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

BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1245/Mum/2014
(**निर्धारण वर्ष** / Assessment Year: 2009-10)

Thyssenkrupp Industrial Solutions (India) Pvt. Ltd. Uhde House, L.B.S. Marg, Vikhroli (W), Mumbai-400083.	**बनाम**/ Vs.	DCIT Range 10(3) Room No.451, 4th Floor, Aayakar Bhawan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACU1416H		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Niraj Sheth
Revenue by:	Shri Rahul Raman (DR)

सुनवाई की तारीख / Date of Hearing: 09/07/2020
घोषणा की तारीख /Date of Pronouncement: 07/08/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the assessment order passed u/s.144C(1) of the Income Tax Act, 1961 (in short "the Act") in pursuance of the directions of Dispute Resolution Panel – II, Mumbai [hereinafter referred to as the "DRP"] dated 01.11.2013 relevant to the A.Y. 2009-10.

2. The assessee has raised the following grounds: -

> "1. The learned Deputy Commissioner of Income Tax - 10(3), erred in disallowing provision for costs incurred on completed contracts amounting to Rs.63,67,083/-.
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> 2. The learned Deputy Commissioner of Income Tax - 10(3) erred in not considering that the provisions were made as per the regular method of accounting followed by the appellant.

3. The learned Deputy Commissioner of Income Tax - 10(3) erred in disallowing provisions for cost overruns on incomplete contracts - Rs.49,87,665/-.

4. The learned Deputy Commissioner of Income Tax - 10(3) erred in not deleting provisions for costs on completed contracts amounting to Rs.4,29,30,847/- which has been disallowed in earlier assessment years and were utilized/written back in the current year.

5. The learned Deputy Commissioner of Income Tax - 10(3) erred in confirming taxation of an amount of Rs.79,15,01,432/-. as income, in respect of contracts accounted under "Percentage of Completion" (POC) Method.

6. The learned Deputy Commissioner of Income Tax - 10(3) erred in not considering that the appellant was following a regular method of accounting, sanctified by Accounting Standards.

7. The learned Deputy Commissioner of Income Tax - 10(3) failed to consider that the addition made of Rs.79,15,01,432/- has resulted in taxing gross receipts, without allowing deduction for expenditure required to earn such receipts.

8 Without prejudice to ground Nos. 5 to 7 above, the Assessing Officer erred in not allowing deduction (following his own method) where the sale proceeds recognized by the Appellant were higher than the billings done during the year.

9. The appellant submits the finding of the learned Dispute Resolution Panel - II that the appellant has not proved/ explained that it has followed AS - 7 for accounting its revenue, is with due respect, a perverse finding.

10. The learned Deputy Commissioner of Income Tax - 10(3) 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.4,38,30,330/- which has been taxed in the immediately preceding assessment year, and which were offered to tax as sales in the current year.

11. The learned Deputy Commissioner of Income Tax - 10(3) erred in confirming taxation of an amount of Rs.1,64,75,381/-, as income, in respect of contracts accounted under the "Completed Contract Method" where the progress billings were in excess of accumulated costs incurred.

12. The learned Deputy Commissioner of Income Tax - 10(3) erred in rejecting the regular method of accounting followed by the appellant and accepted by the Department in the past.

13. The learned Deputy Commissioner of Income Tax - 10(3) erred in not deleting excess of progress billings over accumulated costs incurred in respect of contracts accounted under the "Completed Contract Method- amounting to Rs.9,38,74,194/- which has been taxed in the immediately preceding assessment year and which were offered to tax as sales in the current year.

14. The learned Deputy Commissioner of Income Tax - 10(3) erred in not granting deduction in respect of depreciation of Rs.58,90,262/- on software expenses disallowed as capital expenditure in earlier years.

15. The learned Deputy Commissioner of Income Tax - 10(3) erred in levying interest u/s.234B and 234D of the Act."

3. The brief facts of the case are that the assessee filed its return of income on 26.09.2009 declaring total income to the tune of Rs.49,71,01,740/- for the A.Y.2009-10. The return was processed u/s 143(1) of the Act on 21.12.2010. Notice u/s 143(2) of the Act dated 20.08.2010 was issued and served upon the assessee. Thereafter, the notice u/s 142(1) of the Act was also issued and served upon the assessee. The assessee company was engaged in the business of Supply of complete plants for chemicals fertilizers, petrochemicals, refining and other industries. During the year under consideration, the assessee has shown the sales & services of Rs.359,62,07,121/- and Miscellaneous at Rs.24,06,36,937/-. Net profit was shown at Rs.38,14,39,719/-. The draft

assessment was passed on 08.02.2013. Thereafter, the assessee filed the objection before the DRP-II, Mumbai. The direction was given on 01.11.2013 and thereafter the assessment was completed by assessing the total income in sum of Rs.1,31,64,33,503/- and tax was calculated in sum of Rs.39,49,30,050/- and book profit u/s 115JB was computed and assessed in sum of Rs.39,27,94,467/- tax @ 15% of rs.5,89,19,170/-. Feeling aggrieved, the assessee has filed the present appeal before us.

ISSUE NOS. 1 & 2

4. Under these issues the assessee has challenged the disallowance of the provisions for costs completed and contracts. At the outset, the Ld. Representative of the assessee has argued that the issue has squarely been covered by the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2005-06 bearing ITA. No.1690/M/2012 dated 04.07.2014. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the DRP. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the assessee's own case for the A.Y. 2005-06 Bearing ITA.No.1690/M/2012 dated 04.07.2014. The relevant finding has been given as under.:-

> *''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 recongises 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 recongnises 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 analysed the data of earlier years and subsequent years to determine the alleged unreasonableness of the provisions.It is a fact that res judicta 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 in 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 analysing the terms and conditions of the projects threadbare for which provisions were made during the year under apppel.Reversing his order we decide first effective ground of appeal (ground no. 1-3) in favour of the assessee."

5. The other cases for the A.Y. 2006-07 & 2007-08 in the assessee's own case Bearing ITAT order dated 09.04.2019 and Bearing ITAT order dated 08.06.2020 for the A.Y.2007-08 have also been adjudicated in favour of the assessee. There is no need to advert the finding of the Hon'ble ITAT in these cases also because the main reason was the basis of the finding in the assessee's own case for the A.Y.2005-06. Since the case of the assessee has duly been covered by its own case (supra), therefore, in the said circumstances, the issue is decided in favour of the assessee against the revenue.

ISSUE NO. 3

6. Under this issue the assessee has challenged the disallowance for cost overruns on incomplete contracts. The issue has been decided in the assessee's own case for the A.Y. 2005-06 bearing ITA. No.1690/M/2012 dated 04.07.2014. The relevant finding is hereby mentioned below.:-

"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 recongises 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 recongnises 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 analysed the data of earlier years and subsequent years to determine the alleged unreasonableness of the provisions.It is a fact that res judicta 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 in 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 analysing the terms and conditions of the projects threadbare for which provisions were made during the year under apppel.Reversing his order we decide first effective ground of appeal (ground no. 1-3) in favour of the assessee."

7. Thereafter, the issue has been decided in favour of the assessee in the assessee's own case for the A.Y. 2006-07 & 2007-08 bearing ITA. No. 1691/M/2012 dated 09.04.2019 and bearing ITA. No. 1904/M/2012 dated 08.06.2020 for the A.Y.2007-08 respectively. However, these appeals has been decided on the basis of the decision in the assessee's own case for the A.Y. 2005-06 bearing ITA. No.1690/M/2012 dated 04.07.2014. There is no need to advert the finding of the Hon'ble ITAT in these cases also because the main reason has been given which has been discussed and relied by the Hon'ble ITAT in the assessee's own case for the A.Y.2005-06. Since the case of the assessee has duly been covered by its own case (supra), therefore, in the said circumstances, the issue is decided in favour of the assessee against the revenue.

ISSUE NO.4

7. Under this issue the assessee has argued that the issue is pending before the Hon'ble ITAT for the A.Y.2008-09 and accordingly this issue can be decided. Accordingly, this issue be dealt in accordance with the decision of the Hon'ble ITAT in ITA. Nos.3775/M/2016 & 4214/M/2016 for the A.Y.2008-09.

ISSUE NOS. 5 TO 9

8. Under these issues the assessee has challenged the method of accounted under "Percentage of Completion Method". The Ld. Representative of the assessee has also argued that the issue has duly been covered by the decision of the Hon'ble ITAT for the A.Ys. 2006-07 in ITA. No.1691/M/2012 and in ITA. No. 1904/M/2012 A.Y. 2007-08 dated 08.06.2020. The relevant finding bearing ITA. No. 1904/M/2012 A.Y. 2007-08 dated 08.06.2020 is hereby mentioned below.:-

> *"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 assesse'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. Since the issue is squarely covered by the above said decision, therefore, this issue is decided in favour of the assessee against the revenue.

ISSUE NO. 10

10. Under this issue the assessee has argued that the issue is pending before the Hon'ble ITAT for the A.Y.2008-09. Accordingly, this issue be dealt in accordance with the decision of the Hon'ble ITAT in ITA. No.3775/M/2016 & 4214/M/2016 for the A.Y.2008-09.

ISSUE NOs. 11-12

11. Issue no. 11 & 12 are in connection with the disallowance of Excess of Progress Billings on completed contracts project. The Ld. Representative of the assessee has also argued that the issue has duly been covered by the decision of the Hon'ble ITAT for the A.Ys. 2006-07 in ITA. No.1691/M/2012. The relevant finding is hereby mentioned below.:-

> *2.6 Ground Nos. 12 to 13: Excess of Progress Billing sunder statement of profit in respect of incomplete contracts obtained prior to 31/03/2003 and accounted under Completed Contract Method*
>
> *2.6.1 This addition of Rs. 396.15 Lacs represents alleged understatement of profit in respect of incomplete contracts accounted under Completed Contract Method [CCM]. It was noted that as per accounting policies, the assessee was following Completed Contract Method[CCM]for contracts received / started up-to 31/03/2003 and for contracts after this cut-off date, percentage completion method was being followed to recognize the revenue in the books of accounts. The dispute, under these grounds, is with respect to contracts started before 31/03/2003 wherein the assessee followed completed contract method. During assessment proceedings, it transpired that the assessee raised invoices against these 13 projects for Rs.22.52 Crores and reflected the same on the liabilities side of the Balance Sheet. Similarly, the costs of Rs.18.56 Crores were accumulated against these projects and reflected on the asset side of the Balance Sheet. The Ld. AO opined that though substantial work was done under these projects and invoices were also raised, no profit was shown against the same. Resultantly, the differential of the two amounts i.e. Rs.396.15 Lacs was added to the income of the assessee. The stand of Ld. AO, upon confirmation by first appellate authority, is under appeal before us.*
>
> *2.6.2 Th Ld. Sr. Counsel submitted that the costs as well as revenues are recognized under these projects on completed contract method. These revenues as well as costs were*

accumulated in the similar manner for AYs 2004-05 & 2005-06 also which has been accepted by the revenue and therefore, there was no reason to disturb the same in this AY. Per contra, Ld. CIT-DR submitted that, upon change of method of accounting, the revenues from such projects were to be offered to taxation.

2.6.3 Upon careful consideration, we find that the assessee has accumulated cost as well as revenue under these projects in the Balance Sheet by following completed contract method. The revenue has accepted such accumulation during AYs 2004-05 & 2005-06 and this is the third year of accumulation under the projects. It is not the case of the revenue that the income under these projects have not been offered to tax in subsequent years. No case of revenue leakage has been established before us. Therefore, the action of revenue in disturbing the consistent method of accounting being followed by the assessee could not be held to be justified. Hence, we delete the impugned additions and allow these grounds of appeal."

12. Since the issue is squarely covered by the above said decision, therefore, this issue is decided in favour of the assessee against the revenue.

ISSUE NO. 13

13. Under this issue the assessee has challenged the disallowance of depreciation of repair expenses as capital in the A.Y.2007-08. However, in this regard, the issue is pending in ITA. No.3775/M/2016 & 4214/M/2016, therefore, no doubt the decision of this issue will depend upon the decision in the above appeals, hence, at this stage, need not required to be answered.

ISSUE NO. 14

14. This issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

ISSUE NO. 15

15. The same being merely consequential in nature, do not require our indulgence and therefore, the same is not required to be adjudicated.

16. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 07/08/2020

Sd/-	Sd/-
(PRAMOD KUMAR)	**(AMARJIT SINGH)**
VICE PRESIDENT	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 07/08/2020
Vijay Pal Singh/Sr. P.S.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**