

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3195/M/2022  
Assessment Year: 2017-18**

M/s. John Cockerill India Ltd., Mehta House, Plot No.64, Road No.13, MIDC, Andheri East, Mumbai – 400 093 <b>PAN: AAACF0252G</b>	Vs.	Deputy/Assistant Commissioner of Income Tax, Cir. 3(4), 29 <sup>th</sup> Floor, World Trade Centre-1, Cuff Parade, Colaba, Mumbai - 400005
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Suyog Bhave, A.R.  
Revenue by : Shri Vranda U Matkarni, D.R.

Date of Hearing : 01 . 02 . 2023  
Date of Pronouncement : 16 . 03 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. John Cockerill India Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 17.11.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2017-18 on the grounds inter-alia that :-

*“(a) The impugned order dated 17.11.2022 passed by the Commissioner (Appeals) is non-speaking and has been passed in totally dis-regards to the binding decision of this Hon'ble Tribunal in*

*Appellant's own case for AY 2009-10, 2010-11 and 2011-12 deciding the issue on provisions on loss of contract in favor of the Appellant.*

*(b) The Learned Commissioner (Appeals) erred in confirming the disallowance of an amount of Rs.49,88,511/- towards provision for loss on contract.*

*(c) The Learned Commissioner (Appeals) failed to appreciate that the Appellant had made the said provision for loss on contract based on technical assessment carried out for individual projects and in order to comply with the Accounting Standard 7 and Notification no. 69(E) dated 25.01.1996 on Accounting Standards under the provisions of Section 145(2) of the Act issued by the Government of India.*

*(d) The Learned Commissioner (Appeals) failed appreciating that provision for loss on contract had been made on the basis of technical assessment of the individual projects undertaken by the Appellant and considering the possible cost escalations or event inefficiency in relation to the contracts agreed to be executed by the Appellant with the likely costs for correcting such defects or failures.*

*(e) The Learned Commissioner (Appeals) erred in adding back the uncertain provisions for loss on contract in computation of book profits under section 115JB of the Act.*

*(f) The Appellant craves leave to add, alter or amend to the above grounds of appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of manufacturing and installation of cold rolling mills, galvanizing lines, colour coating lines, testing leveling lines, skin pass mills, acid regeneration plants, wet flux and pickling lines for ferrous and non-ferrous industries worldwide. The return of income filed by the assessee declaring total income at Rs.Nil under normal provisions of the Income Tax Act, 1961 (for short ‘the Act’) and book profit at Rs.3,84,28,017/- under section 115JB of the Act were subjected to scrutiny. Notices under section 142(1) and 143(2) were duly served upon the assessee. The Assessing Officer (AO) after perusal of the profit & loss account and details furnished

by the assessee noticed that the assessee has debited an amount of Rs.49,88,511/- under the head provision for estimated loss on contracts, for which the assessee was called upon to explain. The assessee has merely provided the loss on contract on estimate basis and liability of the assessee has not crystallized during the year. Declining the contentions raised by the assessee, the AO disallowed an amount of Rs.49,88,511/- and added the same to the total income of the assessee as well as for book profit under section 115JB of the Act and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee has claimed provision for estimated loss on contract of Rs.49,88,511/- based on its AS-7 prescribed by the Institute of Chartered Accountant of India (ICAI) as well as on the basis of relevant provision of the Act. However, the assessee has failed to bring on record any evidence as to how such provision of estimated loss on contract are to be ascertained/materialized in future.

6. However, it is brought on record to the notice of the Bench that this issue in the earlier years for A.Y. 2009-10 has been decided in favour of the assessee in case of CMI FPE Limited vs. ACIT in ITA No.2334/M/2013 for A.Y. 2009-10 & ors. order dated 10.06.2016.

7. We have perused the order (supra) wherein the identical issue has been decided by returning following findings:

*“3. We have heard the parties, and perused the material on record.*

*3.1 The assessee is a manufacturer of heavy industrial machinery, which has a gestation period of two to three years. It follows accrual system of accounting, which is mandatory for it under its' governing Act, i.e., the Companies Act, 1956. It follows percentage completion method for recognition of revenue. The fundamental accounting principle of prudence, providing for all known liabilities and losses (even though the amount thereof cannot be determined with certainty and represents only a best estimate in the light of available information), would validate the assessee's claim. The said principle, along with 'substance over form' and 'materiality', constitute the principal considerations for the selection of the accounting policies. As such, irrespective of the stage of completion of the project, where, on the basis of the facts and data, a project stands to incur a loss on its' completion, the same is to be provided in the first instance, and which has been provided for by the assessee on proportionate basis. The said principle stands advocated by both the Accounting Standard (AS-1) issued by ICAI as well as AS-I issued u/s. 145 by CBDT, both since notified, so as to assume the force of law. The same would entail carrying out a costbenefit analysis, which may itself involve several estimates, called accounting estimates. The same have to be reliable, based on verifiable and/or empirical data, which we regard as a second, albeit integral, aspect – the assessee's claim for loss meriting an in principle approval or acceptance. True, in a given case, the loss itself may arise only on account of inflated cost, so that on facts there is no application of the principle, but that would not detract from the fact that such a loss, where properly made, cannot be denied. Further, the estimate may itself change from time to time, i.e., as time goes by and more and more work, incurring cost, is undertaken, so that it is only the balance (uncompleted) work, i.e., which is yet to be completed, qua which the costs are to be estimated. The cost estimate is again bound to vary on the basis of and in light of the available information. That (variation), rather, is the norm, as inflow of information, having both qualitative and quantitative implications, and which aspects are themselves interrelated, is a continuous phenomenon. To contend,*

*therefore, as does the ld. CIT(A), that there has been a variation, and inferring on that basis that the estimates are not scientific or not based on reliable data, is misconceived. In fact, the variation, as reported (refer para 4 of the impugned order), is itself quite insignificant, so that it should not have, even on that basis, led to the inference of rejection of the estimates.*

*The Revenue can no doubt, and it is indeed duty bound to, verify the assessee's claim qua both the cost and the revenue estimates. Why, in a given case, the actual costs, incurred subsequently, may itself form a valid ground or basis to verify the veracity of the assessee's claim/s, even as we have clarified that the estimates are bound to undergo change with time in light of the available information and experience, so that the principle involved would be that the estimate or assessment as made is explainable with reference to the available information.*

*3.2 The Revenue misdirects itself when it, relying on the decision Rotork Controls India Private Ltd. vs. CIT [2009] 314 ITR 62 (SC), refers to the statement of law by the Hon'ble Apex Court in respect of claim for deduction qua a liability. The two, i.e., a 'liability' and 'loss', though para materia from the stand-point of prudence, may not be so as regards provision therefor. The provision of loss would be justified on a factual basis to arrive at the conclusion that the estimated expenditure (for the work to be undertaken or the services to be rendered), together with the actual cost already incurred thereon, shall exceed the estimated revenue from the project. The question, thus, is principally of the reliability of the estimate, given the explicit terms of the accounting standards, statutorily mandated, so that the same have the force of law, with the Apex Court in fact emphasizing time and again that in the absence of any specific provision of law to the contrary, the principles of commercial accounting shall apply. Reference in this regard may also be made with profit to its' celebrated decision in Calcutta Co. Ltd. vs. CIT [1959] 37 ITR 1 (SC). Once, on the basis of the facts and the information on record, the loss is likely to arise, the same has to be provided for under the prudence mandate, which is what AS-7 (also notified by the Central Government) in substance provides under the segment 'Recognition of expected losses' vide paras 35 and 36, reproduced as under:*

#### ***'Recognition of Expected Losses***

*35. When it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognised as an expense immediately.*

*36. The amount of such a loss is determined irrespective of:*

- a) whether or not work has commenced on the contract;*
- b) the stage of completion of contract activity; or the amount of profits expected to arise on other contracts which are not*

*treated as a single construction contract in accordance with paragraph 8.'*

*A liability, on the other hand, arises on account of a contractual or statutory obligation.*

*3.3 As regards the reliance by the Revenue before us on CIT vs. Kamani Metals & Alloys Ltd. [1994] 208 ITR 1017 (Bom), the same, in our view, shall not govern the facts or the issue involved in the present case, even as admittedly the accountancy principle of valuation of inventories is also based on the principle of prudence. In that case, the assessee-company, a manufacturer of copper and copper based alloys, strips and coils of various specifications, valued its raw materials, being virgin metals (viz. copper, zinc, tin), following the valuation principle of cost or replacement value, whichever is less. On that basis, it claimed the reduction in the raw material (copper cathode) price post December 31, 1974, the valuation date, for which the purchase order was issued in August, 1974. The Hon'ble Court upheld the order by the tribunal, restricting the valuation to that as per the rate obtaining as on 31.12.1974, i.e., in principle. Further, however, as the goods had not been received by December 31, 1974, so that there was no closing stock as on that date, the Hon'ble Court held that the reduction in the price with reference to the contract date even as on 31.12.1974 also could not allowed. Further, even though the value of the raw material cost may have decreased, the firm may stand to earn profit on the basis of the net realizable value of the finished goods, i.e., on the basis of the ruling price less cost of realization thereof. The prices of finalized goods may or may not move in sympathy with that of the raw materials, depending upon the demand and supply forces in the relevant market. Two, even the raw material price may stand to reverse, and may not be irreversible so as to conclude that the loss had indeed been incurred. Thirdly, and most importantly, it is the profit (or loss) for the relevant year that is to be assessed and brought to tax for that year – each year being an independent unit of assessment. The decline in the market price, even where relevant and material, i.e., with reference to the price obtaining as at the year-end, would therefore fall to be considered as and form part of the profit (or loss) of the subsequent year. This also explains the standard prescription for valuing raw material at historical cost (refer AS-2 issued by ICAI). The project/s in the instant case, on the other hand, spread over 2-3 years, and it is on account of this that the loss thereon, the enterprise following percentage completion method (for recognizing income), the profit (or loss) on the entire project, estimating the costs yet to be incurred, is required to be reckoned, booking the same proportionately. AS-7, on the other hand, clearly provide for reporting profit on the basis of proportionality when the project is likely to yield a profit, while booking the loss where not so, and which in the present case, as we understand, has been provided for on a proportionate basis. The reliability of the estimate is indeed very relevant and crucial to the claim for loss, lest any amount could be*

*claimed under the garb of the likely loss, and which brings us to the next aspect of the matter.*

*3.4 The Revenue, moving on the premise that the assessee's claim is both factually and legally untenable, has rejected the same. We find no exercise conducted by it at any stage to verify the assessee's claim, which we have found acceptable in principle. In this respect, the ld. AR would before us contend that the assessee has also, and only rightly so, taken into account the likely cost escalations; the projects being scheduled to be completed only over a period of two to three years. True, but the same would also have been similarly factored into while negotiating the contract rates. The matter would require being examined for the veracity of the estimations, and particularly qua cost escalations, as also with reference to the relevant clauses, if any, of the contract, i.e., as regards the cost escalation, which could also be made operative where the project is delayed beyond a particular time line. Reference in this context may also be made to paras 22, 23 and 31 of AS-7.*

*4. In view of the foregoing, we uphold the assessee's claim in principle, i.e., qua the provision for loss on contracts likely to arise on its ongoing projects, which though would have to be substantiated. Further, the fact that the assessee did not contest the claim for loss, similarly made, while computing its' book profit, though surprising, cannot by itself prevail so as to be regarded as conclusive of the matter, and can at best provide a clue to the Revenue that the assessee's claim with regard to cost escalation/s may require a closer examination, which the AO is even other obliged to, even as to be fair to the assessee the loss stands provided for in the audited accounts, so that it has been subject to both internal as well as external scrutiny. The same though cannot bind the A.O. We decide accordingly. The appeal is accordingly disposed on the above said terms."*

8. Following the order passed by the co-ordinate Bench of the Tribunal on identical issue in assessee's own case, we are of the considered view that the issue is required to be remanded back to the AO to decide afresh to find out if the assessee has ascertained loss on contract by taking into consideration evidence if any brought on record by the assessee. So assessee's claim regarding the provision for loss on contracts likely to arise on its ongoing projects is principally upheld but would have to be ascertained loss under section 115JB of the Act by taking into consideration cost escalation etc. in the light of the directions issued by the

co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2009-10. In view of what has been discussed above, the impugned order passed by the Ld. CIT(A) is set aside and issue is remanded back to the AO to decide afresh after providing opportunity of being heard in the light of the observation made hereinbefore.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 16.03.2023.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 16.03.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.