आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 183/Mum/2016

(निर्धारण बर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 1036/Mum/2015

(निर्धारण बर्ष / Assessment Year 2010-11)

The Dy. Commissioner Tax Room No. 460, 4th floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	Aker Powergas Pvt. Ltd. Powergas House, 83, I Think techno campus, kanjurmarg (East) Mimbai-400 042
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AACD1981E**		

आयकर अपील सं./ IT (TP) No. 957/Mum/2016

(निर्धारण बर्ष / Assessment Year 2011-12)

आयकर अपील सं./ IT (TP) No. 1071/Mum/2015

(निर्धारण बर्ष / Assessment Year 2010-11)

Aker Powergas Pvt. Ltd. Powergas House, 83, I Think techno campus, kanjurmarg (East) Mimbai-400 042	Vs.	The Dy. Commissioner Tax Room No. 460, 4th floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**

अपीलार्थी की ओर से / **Appellant by**	:	Shri Girish Dave, AR
प्रत्यर्थी की ओर से **/ Respondent by**	:	Shri Vivek Peripurna, Sr. DR

सुनवाई की तारीख **/ Date of hearing:**	08.03.2019
घोषणा की तारीख **/ Date of pronouncement :**	03.06.2019

आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These appeals are arising out of the different orders of Dispute Resolution Panel-I, Mumbai [in short 'DRP'], in objection Nos. 101, 87, vide direction dated 10.12.2015, 27.10.2014. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle-14 (1)(1), Mumbai (in short 'DCIT/AO') for the assessment years 2011-12, 2010-11 vide order of different date 18.12.2015, 17.12.2014 under section 143(3) read with section 144C(13) of the Income Tax Act, 1961(hereinafter 'the Act).

2. The first issue in this appeal of assessee in ITA No. 1071/Mum/2015 for AY 2010-11 is against the order of DRP/ ACIT in upholding the adjustment made by determining Arm's Length Price (ALP) of the International transaction pertaining to management charges i.e. area management cost/ corporate management cost amounting to Rs. 17,86,965/- and adjustment was made at Rs. 3,41,50,323/-. For this assessee has raised the following ground No. 1: -

> *"1. Transfer pricing adjustment under section 92CA(3)*
>
> *1.1 The learned ACIT/Dispute Resolution Panel ("DRP) erred in upholding an adjustment of Rs. 3,41,50,323/- in law and on facts, by determining the arm's length price of the international transaction pertaining to*

management charges (Area Management Cost / Corporate Management Cost) at Rs. 17,86,965.

1.2 The learned ACIT/DRP erred in not selecting any of the methods listed in Section 92C(1) for the determination of Arm's Length Price ("ALP") for management charges.

1.3 The learned ACIT/DRP erred in upholding the ALP of management charges determined by the learned Transfer Pricing Officer ("TPO") as Rs. 17,86,965 (ad hoc 5% of the charge paid) which was based on TPOs conjectures and surmises and which lacked a scientific basis.

1.4 The learned ACIT/DRP, based on documentary evidences submitted, failed to understand and appreciate that services were rendered and benefits were derived by the appellant which were primarily intangible in nature.

1.5 The learned ACIT/DRP erred in considering the cost allocation certificate in an incorrect perspective.

1.6 The learned ACIT/DRP did not take into account appellant's submissions regarding reliance placed oil and international jurisprudence for justification on payment for availing management services."

3. Brief facts are that that Additional CIT (TP), Range-1(1), Mumbai vide is letter dated 20.08.2012 referred to the computation of ALP in relation to the international transaction to TPO under section 92 CA(1) of the Act. The TPO vide his order dated 30.11.2013 under section 92CA (3) of the Act made an adjustment of Rs. 3,41,50,323/-. Against this adjustment, the assessee moved objection before DRP and DRP vide its order dated 29.10.2014 rejected the objections of the assessee and uphold the addition of Rs. 3,41,50,323/- made on account of adjustment made by TPO to the ALP of international transaction. The DRP followed the earlier years order for AY 2009-10 and the relevant directions of DRP read as under: -

> *"2.2 We find that this very issue has been adjudicated upon by this Panel at Para 2 (Pages 2 to 21) for AY 2009-10, which are not reproduced for the sake of brevity. We find that alter elaborately discussing the facts and findings of the AY 2009-10, the Panel concluded as under:*
>
> > *2.8.4 In view of the judicial precedents as well as the facts on record we are of the view that the TPO has rightly determined the ALP of Management services at NIL. The panel is also of the view that the assessee has failed to demonstrate that it has received services or that it benefited from such services as claimed. It has further failed to demonstrate the incurrence of cost by the AE as well as its*

allocation among the various group entities. The TPO has not questioned the commercial expediency 01 such transaction entered into by the assessee, rather, has only worked out the arm's length price of the purported service. We are further of the view that no services are rendered nor received by the assessee and what is received (if at all) do not take character of chargeable service. The perusal of the e-mails and other contemporaneous record only goes to show that incidental and passive association benefits have been provided by the AE. In this view of the matter, there could neither be any cost contribution or payment for such service to the AE. Further, as no expenditure would have been incurred, there is no necessity to apply a particular method to arrive at such conclusion. Therefore, the adjustment done by the TPQ on this ground is upheld.

2.3 During the year under consideration, we find that the facts are essentially similar to AY 2009-10. The difference in facts (if any) in this year are insignificant to render any impact on the decision arrived at in 2009-10. This year also

payments have been shown under the AMC and CMC service agreements, the adequacy and genuineness of which were elaborately commented upon by this Pane) in AY 2009-10. The evidence of rendering of service by the AE or the receiving of the benefit by the taxpayer is the same as last year, in the form of emails for the year under consideration. During the year under consideration, we find that the TPO has been more than fair in considering 5% of the expenditure claimed as the ALP of the transaction at para 6, despite his finding that the taxpayer failed to prove that services were rendered or that the taxpayer had derived benefits for which the payments were made. However, considering the evidences furnished before him, wherein certain instances to establish the service rendered and receipt of tangible benefits by the assessee were proved, the TPO considered 5% as ALP of the transaction.

2.4 During the year under consideration also, no details of incurrence of cost for the service rendered, which has benefitted the assessee for which the payment has been made could be furnished by the assessee. The Management Certificate for allocation of cost is also essentially of the same nature with the defects

mentioned in the last year. In fact, on page 337 of Paper book Volume 28 before us the following is noted

> *'our views expressed above are purely in connection with the mathematical accuracy of the cost allocation charge made by Aker As to its group entities. We hove not assessed the potential benefits resulting from payments of AMC/CMC charges to group entities. The above Management certification relates only to elements, accounts, items 001 financial and non-financial information specified in this report. it does not extend U entities financial statement as a whole.*

This certificate of the assessee also proves that the payment of the management charges is not linked to the benefits received by the taxpayer for which this agreement has been made.

2.5 The various arguments, submissions, and evidences placed before us are essentially the same as AY 2009-10, which have been elaborately discussed and considered and adjudicated by this panel in the said order in favour of the revenue (which is not been reproduced for the sake of brevity), and which in our opinion is equally applicable to the year

under consideration. The arguments relating to benchmarking the transaction at entity level by aggregating all international transactions, and that it had shown substantial taxable income as compared to a very meagre amount claimed under management charges have been adequately addressed in the order of this panel for AY 2009-10.

2.6 Further, during the course of hearing before us, the assessee was asked to demonstrate the fact that services were actually rendered. The assessee was also asked to relate the cost of specific activities conducted by the AE for the benefit of the assessee. The assessee was also asked to demonstrate the basis of allocation of costs, the activities for which they were incurred, and the benefit accruing to the assessee from those activities. These issues were raised to determine first, whether, and how much, of such expenditure was for the purpose of benefit of the assessee (deductible under Section 37 of the Act), and secondly, whether that amount passed a transfer pricing analysis. The emails, if at all, show that some services have been rendered, but whether these had some value and if yes, the cost incurred for that and the benefit for which such cost was incurred must be proved by the assessee. It also has to demonstrate that

the price paid was such that an independent entity would have paid for such services for the benefits (if any) received by it. Despite the opportunity being provided by the Panel, no further evidence or explanation was furnished, except stating that the TPO has also in this year partly accepted the assessee's contention. As has been mentioned above, we are of the view that the TPO has been more than fair in considering 5% of the value of the reported International transaction as its ALP. In the absence of any further evidence or explanation, the claim of the assessee cannot be allowed. Reliance is placed on the decision of the Hon'ble Delhi High Court in the case of CIT Vs MIs Cushman and Wakefield (India) P Ltd in ITA No. 475/2012 wherein the court vide its order dated 23.05.2014 has upheld the above view.

2.7 Accordingly, in view of the findings and decision of this panel in AY 2009-10 (which is equally applicable for the year under consideration) and considering that the facts of the year under consideration are essentially similar to last year along with the other reasons discussed above, the objection is rejected.

Aggrieved, assessee is in appeal before Tribunal.

4. At the outset, the learned Counsel for the assessee as well as the learned Sr. DR fairly agreed that the issue has already been set aside in assessee's own case by this Tribunal in ITA No. 1766/Mum/2014 for AY 2009-10 vide order dated 06.04.2016 vide Para 8 as under: -

> *"8. We have noted that learned counsel for the assesse has fairly accepted that the assessee could not lead the necessary evidence, in support of rendition of services, at the assessment stage, and it was only before the DRP that the assessee could produce the evidence. He submits that this was the first year for payment of management services and that there were genuine difficulties preventing the assessee from submission of these details at the assessment stage. He has now submitted voluminous evidences before us but, in our considered with you, the right course of action will be that all these evidences are examined at the assessment stage. The examination of basic evidence at the appellate stage or even at the stage of the DRP is neither appropriate nor desirable, and even doing so, in appropriate cases, calls for the comments from the assessment stage. We do not want to conduct this exercise of appreciating the evidence, for the first time in the case of the assesse, at this level. Learned Departmental Representative has also not seriously opposed this suggestion of*

> *the matter being remitted to the assessment stage. In this view of the matter, and with the consent of the parties, the matter stands restored. As the matter is being remitted to the assessment stage, it will be open to the assessee to take all such pleas, as he may be advised, and the TPO shall adjudicate upon the same in accordance with the law, by way of a speaking order and after giving yet another fair opportunity of hearing to the assessee. Ordered accordingly."*

5. Both, the learned Counsel for the assessee and the learned Sr. DR, agreed that on the same directions the matter can be restored back to the file of the AO. However, the learned Counsel for the assessee Shri Girish Dave drew our attention to the TPO's order 13.11.2012 passed under section 92CA(3) of the Act, whereby the assessee has filed complete details and evidences regarding emails etc. He referred to page 27 and 28 of the order and the facts noted by the TPO in Para 5.5 and 5.6 which read as under:-

> *"5.5 The taxpayer has contended that it is difficult for it to document every receipt of services as the same is received in different forms. It also contends that since such management services are received on year on year basis, it is difficult to assign the benefit in tangible terms.*

It needs to be mentioned that the taxpayer's observation that such services are provided on year basis is incorrect, as provision of such services as started only since FY 2007-08. If the taxpayer is so assured of homologous and integral nature of these services forming part of the primarily business, it would be possible for it to collate and furnish case specific tangible benefits in respect of various services rendered by the AE. However, the taxpayer has failed to furnish tangible benefit sin a case specific manner.

5.6 The taxpayer while summarizing the benefit out of availment of management services from AKAs has even taken into account services such as assistance in into Engineering Services Market, etc. All these activities, cannot form part of specific policy and management inputs given by either the CEO or the EVP of the Aker Solutions Group. The summary nature of these services provided by AKAS to the taxpayer has been elaborately discussed in the show cause notice as well as the discussion in the preceding paragraphs."

6. However, the learned Counsel for the assessee agreed for setting aside of this issue to the file of the TPO for taking a decision afresh in term of the evidence file by the assessee. Hence, we remand this issue back to the file of the TPO and TPO will decide in term of directions given

by this Tribunal in AY 2009-10. This issue of assessee's appeal is allowed for statistical purposes.

7. As the facts are identical even in AY 2011-12 in IT(TP)A No. 957/Mum/2016 and the issue is same except quantum and hence, taking a consistent view in AY 2011-12 also, we remand this issue back to the file of the TPO and TPO will decide in term of directions given by this Tribunal in AY 2009-10. This issue of assessee's appeal is allowed for statistical purposes.

8. The next issue in this appeal of assessee in ITA No. 1071/Mum/2015 for AY 2010-11is against the order of DRP/ACIT in confirming the disallowance of expenses relatable to exempt income by invoking the provisions of section 14A read with Rule 8D(2) (i), (ii) and (iii) of the Income-tax Rules, 1962. For this assessee has raised the following grounds: -

> *"2. Disallowance of expenses under section 14A*
>
> *2.1 The learned ACIT/DRP erred in disallowing Rs. 65,12,673/- under section 14A as expenses incurred in respect of tax free income.*
>
> *2.2 The learned ACIT/DRP erred in disallowing an amount of Rs. 35,47,109/- by considering an amount of Rs. 2,43,00,896/- as expenditure by way of interest for the purpose of calculating disallowance under rule 8D(ii) without appreciating that the interest expense*

includes Rs. 2,32,65,399/- relates to interest on loan obtained for construction of new office building.

2.3 The learned ACIT/DRP erred in holding that as per the provisions of rule 8D the disallowance of expenses is mandatory. He erred in not appreciating that the provisions of rule 8D can he applied only if the assessing officer is not satisfied with the correctness of claim of expenditure made by the assessee.

2.4 The learned ACIT/ DRP erred considering 0.5% of the average value of entire investments in the computation of rule 8D, without appreciating that part of the investments made in Mutual Funds (with Growth Scheme) will not generate any tax-free income and therefore the same ought to have been reduced in the computation."

9. Brief facts are that the assessee has received dividend income of Rs. 36,26,114/-, which was claimed by assessee as exempt under section 10(34) of the Act. The assessee suo moto disallowed a sum of Rs. 13,972/- in respect of expenditure incurred in relation to exempt income, which do not form part of total income under the Act. The AO disallowed under Rule 8D(2)(ii) at Rs. 35,47,109/- and under Rule 8D(2)(iii) at Rs. 29,79,536/-. The DRP also directed the AO to make a disallowance.

10. The main argument taken by assessee before us is that there is no satisfaction recorded by the AO or DRP that there is any expenditure over and above what is declare by assessee and they are relatable to exempt income. According to the learned Counsel, before us, there is no satisfaction at all in the order of the authorities below that there is an expenditure incurred for earning of this exempt income. Once, this is the position no disallowance under section 14A read with section 8D(2) can be made or no invocation of this provisions can be made unless and until the AO is satisfied that there is expenses relatable to exempt income which need to be disallowed. The learned Counsel for the assessee relied on the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC).

11. We noted from the authorities below that there is neither any whisper about the satisfaction nor any expenditure incurred by assessee in relation to any exempt income is pointed out in the assessment order. Even, the authorities below have not gone into the details filed by the assessee or the accounts of the assessee for the purpose of invocation of provisions of section 14A read with Rule 8D(2) of the Rules. In the absence of any satisfaction, we are of the view that Hon'ble Supreme Court has clearly hold in the case of Maxopp Investment Ltd. (supra) that the AO cannot invoke the provisions of section 14 A read with Rule 8D(2) of the Rules. The Hon'ble Supreme Court held as under: -

> *"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section*

> *14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the AO."*

12. In view of the above, we are of the view that the AO has erred in invoking the provisions of section 14A of the Act read with Rule 8D and wrongly rejected the objections of the assessee by the DRP. We reverse the orders of the authorities below and allow this issue of assessee's appeal.

13. Similarly, in AY 2011-12 in IT(TP) A No. 957/Mum/2016, facts are identical and the issues are same and hence, taking a consistent view in AY 2011-12, we reverse the orders of the authorities below and allow this issue of assessee's appeal in this year also.

14. The next issue in this appeal of assessee in ITA No. 1071/Mum/2015 for AY 2010-11 is against the order of AO/ DRP making addition of tax withheld i.e. taxing foreign receipts from gross basis. For this assessee has raised the following ground No. 3: -

> *"3. Taxing foreign receipts on gross basis*
>
> *3.1 The learned ACIT/DRP erred in making addition of tax withheld of Rs. 26,34,570/- by Konkola Copper Mines PLC in Zambia without appreciating that only the net income of' Rs.*

1,75,63,800/- (i.e. after withholding tax) is liable to tax in the hands of the appellant in India.

3.2 Without prejudice to the above, the learned ACIT erred in restricting the credit under section 90 to Rs. 23,27,731/- instead of the revised benefit on gross income after addition of the above withholding tax which works out to Rs. 30,29,755/-."

15. At the outset, the learned Counsel for the assessee as well as the learned Sr. DR agreed that this issue is against the assessee in earlier assessment year i.e. AY 2009-10 in ITA No. 1766/Mum/2014 for AY 2009-10 vide order dated 06.04.2016, wherein the Tribunal has considered the receipts of the same period from Konkola Copper Mines PLC in Zambia, the Tribunal relying on the Double Tax Avoidance Agreement (DTAA) between the Zambia and India. The gross income is to be taxed but subject to relief on the DTAA. The Tribunal deal with this issue in Para 16 as under: -

"16. We are of the considered view that there is no ambiguity on the aspect whether it is the gross amount of foreign income, or the amount net of tax in respect of foreign income, which is to be brought to tax. The tax is on the income, and, as for the tax imposed in the source country i.e. Zambia in this case, double taxation relief is very well admissible under section 90 read with Article 24 of India Zambia Double Taxation Avoidance Agreement [(1984) 146 ITR

Stat 233]. Just because an assessee does not claim double taxation relief in respect of an income, it does not entitle the assessee to exclude that income from taxable income. Nothing, therefore, turns on not claiming double taxation relief on an income, so far as taxability of that income is concerned. As for the relief under section 90, the assessee is entitled to relief for the entire income. When entire income is brought to tax, as a corollary to the same, double taxation relief is to be given in respect of the same. To that extent, grievance of the assessee is justified."

16. We also direct the AO to tax the gross income but relief under section 90 of the Act is to be allowed to the assessee. The AO will follow the Tribunal's direction as in ITA NO. 1766/Mum/2014 for AY 2009-10. This issue of assessee's appeal is partly allowed as indicated above.

17. Similar are the facts and issue is same in AY 2011-12 in IT(TP) A No. 957/Mum/2016, hence, taking a consistent view in AY 2011-12, we also direct the AO to tax the gross income but relief under section 90 of the Act is to be allowed to the assessee for this year also.

18. The next issue in this appeal of assessee is against the order of AO/DRP in disallowing computer software expenses treating the same as capital in nature. For this the assessee has raised, the following ground No.4: -

"4. Disallowance of software expenses

4.1 The learned ACIT/DRP erred in disallowing computer software expenses of Rs. 6,37,70,756/- which are revenue expenses, by treating the same as capital in nature.

4.2 The learned ACIT/DRP erred in observing that since the usage of software is for more than two years, the software expenses are to be regarded as an intangible capital asset, without appreciating the fact that the software payments were for actual usage for a period of less than one year."

19. Brief facts are that the assessee has claimed software expenses as revenue in nature amounting to Rs. 6,37,70,756/- during the year under consideration. During the course of assessment proceedings, the assessee was asked to justify as to why these expenses should not be treated as capital in nature. The assessee stated that these are incurred for various projects and assessee filed complete details of the projects. The assessee claimed that the software projects would become outdated much earlier than expected and therefore, upgraded its software. Element of upgrading the apparatus does not make the asset as capital in nature, therefore, it was rightly claim as revenue expenditure. But the AO was of the view that since the assessee's project was for 2 to 3 years, the assessee's expenses are in capital line and assessee is entitled for depreciation on this software expenditure. The DRP also affirmed the view of the AO. Aggrieved, assessee is in appeal before Tribunal.

20. We have noted that the Tribunal in ITA No. 1766/Mum/2014 for AY 2009-10 vide order dated 06.04.2016, has considered this issue as Revenue in nature by observing as under: -

> *"22. There is no dispute about genuineness of the expenses and the dispute before us is confined to the question whether it should be treated as revenue expenditure or as capital expenditure. We have noted that out of a total expense of Rs 5,88,62,091, an amount of Rs 5,29,32,320 is aid to the Aker Norway for actual use of software. Since the amount is paid on the basis of actual use of software, and not for acquisition of software, there cannot be any occasion for treating the same as capital expenditure. As regards the remaining amount also, as evident from the copies of invoices before us, the payment is for the licence fees on annual basis, and not for the entire project period. The fact that the licence is used in a project which has a life span of over one year does not mean that the benefit from the licence fees was more than one year. In our considered view, in the light of these facts evident from material on record, it is unambiguous that the authorities below have wrongly held the software payment to be capital expenditure in nature. We, therefore, uphold the grievance of the assessee and direct the Assessing Officer to*

treat the software expenses as revenue expenditure in nature."

21. We noted that there is no difference in the facts in this year and the Tribunal has already taken a view in immediately preceding year, taking a consistent view, we also holds that the expenditure incurred by assessee on projects of software is Revenue in nature. We allow this issue of assessee's appeal.

22. Similar are the facts and issues are same in AY 2011-12 in IT(TP) A No. 957/Mum/2016, hence, taking a consistent view in AY 2011-12, we also holds that the expenditure incurred by assessee on projects of software is Revenue in nature. We allow this issue of assessee's appeal.

23. The next issue in this appeal of assessee in ITA No. 1071/Mum/2015 for AY 2010-11 is as regards to the short credit for TDS allowed by AO. For this assessee has raised the following ground No. 5: -

"5. Short credit of TDS

The learned ACIT erred in granting TDS credit for Rs. 10,09,56,729/- as against claim of Rs. 11,81,18,813/- in the return of income, leading to a short credit of TDS of Rs. 1,71,62,084/-."

24. After hearing both the sides and going through the facts, both the parties agreed that this issue can be remitted back to the file of the AO. We direct the AO to allow the TDS credit after verifying the evidences and TDS certificates. We direct the AO to verify the tax credits and after that allow the claim of the assessee as per law.

25. Similar are the facts and issues are same in AY 2011-12 in IT(TP) A No. 957/Mum/2016, hence, taking a consistent view in AY 2011-12, we remit the matter back to the file of the AO who will allow the TDS credit after verifying the evidence and TDS certificates. We direct the AO to verify the tax credits and after that allow the claim of the assessee as per law.

26. The next issue in this appeal of assessee is against the order of AO levying the interest under section 234A, 234B and 234C of the Act. For this assessee has raised the following ground NO. 6,7 & 8: -

> *"6. Levy of interest under section 234A*
>
> *The learned ACIT erred in levying interest of Rs. 3,32,462 under section 234A without appreciating the fact that the Central Board of Direct Taxes had issued a notification extending the due date of filing the income-tax return from 30 September 2010 to 15 October 2010.*
>
> *7. Levy of interest under section 234B*
>
> *The learned ACIT erred in levying interest of Rs. 1,89,50,334 under section 234B without appreciating that as more than 90% of the assessed tax had been paid, the question of levy of interest under section 234B does not arise.*
>
> *8. Levy of interest under section 234C*

The learned ACIT erred in levying interest of ₹ 6,45,752/- under section 234C."

27. We have heard rival contentions on this issue and gone through the facts and circumstances of the case. As regards to levy of interest under section 234A of the Act, we direct the AO to verify the date of filing of return and the notification issued by Central Board of Direct Taxes extending the due date for filing of return of income from 30-09-2010 to 15-10-2010. Accordingly, the AO will decide. The charging of interest under section 234B of the Act, the AO will calculate the payment of tax and incase the advance tax paid is more than 90 % of the assessed tax, then there is no question of levy of interest under section 234B of the Act. The AO will decide accordingly. As regards to charging of interest under section 234C of the Act, the same will be charged on the deferment of advance tax. The AO will verify the deferment of advance tax installments and accordingly, decide the levy of interest under section 234C of the Act. The AO is directed accordingly on the chargeability of interest under section 234A,B and C of the Act. This issue of assessee's appeal is partly allowed for statistical purposes.

28. The only issue in this appeal of Revenue in ITAs No. 1036/Mum/2015 is against the order of DRP in treating the addition made by AO in regard to negative contracts margin and prior period expenses. For this Revenue has raised the following ground No.1: -

"1. On the facts and in the circumstances of the case and in law, the Dispute Resolution Panel erred in deleting the addition made by the AO of ₹ 3,30,52,696/- against the negative contracts margin and prior period expenses."

29. Brief facts are that the AO noted during the course of assessment proceedings from the details of turnover as reflected in the profit and loss account that there are entries for negative turnover. The assessee claimed that the assessee is getting prior period income against the expenses but there are also negative entries with regards to the contract margins. The AO in his draft assessment order going through the matching principle added contracts given negative contract margins totaling to Rs. 3,30,55,696/-. However, the assessee carried the matter to DRP and DRP relying on the earlier years directed the AO to delete the addition made on account of reversal of income as well as the prior period expenses vide Para 1 to 5.2 as under: -

> *"5.1 DRP's Directions: We find that the issue stands decided in favour of the assessee by the directions of DRP in AY 200910. The directions of this panel in AN' 2009-10 are as under:*
>
> > *i. We have considered the assessee's submissions and the facts on record. At the outset it may be mentioned that on the additional evidence filed by the assessee, the AO has not provided any comments and has relied on its findings in the draft order on this issue. it is seen that the assessee follows percentage completion method for recognition of its revenue. As regards the claim of reversal of income in respect to billings not accepted by the clients of As. 34,67,682/-, we are of the view that this is normal loss for the year. Since the corresponding revenue had already been*

recognized in earlier year, in this year, on ascertaining that the amount could not be billed to its client, it is a allowable loss for the year. The AO is accordingly directed to allow the same.

ii. As regards expenses incurred of As. 1.96 crore, since the expenses have been incurred in this year, they cannot be treated as prior period expense only for the reason that the project was completed in earlier year. The crystallization of the liability as well as the actual incurrence has happened in this year and hence cannot be treated as prior period expense. Considering the facts of the case and also the fact that in earlier year the CIT(A) has also accepted the assessee's claim against which revenue has not preferred any appeal, we direct the 40 to allow the assessee's claim.

5.2 Since, there is no change in fact in this year regarding the reversal of income as well as the prior period expense, respectfully following the directions of this panel in AY 2009-10, the objection is accepted and the AO is directed to allow the claims of the assessee regarding both

the items."

Aggrieved, Revenue is in appeal before Tribunal.

30. At the outset, the learned Counsel filed copy of Tribunals order in ITA No. 1766/Mum/2014 for AY 2009-10 vide order dated 06.04.2016 and stated that Tribunal relying on the assessment order deleted the addition by observing in Para 31-32 as under: -

> *"31. As for the appeal filed by the Assessing Officer, the only grievance raised therein is as follows:*
>
> > *On the facts and in the circumstances of the case and in law, the dispute Resolution Panel erred in deleting the addition made by the A.O. of Rs.2,30,71,801/- against the negative contracts margin and prior period expenses.*
>
> *32. Learned representatives fairly agree that this issue is covered, by the order dated 19th December 2014 passed by the coordinate bench in assessee's own case for the immediately preceding assessment year. A copy of the coordinate bench decisions dated 19th December 2014 is deemed to be attached and forming part of this order as well. We see no reasons to disturb the findings of the learned CIT(A) which are in conformity with the stand of the coordinate bench. We, therefore, approve the conclusions arrived at by the learned CIT(A) on this point, and decline to interfere in the matter."*

31. During the year, the appellant had shown net contract margin of Rs. 1,04,05,501/- for the contracts completed prior to financial year 2009-10. The breakup of positive and negative contract margin is as under: -

> *"Positive Rs. 2,26,47,195/-*

Negative Rs. 3,30,52,696/-

Net (negative) Rs. 1,04,05,501/-

The negative contract margin of Rs. 3,30,52,696/- consists of two components:

Reversal of income of Rs. 2,33,03,181/-

Expenses incurred of Rs. 97,49,516/-

Reversal of Income of Rs. 2,33,03,181/-"

32. We noted from the facts that majority of the contracts undertaken by the company are ongoing which span over one year. The revenue is recognized on the basis of percentage completion method as provided in the accounting standard. Based on the percentage completion method, the company had recognized revenue till financial year 2008-09. However, out of the revenue recognized some amounts were to be billed in financial year 2009-10. During the financial year 2009-10, post discussions with the clients, the company realized that it could not bill the entire amount to some clients and had to reverse some part of the Revenue. The reversal of revenue in the current year is on the basis of amount not billed or amount not paid by the clients. It is a normal loss arising during the course of business of the assessee and is accordingly allowable as a deduction under section 28 of the Act. The reversal was pursuant to discussions with clients in the financial year 2009-10 and accordingly it cannot be categorized as a prior period team. In view of the above facts that we are of the view that this issue is fully covered in favour of assessee and against Revenue by Tribunal's decision in assessee's own case. Respectfully, following the Tribunal's decision, we

confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.

33. Similar are the facts and the issues are same in ITA No. 183/Mum/2016 for AY 2011-12, hence, taking a consistent view in this year also, we confirm the order of CIT(A) and dismiss this appeal of Revenue.

34. **In the result, appeals of assessee are partly allowed and the appeals of Revenue are dismissed.**

Order pronounced in the open court on 03.06.2019.

Sd/-	Sd/-
(राजेश कुमार / RAJESH KUMAR)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 03.06.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //**True Copy**//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**