

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” Bench, Mumbai**

**Before Shri Pramod Kumar, Vice President  
and Shri Ravish Sood, Judicial Member**

**ITA No. 1904/Mum/2012  
(Assessment Year: 2007-08)**

Thyssenkrupp Industrial Solutions (India)  
Private Limited (formerly known as Uhde India  
Private Limited); Uhde House, L.B.S Marg,  
Vikhroli (West), Mumbai – 400 0883

Vs.

Additional Commissioner Of Income-tax 10(3);  
Mumbai.

PAN – AAACU1446H

**(Appellant)**

**(Respondent)**

Appellant by: S/sshri Niraj Sheth, Darshiti Naik & Harmuzd  
Jamshedji.

Respondent by: Shri Debashis Chandra, CIT D.R

Date of Hearing: 16.01.2020

Date of Pronouncement: 08.06.2020

**ORDER**

**PER RAVISH SOOD, JM**

The captioned appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals)- 22, Mumbai [for short “CIT(A)”], dated 11.01.2012, which in turn arises from the assessment order passed by the Assessing Officer [for short “A.O”] under Sec. 143(3) of the Income Tax Act, 1961 [for short ‘Act’] for A.Y. 2007-08. The assessee has assailed the impugned order on the following grounds of appeal before us :

- “1. The learned Commissioner of Income tax (Appeals) erred in disallowing provision for costs incurred on completed contracts amounting to Rs. 3,67,61,993/-.
2. The learned Commissioner of Income tax (Appeals) erred in not considering that the provisions were made as per the regular method of accounting followed by the appellant.

3. The learned Commissioner of Income tax (Appeals) failed to consider the detailed facts submitted in case of provision made on Uhde Gmbh-SAFC contract, including the liquidated damages payable.
  4. The learned Commissioner of Income tax (Appeals) erred in holding that provision for liquidated damages was not crystallized as the appellant had applied for waiver of the same.
  5. The learned Commissioner of Income tax (Appeals) erred in disallowing provisions for cost overruns on incomplete contracts – Rs. 62,62,342/-.
  6. The learned Commissioner of Income tax (Appeals) erred in not deleting provisions for costs on completed contracts amounting to Rs. 7,74,57,588/- which has been disallowed in earlier assessment years and were utilized/written back in the current year.
  7. The learned Commissioner of Income tax (Appeals) erred in confirming taxation of an amount of Rs. 22,19,88,173/-, as income, in respect of contracts accounted under "Percentage of Completion (POC) Method"
  8. The learned Commissioner of Income tax (Appeals) erred in not considering that the appellant was following a regular method of accounting, sanctified by Accounting Standards.
  9. The learned Commissioner of Income tax (Appeals) failed to consider that the addition made of Rs. 22,19,88,173/- has resulted in taxing gross receipts, without allowing deduction for expenditure required to earn such receipts.
  10. Without prejudice to ground Nos. 7 to 9 above, the Assessing Officer erred in not allowing deduction (following his own method) where the sale proceeds recognised by the Appellant were higher than the billings done during the year.
  11. The learned Commissioner of Income tax (Appeals) erred in not deleting excess of progress billings over sales recognized in respect of contracts accounted under the "Percentage of Completion Method" amounting to Rs. 15,43,26,923/- which has been disallowed in the immediately preceding assessment year and which were offered to tax as sales in the current year.
  12. The learned Commissioner of Income tax (Appeals) erred in not allowing deduction (following own method) in respect of contracts accounted under the "Completed Contract Method" and which were incomplete as on 31<sup>st</sup> March 2007, where the inventories were in excess of progress billings, amounting to Rs. 13,74,865/-.
  13. The learned Commissioner of Income tax (Appeals) erred in not deleting excess of progress billings over accumulated costs in respect of contracts accounted under the "Completed Contract Method" amounting to Rs. 16,67,302/- which has been disallowed in the immediately preceding assessment year and which were offered to tax as sales in the current year.
  14. The learned Commissioner of Income tax (Appeals) erred in disallowing software maintenance expenses amounting to Rs. 1,09,77,210/- on the ground that the same was capital expenditure.
  17. The learned Commissioner of Income tax (Appeals) erred in confirming levy of interest u/s 234B"
2. Briefly stated, the assessee company which is engaged in the business of supply of processes, designing, construction and commissioning of complete plants for chemicals, fertilizers,

petrochemicals, refining and other related industries had e-filed its return of income for A.Y 2007-08 on 26.10.2007, declaring an income of Rs. 23,49,77,390/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the income of the assessee was assessed by the A.O vide his order passed u/s 143(3), dated 27.12.2010 at Rs. 49,99,23,265/- after making the following additions/disallowances:

Sr. No.	Particulars of addition/disallowance	Amount
1.	Disallowance of provision for costs incurred on completed contracts.	Rs. 3,67,61,993/-
2.	Disallowance of provision for cost overruns on incompletd contracts.	Rs. 62,62,342/-
3.	Addition of the amount accounted under "Percentage of Completion" (POC) Method as income of the assessee.	Rs. 22,19,88,173/-
4.	Disallowance of software maintenance expenses by treating it as capital expenditure.(subject to allowing of consequential depreciation on the capitalized value)	Rs. 1,09,77,210/-

3. Aggrieved, the assessee assailed the aforesaid additions/disallowances before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee upheld the aforementioned additions/disallowances.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record and also the judicial pronouncements relied upon by them. As multiple issues are involved in the present appeal, therefore, the same are being taken up in a chronological manner, as under:

**(A). DISALLOWANCE OF PROVISION FOR COSTS INCURRED ON COMPLETED CONTRACTS : Rs. 3,67,61,993**

5. In the course of the assessment proceedings it was observed by the A.O that the assessee had made a provision for cost on completed contracts of Rs. 3,67,61,993/-. On being called upon to justify the same, the assessee in support thereof filed an exhaustive reply dated 11.11.2010. It was the claim of the assessee that it was engaged in the business of engineering consultancy and contract execution including Lumpsum Turnkey Projects [for short "LSTK"]. Further, it was submitted that it was following the "Percentage of Completion"(POC) method for contracts received on or after 1<sup>st</sup> April, 2003. It was submitted by the assessee that it makes provisions for costs on completed contracts when it is probable that an outflow of resources would be required to settle an obligation, in respect of which a reliable estimate can be made. However, the A.O was not persuaded to accept the aforesaid explanation of the assessee as regards making of provision for cost on completed contracts of Rs. 3,67,61,993/-. It was observed by the A.O that in none of the projects the liability was ascertained or had crystallised during the year. Further, it was noticed by him that in the preceding years also similar types of provisions were made by the assessee company against different projects which were disallowed by the A.O and thereafter confirmed in appeals. Also, it was observed by the A.O that the ITAT 'G' Bench in the assessee's own case for A.Y 2002-03, had vide its order dated 10.09.2008 dismissed its appeal and confirmed the disallowance of provision for cost on contracts. In the backdrop of his aforesaid observations the provision for cost on completed contracts of Rs. 3,67,61,993/ was disallowed by the A.O.

5.1 Aggrieved, the assessee assailed the disallowance of provision for cost on completed contracts before the CIT(A). In its attempt to justify the making of provision for cost on complete contracts, it was submitted by the assessee that it carried out two types of contracts viz. (i). Lumpsum Turnkey Projects [for short "LSTK projects"]; and (ii). Cost plus fees contracts. Insofar LSTK projects were concerned, it was submitted by the assessee that revenue was recognised on commissioning of the plant i.e at the stage at which the plant is started and commissioning operations are commenced to demonstrate the guaranteed parameters to the client. Also, commissioning would mean feeding the raw-material (feedstock) for the first time into the plant following mechanical completion and lining up of various sections of the plant leading to operation for production. As claimed by the assessee, after commissioning of the plant it would conduct

guaranteed test runs and demonstrate the technical parameters as would have been guaranteed under the contract viz. consumption of raw material, production capacity, meeting effluent norms etc. before the plant would be finally accepted by the client. It was the claim of the assessee, that since the profit on the aforementioned projects would be recognised upon commissioning of the plant i.e much before its final acceptance by the client, therefore, it was but essential for the assessee to provide for estimated costs which were likely to be incurred during the period falling between commissioning and the final acceptance of the plant by the client. As claimed by the assessee, the said costs would take within its sweep project specific travelling costs of the engineers, testing costs, supplies of replacement spares, replacement costs, modification costs etc. Also, as stated by the assessee, it was necessary to make provisions for additional costs if sustainable production capability was not demonstrated within the guaranteed period.

5.2 As regards the “Cost plus fee contracts”, it was submitted by the assessee that the revenue was recognized upon mechanical completion of the plant. Mechanical completion was stated to be the stage at which the plant after mechanical completion would be ready for acceptance of feed stock leading to production of guaranteed products. It was explained by the assessee that the provisions were made mainly for re-engineering services to be provided. As the assessee’s liability in cost-plus fee contracts would only be related to providing of re-engineering services, therefore, the quantum of provision would comparatively be lesser as compared to LSTK contracts.

5.3. In the backdrop of its aforesaid submissions, it was the claim of the assessee that in both types of contracts costs were still to be incurred by the assessee in future i.e until the final acceptance of the plant by the client, and in certain cases expenses would have to be incurred even after the final acceptance of the plant by the client.

5.4 As regards the basis for estimation of the future costs, it was submitted by the assessee that at the year-end the project implementation team consisting of project managers, lead engineers and engineering managers would evaluate the status of each project that was being executed by the company and would therein estimate the costs likely to be incurred on each contract/project. On the basis of technical evaluation, the team would identify the additional number

of engineering hours required to be provided under the contract, the additional costs expected to be incurred on account of travelling, site related expenses, expenses for replacement/modification of equipment etc. Also, it was submitted by the assessee that as it was engaged in designing, construction and commissioning of plants for a diverse variety of industries and the services were highly technical in nature and the projects were carried out over a very wide geographical area, therefore, the same made the process of estimation complex. Since recognition of profits was done much in advance to the final acceptance of the plant by the client, therefore, as claimed by the assessee it was necessary to provide for the costs for each of such project which was likely to be incurred in future before final acceptance of the plant by the client. On a perusal of the records, we find that the assessee in its reply had placed on record a contract wise breakup of the provisions made by it during the year, which had been reproduced by the CIT(A) at Page 5-10 of his order. Also, support was drawn by the assessee from the fact that similar accounting methodology was being followed by it in earlier years, and the creation of provisions was in line with the applicable guidelines and accounting standards issued by the Institute of Chartered Accountants of India (ICAI). However, the CIT(A) after deliberating on the contentions advanced by the assessee was not persuaded to subscribe to the same. It was observed by the CIT(A) that the Tribunal vide its order passed in the assessee's own case for A.Y 2002-03, dated 10.09.2008, after relying on the judgments of the Hon'ble Supreme Court in the case of Metal Box Company of India Ltd. Vs. Their Workmen (1969) 73 ITR 53 (SC) and Bharat Earth Movers Vs. CIT (2000) 245 ITR 428 (SC), had observed, that incurring of liability should be certain during the year and should be capable of estimation with reasonable certainty. In other words, the requirements of the principle to be followed for making of a provision were viz. (a). the certainty of the arising of the liability; and (b). on quantum aspect, the estimation must be based on the reasonableness and arbitrariness should be avoided in such estimation. It was also observed, that though the assessee had claimed that while making quantification for provisions, Project manager, Lead Engineers, Commercial Manager and Finance Manager jointly estimated the cost of provisions, however, no such evidence in support of such claim was ever placed on record. In fact, it was noticed by the CIT(A) that the evidences produced by the assessee were mere estimates made by a single person. It was also

observed by the CIT(A) that in few projects substantial provisions made against completed contracts were reversed/written back in the subsequent years. In the backdrop of his aforesaid observations, the CIT(A) concluded that as the provisions for costs incurred on completed contracts were unascertained liabilities, therefore, the same could not be allowed to the assessee.

5.5 The Ld. Authorised representative (for short “A.R”) for the assessee, submitted, that the issue pertaining to the assessee’s claim as regards allowability of provisions for costs incurred on completed contracts was squarely covered by the order of the Tribunal in the assessee’s own case for A.Y 2005-06, ITA No. 1690/Mum/2012, dated 04.07.2014 and A.Y 2006-07, ITA 1691/Mum/2012, dated 09.04.2019. It was averred by the Id. A.R, that the facts and issue pertaining to the assessee’s claim for provision for costs incurred on completed contracts involving identical facts was there before the Tribunal in the preceding years, which was decided in favour of the assessee in the respective appeals. In order to buttress his aforesaid claim, the Id. A.R took us through the observations in context of the issue under consideration recorded in aforesaid orders of the Tribunal in the assessee’s own case for A.Y 2005-06 and A.Y 2006-07. As regards the reliance placed by the CIT(A) on the fact that the disallowance of provisions for costs incurred on completed contracts was upheld by the Tribunal in the case of the assessee for A.Y 2002-03, it was submitted by the Id. A.R that though the Tribunal had observed that making of a provision by the assessee in principle was justified, however, as the assessee had failed to provide the requisite information to prove that the liabilities were identifiable, determined and ascertained, therefore, the Tribunal in absence of such information had not agreed with the quantification of provision and had allowed the provision to the extent the same was utilised subsequently. It was submitted by the Id. A.R that the facts involved in the case of the assessee for the year under consideration in context of the aforesaid issue were clearly distinguishable as against those for A.Y 2002-03.

5.6 Per contra, the Id. D.R relied on the orders of the lower authorities. It was submitted by the Id. D.R that as the incurring of liability pertaining to the assessee’s claim of provisions for costs incurred on completed contracts was neither certain nor capable of estimation with reasonable certainty, therefore, both the lower authorities after exhaustive deliberations on the said aspect had

disallowed the same. However, it was fairly admitted by the Id. D.R that the aforesaid issue was squarely covered by the order of the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y 2006-07.

5.7. We have given a thoughtful consideration to the aforesaid issue in the backdrop of the contentions advanced by the authorised representatives for both the parties, and have also perused the material available on record and the judicial pronouncements relied upon by them. On a perusal of the records, we find, that the present issue arose for the first time during A.Y 2001-02 which had reached upto the level of this Tribunal which had allowed the claim in its entirety, on the ground, that the liability was identified, determined and ascertained on the basis of technical assessment. As observed by us hereinabove, the Tribunal while disposing off the appeal of the assessee for A.Y 2002-03, had held, that making of a provision by the assessee in principle, was justified. However, since the assessee was unable to provide the requisite information to prove that the liabilities were identifiable, determined and ascertained, therefore, for the said reason the Tribunal had not agreed with the quantification of provision in the absence of information, and had allowed the same only to the extent it was actually utilized subsequently. For A.Y 2003-04, the Tribunal allowed a deduction in respect of provisions where explanations & workings were submitted and balance provisions were disallowed in the absence of requisite information. Similar view was also taken by the Tribunal in the case of the assessee for AY 2004-05. Our attention was drawn towards the fact that the assessee's appeal against this order of Tribunal for AYs 2002-03, 2003-04 & 2004-05 had already been admitted by Hon'ble High Court of Bombay, while for the revenue's appeal for A.Y 2004-05 had already been dismissed. For A.Y 2005-06, the Tribunal allowed the claim of the assessee upon finding that the provisions were made on a scientific basis. While adjudicating the appeal for AY 2005-06, the decisions passed in earlier years were duly considered by the Tribunal. On a similar footing, the Tribunal vide its recent order in the assessee's own case for A.Y 2006-07, ITA No. 1691/Mum/2012, had followed its earlier view for A.Y 2005-06, and allowed the deduction of provisions in its entirety, observing as under:

“2.3.11 We have heard the rival contentions and perused relevant material on record including documents placed in the paper-book & judicial pronouncements relied upon by

respective representatives. Since the issue is recurring in nature, for ease of understanding, at the outset, the status of appeal filed by the assessee in past years before the Tribunal could be tabulated in the following manner: -

No.	A.Y	ITA No.	Order dated	Remarks
1.	2000-01	ITA 8053/Mum/2004	23/10/2007	Assesses appeal on the issue allowed
2.	2002-03	ITA 1926/Mum/2006	10/09/2008	Assesses appeal on the issue partly allowed
3.	2003-04	ITA 6510/Mum/2009	30/09/2011	Assesses appeal on the issue partly allowed
4.	2004-05	ITA 6511/Mum/2009	08/08/2012	Assesses appeal on the issue partly allowed
5.	2005-06	ITA 1690/Mum/2012	04/07/2014	Assesses appeal on the issue allowed

The observation/conclusion in the latest order of the Tribunal for A.Y 2005-06 could be extracted in the following manner :-

“2.5. We have heard the rival submissions and perused the material before us. In our opinion PCCC is based on identified liability, though it is only an estimate. In the year under appeal the assessee had made provisions for eleven unfinished projects and in subsequent two years after completing the projects wrote off the provisions and offered the balance for taxation. We further find that in those years the assessee had written back the balance amount and same was taxed by the AO. In our opinion, the AO cannot take two stands-he cannot tax the assessee in later years for a part of transaction for which provision has been made for earlier years. In the commercial world provisions are made for contingencies and court are of view that same have to allowed. AS-7 recognizes the principal of making provisions for certain expenses. It is a normal feature of business world that at the end of a particular AY., it may not be possible for an assessee to determine the probable future expenditure of an ongoing project or scheme. If it recognizes income from such project in that year, it will have to make some reasonable provisions for the expenditure to be incurred in subsequent year. Provision will vary from project to project and from year to year. It would also depend on stage of completion of the project. For that purpose, assessee will have to rely on earlier years’ experience and report of the technical personnel. Question of provisions for warranty was discussed at length by the Hon’ble Apex Court in the matter of Rotork Controls India P. Ltd.(314 ITR62). We are aware that warranty cannot be equated with provisions made for the projects to be completed by an assessee, but the principle laid down by the Hon’ble Court are applicable to the case under consideration. Provision after all is only an estimation of probable expenditure to be incurred after the end of a particular year. Besides, in our opinion travelling cost of the engineers and technical staff, testing cost, supplies of replacement spares, site related costs, cost of completion of punch list work, cost of modification for uncompleted projects has to be considered while making provisions when an assessee carries out a business of providing diversified engineering services. We find that the assessee had to make provisions for additional cost if sustainable production capability is

not demonstrated within the guarantee period. In such cases cost provisions had to be made even after acceptance/conditional acceptance of a plant. We find that the FAA has disallowed provisions on the basis that the assessee had written back the amounts in subsequent years. He has not analyzed the data of earlier years and subsequent years to determine the alleged unreasonableness of the provisions. It is a fact that *res judicata* is not applicable to income tax proceedings and every year is an independent unit, but rule of consistency contemplates that the AO should not suddenly disallow any item without assigning some reason. From the order of the AO/FAA we are unable to find as how the facts and circumstances for the year 2001-02 were different from the facts for the year under consideration. Assessee was following the same system of making provisions for uncompleted projects for last so many years. There is nothing in the order of the FAA that could prove that provisions made by the assessee were not based on estimate given by experts. We have perused the paper book-it is found that internal memos are signed by one person, but the estimate of provision was prepared by three/four competent authorities, dealing with financial and technical sides of the projects (page 83, 89, 124, 138 of the PB). In short, the assessee was following some system in estimating provisions. Therefore, without pointing out major defects it was not proper on part of the FAA to state that system was. FAA has given his finding without giving the reasons. In our opinion writing off of provisions in subsequent years cannot be basis for disallowing it. Accounting standards expect that assessee should write back such amounts in later years. FAA has overlooked the fact that out of the provisions made by the assessee, Rs.3.70 Crores were actually spent by the assessee in the subsequent years to complete the unfinished projects or to render further services. Therefore, in our opinion, he was not justified in confirming the disallowance of Rs. 8.14 Crores, without analyzing the terms and conditions of the projects threadbare for which provisions were made during the year under appeal. Reversing his order, we decide first effective ground of appeal (ground no. 1-3) in favor of the assessee.

2.3.12 Upon careful consideration of factual matrix, the undisputed position that emerges is the fact the assessee's complex nature of business require estimation of future expenditure to be incurred on the projects and create a provision thereof since the revenue from the project is recognized after commissioning of the plant whereas some expenditure is certainly required to be incurred by the assessee between the stage of commissioning of the plant and final acceptance of the plant by the customer. In our opinion, these estimations are mere projections which may or may not crystallized in the subsequent years and the provisions may require suitable adjustment by way of further debit to profit & loss account of subsequent years or reversal by way of credit to profit & loss account in subsequent years. The prime reason to disallow the provisions by first appellate authority is the fact that the estimates were not made on any scientific basis, the same are without requisite documentary evidences and a major portion of the same has been reversed in the subsequent years. However, the said reasoning, in itself, could not deprive the assessee to claim legitimate business expenditure under mercantile system of accounting following matching concept of income. Nothing on record suggest that reversal in the subsequent years has not been offered to tax by the assessee. The details as placed on record, reveal that out of such provisions of Rs.949.35 Lacs, the assessee has incurred expenditure of Rs.751.60 Lacs (which is more than 79% of the provisions) in the subsequent year and the excess provision i.e Rs.393.14 Lacs have

been offered to tax in AYs 2007-08 & 2008-09 by way of reversal. Further, the assessee is following consistent method of accounting and estimating the provisions on similar basis which is in line with the applicable accounting standards notified u/s 145(2) and as per statutory mandate. Nothing on record suggest that there was any change in method of accounting during impugned AY to recognize the revenue or expenses.

2.3.13 The assessee's submission before Ld. AO dated 06/11/2009 as placed from page nos. 55 onwards, reveal that project wise estimation were made by assessee for the expenditure to be incurred under each head. The same were arrived at after identifying expected cost required to be incurred in future on various projects. The elaborate working of the same along with relevant contracts entered into by the assessee with the customers has already been placed in the paper-book which establishes the fact that the estimates were not mere guess work or made out of thin air. Another undisputed fact is that the assessee has incurred actual expenditure in subsequent years against these estimations which itself prove that the assessee had certain liability under these contracts. It is altogether different aspect that the matter of estimation may not be accurate one or commensurate with actual expenditure incurred by the assessee in future years. It may only necessitate the assessee to adjust the same suitably in subsequent years on the basis of actual outcome. So long as the provisions were made on scientific basis and the basis of the same was substantiated by the assessee, there could be no occasion to disallow the same. It is also noteworthy point that subsequent reversal in future years has been offered to tax by the assessee which lend credence to tax neutrality plea raised by Ld. AR.

2.3.14 Proceeding further, it is undisputed position that part of the provisions has always been allowed to the assessee by the Tribunal right from AY 2001-02 onwards which is evident from the table given at para 2.3.11. The claim has fully been allowed in AY 2001-01 & in AY 2005-06 whereas part claim, to the extent details have been furnished by the assessee, has been allowed for AYs 2002-03 to 2004-05. In the impugned AY, we find that complete project wise provisions made by the assessee has been placed on record and provision made under each project has been uniquely identified.

2.3.15 The Ld. CIT-DR has placed reliance on the decision of Delhi Tribunal rendered in IOT Infrastructure & Energy Services Ltd Vs ITO [ITA No. 2585/Mum/2009 dated 17/05/2013], the perusal of which reveal that in that case, the assessee had made adhoc provision of 5% for warranty expenditure whereas the past data revealed that no warranty expenditure was incurred by the assessee in the earlier years and therefore, the Tribunal upheld the stand of Ld. first appellate authority in restricting the same to 0.2% only. However, the facts in the present case is that the assessee has certain liability under the project and estimates have been made project wise, the working of which has been placed on record, Therefore, we find this case law to be factually different.

2.3.16 The due consideration of above factual matrix leads us to inevitable conclusion that the impugned provisions made by the assessee were allowable in full during impugned AY. Therefore, by reversing the stand of Ld. first appellate authority, we allow Ground Nos. 1 to 4 of the assessee's appeal."

On a perusal of the records, we find that though the revenue would be recognized by the assessee on commissioning of a plant, however, in the backdrop of the complex nature of its business

certain expenditure would certainly be required to be incurred between the stage of commissioning of the plant and final acceptance of the same by its customer. As such, the assessed had to carry out estimation of such future expenditure and create a provision for cost on the completed projects. As is discernible from the orders of the lower authorities the aforesaid provision had been disallowed by them primarily for the reason that they were not made on a scientific basis and the estimation of the same was not backed by supporting documentary evidence. Also, it was observed by the lower authorities that a major portion of the provision was reversed in the subsequent years. In our considered view the aforesaid reasoning of the lower authorities would not justify disallowance of the provision made by the assessee. It is not the case of the revenue that the reversal of the provision in the subsequent year had not been offered to tax by the assessee. On a perusal of the records, we find that the provision for costs on completed contracts made by the assessee are based on identified and ascertained present liabilities on the basis of technical assessments and projections of the project managers, who are experts in their field. Apart from that, the aforesaid practice of providing for all known liabilities on an estimate basis by the assessee is in accordance with the Accounting Standard-1 issued u/s 145 vide CBDT Notification No. S.O 69(E), dated 25.01.1996, as per which provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information. Also, the provision made by the assessee is in conformity with Accounting Standard-7 issued by the ICAI. Further, we find that the assessee consistently by way of a regular method of accounting had been making such provision for costs on completed contracts, which would be reviewed by it each and every year and were immediately written back if the same were not required. We further find that the issue as regards allowability of the provision for costs incurred on completed contracts is a recurring issue which in the preceding years involving identical facts had travelled upto the Tribunal. As observed by us hereinabove, the issue as regards the allowability of provision for costs on completed contracts is squarely covered by the order passed by the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y 2006-07 in ITA No. 1691/Mum/2012, wherein after exhaustive deliberations it was observed that the assessee's claim for provision for costs on completed

contracts was in order. Accordingly, on the basis of our aforesaid observations and respectfully following the aforesaid order passed by the Tribunal in the assessee's own case for A.Y 2006-07, ITA No. 1691/Mum/2012, we set aside the order of the CIT(A) and vacate the disallowance of provision for costs incurred on completed contracts of Rs. 3,67,61,993/- made by the A.O. **Grounds No. 1 to 4** are allowed in terms of our aforesaid observations.

**(B). DISALLOWANCE OF COSTS OVERRUNS ON INCOMPLETE CONTRACTS: Rs.62,62,342/-**

6. In the course of the assessment proceedings it was observed by the A.O that the assessee had made a provision of Rs. 62,62,342/- for cost overruns on incomplete contracts i.e accounting for expected loss to be incurred on a particular contract. On being called upon to explain the nature of the aforesaid provision, it was claimed by the assessee that while the project would be in progress, the total cost of the project as of date (say March 31, 2007) would be identified. Further, depending upon the expected work to be done for the Project, the project implementation team would estimate the expected costs which were yet to be incurred after considering the engineering hours and supplies etc. Accordingly, the total estimated cost would therein be arrived i.e actual cost incurred till date (+) estimated cost yet to be incurred for completing the project, which would then be compared against the "Contract revenue" i.e the total contract value agreed by the assessee with its client. As the assessee could not bill the client beyond the contract value, therefore, the cost overruns in excess of the contract value which cannot be recovered from the client being in the nature of a crystallized, identified, determined and ascertained loss would therein be immediately provided in the accounts. It was the claim of the assessee, that providing for the cost overruns on incomplete contracts was as per the mandatory requirements of AS-7(revised) – Para 35, which provided that if it is probable, for a particular contract, that the contract cost would exceed the contract revenue, the expected loss should be recognized as an expense immediately. Further, such loss is to be determined irrespective of viz. (a). whether or not work has commenced on the contract; (b). the stage of completion of contract activity; or (iii). the amount of profits expected to arise on other contracts which are not treated as a single construction contract in accordance with paragraph 8. In the backdrop of the aforesaid facts the assessee furnished the

contract-wise details of provisions for cost overruns on incomplete contracts. However, the A.O did not find favour with the aforesaid claim of the assessee and disallowed the same.

6.1 Aggrieved, the assessee assailed the aforesaid disallowance before the CIT(A). It was observed by the CIT(A) that a similar claim of provision for project loss on incomplete contracts had came up before the Tribunal in the assessee's own case for A.Y 2003-04, ITA No. 6510/Mum/2009, wherein the disallowance of the same so made by the A.O was upheld. Observing, that the facts involved in the appeal of the assessee were identical as against those which were there before the Tribunal in its appeal for A.Y 2003-04, ITA No. 6510/Mum/2009, the CIT(A) upheld the disallowance made by the A.O.

6.2 The assessee being aggrieved with the upholding of the disallowance of the provision for cost overruns on incomplete contracts by the CIT(A), has carried the matter in appeal before us. It was submitted by the Id. A.R that the issue was squarely covered by the order of the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y 2006-07, ITA No. 1691/Mum/2019, dated 09.04.2019. In order to buttress his aforesaid claim the Id. A.R took us through the observations recorded by the Tribunal in context of the issue under consideration in its aforesaid order, which reads as under:

“2.4.3 After careful perusal of material on record, we find substantial force in the arguments of Ld.AR. It is undisputed fact that such provisions were made by the assessee in AY 2005-06 which has been allowed by Ld. AO himself. Secondly, out of these provisions of Rs.192.34 Lacs, an amount of Rs.134.11 Lacs has actually been utilized/paid by the assessee in subsequent years (which is more than 69% of the provisions) and balance amount i.e. Rs.58.23 Lacs has been offered to tax in subsequent years. Moreover, the assessee has already placed on record project wise estimation and nothing on record suggest that there was any change in method of accounting being followed by the assessee. This being the case, the impugned additions could not be sustained. We order so. Ground No. 5 of the appeal stands allowed.”

6.3 We have perused the aforesaid observations of the Tribunal in the assessee's own case for A.Y 2006-07, ITA 1691/Mum/2019, dated 09.04.2019, and find that the facts therein involved in context of the issue under consideration are in parity with those for the year under consideration. Insofar reliance placed by the CIT(A) on the order of the Tribunal for A.Y 2003-04, ITA No.

6510/Mum/2009, dated 30.09.2011 is concerned, we find that though the Tribunal had approved the claim of the assessee in principle, but then, it was only on account of absence of the relevant information that part relief was allowed. As for the appeal of the assessee against the order of the Tribunal for A.Y 2003-04, we find that the same had been admitted by the Hon'ble High Court.

6.4 Further, on a perusal of the orders of the lower authorities, we find, that the assessee had furnished before them complete project wise estimation for the year under consideration, and there is nothing discernible from the record which would suggest that there was any change in the method of accounting being followed by the assessee. Insofar the case of the assessee for A.Y 2004-05 is concerned, we find that the claim of the assessee in context of the issue under consideration was allowed by the Tribunal. As regards A.Y 2005-06, a similar claim of the assessee was allowed by the A.O himself. Accordingly, in terms of our aforesaid observations and finding no reason to take a different view, we respectfully follow the order passed by the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y 2006-07, ITA No. 1691/Mum/2019, dated 09.04.2019, and set aside the order of the CIT(A) and delete the disallowance of provision for cost overruns on incomplete contracts of Rs. 62,62,342/-. **Ground of appeal No. 5** is allowed in terms of our aforesaid observations.

7. The **Ground of appeal No. 6** as per the concession of the Id. A.R is dismissed as not pressed.

**(C). ADDITION IN RESPECT OF PROJECTS ACCOUNTED UNDER “PERCENTAGE COMPLETION METHOD” : RS. 22,19,88,173/-**

8. In the course of the assessment proceedings it was observed by the A.O that the assessee had understated the profits in respect of the projects accounted under the percentage completion method. It was noticed by him that the progress billings representing the aggregate of invoices raised in respect of different projects exceeded the sales revenue recognized by the assessee in its books of accounts by an amount of Rs. 22,19,88,173/-. It was observed by the A.O that the progress billing raised by the assessee on its clients was for the work done on each project, against which the corresponding costs incurred in respect of the said projects as on 31.03.2007

was debited by it in its profit and loss account. On being queried as regards the understatement of the sales revenue, it was submitted by the assessee that as per AS-7 it was mandatorily required to follow POC Method of accounting for revenue recognition on contracts entered into by it w.e.f 01.04.2003. It was submitted by the assessee that as per the POC Method the percentage of completion was arrived at by taking the ratio of “actual direct costs” incurred till the reporting date to “total expected direct costs” on the contract. Accordingly, it was submitted that under the said method the “contract revenue” was matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expense and profit which could be attributed to the proportion of work completed. It was the claim of the assessee that AS-7 contemplated recognition of all expenditure pertaining to the stage of construction reached at the end of the financial year, and the recognition of revenue by applying the percentage of work completed to the total contract value. It was further submitted by the assessee that the profit figure for the period would be the difference between the revenue so recognized and the costs incurred for completing the project up to that stage. Further, it was submitted by the assessee that billing pattern would not have any effect on the revenue recognition unless it represented the actual work completed. As regards the amount of billing in excess or short of revenue recognized, it was the claim of the assessee that the same would be reflected as an advance received (current liability) or amounts receivable (current asset), as the case may be. In sum and substance, it was the claim of the assessee that the stage of completion of a contract was determined on the basis of the proportion that contract costs incurred up to the reporting date would bear to the estimated total contract costs. It was the claim of the assessee that in respect of the contracts under the POC Method, the Progress Billings represented the aggregate of invoices raised on different clients, as per the contractual terms of the respective contracts. In the backdrop of his aforesaid submissions, it was the claim of the assessee that the excess amount of progress billing represented the advances received from the clients. As such, it was the claim of the assessee that under the POC Method income was not based on advances collected and progress billings, because that would not necessarily indicate the contract activity performed. On the basis of his aforesaid contentions, it was submitted by the assessee that in respect of the contracts accounted for under the POC

Method, the cases in which the aggregate of invoices raised (progress billings) exceeded the sales revenue recognized, it would be reflected in the balance sheet under the schedule of Current Liabilities as “Advances received against Progress Billings on Incomplete Contracts”, while for the contracts where the sales revenue recognized exceeded the billings as on 31.03.2007 were recognized as an asset. However, the submissions of the assessee did not find favour with the A.O. It was observed by the A.O that the claim of the assessee that the stage of percentage of completion of contract, as per AS 7, was to be arrived at by taking the “actual direct cost incurred” till the reporting date vis-a-vis the “total expected direct cost” on the contract would not represent the real profits earned by the assessee till the accounting date. In fact, the A.O was of the view that since the assessee was following the mercantile system of accounting, all the invoices i.e the progress billings raised by the assessee should have been reflected in the total sales in its books of accounts as on 31.03.2007. The A.O held a conviction that the ratio of actual sales till the reporting date to the sale price of the project would give the correct figure of percentage completion of the project. Relying on a host of judicial pronouncements, it was observed by the A.O that the method of accounting followed by the assessee was not to be held as sacrosanct, and in case the true income could not be ascertained on the basis of the assessee’s method, then the income must be computed upon such basis and in such manner as the A.O may determine. On the basis of his aforesaid observations the A.O made an addition of the amount received by the assessee against Progress Billings on incomplete contracts (reduced by such amounts already received till 31.03.2006 and taxed as income in A.Y 2006-07) amounting to Rs. 22,19,88,173/- to the returned income.

8.1 Aggrieved, the assessee assailed the aforesaid addition in respect of alleged understatement of profits in respect of the projects accounted under the POC Method in appeal before the CIT(A). However, the CIT(A) observed that an identical addition that was made by the A.O in the assessee’ own case for the immediately preceding year i.e A.Y 2006-07 was on appeal upheld by him, vide his order dated 16.12.2011. Observing, that the facts and the issue involved in the case of the assessee for the year under consideration remained the same, the CIT(A) following his own order for A.Y 2006-07 upheld the addition of Rs. 22,19,88,173/- made by the A.O.

8.2 The assessee being aggrieved with the order of the CIT(a) has carried the matter in appeal before us. At the very outset, it was submitted by the Id. A.R that the CIT(A) had relied upon his own order passed in the case of the assessee company for A.Y 2006-07. It was submitted by the Id. A.R that the order of the CIT(A) for A.Y 2006-07 in context of the issue under consideration had been 'set aside' by the Tribunal vide its order passed in ITA No. 1691/Mum/2012. In order to fortify his aforesaid contention the Id. A.R took us through the observations recorded by the Tribunal in context of the aforesaid issue while disposing off the assessee's appeal for A.Y 2006-07.

8.3 We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record and the judicial pronouncements relied upon by them. Admittedly, the CIT(A) while disposing off the appeal of the assessee in context of the aforesaid issue under consideration had simply relied on his earlier order dated 16.12.2011, that was passed by him in the assessee's own case for A.Y 2006-07, wherein identical facts were involved. We find that the order of the CIT(A) in context of the issue in question had been 'set aside' by the Tribunal vide its order passed while disposing off the appeal of the assessee for A.Y 2006-07, ITA No. 1691/Mum/2012, dated 09.04.2019. In the aforesaid case the Tribunal after deliberating on identical facts and issue before them had observed as under:

"2.5.5 Upon careful consideration, the undisputed position that emerges is that the assessee is following consistent method of accounting to recognize the revenue under these contracts. The percentage of completion of the project has been worked out as per total cost incurred on the project to date vis-à-vis total budgeted cost and that fraction is applied to the contract value for the purpose of revenue recognition. Similar formulae have been adopted by the assessee in preceding two years which has been accepted by the revenue. No case of revenue leakage has been established before us. Nothing on record suggest that remaining income under the project has not been offered by the assessee in subsequent years, following the same method of accounting. Simply because progress billing was more than the stage of percentage of completion, the same, in itself, could not be the basis to usurp the consistent method of accounting being followed by the assessee. Therefore, the additions made by the revenue, under the circumstances, could not be sustained. We order so. Accordingly, ground Nos. 7 to 11 of assessee's appeal stands allowed."

As observed by us hereinabove, the issue involved in the present appeal remains the same as was there before the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y

2006-07. At this stage, it would be relevant to point out that the CIT(A) while upholding the addition in question had not given any independent finding and had merely relied upon his order passed while disposing off the appeal of the assessee for the immediately preceding year i.e A.Y 2006-07. We have perused the order passed by the Tribunal while disposing off the appeal of the assessee for A.Y 2006-07 wherein identical facts were involved, and finding ourselves to be in agreement with the view therein taken, respectfully follow the same. Resultantly, the order passed by the CIT(A) is set aside and the addition of Rs. 22,19,88,173/- made by the A.O is vacated. **Grounds No. 7 to 10** are allowed.

9. The **Grounds of appeal Nos. 11 to 13** as per the concession of the Id A.R are dismissed as not pressed.

**(C). DISALLOWANCE OF SOFTWARE MAINTENANCE EXPENSES : RS. 1,09,77,210/- :**

10. In the course of the assessment proceedings it was observed by the A.O that the assessee company had claimed deduction of computer software charges amounting to Rs. 1,09,77,210/-. Being of the view, that the assessee by purchasing the computer software was enjoying enduring benefit for a long period, therefore, the A.O treated treated the same as a capital expenditure. At the same time, the A.O allowed depreciation @60% on such capitalized value.

10.1 Aggrieved, the assessee assailed the disallowance of computer software charges by recharacterizing of the same as a capital expenditure by the A.O. It was submitted by the assessee before the CIT(A) that the computer software charges were in the nature of revenue expenses and pertained to Annual Maintenance Charges, rectification/modification of software, upgrading of software etc. As such, it was the claim of the assessee that the A.O had erred in disallowing the computer software charges by treating the same as being in the nature of a capital expenditure. However, the CIT(A) was not persuaded to subscribe to the contentions advanced by the assessee. It was observed by him that an identical issue had come up before him in the assessee's appeal for the immediately preceding year i.e A.Y 2006-07, wherein the disallowance of the computer software charges made by the A.O was upheld by him. Accordingly, relying on the view

taken by him in the assessee's own case for the immediately preceding year the CIT(A) upheld the order of the A.O in context of the issue under consideration.

10.2 The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. A.R that the issue was squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y 2006-07 in ITA No. 1691/Mum/2012, dated 09.04.2019, wherein the disallowance of computer software expenses was vacated. In order to support his aforesaid claim the Id. A.R drew our attention to the observations of the Tribunal in context of the issue under consideration in ITA No. 1691/Mum/2012, dated 09.04.2019. Per contra, the Id. D.R could not rebut the claim of the counsel for the assessee.

10.3 We have perused the order passed by the Tribunal in the assessee's own appeal for A.Y 2006-07 in ITA No. 1691/Mum/2012, dated 09.04.2019. The Tribunal in its aforesaid order had 'set aside' the order of the CIT(A) and vacated the disallowance of computer software charges made by the A.O, observing as under:

"2.7.2 The Ld. Sr. Counsel submitted that these expenditures were in the nature of annual payments for maintenance of various software being used by the assessee and therefore, the same were revenue in nature. Our attention is drawn to the fact that similar issue in earlier years stood squarely covered in assessee's favor by the orders of the Tribunal. Further, the appeal filed by the revenue against the order of the Tribunal for AY 2004-05 was also dismissed by Hon'ble Bombay High Court.

2.7.3 Upon careful consideration, we find that when the expenditure is in the nature of annual maintenance charges, the same could not be held to be capital in nature. Keeping in view the fact that the issue stood covered in assessee's favor by the orders of Tribunal for earlier years, we hold the expenditure to be revenue in nature and hence, fully allowable to the assessee. Consequently, the depreciation allowed against the same shall stand reversed. This ground stand allowed."

We have given a thoughtful consideration to the issue before us and find that the same is squarely covered by the order passed by the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y 2006-07 in ITA No. 1691/Mum/2012, dated 09.04.2019. In fact, as observed by us hereinabove, the CIT(A) while upholding the disallowance of computer software charges made by the A.O by recharacterizing the same as a 'capital expenditure', had simply relied upon his order for A.Y 2006-07 and had not arrived at any independent finding. Now when the order of

the CIT(A) for A.Y 2006-07 in context of the aforesaid issue under consideration had been set aside by the Tribunal, vide its order passed in ITA No.1691/Mum/2012, dated 09.04.2019, therefore, respectfully following the said order we set aside the order of the CIT(A) for the year under consideration and delete the disallowance of computer software charges of Rs. 1,09,77,210/- which were claimed by the assessee as a revenue expenditure, but were recharacterized by the A.O as a capital expenditure. However, this goes without saying that the consequential depreciation on such capitalized value as allowed by the A.O after treating the computer software charges as a capital expenditure shall also consequentially be withdrawn. **Ground of appeal No. 14** is allowed in terms of our aforesaid observations.

11. The assessee has assailed before us the levy of interest u/s 234B of the Act. As the levy of interest u/s 234B is mandatory as per the judgment of the Hon'ble Supreme Court in CIT Vs. Anjum M.H Ghaswala & Ors (2001) 252 ITR 1 (SC), therefore, the A.O is directed to rework out the same after giving appellate effect to this order.

12. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeal was concluded on 16/01/2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows: (5) The pronouncement may be in any of the following manners:— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, "ordinarily" the order on an appeal should be pronounced by the bench within no more than 90

days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”.

In the rule so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any “extraordinary” circumstances.

13. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai ‘F’ Bench in DCIT, Central Circle-3(2), Mumbai Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

“Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon’ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that “In case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown”. Hon’ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, “It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly”, and also observed that “arrangement continued by an order dated 26th March 2020 till 30th April 2020

shall continue further till 15th June 2020”. It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus “should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure...”. The term ‘force majeure’ has been defined in Black’s Law Dictionary, as ‘an event or effect that can be neither anticipated nor controlled’ When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an “ordinary” period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to be interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club Vs DIT* [(2017) 392 ITR 244 (Bom)], Hon’ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon’ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed “while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly”. The extraordinary steps taken suo motu by the Hon’ble High Court and Hon’ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words “ordinarily”, in the light of the above analysis of the legal position, the period during which lockdown was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case.”

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same, therein respectfully follow the same. As such, we are of the considered view that the period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

14. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-  
(Pramod Kumar)  
VICE PRESIDNET

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 08.06.2020  
P.S Rohit

**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.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai