

आयकर अपीलीय अधिकरण, कोलकाता न्यायपीठ 'ए', कोलकाता।
IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA
BEFORE SHRI WASEEM AHMED, AM & SHRI S.S.VISWANETHRA RAVI, JM

आयकर अपील सं./ITA No.99/KoI/2011

(निर्धारण वर्ष / Assessment Year :2003-2004)

DCIT, Circle-1, 7 th Floor, Aayakar Bhawan, Kolkata-700069	Vs.	M/s McNally Bharat Engineering Company Ltd, 4, Mangoe Lane, Kolkata-1
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCM 9443 R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Ram Bilas Meena, CIT

निर्धारिती की ओर से /Assessee by : Shri Vijay Shah CA

सुनवाई की तारीख / **Date of Hearing** : **21/12/2016**

घोषणा की तारीख/**Date of Pronouncement** **11/01/2017**

आदेश / O R D E R

Per Shri Waseem Ahmed, AM:

The above appeal is directed by the Revenue against the order dated 20.09.2010, passed by the Id. Commissioner of Income Tax (Appeals)-I, Kolkata in Appeal No.605/CIT(A)-1/Cir.1/.09-10, pertaining to assessment year 2003-04, arising out of assessment order dated 31.12.2009, passed by the CIT-1 Kolkata u/s.143(3)/254 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal :-

1. *That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.1,46,976/- made on account of advances written off by accepting it as loss allowable u/s. 37 when he himself observed that the advance was given for capital assets.*
2. *That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.5,67,156/- made on account of loose tools written off when the assessee failed to substantiate that loss was genuinely claimed.*
3. *That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.1,45,57,065/- made on account of corporate advances written off without appreciating the fact that assessee failed to prove and substantiate the genuineness of loss.*

4. *That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.6,50,00,000/- made on account of contract WIP written off without appreciating the fact that assessee booked a provisional loss allowable u/s.37.*
5. *That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.10,43,715/- made by disallowing sub-contractor charges when the identity of the sub-contractor and genuineness of the transaction was doubtful.*

2. The first issue raised by Revenue in this appeal is that Id. CIT(A) erred in deleting the addition made by the AO for Rs.1,46,976/- on account of advances written off by the assessee.

3. Briefly stated the facts are that the assessee, in the present case, is a limited company and engaged in the manufacturing business and Turnkey contracts. The assessee, in the year under consideration, has written off an amount of Rs.1,46,976/- given to M/s CRB Capital Market (MCRBCM for short) on the ground that the company has gone under liquidation. However, the AO during assessment proceedings observed that the amount of money given to MCRBCM has not been explained with reference to the purpose for which it was given. Therefore, the assessee failed to establish whether it was given in the normal course of business. Accordingly, the AO disallowed the same and added to the total income of the assessee.

4. Aggrieved, the assessee preferred an appeal before Id. CIT(A) whereas assessee submitted that the said amount was given to MCRBCM as per the Hon'ble jurisdictional High Court order as the official liquidator raised the claim against the assessee for the said amount. The said amount was accordingly given and shown as advances to be realized after the settlement of the process of liquidation. But the same was not realized, therefore, it was treated as loss to the business of assessee. Ld. CIT(A) after considering the submission of the assessee has deleted the addition made by the AO by observing as under :-

“5.2 I have carefully examined the above facts and submissions. The lease was taken to purchase the asset which was for the purpose of the business. CRB capital market who financed the lease went into liquidation and the amount had to be paid to the official liquidator of the company. Therefore, the contention of the A.O. that the amount was not given in the normal course of business is not correct as it can be seen that advances has been made in order to payoff the liquidator which was expected to be recovered once the matter is settled. Hence, A.O. is directed to delete the disallowance made for advances given to CRB Capital market amounting to Rs.1,46,976/- and to treat it as genuine business loss.”

Being aggrieved by this, Revenue has come in an appeal before us.

5. Before us Ld. DR vehemently supported the order of Assessing Officer whereas Id. AR before us filed a paper book, which is running from pages 1 to 336 and drew our attention on pages 17 to 20 of the paper book where the necessary details of MCRBCM liquidation were placed and he relied on the order of Id. CIT(A).

6. We have heard the rival contentions of both the parties and perused the material available on record. From the foregoing discussions, we find that the amount given to MCRBCM was written off by the assessee in the year under consideration but the same was disallowed by the AO by observing that the purpose of the advances given to MCRBCM has not been given. However, on perusal of records, we find that all the necessary details were furnished before appellate stage with the nature and purpose of transaction. The assessee acquired leased asset from the MCRBCM but later the company went into liquidation. Subsequently the Hon'ble jurisdictional High Court ordered to the assessee for the payment of the aforesaid sum which later became irrecoverable. From the above, it gets established that the advances were given in the course of business and accordingly the same is eligible for deduction. In view of the above, we find no infirmity in the order of Id. CIT(A). Hence, this ground of appeal of Revenue is dismissed.

7. The second issue raised by Revenue in this appeal is that Id. CIT(A) erred in deleting the addition made by the AO for Rs.5,67,156/- on account of loose tools written off. The assessee in this year has written off raw material for Rs.18,52,714/- including the loose tools on the ground that loose material were obsolete and non-moving items due to change in the technology. However, the AO during the assessment proceedings, observed that no details was submitted with regard to loose tools written off for Rs.5,67,156/-. Therefore, the AO disallowed the claim of loss for Rs.5,67,156/- on account of non-availability of details. The disallowed amount was added to the total income of the assessee.

8. Aggrieved, assessee preferred appeal before Id. CIT(A) whereas assessee submitted that the details of loose tools which was written off for Rs.5,67,156/- was duly submitted before the AO along with letter dated 24th February, 2006. Accordingly, the argument of the AO that the details were not submitted is not tenable. Id. CIT(A) after considering the submissions of the assessee has deleted the addition made by the AO by observing as under :-

“Hence, the contention of the A.O. that no details have been filed is not correct. The A/R in its written submission has filed copies of the above details with the documentary evidence that the same were before the Hon'ble ITAT and copy of it was submitted to the A.O. The AIR further contended that the above details may have been missed out by the A.O. while giving effect to the order of ITAT.”

Aggrieved by this, the Revenue has come up in appeal before us.

9. Before us both the parties before us relied upon the order of authorities below as favorable to them.

10. We have heard rival contentions and perused the material available on record. On perusal of the details of the stores and loose tools written off furnished at the time of assessment, which is placed at pages from 21 to 71, we find that the necessary supporting evidence

were duly submitted by the assessee before the AO at the time of assessment. Before us Id. DR has also not brought anything on record contrary to the findings of Id. CIT(A). In view of the above, we find no infirmity in the order of Id. CIT(A). Hence, this ground of appeal of the revenue is dismissed.

11. The third issue raised by the revenue in this appeal is that Id. CIT(A) erred in deleting the addition of Rs.1,45,57,065/- on account of corporate advances written off. The assessee, for the year under consideration, has given advances in connection with its business to several parties but could not recover the same. Therefore, the assessee has written off such advances in its books of accounts. However, the AO observed that the necessary details of the parties such as name, address, amount of advances given, purpose for giving advances were not furnished. Therefore, the genuineness of the transactions cannot be established. Accordingly, the AO disallowed the same and added to the total income of the assessee.

12. Aggrieved, assessee preferred an appeal before the Id. CIT(A) whereas assessee submitted that the advances were given to the following parties :-

Sl.No.	Name of the party	Amount
1.	Techno Perfect pvt. Ltd.	5,00,000
2.	ODC Carriers Pvt. Ltd.	1,40,57,065

The assessee further submitted that the necessary details was furnished to the AO during the assessment proceedings vide letter dated 14.02.2006. The advances written off as irrecoverable were duly approved by the Board of Directors in its meeting dated 30.03.2004. Id. CIT(A) after considering the submission of the assessee has deleted the addition made by the AO by observing as under :-

"7.4 I have pursued the documents as filed by the appellant both before the A.O. as well as before the Hon'ble ITAT. The contention of the A.O. that the name, address and purpose of giving the advance has not been furnished is not totally correct. The assessee during the course of assessment proceedings u/s 143(3)

itself had duly provided the name of the party to whom advances were given alongwith the purpose for which such advance was given. On perusal of the assessment records it could be noted that the A.O. had no where asked the assessee to produce any further details. The A.O. himself has allowed write off in relation to 1 party i.e . Flora Vanijya for Rs. 1,07,52,690/- though the advance given to said party was for the same contract and for the same purpose. If the said advance can be allowed as business loss I fail to understand how the advance given to other 2 parties for the same contract can be disallowed with the contention that the purpose of giving the advance have not been furnished. What is true for 1 party should be followed for the other 2 parties also when all the 3 contractors were in relation to only 1 contract i.e. Neyveli Lignite Corporation Ltd.

7.5 The A.O while making the disallowance has also relied upon the decision in the case of Salem Magnesite (P) Ltd. -vs.- CIT (2009) ITCL 549 (Bom-HC). The A/R submitted that the above judgment relied by the AO has no relevance in the present case. It has been submitted that the above decision speaks about capital advance made to its subsidiary company for the purpose of construction of an asset. Hence, the High Court has held such claim not eligible to be allowed as bad debt u/s 36(1)(vii). The contention of the A/R seems correct as the appellant, in the present case, have given the advances to its sub contractor in order to complete the contract. Therefore advances are given solely for the purpose of the business.

7.6 With the above observation the A.O. is directed to delete the disallowance made for Rs. 1,45,57,065/- as the above advances are allowable as business loss u/s 28 read with Sec 37(1) as per the directions of Hon'ble ITAT vide its order dated 21-02-2008."

Aggrieved by this, the revenue has come up in appeal before us.

13. Before us both the parties relied upon the order of authorities below as favorable to them.

14. We have heard rival contentions and perused the material available on record. On perusal of the record, we find that all the necessary details of the impugned advances given to the parties were furnished by the assessee at the time of assessment and the relevant details are enclosed at pages 79 of the paper book. The advances represent the money given in relation to business contracts of the assessee with Neyveli Lignite Corporation. On further perusal, we find

that the advances written off were also approved in the minutes of Board meeting held on 30th March, 2004. The necessary details of the parties were duly furnished at the time of assessment. In this connection, we rely in the case of *Ashoka Marketing Limited Vs CIT* reported in 253 ITR 460 wherein the Hon'ble Jurisdictional High Court has observed as under:

"In the present case, undoubtedly Shalimar Works (P) Ltd. at the relevant time was a subsidiary of the assessee and this company was wound up because of the orders passed by this Court and all the assets of the company were purchased by a wholly-owned company of the Government of West Bengal for a sum of Rs. 74,00,000 and the entire amount went to the secured creditor with the result that undoubtedly the assessee had no chance of recovering the amount in question from the aforesaid subsidiary."

When this Court while considering the possibility for recovery of loan in case unsecured creditors found that the entire amount went to the secured creditors and nothing remains to be paid for unsecured creditors, there is no justification to deny the claim of the assessee. Therefore, following the aforesaid finding of this Court regarding possibility of the recovery of loan of unsecured creditors when there is no chance the assessee has rightly written off that debt treating as a bad debt."

Respectfully following the aforesaid judgment and in view of the facts discussed above, we find no infirmity in the order of Id. CIT(A). Hence, this ground of appeal of revenue is dismissed.

15. The fourth issue raised by Revenue is that Id. CIT(A) erred in deleting the addition made by AO for Rs.50 lakh on account of WIP written off.

16. Facts relating to this ground are that the assessee during the year has undertaken several projects including the four projects as discussed subsequently. These four projects were based on Port Handling, Ash Handling and Water Management activities. The assessee never had any experience of these projects in earlier years. As such, these projects were new to the assessee but the assessee wanted to enter into the aforesaid activities. Therefore such projects were undertaken by the assessee without any profit margin. These projects were undertaken in the year under consideration and were completed in the financial year ending as on 31st of March 2007. In all these projects, the assessee incurred huge losses which were spread over in the financial years beginning from 31st March 2003 to 31st March 2007. Accordingly, the assessee claimed losses in the different financial years as mentioned

above. The loss claimed in the year under consideration can be presented in the following manner.

Sl.No.	1	2	3	4	Total
Project Name	Kandla Port Trust	NTPC Rama Gumdam	NTPC Rihand	Ahmedabad Municipal Corporation	
Cost Incurred till 31 st March, 2003	1,00,00,000	5,48,00,472	7,66,81,075	24,74,989	14,39,56,536
Cost Written off	1,00,00,000	3,50,00,000	75,25,000	24,74,989	5,50,00,000
Bill raised in the year	Nil	1,54,02,000	5,87,83,000	Nil	7,41,85,000

The assessee claimed the loss in the year under consideration after putting its reliance in Accounting Standard 7 issued by Institute of Chartered Accountant of India (ICAI). However the AO disregarded the claim of the assessee by observing that the necessary details of the expenditure incurred by the assessee as well as the stage of completion of the work was not furnished at the time of assessment. Similarly the AO observed that the future loss in a contract is subject to high degree of uncertainty. Moreover, the assessee was following completed contract method as per accounting standard 7 as mentioned in notes to accounts. In the completed contract method the profit and loss is determined at the time of completion of contract and not on the basis of estimates as done in the present case. The contract in the present case hasn't not yet been completed therefore the claim for the loss by the assessee is not tenable. It was also observed by the AO that the future losses which are contingent in nature may be recognized as per the accounting standard but under the provisions of Income Tax Act such possible losses are not allowable. Therefore the loss claimed by the assessee is contingent in nature. The AO also observed that the loss has been adjusted against the revaluation reserve and the same was not routed through profit and loss account. In view of above the AO disallowed the loss claimed by the assessee and added to the total income of the assessee.

17. Aggrieved, assessee preferred an appeal before Id.CIT(A) whereas assessee submitted that all the relevant details along with bills, invoices were duly submitted before the AO at the time of assessment proceedings. The loss incurred by the assessee in all contracts is

substantially higher than the expenses actually written off in the books of accounts in the year under consideration. So the expenses written off on the basis of estimated cost is reasonable and justifiable. The assessee further submitted that no loss was claimed on the basis of *ad hoc* estimation as the assessee was well aware that it is the new line of activity and these projects were undertaken without any margin. Therefore, all the losses were reasonably estimated on the basis of supporting quotations and these losses were claimed in terms of provisions of Accounting Standard-7 issued by ICAI. Ld. CIT(A) after considering the submissions of the assessee has deleted addition made by the AO by observing as under :-

“On perusal of the above provisions it is imperative to note that the assessee following Completed Contract method books revenue and its related costs only after the completion of the contract. However, as per Para 13 of AS-7, when as per the estimates of total cost and revenue, loss is determined, provision is mandatorily required to be made of the entire loss irrespective of the method of accounting followed and the percentage of contract completed. Hence, the loss is required to be booked under both percentage completion method and completed contract method. Further Para 13.3 provides that such loss can be booked even before the contract is commenced. In the present case, the contention of the A.O. that the appellant cannot provide for the foreseeable loss in the first year of contract when it is following Completed contract method is not tenable. The appellant is required to book such loss as and when such loss is estimated. Hence writing off of such expenditure in the first year of the contract even in the Completed Contract method is in accordance with the Accounting Standard-7 issued by ICAI which the appellant is mandatorily required to follow.

(d) Now the issue arise whether loss written off as per the mandatory Accounting Standards are binding on the Income Tax Act also. In this regard, reference -was made by the appellant on various case laws which has already been mentioned above in para above. On reading of the above case laws and taking into account the submission made by the A.O. and the appellant, it is observed that the above matter is squarely covered by the decision of Hon'ble Mumbai Tribunal in the case of Jacobs Engineering Pvt Ltd.-vs.-ACIT (2009) 30 DTR 614(Mum). The A.O. in his order dated 31-12-2009 has not stated the facts of the above judgement correctly. Hence the contention of the A.O. that the above judgement has no relevance in the case of the appellant is completely without any basis. Hence in the light of above

judgement and on the basis of the decision of Apex Court in the case of Woodward Governor India (P) Ltd. & Ors the foreseeable loss booked by the appellant is an allowable deduction under the Income Tax Act.

With the above observation, the A.O. is directed to delete the disallowance made for Rs. 5,50,00,000/- on account of Contract Work In progress written off following AS-7 and this ground of appellant is allowed.”

Aggrieved by this, the revenue has come up in appeal before us.

18. The Id. AR before us submitted that loss has been incurred at the end of the completion of the project i.e. total cost incurred is higher than the total revenue booked by the assessee for the said projects. Year-wise revenue, cost incurred and loss suffered in the project for the years ended 31-03-2003, 31-03-2004, 31-03-2005, 31-03-2006 and 31-03-2007 has been filed with the Paper Book. From above it could be noted that, the total loss incurred for each project is substantially higher than the expenses written off in the year under consideration. Therefore, expenses written off on the basis of estimated cost is justified as the actual expenditure incurred is higher than the amount written off in the year under consideration. Hence, the contention of the A.O. that details in relation to write off of WIP, details of contract revenue and details of estimates of cost in relation to each project have not been furnished is not correct. Detailed statement showing estimated cost of contract prepared at the time of acquiring the contract was filed before the A.O. which is placed on pages 169 to 280 of the paper book. The said statement was supported by the quotations taken for costs to be incurred for the said project. It was prepared on the basis of proper estimation of the costs which was to be incurred at the time of execution of the contract. Further, the contract revenue was determined on the basis of agreement entered into between the assessee and the contractee which is a fixed value contract. The copy of the agreement entered into with each contractor has also been enclosed in the Paper Book which are placed on pages 244 & 264 of the paper book. On perusal of the above,

it could be noted that estimated cost of each contract is higher than its contract value. Since at the time of obtaining the contract, the assessee was conscious of the fact that the contract would be executed without any margin, hence the difference between the estimated cost of the contract and the contract value was written off in the first year following AS-7. Therefore, following the principle of prudence and complying with the AS-7 which is mandatorily required to be followed, foreseeable loss was written off in the books of accounts. Our attention was also drawn to the accounting policy of the assessee and reference is also drawn to Schedule 22 of notes to accounts which is being reproduced below:-

"Revenue on contracts is recognized when the contract is completed. In respect of contracts involving milestones revenue is recognized on completion of respective milestone. In case the long term contracts mainly, where the current estimate of total contract cost and revenue indicate a loss, provision is made for the entire loss on the contract. The costs on long term contracts not yet completed less related foreseeable losses and progress payments are shown in the stocks as Jobs-in-progress Contract"

Hence, to allege that the loss derived by assessee is *ad hoc* is wrong as the same is well substantiated.

Besides the above for assessable loss accounted in accordance with AS-7 is not contingent in nature. Such loss has been accounted as per AS-7 issued by ICAI which permits the contractor to book the losses where estimated loss is indicated.

On the other hand, Id. DR before us submitted that all the losses claimed by the assessee are capital in nature and, therefore, the same cannot be disallowed in the year under consideration. Besides, all the losses were not quantified on any scientific basis, therefore, all the losses were in contingent in nature. Ld. DR vehemently supported the order of AO.

19. We have heard rival contentions. On perusal of the record we find that the issue in the instant case relates to the disallowance made by the AO on account of the losses claimed by the assessee. The reasons for the losses have been elaborated in the preceding paragraph and the same are not

repeated here for the sake of brevity. In the instant the assessee is following completed contract method as per accounting standard 7 issued by ICAI which states about the claim of foreseeable loss. Accordingly the loss was claimed by the assessee. This fact about the AS 7 was duly observed by the AO in its order. But the AO was of the view that the AS 7 has no application in the proceedings under the Income Tax Act. Therefore the loss claimed by the assessee was treated as contingent in nature and accordingly the same was disallowed. However we find that the provisions of AS 7 has application in the income tax proceedings as held by the Hon'ble Delhi High Court in the case of *CIT -vs.- Triveni Engineering & Industries Ltd* (2011) 336 ITR 0374 (Del). The relevant extract of the judgment is reproduced below:

*"No doubt, unless the expenditure is actually incurred or it accrued in the relevant year, it would not be allowed as deduction. Such a liability has to be in praesenti. However, at the same time, in the given scenario where in relation to the project works undertaken by the assessee, completed contract method of accounting is followed, which is consistent with the accounting standards and these accounting standards also lay down the norms indicating the particular point of time when the provision for all known liabilities and losses has to be made, the making of such a provision by the assessee appears to be justified more so when the assessee had recognized gain as well on such project during this year itself. This appears to be in consonance with principle of matching cost and revenue as well. However, in the projected scenario of this case, after taking stock of the entire situation, it is not necessary to conclusively answer the questions formulated. It is because of the reason that the entire exercise is revenue neutral. It may be pointed out that it is a matter of record that against the provision of Rs. 139 lakhs, the assessee had to actually incur expenditure of Rs. 218.03 lakhs, i.e., more than the provision made. It is undisputed that the expenditure incurred by the assessee on the project is admissible deduction. The only dispute that the Revenue seeks to raise is regarding the year of allowability of expenditure. Considering that the assessee is a company assessed at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure is, in any case, revenue neutral. In such circumstances, substantial questions of law that need to be answered do not arise.—CIT vs. Nagri Mills Co. Ltd. (1958) 33 ITR 681 (Bom) and CIT vs. Shri Ram Pistons & Rings Ltd. (2008) 220 CTR (Del) 404 **applied.***

As the assessee had to incur expenditure in excess of the provision made by it and the assessee being a company assessable at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure is revenue neutral and, therefore, no substantial question of law arises from the order of the Tribunal allowing the provision for future losses."

19.1 From the above judgment, it is clear that there is no denial of following the AS-7 issued by ICAI in the books of accounts and accordingly the deduction is allowed under the income tax Act. The issue is also squarely covered in favour of the assessee by the following decisions of ACIT -vs.- ITD Cementation India Ltd (2014) 146 ITD 59 (Mum Trib)

“Sec 145(2) provides that Central Govt may notify in the Official Gazette from time to time accounting standards to be followed by any class of asses sees or in respect of any class of income. It is a fact that AS-7 has not been notified by the Central Govt. This does not mean that the assessee is precluded from following AS-7 issued by ICAI. ICAI being the highest accounting body of the country, created by an Act of Parliament, Accounting Standards issued by it cannot be brushed aside lightly. On the contrary, if an assessee was following the Accounting Standards issued by ICAI, it would give more credibility and authenticity to its account. It was not in dispute that the assessee was executing fixed price contract which means that the contractor has agreed to a fixed contract price or rate in some cases subject to cost escalation prices. As per AS- 7, the assessee was entitled to make provision for foreseeable losses. Hence provision for foreseeable loss made in accordance with guidelines of AS-7 and duly debited in audited accounts of company is an allowable expenditure u/s 37(1).”

2. ACIT vs.- Ashoka Buildcon Ltd (2014) 42 CCH 149(Pune Trib)

“Work carried out by the assessee was a composite fixed contract work involving improvement of road and its maintenance thereof for a fixed period. Where an assessee is executing an infrastructure development fixed price contract, the foreseeable losses of future years can be recognized following the rationale of AS-7 issued by ICAI, and such a Provision is an allowable deduction.”

3. Dredging International -vs.- ADIT (2011) 48 SOT 430 (Mum)

“Assessee's claim for provision for loss, which was made in accordance with guidelines of AS-7 and duly debited in the audited accounts of the company is an allowable expenditure.”

4. Jacobs Engineering Pvt Ltd -vs.- ACIT (2009) 30 DTR 614 (Mum)

“Since the foreseeable losses were provided in the books in accordance with AS-7 which is mandatorily required to be followed, such losses are also allowed under the Income Tax Act.”

19.2 We also find that the aforesaid loss was claimed by the assessee in terms of the provisions of AS-7 issued by the ICAI which reads as under :

"13. Provision for Foreseeable Losses

13.1 When current estimates of total contract costs and revenues indicate a loss, provision is made for the entire loss on the contract irrespective of the amount of work done and the method of accounting followed. In some circumstances, the foreseeable losses may exceed the costs of work done to date. Provision is nevertheless made for the entire loss on the contract.

13.2

13.3. If a provision for loss is required, the amount of such provision is usually determined irrespective of

*(i) whether or not work has commenced on the contract; and
(ii) the stage of completion of contract activities and*

(hi) the amount of profits expected to arise on other unrelated contracts.

19. A foreseeable loss on the entire contract should be provided for in the financial statements irrespective of the amount of work done and the method of accounting followed"

Thus on the perusal of AS-7, we find that where the expected contract costs exceeds total contract revenue, then the probable loss should be recognized in the books immediately. Loss could be recognized irrespective of the stage of completion of contract and method of accounting followed. Hence, loss is permissible to be accounted for even in the period in which the contract is signed or when the legal or constructive obligation has been assumed. Assessee has determined the loss on the basis of the cost that can be attributed to a contract in accordance with AS-7. Actual expenditure incurred in the first year is in excess of amount written off in the first year of contract. Such write off have been made to comply with the provisions of Accounting Standard - 7 as prescribed by the ICAI. The fact that assessee has made a correct estimate of the loss is further supported by the fact that actual loss

borne by the assessee in every contract referred above is higher than the amount written off in the first year of contract. Hence, the contention of the A.O that such loss is a contingent loss and does not have any basis does not hold good. Foreseeable losses written off in accordance with Accounting Standard 7- "**Construction Contracts**" is an allowable loss. Para 13 of Accounting Standard 7- "**Construction Contracts**" as prescribed by ICAI mandates an entity to make a provision for losses irrespective of the method of accounting followed and percentage of contract completed.

19.3 The next allegation of the AO was that the assessee failed to file necessary details of the expenditure and work completed at the time of assessment. However on perusal of the Id. CIT(A) order we find that the Id. CIT(A) has given very clear finding that all the details were submitted before the AO and accordingly the finding of the AO is wrong. The relevant extract of the order is reproduced below:-

“(a) The appellant has duly submitted details of actual expenditure written off during the year as well as details of estimated cost on the basis of which excess cost incurred over the contract value has been written off. On perusal of the said details it could be noted that the loss written off was estimated by the ape before the contract was commenced. The amount written off was on account of actual expenditure incurred by the appellant. Hence, the contention of the AO that the details were not submitted is not correct and write off of such loss is a genuine loss incurred during the course of business.”

19.4 The next allegation of the AO was that the assessee has not accounted for such loss in its profit & loss account. In this regard we find that the loss was adjusted against the revaluation reserve in terms of the Hon'ble Jurisdictional High Order in the own case of the assessee. In fact there was amalgamation which was sanctioned by the Hon'ble Jurisdictional High Court and accordingly the aforesaid loss was claimed against the revaluation reserve. However in our view the loss was genuine as no defect has been pointed out by the AO. Simply the loss was not written in the profit & loss account but adjusted against the

revaluation reserve does not mean that the assessee is not entitled. In this connection we rely in the case of DCIT Vs. TATA sponge iron limited reported in 90 ITD 138. The relevant hand note reads as under :

“Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of - Assessment year 1998-99 - Assessee-company constructed railway sidings on railway land for quick and easy movement of raw materials and finished goods and in books of account, expenditure incurred on construction of railway sidings was capitalized and was written-off over a period of five years - However, in income-tax return, assessee claimed said expenditure as revenue expenditure - Assessing Officer disallowed assessee’s claim - It was found that expenditure had been incurred by assessee only to run its business more efficiently and advantageously and it was not in relation to assets owned by assessee or to acquire any new asset but in order to facilitate movement of materials for business operation of assessee - Whether, since expenditure did not bring any asset to assessee and Railways owned it and also reserved right to close sidings, though assessee had been given a long-term right of use, said expenditure did not result in acquisition of capital asset and, hence, by no stretch of imagination could be treated as expenditure for creation of an asset of enduring nature - Held, yes - Whether, therefore, said expenditure was allowable as revenue expenditure - Held, yes”

In view of above and respectfully following the aforesaid judgments of various Hon'ble High Courts, we do not find any infirmity in the order of Id. CIT(A). We uphold accordingly. Hence, ground raised by the Revenue is dismissed.

20. Last issue raised by the revenue is that Id. CIT(A) erred in deleting the addition made by the AO for Rs.10,43,715/- on account of payment made to sub-contractor.

21. The assessee, in the year under consideration, has claimed expenses under the head sub-contract charges. One of the party acting

as sub-contractor was M/s Laxmi Enterprises to whom the notice u/s.133(6) of the Act was issued but returned as un-served. The assessee in the course of assessment also submitted necessary details such as ledger account, vouchers, details of payment along with cheque details, PAN card along with addresses of the parties in support of the impugned transaction. However, the AO rejected the claim of the assessee by holding that the identity of the party has not been established, therefore, sub-contract charges for Rs.10,43,712/- was disallowed and added to the total income of the assessee.

22. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who has deleted the addition made by the AO by observing as under :-

“9.4 On perusal of the details filed by the appellant, it can be seen that there is sufficient material on record to state that the transaction is a genuine one. The appellant has duly deducted TDS on the amount paid to the sub contractor. Merely because the notice was returned unserved, it cannot be concluded that the assessee does not exist and the transaction is not for the purpose of business. There is no reason to doubt the genuineness of the transaction in view of the details and evidences produced by the appellant. Accordingly, the disallowance of Rs.10,43,712/- is deleted.”

Aggrieved by this, the revenue has come up in appeal before us.

23. Before us both the parties relied upon the order of authorities below as favorable to them.

24. We have heard rival contentions. On perusal of the record, we find that all the necessary details of sub-contractor charges paid to M/s Lakshmi Enterprises were duly submitted before the AO, which are placed at page 281 to 305 of the paper book. In our considered view, the assessee has filed the necessary details, which are sufficient enough to

prove the identity of the party. Non-service of notice issued u/s.133(6) of the Act cannot be the sole reason for treating the payment as in-genuine. In rejoinder, Ld. DR has not brought anything on record contrary to the finding of Id. CIT(A), hence, we uphold the same and ground of appeal raised by the revenue is dismissed.

25. In the result, appeal of revenue stands dismissed.

Order pronounced in the open court on this 11/01/2017.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
लेखासदस्य / MEMBER ACCOUNTANT

कोलकाता /Kolkata; दिनांक Dated 11/01/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-DCIT, Cir-1, Kolkata
2. प्रत्यर्थी / The Respondent-M/s McNally Bharat Engineering Co Ltd
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY
ORDER,

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता