members. KPMG incurs the cost on its behalf and on behalf of the sub-licensees and recover from sub-licensees their share or cost. The reimbursements of costs are termed as support service charges in the books of sub-licensees. The assessee has also given the break-up of facilities consisting of following items:

<i>Particulars</i>	<i>Amount in crs. (Rs.)</i>	<i>Refer note</i>	<i>Basis of recovery</i>
<i>Occupancy costs and use of assets</i>	<i>10.59</i>	<i>1</i>	<i>Area occupied</i>
<i>Electricity & Water</i>	<i>0.59</i>	<i>2</i>	<i>Area occupied</i>
<i>Communication Technology and Knowledge management</i>	<i>1.11</i>	<i>3</i>	<i>Headcount</i>
<i>Consumables and others</i>	<i>0.52</i>	<i>4</i>	<i>Headcount</i>
<i>Total</i>	<i>12.81</i>		

3. It is also explained that in all the cases the consideration paid was determined by the original vendor who was an unrelated party of KPMG. It was also submitted that basis of recovery from the assessee was the same as the basis of recovery from BSR & CO (a sub-licensee) whose relationship with KPMG did not fall within the ambit of section 40A(2)(b) of the Act. Before the assessing officer, the assessee has also provided copies of invoices raised by KPMG on the company and BSR & CO an unrelated party. Since the KPMG made arrangement for various facilities from the outside vendor, therefore, the cost regarding use of those facilities were also recovered from each sub-licensees as its share of cost. The assessee has also provided the comparative cost incurred by the KPMG and the allocation made to the assessee company as under:

<i>Nature of items</i>	<i>Cost incurred by KPMG (in Lakhs)</i>	<i>Cost allocated to KASPL (in Lakhs)</i>
<i>Rent</i>	<i>5,985.73</i>	<i>627.70</i>
<i>Municipal Taxes</i>	<i>3.52</i>	<i>0.37</i>
<i>Office Maintenance</i>	<i>910.73</i>	<i>89.22</i>
<i>Security Charges</i>	<i>125.20</i>	<i>13.02</i>
<i>Lease finance charges</i>	<i>848.48</i>	<i>88.20</i>
<i>Depreciation</i>	<i>2,286.36</i>	<i>237.68</i>
<i>Insurance-General</i>	<i>25.57</i>	<i>2.66</i>
<i>Total</i>	<i>10,185.59</i>	<i>1058.85</i>

4. The assessee also submitted that the amount has been recovered on cost to cost basis and on the same basis as has been charged to other sub-licensees whose relationship with KPMG was not covered within the meaning of section 40A(2)(b) of the Act. The assessee has also given the break-up and justification of allocation of various expenses i.e. electricity and water expenses,

communication and technology expenses and consumable and others which have been reproduced at page 4 & 5 of the assessment order.

5. However, the AO has not agreed with the submission of the assessee and stated that assessee had failed to furnish any specific particulars which would throw light on the specific nature of work done by M/s. KPMG and the amount of charges paid to them on account of such work. The assessing officer concluded that assessee company has not furnished any verifiable specific details for the ascertainment of reasonableness of expenditure u/s 40A(2)(b) therefore, facility cost paid to KPMG was considered as excessive and unreasonable and 10% of the said facility cost to the amount of Rs. 1,28,06,374/- of the total facility costs paid to KPMG of Rs. 12,80,63,741/- was disallowed and added to the total income of the assessee.

6. Similarly, the assessing officer has noticed that assessee has reimbursed Rs. 91,81,397/- being its share of professional indemnity insurance to KPMG, a partnership firm in which one of the shareholder was a partner. The assessee was asked for justification of such payment under the provisions of section 40A(2)(b) of the Act. The assessee explained that KPMG has taken a policy to cover itself and all the sub-licensees and paid the insurance premium to the insurance company and thereafter it recovers the appropriate portion from all the sub-licensees based on their client revenues. Similar to the reasons as discussed above the assessing officer stated that assessee company has not filed

the specific particulars to ascertain the reasonableness of the payment made to its sister concern KPMG for the services rendered by them therefore 10% of the said facility cost of Rs. 9,18,140/- was disallowed u/s 40A(2)(b) of the Act and added to the total income of the assessee.

7. The AO has also noticed that assessee has paid professional fees of Rs. 18,48,51,932/- to KPMG. On query, the assessee explained that it has availed the services in the area of book keeping, treasury management, tax compliances, MIS reporting and other aspects like payable and receivable management etc. The detailed description of the services along with break-up submitted by the assessee has been reproduced at page no. 8, 9, 10 & 11 of the order of assessing officer. However, for the same reason as discussed (supra) in this order, the AO had not agreed with the submission of the assessee and stated that it is not ascertainable whether the payment made by the assessee company to KMG was excessive or not within the meaning of provisions of section 40A(2)(b) of the Act. Therefore, for the reason as referred above, the AO has disallowed 10% of the professional fees of Rs. 18,48,51,932/- (Rs. 33,48,51,932/- + 15,00,00,000/-) which comes to Rs. 18,48,51,932/-.

8. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the fact stated by the assessing officer.

9. During the course of appellate proceedings before us, the Id. Counsel submitted that during the course of assessment proceedings, the assessee has provided the complete details cost of support services availed by the assessee company from the KPMG along with basis of recovery as per area occupied and headcount and also submitted the relevant detail of common expenses incurred under the different heads along with allocation made to the assessee company. He submitted that the AO has not specifically asked any information which is further required without disproving the relevant details and supporting material furnished by the assessee. The Id. Counsel also submitted that both the KPMG and assessee company are regularly assessed to income tax and filed their return of income at the same tax rate 30% and also attached copies of return of income filed alongwith copies of assessment order passed in their cases by the assessing officer. The Id. Counsel further submitted that the Id. CIT(A) has not given any specific finding and sustained the addition made by the assessing officer on assumption basis in unjustified manner. The Id. Counsel also placed reliance on the judicial pronouncements and the copies of the same placed in the paper book filed before us.

10. On the other hand, Id. DR relied upon the lower authorities.

11. Heard both the sides and perused the material on record. During the course of assessment proceedings, the assessing officer has disallowed 10% of the cost allocated by the KPMG to the assessee company from the common facilities shared by them on

the ground that assessee company has not furnished any verifiable specific details for the ascertainment of reasonableness of expenditure u/s 40A(2)(b) in respect of the allocation of various common costs i.e. facility cost, professional indemnity insurance, professional fees etc. as discussed (supra) in this order. However, from the perusal of the material on record, the assessee vide letter dated 18.12.2013 during the course of assessment has explained that it had the set up its offices at different locations at Mumbai, Gurgaon, Delhi, Bangalore, Hyderabad, Pune and Kolkata as sub-licensees of KPMG International and operated from same premises and used the common infrastructure, technology, communication, supplies and support personnel etc. The assessee has also given the basis of recovery of allocation of cost incurred by the KPMG on its behalf under the different heads as reproduced as under:

“KPMG is a registered partnership firm in India. It has been set up pursuant to the approvals received from the Secretariat of Industrial Approvals, Government of India.

KPMG is a member firm of KPMG International, a co-operative which is a mutual association of its members. KPMG Advisory Services Private Limited, ("the assessee"/"the Company"/"KASPL") is a sub-licensee of KPMG.

*Mumbai, Gurgaon, Delhi, Bangalore, Chennai, Hyderabad, Pune,
Kolkata, Kochi and Chandigarh.*

KASPL staffs operate from offices located at Mumbai, Gurgaon, Bangalore, Hyderabad, Pune and Kolkata only. The sub-licensees of KPMG International in order to take advantage of economies of scale, operate from the same premises and use the entire infrastructure i.e. technology, communications, supplies, support personnel, etc. This also becomes convenient as all the entities as members/sub-licensees are

required to follow certain methodologies in the conduct of their profession/business.

KPMG incurs the costs on its behalf and on behalf of sub licensees and recover from sub licensees their share or cost. The reimbursements of costs are termed as support service charges in the books of sub licensees. The facilities broadly consist of the following items

Particulars	Amount in crs. (Rs.)	Refer note	Basis of recovery
Occupancy costs and use of assets	10.59	1	Area occupied
Electricity & Water	0.59	2	Area occupied
Communication Technology and Knowledge management	1.11	3	Headcount
Consumables and others	0.52	4	Headcount
Total	12.81		

In all the cases the consideration is determined by the original vendor who is an unrelated party of KPMG. As mentioned in the table above the recoveries is made by KPMG from the sub licensees on pre-determined basis. Further, the basis of recovery from the assessee is the same as the basis of recovery from BSR & Co (a sub licensee), whose relationship with KPMG does not fall within the ambit of Section 40A(2)(b) of the Act. We have enclosed copy of invoice raised by KPMG on the company and BSR & Co as sub annexure (1) and (i). Further, we also enclose confirmation of KPMG to the effect as sub annexure (iii).

Note-1

Detailed justification on incurrance of occupancy costs and use of assets
Rs. 10.59 Crores

As mentioned earlier, KPMG ("The firm") incur the expenditure on purchasing/availing various facilities from the outside vendors. In addition to use the facilities for itself, KPMG also recover it from each sub licensees its share of cost.

We provide hereunder a comparative chart of the cost incurred by the firm and its further allocation to the company

Nature of items	Cost incurred by KPMG (in Lakhs)	Cost allocated to KASPL (in Lakhs)
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<i>Rent</i>	<i>5,985.73</i>	<i>627.70</i>
<i>Municipal Taxes</i>	<i>3.52</i>	<i>0.37</i>
<i>Office Maintenance</i>	<i>910.73</i>	<i>89.22</i>
<i>Security Charges</i>	<i>125.20</i>	<i>13.02</i>
<i>Lease finance charges</i>	<i>848.48</i>	<i>88.20</i>
<i>Depreciation</i>	<i>2,286.36</i>	<i>237.68</i>
<i>Insurance-General</i>	<i>25.57</i>	<i>2.66</i>
<i>Total</i>	<i>10,185.59</i>	<i>1058.85</i>

It may be noted that the company has its offices in all metro and in second class metro cities where taking a property on rent is an absolutely costly affair. Further taking separate premise on lease is not a feasible solution. Using the premises of KPMO taken on lease benefits the company due to economy of scale.

As explained above, KPMG incurs the occupancy cost and recovers the appropriate proportion of the same from all other co-occupants based on the area occupied by them. Rs. 1058.86 Lakhs paid by KASPL represents the assessee's share on the total cost incurred by KPMG. The amount have been recovered on cost to cost basis and on the same basis as has been charged to other sub-licences whose relationship with KPMO is not covered within the meaning of 40A(2)(b).

Note-2

Justification of incurrance of Electricity and water expenses of Rs. 0.59 Crores/-

<i>Nature of items</i>	<i>Cost incurred by KPMG</i>	<i>Cost allocated to KASPL</i>
<i>Electricity and water</i>	<i>570.68 Lakhs</i>	<i>59.33 Lakhs</i>

As explained above, KPMG incurs the cost on electricity charges and recover the appropriate proportion of the same from all other co-occupants based on the area occupied by them. Rs. 59.33 Lakhs paid by KASPL represent the assessee share on the total cost incurred by KPMG. The amount have been recovered on cost to cost basis and on the same basis as has been charged to other sub-licences whose relationship with KPMG is not covered within the meaning of 40A(2)(b)

Note-3

Justification of incurrance of Communication & Technology expenses of Rs. 1.11 Crores/-

The amount paid by KASPL towards the reimbursement of communication expense is on account of the following services received by the company:

<i>Nature of items</i>	<i>Cost incurred by KPMG (in Lakhs)</i>	<i>Cost allocated to KASPL (in Lakhs)</i>
<i>Annual Maintenance Contracts</i>	<i>113.70</i>	<i>11.82</i>
<i>Facilities Management</i>	<i>118.85</i>	<i>12.35</i>
<i>Computer Expenses</i>	<i>379.72</i>	<i>39.47</i>
<i>Courier & Postage</i>	<i>117.24</i>	<i>12.23</i>
<i>Leased Lines</i>	<i>332.24</i>	<i>34.65</i>

As mentioned earlier the basis adopted by KPMG for recovery of cost from assessee is the same as the recovery of cost from BSR & Co whose relationship with KPMG does not fall within the ambit of Section 40A(2)(b) of the Act as it is evident from the confirmation given by KPMG.

It can be observed that the total cost on communication expense is even less than 1% of the turnover of the company. It may be appreciated that the kind of industry that the assessee is operating in, it is highly technology based where the communication from the client is mostly either web-based or through the telephone lines. Further, since the company has its offices spread in multiple locations therefore the physical movements of documents are also necessitated in various circumstances, also in some of the cases we do have to send the various reports etc. to the clients situated across the globe therefore the expenditure in courier and postage is quite obvious.

The option with the company was to set up an information technology infrastructure within its control and incurs the huge capital expenditure on the initial set up and incurs the periodical revenue expenditure, some of which is also the fixed in nature, on its maintenance or outsources it to some third party vendor which was not financially viable. Also, had the company decided to go ahead with its own set up, the related cost would have been equal or higher, therefore by no way it can be said that the expense incurred by the company is excessive and unreasonable having regard to the market value of services enjoyed by it.

4. *Justification of incurrence of Consumables and others Rs. 0.52 Crores/-*

Consumable expenses mainly comprises of the following expense incurred by the company which has been appropriately allocated to the assessee on a pre-determined basis.

<i>Nature of items</i>	<i>Amount paid by KPMG in Lakhs</i>	<i>Amount recovered from KASPL in Lakhs</i>
<i>Printing</i>	<i>189.77</i>	<i>19.73</i>
<i>Stationery</i>	<i>135.03</i>	<i>14.04</i>
<i>Record Management</i>	<i>45.96</i>	<i>4.78</i>
<i>Photocopying</i>	<i>24.03</i>	<i>2.50</i>
<i>Canteen Expenses</i>	<i>104.79</i>	<i>10.89</i>
	<i>499.58</i>	<i>51.94</i>

It may be appreciated that the expenses of the aforesaid nature is part and parcel of any business entity. We being a professional firm, the deliverable are in the form of email followed by the printing material duly signed and verified by the authorized signatory. In the whole process there is a substantial consumption of the printing materials. As per the agreement the printing material and other stationeries are provided by KPMG and an appropriate share, computed on the pre-determined basis as per the agreement is allocated to all the sub licensees and consequently to the assessee also.

Similarly KPMG host the canteen facilities wherein the concessional food is offered to the staffs of the assessee. The appropriate percentage of these expenses are allocated among all the sublicensees based on their respective headcounts.

From the facts as aforesaid, it can be concluded that the amount paid by KASPL to KPMG is driven by the prudent business sense and after careful consideration of the cost and benefit associated therewith.

By no stretch of imagination, it can be said that the expenses are excessive or unreasonable having regard to the fair market value of the goods, services or facilities availed by the assessee company.

12. We find that assessing officer has neither specified any kind of further information and details required to be furnished by the

assessee nor brought any material on record to establish that the allocation and reimbursement of the cost incurred on behalf of the assessee by the KPMG was excessive or unreasonable as specified in section 40A(2)(b) of the Act. We have also perused the submission of the assessee that KPMG and assessee both are assessed to tax in India and during the A.Y. 2011-12 both have paid tax at the same tax rate of 30% on the income shown in the return of income as under:

<i>Entity</i>	<i>Turnover (TO)(Rs)</i>	<i>Taxable Income (TI)(Rs)</i>	<i>Tax Liability</i>	<i>Tax rate(%)</i>	<i>Copy of COI and ITR Ack for AY 2011-12</i>
<i>Appellant</i>	<i>175,3506,750</i>	<i>7,04,55,618</i>	<i>2,34,03,594</i>	<i>30%</i>	<i>Attached</i>
<i>KPMG</i>	<i>638,59,37,004</i>	<i>40,79,06,244</i>	<i>12,60,43,029</i>	<i>30%</i>	<i>Attached</i>

13. Further, the assessee has explained along with the factual submission made before the AO that facility cost of rental office premises located at 10 locations in India comprised of office maintenance cost, securities charges, general insurance premium, utilities, IT infrastructure and maintenance, facility management expenses etc. and others costs were allocated based on area occupied and by headcount. Similarly, in respect of professional indemnity insurance cost it was explained that same was recovered on the basis of revenue earned by the sub-licensee. Further, professional fees paid to KPMG was comprised various internal services i.e. service charges maintenance of books of account, HR related services, accounts related services, information technology maintenance services and other services

were explained in detail in the submission of the assessee as discussed in this order.

14. We have also perused the judicial pronouncements as referred by the Id. Counsel. In the case of *Coronation Flour Mills vs ACIT (2010) 188 taxman 257 (Guj)*, the Hon'ble High Court of Gujarat held that AO is required to record a finding as to whether expenditure is excessive or unreasonable in relation to any one of three requirements prescribed in section which are independent and alternative to each other for making disallowances.

The Hon'ble Bombay High Court in the case of *PCIT vs M/s. Tata Toyo Radiator Pvt. Ltd. IT Appeal No. 342 of 2017* held that there was no material on record to suggest that such expenditure was excessive or unreasonable having regard to the market value of services for which the payment was made and instead of different companies incurring such expenditure the same would be commonly undertaken by the company and different sister concern would undertake a portion of such expenditure.

The Hon'ble High Court of Bombay in the case of *CIT vs Indo Saudi Services (Travel) Pvt. Ltd. (2008) 219 CTR 562 (Bombay)* that regarding excessive or unreasonable payment u/s 40A(2) of the Act held that Revenue was not in a position to point out how assessee evaded payment of tax by alleged payment of higher commission to its sister concern since sister concern was also paying tax at higher rate disallowance of alleged commission paid to sister concern was not justified.

15. Looking to the above facts and findings and material on record, the assessing officer has not pointed out any specific defect in the submission of the assessee and also both the assessee and its associate enterprises are assessed at same rate of tax at 30%, therefore, we consider that decision of ld. CIT(A) in sustaining the addition made on estimated basis of 10% of expenses u/s 40A(2)(b) are not justified. Accordingly, all the grounds 1 to 5 of appeal of the assessee are allowed.

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16. Since identical issue on same fact, we have adjudicated vide ITA No. 5396/M/2024 as (supra) wherein the similar grounds of appeal of the assessee are allowed therefore, applying the same finding mutatis mutandis the ground of appeal of the assessee 1 to 4 are allowed. Accordingly, the appeal of the assessee is allowed.

ITA No. 5392/M/2024, ITA No. 5393/M/2024 and ITA No. 5394/M/2024

17. ITA No. 5392/M/2024, ITA No. 5393/M/2024 and ITA No. 5394/M/2024 are based on common issue on identical facts therefore, all these appeal are adjudicated together by taking the ITA No. 5394/M/2024 as a lead case and its findings will be applied to the other two appeals wherever applicable.

ITA No. 5394/M/2024 (A.Y. 2012-13)

“1. On the facts and circumstances of the case and in law the learned AO has erred in going beyond the directions of the learned PCIT in its order

under section 263. Accordingly, the order passed by the AO is bad in law and ought to be quashed.

2. On the facts and circumstances of the case and in law, the NFAC/CIT(A) erred in upholding the disallowance of write-off of Rs. 1,88,00,034 from opening unbilled revenue as on 01 April 2011

3. The NFAC/CIT(A) erred in upholding the disallowances without considering all the submissions of the Appellant and without giving an opportunity of being heard to the Appellant.

4. The NFAC/CIT(A) erred in passing the order just 1 day post uploading the Appellant's submission on the e-filing portal.

The Appellant craves leave to add, to alter, to amend and/or to delete any one or more of the ground(s) of appeals.”

18. Fact in brief is that return of income declaring total income of Rs. 4,45,93,640/- was filed on 30.11.2011. The assessment u/s 143(3) of the Act was completed on 14.03.2016 determining total income at Rs. 11,05,06,690/-. Subsequently, the Id. PCIT has passed order u/s 263 of the Act on 26.12.2017 holding that the AO had not made enquiry in respect of unbilled Revenue and set aside the assessment order dated 14.03.2018 passed u/s 143 of the Act to the file of the AO for passing a fresh order. Subsequently, during the course of assessment proceedings u/s 143(3) r.w.s. 263 of the Act, the AO has noticed that assessee has disclosed Rs. 40,86,45,393/- as unbilled revenue as on 31.03.2012. The assessee was asked to furnish project wise, client wise mile stones achieved and how the revenue was offered and also asked rational for unbilled revenue. The assessee explained that it followed a rational method of accounting by computing number of working hours and apportioning the sales according to

the total value of contract. The billing was done on milestone basis and as and when the milestone was achieved the bill was raised. The assessee has also explained that it has reversed the unbilled revenue to the amount of Rs. 1,88,00,034/- without raising any invoices on client. However, the AO has not agreed with the submission of the assessee and stated that assessee has failed to substantiate the basis of reversing the unbilled Revenue. The AO further stated that assessee has not produced any communication or correspondence with its clients to indicate that they will not pay the amounts. The assessing officer was of the view that assessee had no basis to reduce the income for the year by reversing sales without any documentary evidence, therefore, the aforesaid unbilled reversed amount of Rs. 1,88,00,034/- was added to the total income of the assessee.

19. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

20. During the course of appellate proceedings before us, the ld. Counsel submitted that the assessee had explained in detail to the AO that Revenue is recognized on the basis of time spent with the clients. He also submitted that party-wise break-up of accounting of revenue under various categories comprising of opening / closing, unbilled revenue etc. were provided to the AO. He also submitted that unbilled revenue was already offered as professional income in the year of accrual and shown as an asset in the balance sheet until invoice was raised on the clients. The ld. Counsel has also explained the method of recording the journal

entries in the books of account pertaining to the unbilled revenue. He further submitted that assessee has accounted unbilled revenue in the previous F.Y. and offered to tax on the basis of time spent with the client. The ld. Counsel also referred the Audited Accounting Financial Statement and other detail like party wise break up submitted before the lower authorities.

21. On the other hand, ld. DR supported the order of lower authorities.

22. Heard both the sides and perused the material on record. The assessee had disclosed Rs. 40,86,45,393/- as unbilled Revenue as on 31.03.2012. However, the AO has disallowed the claim of written off from opening accrued income to the amount of Rs. 1,88,00,034/-. The assessee explained that part of the opening accrued as accounted on 31.03.2011 as per the percentage completion method was written off during the year was Rs. 1.88 crores which was only 0.99% of the total revenue of the assessee. The assessee has been consistently following mercantile system of accounting. Revenue is recognized as per IND-AS-9 Revenue Recognition (same as ICDS IV – Revenue Recognition). Revenue is recorded on the basis of the time spent and the chargeable rates. Unbilled revenue is offered as professional income in the year of accrual and shown as on asset in the balance sheet until invoicing is done to the client. The written off is in respect of unbilled revenue as on the 1st day of the financial year which amount has been accounted as closing unbilled Revenue in the previous financial year and offered to tax therein. The assessee explained

with supporting details that there is no case where revenue can be written off without it being accounted and offered to tax in earlier year and it is similar to write off of bad debt written off. We have also perused the Schedule 19 of the Audited Financial Statement for the year ended 31.03.2012 with opening unbilled revenue as on 01.04.2011 and closing unbilled revenue as on 31.03.2012 as reproduced below:

Annexure 1

Relevant Accounting Particulars (Balance Sheet)

Amount in ₹, Lakhs (rounded off)

		(₹)	
Billed Revenue/Revenue raised in the financial year 2011-12			1,275,176,746
Less: Opening unbilled Revenue as on 01 April 2011	Schedule 18-Other Current assets	(147,662,699)	
Add: Opening Advance billing as on 01 April 2011	Schedule 8-Other Current Liabilities	31,453,115	(116,209,584)
Less: Closing unbilled Revenue as on 31 March 2012	Schedule 18-Other Current assets	(408,248,293)	
Add: Closing Advance billing as on 31 March 2012	Schedule 8-Other Current Liabilities	(136,158,024)	272,487,369
Total Revenue as per audited financials for financial year 2011-12, the break-up of revenue is as follows:			1,895,438,185
	Schedule 19- Revenue from Services		1,861,389,203
	Sale of software licenses for system integration as per P&I		34,048,982
	Total		1,895,438,185

Fig. Nos. 27 to 74 (Ex. No. 1)

Single Schedule Balance Sheet/Profit and Loss Statement for the year ended March 31, 2012

Amount in ₹

	Note No.	Year ended March 31, 2012	Year ended March 31, 2011
Income			
Revenue from Services (Excludes of service tax)	18	1,861,389,203	1,753,489,860
Sale of software licenses for system integration and software services		34,048,982	17,208,333
Schedule 18 - Other Current Assets for financial year 2011-12			
18 Other current assets			
Unbilled revenue		408,248,293	347,662,699
		408,248,293	347,662,699

Balance Sheet as at 31 March 2012

Amount in ₹

		2012	2011
Other current liabilities			
Current liabilities of General ledger obligations (Excludes by way of Hypothecation (in cooperative raised assets) (Under code 90-31 and 32)		4,748,323	6,364,030
Current liabilities of Fixed Liabilities Schedules (Excludes by way of Hypothecation (in all current assets and of minority Share holders owned by company and amounts recognised by MCA21 and MCA21 India Pvt Ltd)		73,888,376	84,444,466
Advance billing		128,369,604	61,440,316
Advances received		882,185	17,088,643
Statutory liabilities		(2,848,236)	21,264,875
Other		235,206,967	282,991,881

23. We have also perused the copies of various documents filed before the AO by the assessee on 19.12.2019 under the following categories:

Sr. No.	Category	Description
1	Party Wise List	List of Clients with following financial year wise: 1) Opening WIP 2) Billing during the year 3) Revenue during the year 4) Closing WIP
2	Category A	List of clients whose income accrued and billed within the same year ~- — ~-
3	Category B (i)	Advance received from clients in one year accrued and offered for tax in subsequent years
4	Category B (ii)	Advance billed to client in one year reversed in subsequent years
6	Category C (i)	Amount billed and offered for tax in previous year got reversed in subsequent years due to cancellation of invoices as same was accepted by client
7	Category C (ii)	Amount offered for tax in previous year on accrual however lower amount billed to client, Unbilled revenue already offered for tax in previous year gets reversed.
8	Category C (Hi)	Amount offered for tax in previous year reversed in current year.
9	Category D (i)	Movement of Opening WIP - billed and offered for tax in previous year
10	Category D (ii)	Movement of Opening WIP - Project continue over a period more than 2 years.

The assessee explained that it recognizes the revenue on mercantile basis and the unbilled revenue has already been shown as a part of income of the assessee during the F.Y. relevant to A.Y. The assessee explained that it recognized the revenue on the basis of time spent on acknowledgement in the P & L A/c without the billing made to the client in the case of unbilled revenue. It was also explained that accrued income get adjusted when billing was done subsequently to the client. The Id. CIT(A) in his finding at

page no. 6 of the order has mentioned that in its submission the assessee has provided party-wise break-up of the detail of accounting of revenue under various categories e.g. opening/closing unbilled revenue. It is also explained that vide letter dated 19.12.2019 full details of all the parties in respect of whom the accrued revenue was written off was provided to the assessing officer at the time of assessment stage. The assessee also explained that there was no case where revenue can be written off without it being accounted and offered to tax in the earlier years and therefore, the reversal of unbilled of revenue was already account in the books of account of the assessee. After considering the material available on record, we find that AO and Id. CIT(A) have neither controverted the supporting material and detailed submission made by the assessee as discussed nor demonstrated any deficiency and suppression of any material fact by the assessee. Therefore, we consider that decision of Id. CIT(A) in sustaining the disallowance of reversing unbilled revenue is not justified. Accordingly, ground no. 2 to 3 of the appeal of the assessee are allowed. Since we have allowed the ground no. 2 to 3 of appeal of the assessee therefore ground no. 1 and 4 of the appeal become academic and not required adjudication. Therefore, appeal of the assessee is allowed.

ITA No. 5393/M/2024 (A.Y. 2015-16)

24. We have adjudicated the identical issue on common fact as per ground of appeal no. 2 to 3 filed by the Revenue for the A.Y. 2012-13 vide ITA 5394/M/2024 as supra in favour of the

assessee. Applying the same findings, the grounds of appeal no. 1 to 2 of the appeal are allowed. The Ground No. 3 become academic not required any adjudication.

ITA No. 5392/M/2024 (A.Y. 2018-19)

25. The issue in the appeal are similar to the issue which have been adjudicated for A.Y. 2012-13 and A.Y. 2015-16 vide ITA No. 5393/M/2024 and ITA No. 5394/M/2024 in favour of the assessee as supra in this order. Applying the same findings to this appeal the grounds of appeal no. 1 to 4 are allowed. The ground no. 5 become academic not required adjudication.

26. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 13.02.2025.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 13.02.2025
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai