

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,  
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 909/DEL/2016  
[A.Y 2011-12]  
&  
ITA No. 6376/DEL/2017  
[A.Y 2012-13]  
&  
CO No. 188/DEL/2016  
(A/o ITA No. 1655/DEL/2016 [A.Y 2011-12])**

**Nokia Solutions and Networks India Pvt Ltd  
7<sup>th</sup> Floor, Building No. 9A  
DLF Cyber City, Sector 25A  
Gurgaon - Haryana**

**Vs. The Dy.C.I.T  
Circle - 18(2)  
New Delhi**

**PAN No: AACCN 3871 F**

**ITA No. 1655/DEL/2016  
[A.Y 2011-12]**

**The Dy.C.I.T  
Circle - 18(2)  
New Delhi**

**Vs. Nokia Solutions and Networks India Pvt Ltd  
7<sup>th</sup> Floor, Building No. 9A  
DLF Cyber City, Sector 25A  
Gurgaon - Haryana**

**PAN No: AACCN 3871 F**

**[Appellant]**

**[Respondent]**

**Date of Hearing : 16.01.2020  
Date of Pronouncement : 28.01.2020**

Assessee by : Shri Deepak Chopra, Adv  
Shri Amit Srivastava, Adv  
Shri Ankul Goel, Adv

Revenue by : Shri Surendra Pal, CIT-DR

### ORDER

PER N.K. BILLAIYA, AM:-

This above cross appeals by the assessee and Revenue are preferred against the order dated 29.01.2016 framed u/s 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] pertaining to assessment year 2011-12. The assessee has preferred an appeal for A.Y 2012-13. The cross objection filed by the assessee pertains to A.Y 2011-12. Since all these appeals and cross objections were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

2. The appellant company is, inter alia, engaged in the manufacturing and trading of telecommunication network equipment and other related services related to telecom equipment. The assessee is a wholly owned subsidiary of Nokia Siemens Networks BV. It is engaged in manufacturing and trading of telecommunication

network equipments and network design, installation and commissioning. The assessee also manages networks for major telecom operators and provides software services to its associated enterprises (“AEs”). The appellant company also provides software development and certain network management support services. Further, NSN India rendered certain marketing support services to its AEs. With this background of the appellant’s business profile, we will now take up the assessee’s appeal in ITA No. 909/DEL/2016.

ITA No. 909/DEL/2016 [Assessee’s appeal for A.Y 2011-12]

3. Ground No. 1 is general in nature and needs no adjudication.
  
4. Ground No. 2 relates to the addition on account of unearned revenue amounting to Rs. 62,84,26,537/-.
  
5. Ground No. 3 relates to disallowance of provision of liquidated damages.
  
6. Ground No. 4 relates to disallowance out of expenditure in foreign currency.

7. Ground No. 5 relates to disallowance out of technical training expenditure.

8. Ground No. 6 relates to TP adjustment.

9. At the very outset, the ld. counsel for the assessee drew our attention to the decisions of the co-ordinate bench in assessee's own case for Assessment Year 2011-12 and 2009-10 and stated that all the issues involved in the present appeal were considered by the Tribunal in earlier years and has decided in favour of the assessee and against the revenue.

10. The ld. DR could not bring any distinguishing decision in favour of the Revenue.

11. We have given thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. The co-ordinate bench in ITA No. 1013/DEL/2015 has considered all the impugned issues.

Addition on account of Unearned Revenue

12. We find that a similar issue was considered by the co-ordinate bench in Assessment Year 2010-11 [supra] vide Ground No. 2 of that appeal and has held as under:

"25. Considering the facts of the case in totality, in the light of contractual terms and conditions and considering the fact that the unearned revenue has been offered for tax in the subsequent years as exhibited in chart elsewhere, we are of the considered opinion that ht addition of Rs. 1,02,88,91,000/- is uncalled for and deserves to be deleted. Thus, Ground No. 2 is allowed."

13. On finding parity of the facts with the facts of the year under consideration, we do not find any reason to differ with the findings of the coordinate bench. Respectfully following the same, we direct the Assessing Officer to delete the addition of Rs. 62,84,26,537/-. Ground No. 2 with all its sub-grounds is allowed.

Disallowance of provision of Liquidated Damages.

14. A similar issue was considered by the co-ordinate bench in Assessment Year 2010-11 [supra] vide Ground No. 3 of that appeal and the Tribunal has held as under:

*“29. We have given a careful consideration to the orders of the authorities below and have also perused the order of the coordinate bench in ITA No. 3202/Del/2014 for AY 2004-05. We find force in the contention of the Ld. Counsel. An identical issue was considered and decided by the coordinate bench. The relevant findings read as under:*

*"4.4.1 Ground no. 5 of appeal is direct against disallowance of a sum of Rs. 17,61,99,671/- towards provision for liquidated damages. During the year, the assessee has claimed provision for liquidated damages to the tune of Rs. 17,61,99,671/-. The assessee stated that in terms of the purchase order received from customers, liquidated damages @ 0.5% per week subject to a maximum of 0.7% or such other rate as per the relevant contract would be imposed for the late delivery of equipment. The stipulation in the purchase order clearly shows that the liability for*

*liquidated damages is certain, accrued and is not dependent upon the happening of any event other than delay in deliveries. As the company defaulted in the delivery terms, the liquidated damages have been rightly considered as business expenditure. The company is following the method on a consistent basis.*

*When the payment was actually made the accounts were adjusted with reference to any remission or waiver that the company may get in respect of damages payable for the late delivery and the same was brought to tax u/s 41(1) of the [IT Act, 1961](#) by crediting the liquidated damages account. The AO held that the provision made for liquidity damages amounting to Rs. 17,61,99,671/- is unascertained liability in the nature of contingent liabilities and, therefore, added the same. In terms of the purchase order, liquidated damages @ 0.5% per week subject to a maximum of 0.7% would be imposed. The company defaulted in the delivery terms, therefore, the above liability is as definite liability. Further, as the liability is determinable 0.05% per week subject to a maximum of 0.7%, therefore, the liability is also*

*an ascertained liability. The liability to pay liquidated damages arose no sooner than there was a breach. The company had provided for the liquidated damages pertaining to the period of delay falling within the previous year in order to arrive at the true income of that year based on the accrual method of account. The company is following the method on a consistent basis.*

*4.4.2 Hon'ble Supreme Court in the case of [Bharat Earth Movers Ltd. vs. CIT](#) (245 ITR 428) held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable for being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. Similar disallowance was deleted by Ld. CIT(A) in AY 2005-06 following the disallowance of Hon'ble ITAT in the case of [Thermax Babcock and Wilcox Ltd. vs. Addl. CIT](#) 304 ITR 130 (AT). In view of the above factual and legal position, the addition of Rs.*

*17,61,99,671/- towards provision for liquidated damages made by the AO is legally not sustainable. Therefore, the same is deleted. The appeal is allowed in this ground.*

*8. In the present case from page no. 136 of the assessee's paper book, it is noticed that total provision for liquidated damages was of Rs. 19,66,51,910/- out of which Rs. 2,04,52,238/- were utilized and credited/written back, the remaining amount of Rs. 17,61,99,672/- was the actual amount of the damages which were accounted for in the*

*profit and loss account. In the instant case, the Ld. CIT(A) categorically stated that when the payments were actually made, the accounts were adjusted with reference to any remission or waiver that the company may get in respect of damages payable for the late delivery and the same was brought to tax u/s 41(1) of the Act by crediting the liquidated damages accounts. Therefore, the impugned amount was not only the provision but the actual amount of the liquidated damages pertaining to the period of delay falling within the previous year relating to the*

*assessment year under consideration. The Ld. CIT(A) categorically stated that the assessee was following this method consistently. We, therefore, do not see any valid ground to interfere with the factual findings given by the Ld. CIT(A) and accordingly do not see any merit in the ground raised by the Department."*

30. Respectfully following the findings of the coordinate bench, we direct for the deletion of the addition of Rs. 57,93,45,721/-. The Ground no. 3 is accordingly allowed."

30. On finding parity of the facts with the facts of the year under consideration, we find no reason to differ with the findings of the coordinate bench. Respectfully following the same, we direct the Assessing Officer to delete the addition of Rs. 13,95,98,167/-. Ground No. 3 with all its sub-grounds is allowed.

Disallowance out of Expenditure in Foreign Currency.

31. An identical issue was considered by the co-ordinate bench in Assessment Year 2010-11 [supra] vide Ground No. 4 of that appeal and has held as under:

*"32. We have carefully considered the rival contentions. It is not in dispute that school fees of the children of the employees have been paid by the assessee company. We are of the considered view that if the same is treated as perquisites in the hands of the employees then the same takes the colour of the salaries. We, accordingly, restore this issue to the files of the AO. The assessee is directed to demonstrate that the school fees has been treated as perquisites in the hands of the employees and the AO is directed to examine the same and decide the issue afresh after giving a reasonable opportunity of being heard to the assessee. Ground no. 4 is treated as allowed for statistical purposes."*

32. On finding parity of the facts with the facts of the year under consideration, we direct accordingly. Ground No. 4 with all its sub-grounds is treated as allowed for statistical purposes.

Disallowance out of Technical Training Expenditure.

33. An identical issue was considered by the co-ordinate bench in Assessment Year 2010-11 [supra] vide Ground No. 5 of that appeal and has held as under:

"36. We have carefully considered the orders of the authorities below. It is true that amount of Rs. 18.94 crores is part of the details of the expenditure in foreign currency as mentioned else where. It is equally true that the Chartered Accountant certificate clearly shows that it is a contra entry inadvertently shown under the head "details of expenditure" in foreign currency. We find that complete ledger accounts were given to the lower authorities which were not examined by them. In the interest of justice and fair play, we restore this issue to the files of the AO. The AO is directed to examine the ledger accounts and verify whether it is contra entries and after verifying the same and if found correct delete the addition, after giving a reasonable opportunity of being heard to the assessee. Ground no. 5 is treated as allowed for statistical purposes.

34. On finding parity of the facts with the facts of the year under consideration, we direct accordingly. Ground No. 5 with all its sub-grounds is treated as allowed for statistical purposes.

#### TP ADJUSTMENT

35. Facts on record show that while determining the aggregate TP adjustment of Rs. 91,60,15,553/- in respect of certain international transactions undertaken by the assessee during the year under consideration, namely,

- (a) provision of marketing support services
- (b) provision of telecom technical services, and
- (c) provision of warranty support services.

36. In so far as the items at (a) and (c) are concerned, we find that in A.Y 2010-11 [supra], the coordinate bench has considered these issues and have followed the decision given in A.Y 2009-10. The relevant findings read as under:

*“39. Ground no. 7 relates to the transfer pricing adjustments amounting to Rs. 1,17,24,04,607/-. The adjustments have been made in respect of the international transaction under taken by the appellant namely provision of marketing support services and provision of warranty support services. We find that a similar transfer pricing adjustment was made in AY 2009-10 in respect of market support service segment and the matter travelled upto the Tribunal and the coordinate bench in ITA No. 2810/Del/2014 has decided this issue as under:*

*“44. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. It is an undisputed fact that the assessee has recharged the total cost of marketing*

*team along with mark up of 3% from the AE, which means that the AE not only compensated the cost of marketing, team attributable towards the provision of marketing support services to AE by the assessee but also compensated the cost of marketing team attributable to the support provided by the marketing team to the assessee itself. This is not warranted as per the inter company agreement. In our considered opinion, considering the attribution to the services provided to the AE, vis a vis actual Revenue realised from the AE, margin of the assessee from the provision of marketing support services has to be higher than 3%. We find that now the assessee has obtained certain documentary evidence and, accordingly, wishes to submit the same in respect of the claim.*

*45. In view of the above, we are of the considered opinion that cost of marketing team should be bifurcated based on revenue of AE from its operations in India vis a vis revenue generated by the assessee from its sales to third party vendors. We, accordingly, restore this issue to the file of the Assessing Officer/TPO. The assessee is directed to submit the India Specific Profit and Loss Account, network equipment sales to Indian telecom operators of the AE duly certified by an authorised public accountant of Finland. The TPO is directed to examine the same and decide the issue afresh after*

*giving reasonable and sufficient opportunity of being heard to the assessee."*

*40. Respectfully following the findings of the coordinate bench on finding parity of the facts with the case in hand, we direct the AO/TPO accordingly.*

*41. The second adjustment is in respect of warranty support services. This was also disputed in AY 2009-10 and the coordinate bench in the same order in ITA No. 2810/Del/2014 has decided this issue as under:*

*"53. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. We have also accordingly perused the advance pricing agreement u/s 92CC of the Act between the CBDT and the assessee which is exhibited at pages 18 to 76 of the paper book. It is true that the agreement is applicable to 4 consecutive rollback years commencing from the previous year 2009-10 to previous year 2012-13. However, we find that the FAR analysis of the year under APA applicable from assessment year 2010-11 to be read as (2014-15) can also be used for the year under consideration since the TP adjustment is of a very small amount being 1.01 crores. Considering the facts in totality, we direct the TPO to accept the TSS segment as part of network division for bench marking the international transaction which means that this segment should be taken with the main network division of aggregated approach for bench marking."*

*42. Since, the facts of the case in hand are identical to the facts of AY 2009-10. Respectfully following the findings of the coordinate bench (supra), we direct accordingly. Ground no. 7 is allowed.”*

37. In so far as technical support services is concerned, the TPO has used the same comparables as for warrantee support services and has made computation of ALP on the same lines which is as under:

Operating cost	5,12,26,035/-
Arm's length margin	29.15
Arm's length price	6,61,58,424/-
Price shown in the international transactions	5,27,62,616/-
Shortfall being adjustment u/s 92CA	1,33,95,608/-

38. It can be seen from the above chart that the Arm's length margin has been taken at the same rate of 29.15. In light of the above bench marking, we have carefully gone through the agreement exhibited at page 205 of the paper book [particular page 209]. At this juncture, it would be pertinent to mention here that the assessee entered into an 'Advance Pricing Agreement' u/s 92CA of the Act with CBDT and agreement is dated 28.03.2016 and at page 13 under Appendix 1A, details of covered transactions between the assessee and the AEs

related to networks division has been mentioned and the same read as under:

- i. Import of network equipment (both hardware and software) sale to end customers;
- ii. Import of raw material, components and sub-assemblies manufacturing /assembling of network equipment;
- iii. Import of capital items / goods from AEs;
- iv. Export of manufactured /assembled network equipment to V.
- v. Sale of capital items, if any, to AEs;
- vi. Availing of services from AEs for provision of services to customers in India;
- vii. Reimbursement of expenses to/from AEs;
- viii. Provision for warranty support services to AE;
- ix. Payment of royalty to NSN Oy;
- X. Accounts receivables / payables related to above mentioned international transactions.

39. This is only to address the fact that the provision of telecom support services and warrantee support services have to be clubbed together. Therefore, for the detailed discussion given hereinabove in respect of provision of warrantee support services, the same will apply to the telecom technical support services mutatis mutandis. Therefore, for our detailed discussion given therein, the TP adjustment

on account of this service is also directed to be deleted. Ground No. 6 with all its sub grounds is allowed.

40. In the result, the appeal filed by the assessee in ITA No/909/DEL/2016 is allowed in part for statistical purposes on the grounds argued before us.

Revenue's appeal ITA No. 1655/DEL/2016 [A.Y 2011-12]

41. Ground Nos. 1, 2 and 3 relate to the deletion of disallowance of expenses for moulds and tooling of Rs. 2,52,51,690/-, expenditure for project equipment and components written off of Rs. 17,68,18,000/- and out of repair and maintenance expenses of Rs. 3,45,94,107/-.

42. Before us, the ld. DR read the relevant clauses of the draft assessment order and placed strong reliance on the findings of the Assessing Officer.

43. Per contra, the ld. counsel for the assessee stated that in the immediately preceding year, similar disallowances were made in A.Y 2009-10 and the DRP directed the Assessing Officer to delete the disallowance and the Revenue did not prefer any appeal against the order of the DRP and, therefore, the findings given by the DRP has attained finality.

44. We have given thoughtful consideration to the orders of the authorities below and have also considered the directions of the DRP u/s 144C(5) of the Act dated 18.12.2014 for A.Y 2010-11. It is true that while making the disallowances, the Assessing Officer followed the findings given in A.Y 2010-11 and the DRP while deleting the disallowance have followed the directions given in A.Y 2010-11. Since the Revenue did not prefer any appeal for A.Y 2010-11, the directions of the DRP have attained finality.

45. Further, we find that the facts and circumstances and underlying issues are identical during the year under consideration also. Therefore, considering the past history of the assessee, we do not find any reason to interfere with the findings of the DRP. Accordingly, Ground Nos. 1 to 3 are dismissed.

46. Ground Nos. 4 to 10 relate to the exclusion of certain comparables from the final set of comparables for determining the ALP of the international transaction.

47. As mentioned in the case of assessee's appeal [supra], Advance Pricing Agreement has been entered into between the assessee and CBDT and at para 2 it has been mentioned that the agreement shall also apply to consecutive four rollback years commencing from the previous years 2009-10 to 2012-13 for category 2 and 3 transactions only and at page 28 under Appendix 1B, details of covered transactions has been given and the same are reproduced as under:

(a) Details of covered transactions between the Applicant and the AE(s) related to software development support services:

- i) Provision of software development services to NSN Oy
- ii. Reimbursement of expenses to/ from the AE in relation to the abovementioned international transaction; and
- iii. Trade receivables / payables with AE in relation to the abovementioned international transactions.

these combined are referred to as 'Category 2 transaction'.

(b) Details of Most Appropriate Transfer Pricing Method(s):

The Most Appropriate Method shall be the Transactional Net Margin Method ("TNMM") with Applicant as the tested party and operating profit margin for the Category 2 transaction as the Profit Level Indicator ("PLI");.

(c) Details of ALP:

The ALP of the Category 2 transactions shall be the operating profit margin of not less than 17T>0% determined using operating profit /operating cost as the PLI, for each of the APA Years and Rollback Years."

48. In light of Advance Pricing Agreement mentioned hereinabove, the grievance of the Revenue relating to exclusion of comparables becomes infructuous.

49. In the result the appeal of the Revenue is dismissed.

50. The cross objection filed by the assessee has not been pressed. Accordingly, the same is dismissed as not pressed.

ITA No. 6376/DEL/2017 [Assessee's Appeal for A.Y 2012-13]

51. Ground No. 1 is general in nature and needs no adjudication.

52. Ground No. 2 relates to the addition on account of unearned revenue amounting to Rs. 2,12,52,00,000/-.

53. An identical issue has been considered by us in assessee's appeal hereinabove in ITA No. 909/DEL/2016 vide ground No. 2. For our detailed reasoning given therein, Ground No. 2 is allowed.

54. Ground No. 3 relates to disallowance of TDS recoverable written off.

55. During the course of scrutiny assessment proceedings, the Assessing Officer found that the assessee has claimed an amount of Rs. 9,09,12,903/- on account of bad debt and advance written off. The assessee was asked to justify its claim. In its reply, the assessee explained that an amount of Rs. 14.26 crores has been debited to the Profit and Loss Account under the head 'Bad debts and advances written off'. It was explained that the said write off comprises of:

- a) TDS receivables Rs. 9.09 crores.
- b) Security deposits and advances Rs. 5.17 crores.

56. The Assessing Officer was of the opinion that since the assessee is not a banking company and in order to claim bad debts, the assessee was required to satisfy the conditions of section 36(2) of the Act, failing which the TDS receivable and security deposits and advances are not in the nature of income declared in earlier year. The Assessing Officer further observed that it is not understandable as to how the liability can be shifted to be recovered from the department and how the same can be written off. The claim of the assessee was denied by the Assessing Officer.

57. The assessee raised objections before the DRP and explained that the amount of Rs. 9.90 crores represents TDS deducted by customers in respect of which TDS certificates were not received and the said amount was no longer recoverable from the customers and since the amount cannot be recovered by the assessee, nor any claim would be given on account of TDS, the same has been written off as bad debts.

58. The DRP directed the Assessing Officer as under:

- i.* Revenue receipts wrt which TDS were done, whether the assessee had offered gross amount or net amount as income
- ii.* Whether the assessee claimed credit for TDS in the relevant year or in subsequent years wrt the TDS which the assessee wants to write off.
- iii.* Name and address of the parties which did the TDS. The AO should write to the concerned TDS AOs with copies to concerned TDS commissions about the default of the TDS deductor wrt non issuance of TDS certificate and probable non-payment of TDS by the TDS deductor to the credit of central Government.
- iv.* Subject to this, the AO should allow deduction wrt those TDS written off by the assessee receipt of which (against which TDS was done) was offered as income by the assessee on gross basis."

59. The assessee was once again asked to provide justification on claim of bad debts. The assessee filed reply dated 11.1.2017 which did not find any favour with the authorities. It was observed that it is not

possible to discern whether the amounts have been offered as income or not and addition of Rs. 9.09 crores was upheld.

60. Before us, the ld. counsel for the assessee stated that an identical issue was considered by the Tribunal in assessee's own case in Assessment Year 2008-09 and has remanded the matter to the file of the Assessing Officer with certain directions.

61. Per contra, the ld. DR could not bring any distinguishing decision in favour of the Revenue.

62. We have given thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. An identical issue was considered by the co-ordinate bench in ITA No. 333/DEL/2013 for Assessment Year 2008-09. The relevant findings of the co-ordinate bench read as under:

"14. In view of the above factual and legal position, it has become necessary to verify whether the assessee had recognized the income as and when the services are rendered or goods are dispatched and subsequently, whether the assessee written off the difference amount of deficit payment and the

amount under the TDS certificate issued, in their books of accounts. It would be conveniently verified by the learned AO and if he finds that initially the assessee recognized the total invoice amount and subsequently, identified the bad debt with reference to the deficit payment by the party and the amount under TDS certificate issued. On verification of compliance with these two conditions, learned AO will allow this expense. Ground Nos.3 and 3.1 are allowed for statistical purposes."

63. Respectfully following the findings of the co-ordinate bench [supra] we direct accordingly. Ground No. 3 is treated as allowed for statistical purposes.

64. Ground No. 4 relates to disallowance of provision for liquidated damages.

65. An identical issue has been considered by us in assessee's appeal hereinabove in ITA No. 909/DEL/2016 vide ground No. 3. For our detailed reasoning given therein, Ground No. 4 is allowed.

66. Ground No. 5 relates to disallowance of utilization from provision for foreseeable losses.

67. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that during the assessment proceedings of Assessment Year 2010-11, disallowances were made on account of provisions for liquidated damages and the assessee was asked to explain why similar disallowances should not be made during the year under consideration.

68. The assessee filed detailed reply vide submissions dated 21.03.2016 explaining that during the year under consideration, provision for liquidity damages amounting to Rs. 50.64 crores has been created and provision amounting to Rs. 15.55 crores has been realized/written back to the Profit and Loss Account being provision no longer required. It was further explained that since the assessee is engaged in the business of manufacturing and trading of telecom network equipment and, therefore, is obliged to supply and provide installation and commissioning services in respect of such telecom network equipment under the terms of its contract with the customers.

69. Accordingly, in the event any compensation for default or delay on contracts becomes payables and such payables are pending at the end of the FY due to events undertaken during the FY, the assessee creates a provision for such likely compensation. The said provision is written back only after the fulfillment of all obligations by the assessee. It was brought to the notice of the Assessing Officer that provisions are utilized/released any time between one to five years. It was further explained that the said provision is based on invocation of liquidated damages clause by the customers on delay in support/short supply of equipment to the customers or for any default in respect of contractual obligations of the assessee with its customers.

70. The Assessing Officer was of the opinion that the provisions for liquidity damages has been debited to profit and loss account but not added back in the computation of income. Therefore, provisions are unascertained liabilities and are not admissible deduction under the provisions of the Act. The Assessing Officer, accordingly, made addition of Rs. 22,23,38,673/-.

71. The assessee raised objections before the DRP but without any success.

72. Before us, the ld. counsel for the assessee stated that similar issue arose in Assessment Year 2004-05 and 2005-06 and the Tribunal has decided the issue in favour of the assessee in ITA No. 3202/DEL/2014 for Assessment Year 2004-05. The ld. counsel for the assessee drew our attention to the computation of income and pointed out the assessee has added back provision of Rs. 69.67 crores and then claimed a deduction for provision for foreseeable loss utilized during the year amounting to Rs. 34.53 crores. It is the say of the ld. counsel for the assessee that the assessee has been consistently following a practice of first creating provision and in the year provision is created, it is added back in the computation of income and in the year when the actual losses are claimed, it is deducted in the computation of income. The ld. counsel for the assessee stated that this being the first year of actual claim of loss, the same should be allowed.

73. Per contra, the ld. DR strongly supported the findings of the TPO and stated that it is not known whether the claim has been actually verified by the Assessing Officer.

74. We have given thoughtful consideration to the orders of the authorities below. We have also considered the financial statements of the assessee for the earlier years. We find that in the balance sheet dated 31.03.2010, the assessee has shown provision of Rs. 1,91,66,65,000/- and as on 31.03.2009 provision was shown at 96,07,99,000/-. This provision included foreseeable loss on contracts amounting to Rs. 75,85,39,000/- in F.Y. 2009-10, Rs. 34,65,88,000/- for F.Y. 2008-09. The movement in the provisions carried in the books of account is as under:

Particulars	Warranty	Foreseeable loss on contracts	Other Risks & Contingencies
Opening Balance	27,870 (13,696)	346,588	191,305 (128,687)
Acquired on Amalgamation	(72,597)	(113,053)	(91,101)
Addition during the year	420,527 (8,098)	411,951 (305,887)	(-)
Utilization/write back during	214 (66,521)	(72,352)	68,228 (28,483)
Closing Balance	448,183 (27,870)	758,539 (346,588)	123,077 (191,305)

75. Similarly, as on 31.03.2011, provision on account of foreseeable loss on contracts was at Rs. 92,91,19,000/- and movement in provision carried in the books of account is as under:

Particulars	Warranty	Foreseeable loss on contracts	Other Risks & Contingencies
Opening Balance	448,183	758,539	123,077
	(27,870)	(346,588)	(191,305)
Addition during the year	261,575	565,032	136,159
	(420,527)	(411,951)	(-)
Utilization/write back during the	306,959	394,452	
	(214)		(68,228)
Closing Balance	402,799	929,119	259,236
	(448,183)	(758,539)	(123,077)

76. The computation of taxable income for Assessment Year 2011-12 shows that the assessee has added back provision for loss on order /foreseeable loss on contracts of Rs. 17,05,80,088/-.

77. In F.Y. 2011-12, the assessee has shown provision for foreseeable loss on contracts of Rs. 11,703 lakhs. As mentioned elsewhere, in the computation of income the assessee has added back provision for loss of order/foreseeable loss on contacts at Rs. 69,67,78,637/- and has claimed loss utilized during the year at Rs. 34,53,00,000/-.

78. Considering the method of accounting employed by the assessee and on finding that the provisions have been written back in earlier years and have been claimed subsequently, we do not find any reason why the write off should not be allowed as deduction for the write back has been accepted as part of the income. We, accordingly, direct the Assessing Officer to delete the addition of Rs. 22,13,38,673/-. Ground No. 5 is allowed.

79. Ground No. 6 relates to addition on account of TP adjustment.

80. All the issues raised in Ground No. 6 with other grounds were duly considered by us hereinabove in ITA No. 909/DEL/2016 [supra]. For our detailed discussion therein, Ground No. 6 is allowed.

81. In the result, the appeal of the assessee is allowed in part for statistical purposes.

80. To sum up:

<b>ITA No. 909/DEL/2016</b>	Allowed in part for statistical purposes
<b>ITA No. 6376/DEL/2017</b>	Dismissed
<b>CO No. 188/DEL/2016</b>	Dismissed
<b>ITA No. 1655/DEL/2016</b>	Allowed in part for statistical purposes

**The order is pronounced in the open court on 28.01.2020.**

**Sd/-**

**[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 28 January, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi