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

BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA No. 1957/MUM/2017 (A.Y. 2012-13)

M/s. Thyssenkrupp Industrial Solutions (India) Private Limited {Formerly known as Uhde India Private Limited} Uhde House, L.B.S. Marg Vikhroli (W), Mumbai - 400083 **PAN: AAACU1416H**	*v.*	DCIT – Range – 15(3)(1) Room No. 451, 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
Appellant		**Respondent**

Assessee Represented by	**:**	**Shri M.M. Golvala & Shri H. Jamshedji**
Revenue Represented by	**:**	**Shri Samual Pitta**
Date of Hearing	**:**	**17.08.2022**
Date of pronouncement	**:**	**07.11.2022**

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Dispute Resolution Panel–2, Mumbai [hereinafter in short "DRP"] dated 23.12.2016 for the A.Y. 2012-13 passed u/s. 144C (5) of the Act.

2. Assessee has raised following amended grounds in its appeal: -

"1. The learned TPO erred in making a transfer pricing adjustment of Rs.3,93,61,493/- on account of reimbursement of expenses paid to overseas AES.

2. The learned TPO erred in assuming jurisdiction to hold that the ALP of the transaction with the overseas AEs is NIL.

3. The learned TPO failed to consider that the reimbursements are paid, on actuals basis without any mark-up and further erred in rejecting the CUP method followed, without applying any method himself.

4A. The learned Deputy Commissioner of Income-Tax erred in disallowing provisions for costs incurred on completed contracts amounting to Rs.22,93,201/-

4B. The learned Deputy Commissioner of Income-Tax erred in disallowing provisions for cost overruns on incomplete contracts amounting to Rs.19,74,849/

5. The learned Deputy Commissioner of Income Tax erred in not considering that the provisions were made as per the regular method of accounting followed by the appellant.

6. The learned Deputy Commissioner of Income Tax erred in not deleting provisions for costs on completed contracts amounting to Rs.1,10,95,380 /- which has been disallowed in earlier assessment years and were utilized/written back in the current year.

7. The learned Deputy Commissioner of Income Tax erred in confirming taxation of an amount of Rs.53,57,02,575/-, as income, in respect of contracts accounted under "Percentage of Completion" (POC) Method.

8. The learned Deputy Commissioner of Income Tax failed to consider that the appellant was following a regular method of accounting, sanctified by Accounting Standards.

9. The learned Deputy Commissioner of Income Tax failed to consider that the addition made of Rs.53,57,02,575/- 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 Deputy Commissioner of Income Tax 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 Deputy Commissioner of Income Tax erred in not granting deduction in respect of excess of progress billings over sales recognized in respect of contracts accounted under the "Percentage of Completion Method amounting to Rs.18,80,20,410/- which has already been taxed in the preceding assessment years (following the Department's method of accounting) and which was offered to tax as sales in the current year.

12. The learned Deputy Commissioner of Income Tax erred in taxing an amount of Rs 2,25,000/-, as income, in respect of contracts accounted under the "Completed Contract Method" where the progress billings were in excess of accumulated costs incurred.

13. The learned Deputy Commissioner of Income Tax erred in not granting deduction in respect of excess of progress billings over accumulated costs incurred in respect of contracts accounted under the "Completed Contract Method amounting to Rs.87,98,678/- 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 erred in not granting deduction in respect of depreciation of Rs.3,60,966/- on software expenses disallowed as capital expenditure in earlier years.

15. The learned Deputy Commissioner of Income Tax erred in not granting TDS credit in respect of tax deducted by customers/clients of Rs.45,18,086/

16. The learned Deputy Commissioner of Income Tax erred in levying interest u/s 234B and 234C of the Act.

17. The learned Deputy Commissioner of Income Tax erred in levying interest u/s 234D of the Act."

3. Assessee raised following additional ground in its appeal*: -*

> *"1. The Appellant submits that the liability incurred on account of Education Cess and Higher and Secondary Education Cess on Income tax amounting to Rs.94,87,257/ should not be disallowed under section 40(a)(ii).*
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> *2. The Appellant relies on the judgement dated 28th February, 2020 of the Bombay High Court in Sesa Goa Ltd. v. JCIT (ITA No. 17 and 18 of 2013 dated 28th February, 2020)"*

4. At the time of hearing, Ld. Counsel for the assessee submitted that additional Ground is not pressed, accordingly, the same stand dismissed as not pressed.

5. Now, we shall adjudicate the main issues ground wise.

6. With regard to Ground Nos. 1 to 3 which are in respect of reimbursement to AE(s) as not being arm's length price for an amount of ₹.3,93,61,493/-, Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in ITA.No. 1274 /MUM/2016 for the immediately preceding assessment year i.e., A.Y. 2011-12 and decided the issue in favour of the assesse and against the department. Copy of the order is placed on record. Ld. AR of the assessee prayed that the same may be adopted for the year under consideration.

7. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR and relied on the order of the Ld.CIT(A).

8. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2011-12. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1274/Mum/2016 dated 22.07.2022 held as under: -

> *"10. We have considered the rival submissions and perused the material available on record. During the year under consideration, assessee reimbursed expenditures in the nature of salary, software expenses, telephone, travel, insurance, courier charges, training expenses, accommodation other expenses to the associated enterprise for the cost incurred on behalf of the assessee. Such reimbursement was made by the assessee without paying any markup on the cost. The TPO as well as the learned DRP treated the arm's length price of this transaction at NIL on the basis that assessee has failed to justify/prove rendition, necessity and benefit of this expenditure. The learned DRP termed it as 'benefit test' and the 'willingness to pay test', which was alleged to be not satisfied by the assessee. We find that during the course of transfer pricing assessment proceedings, the assessee filed the details of reimbursement paid to the associated enterprises. We find that in respect of the salary expenditure the assessee furnished the certificate issued by the statutory auditor, wherein it was certified that the cost recoverable from the assessee is the salary of the Managing Director of the assessee and same is based on actual cost incurred by the associated enterprise without any markup profit element included therein. The assessee also produced a copy of the invoice raised by the AE on the assessee in respect of the salary expenditure. We further find that assessee furnished the back-toback invoices raised by the third-party on the associated enterprise to substantiate its claim of reimbursement of costs to the associated enterprise. The lower authorities without finding any fault in the benchmarking analysis conducted by the assessee, i.e. by treating the cost paid to the third-party as the perfect CUP, considered*

the arm's length price of the transaction as NIL only by applying the so called 'benefit test' and the 'willingness to pay test'. The TPO also neither undertook any benchmarking analysis nor searched any comparable transaction for considering the arm's length price at NIL. In this regard, it is relevant to note following observations of Hon'ble Delhi High Court in Cushman and Wakefield (India) Pvt. Ltd. [2014] 367 ITR 730 (Del.).

> *"35. The TPO's Report is, subsequent to the Finance Act, 2007, binding on the AO. Thus, it becomes all the more important to clarify the extent of the TPO's authority in this case, which is to determining the ALP for international transactions referred to him or her by the AO, rather than determining whether such services exist or benefits have accrued. That exercise - of factual verification is retained by the AO under Section 37 in this case. Indeed, this is not to say that the TPO cannot - after a consideration of the facts - state that the ALP is 'nil' given that an independent entity in a comparable transaction would not pay any amount. However, this is different from the TPO stating that the assessee did not benefit from these services, which amounts to disallowing expenditure."*

11. As noted above, in the present case, no search was conducted to find out the independent entity in a comparable transaction and the arm's length price of the international transaction was treated to be NIL. In the present case, no doubts about payments made by the assessee have been raised by the Assessing Officer under section 37 of the Act. Further, accrual of benefit to assessee or the commercial expediency of any expenditure incurred by the assessee cannot be the basis for disallowing the same, as held by Hon'ble Delhi High Court in the case of EKL Appliances Ltd. [2012] 345 ITR 241 (Del.).

12. We further find that Hon'ble jurisdictional High Court in CIT v/s Lever India Exports Ltd. [2017] 246 Taxmann 133 (Bombay), observed as under:

> *"7. We note that the Tribunal has recorded the fact that the respondent assessee has launched new products which involved huge advertisement expenditure. The sharing of such expenditure by the respondent assessee is a strategy to develop its business. This results in improving the brand image of the products, resulting in higher profit to the respondent assessee*

due to higher sales Further, it must be emphasized that the TPO's jurisdiction was to only determine the ALP of an International Transaction. In the above view, the TPO has to examine whether or not the method adopted to determine the ALP is the most appropriate and also whether the comparables selected are appropriate or not. It is not part of the TPO's jurisdiction to consider whether or not the expenditure which has been incurred by the respondent assessee passed the test of Section 37 of the Act and/or genuineness of the expenditure. This exercise has to be done, if at all, by the Assessing Officer in exercise of his jurisdiction to determine the income of the assessee in accordance with the Act. In the present case, the Assessing Officer has not disallowed the expenditure but only adopted the TPO's determination of ALP of the advertisement expenses. Therefore, the issue for examination in this appeal is only the issue of ALP as determined by the TPO in respect of advertisement expenses. The jurisdiction of the TPO is specific. and limited l.e. to determine the ALP of an International Transaction in terms of Chapter X of the Act read with Rule 10A to 10E of the Income Tax Rules. The determination of the ALP by the respondent assessee of its advertisement expenses has not been disputed on the parameters set out in Chapter X of the Act and the relevant Rules. In fact, as found both by the CIT (A) as well as the Tribunal that neither the method selected as the most appropriate method to determine the ALP is challenged nor the comparables taken by the respondent assessee is challenged by the TPO. Therefore, the ad-hoc determination of ALP by the TPO dehors Section 92C of the Act cannot be sustained."

13 We further find that the Co-ordinate Bench of Tribunal in Hamon Colling Systems Pvt Ltd. v. DCIT, in ITA No. 3911/Mum./2015, vide order dated 27/05/2020, after considering aforesaid decisions observed as under:

"9. ....Neither the ALP adjustments can be equated with disallowances of expenses, even though effect may be same, nor the TPO has the authority to disallow the expenses. Clearly, the impugned ALP adjustments are vitiated in law for this short reason alone. In any case, the observations with respect to the lack of evidence in support of the benefits is based on sweeping generalizations and is incapable of sustaining legal scrutiny."

14. In view of the above, we are of the considered opinion that TPO as well as learned DRP were not justified in treating the value of international transaction of 'Reimbursement of Expenses' to be NIL, in the present case. Accordingly, grounds no. 1 to 3 raised in assessee's appeal are allowed."

9. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision and following the rule of principle of consistency, the view taken by the Tribunal for the A.Y.2011-12 is respectfully followed, ground raised by the assessee is accordingly allowed.

10. With regard to Ground Nos. 4A, 4B and 5 of grounds of appeal which are in respect of provision for costs made on completed contracts and provisions for cost overruns on incomplete contracts, Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal consistently from the A.Y. 2005-06, 2006-07, 2007-08 and 2009-10 and decided the issue in favour of the assesse and against the department. Copies of the order are placed on record. Ld. AR of the assessee further brought to our notice in assessee's own case in ITA.No. 1245/Mum/2014 dated 07.08.2022 the Coordinate Bench following the decision for the A.Y. 2005-06 set-aside the order of the Ld.CIT(A) and decided the issue in favour of the assessee. Ld. AR of

the assessee prayed that the same may be adopted for the year under consideration.

11. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR and relied on the order of the Ld.CIT(A).

12. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2009-10. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1245/Mum/2014 dated 07.08.2020 held as under: -

> *"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.:-*
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> > *"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.I t 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.A ccounting 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.T herefore, 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."

13. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2009-10 and also following the rule of principle of consistency, grounds raised by the assessee are allowed in this regard.

14. Coming to Ground No. 6 which is in respect to without prejudice claim for cost provisions utilized/written back during the year and taxed in earlier years, at the time of hearing, Ld. AR of the assessee submitted that Ground No.6 is not pressed, accordingly, the same stand dismissed as not pressed.

15. With regard to Ground Nos. 7, 8 and 9 of grounds of appeal which are in respect excess of progress billings on contracts accounted under Percentage Completion Method, Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal consistently from the A.Y. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2015-16 and decided the issue in favour of the assesse and against the department. Copies of the order are placed on record. Ld. AR of the assessee further brought to our notice in

assessee's own case in ITA.No. 1245/Mum/2014 dated 07.08.2022 the Coordinate Bench following the decision for the A.Y. 2007-08 set-aside the order of the Ld.CIT(A) and decided the issue in favour of the assessee. Ld. AR of the assessee prayed that the same may be adopted for the year under consideration.

16. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR and relied on the order of the Ld.CIT(A).

17. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2009-10. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1245/Mum/2014 dated 07.08.2020 held as under: -

> *"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.:-*
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> > *"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."

Similarly, on identical facts in assessee's own case for the Assessment Years 2010-11, 2010-11 and 2015-16 the Coordinate Bench decided the issue in favour of the assessee.

18. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decisions in assessee's own case and also following the rule of principle of consistency, grounds raised by the assessee are allowed in this regard.

19. Coming to Ground Nos. 10 and 11 of grounds of appeal, at the time of hearing, Ld. AR of the assessee submitted that Ground Nos. 10 and 11 are not pressed, accordingly, the same stand dismissed as not pressed.

20. With regard to Ground No.12 of grounds of appeal which is against not allowing deduction in respect of contracts accounted under the "Completed Contract Method" and which were incomplete as on 31st March, 2012 where the inventories were in excess of progress billings amounted to ₹.2,25,000/-, Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal consistently from the A.Y. 2006-07, 2008-09, 2009-10 and 2010-11 and decided the issue in favour of the assesse and against the department.

Copies of the order are placed on record. Ld. AR of the assessee further brought to our notice in assessee's own case in ITA.No. 1245/Mum/2014 dated 07.08.2022 the Coordinate Bench following the decision for the A.Y.2006-07 set-aside the order of the Ld.CIT(A) and decided the issue in favour of the assessee. Ld. AR of the assessee prayed that the same may be adopted for the year under consideration.

21. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR and relied on the order of the Ld.CIT(A).

22. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2009-10. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1245/Mum/2014 dated 07.08.2020 following the decision in assessee's own case for the A.Y. 2006-07 held as under: -

> *"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.:-*
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> > *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 The 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.

Similarly, on identical facts in assessee's own case for the Assessment Years 2008-09 and 2010-11 the Coordinate Bench decided the issue in favour of the assessee.

23. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decisions in assessee's own case and also following the rule of principle of consistency, grounds raised by the assessee are allowed in this regard.

24. Coming to Ground Nos. 13 and 14 of grounds of appeal, at the time of hearing, Ld. AR of the assessee submitted that Ground Nos. 13 and 14 are not pressed, accordingly, the same stand dismissed as not pressed.

25. With regard to Ground No. 15 which in respect of TDS credit Short granted of ₹.2,36,719/- (as compared to TDS Credit appearing in Form 26AS), considering the overall merits on the submissions made by the assessee we are inclined to remit this issue back to the file of Assessing

Officer with a direction to verify the records submitted by the assessee on merit and as per law. It is needless to say that assessee may be given a proper opportunity of being heard. Ground raised by the assessee is allowed for statistical purpose.

26. Coming to Ground No. 16 and 17 which are in respect of levy of interest u/s. 234B and 234D of the Act, as the above grounds being consequential in nature, we are not adjudicating these grounds at this stage and kept open.

27. In the result, appeal filed by the assesse is partly allowed for statistical purpose as per above terms.

Order pronounced in the open court on 07th November, 2022.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 07/11/2022
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum