

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)**

**ITA No. 642/MUM/2023**  
**Assessment Year: 2016-17**

The DCIT, Central Circle-  
5(1),  
Room No. 1928, 19<sup>th</sup> floor,  
Air India Building, Nariman  
Point,  
Mumbai-400021.

**Appellant**

M/s ITD Cementation India  
Ltd.,  
**Vs.** National Plastic Building, A-  
Subhash Road, Paranjape B  
Scheme, Vile Parle (E),  
Mumbai-400057.  
**PAN NO. AA ACT 1426 A**  
**Respondent**

**Assessee by** : Mr. Vijay Mehta  
**Revenue by** : Mr. Ram Prakash Rastogi

Date of Hearing : 30/05/2023  
Date of pronouncement : 26/07/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 22.12.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2016-17, raising following grounds:

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.21,74,000/- u/s.14A of the IT Act, 1961 r.w. Rule 8D expenses and other expenses incurred facilitate*



*the earning of all income including exempt income, and hence disallowance u/s 14A r.w. Rule 8D of the IT Rules.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2,45,07,479/- on account of provisions for unforeseen losses which are not an ascertained liability and are contingent losses and therefore are not allowable under section 37 of the IT Act, 1961.*

2. Brief facts of the case are that the assessee company was engaged in the business of civil contract including carrying out work of construction of roads and bridges, dams etc. for various Government and Non-Government organization. For the year under consideration, the assessee filed return of income on 30.11.2016 declaring total income of Rs. Nil under the normal provisions (after set off of brought forward losses) and book profit of Rs.96,69,03,000/- u/s 115JB of the Income-tax Act, 1961 (in short 'the Act'). The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. During assessment proceedings, the Assessing Officer observed that the assessee has made certain investments in joint ventures and equity shares, the income arising out of which was not included in the total income of the assessee. After recording dissatisfaction to the claim of the assessee of incurring no expenses, the Assessing Officer invoked Rule 8D of the Income-tax Rules, 1962 (in short 'the Rules') and made disallowance @ 0.5% of the average value of the investments eligible for earning exempted income which was computed at Rs.21,74,000/-. The said



disallowance was made under the normal provisions of the Act as well as for computing book profit u/s 115JB of the Act. The Ld. Assessing Officer further observed that the assessee in the profit and loss debited an amount of Rs.2,45,07,479/- on account of provision for 'foreseeable losses' under the account head 'other expense'. Regarding the allowability of the 'foreseeable losses', it was explained by the assessee that in some of the contracts carried out by the company, the total cost to be incurred on the projects, was estimated to exceed the original contract value of the said projects and therefore assessee company was of the view that it would be incurring losses on those projects in future years. It was submitted that the assessee was following Accounting Standard-7 (AS-7) issued by the Institute of Chartered Accountant of India. Due to requirement under AS-7, this loss was required to be disclosed separately as foreseeable contract loss in the profit and loss account. Further it was submitted that the assessee was following percentage completion method year after year and there was no change in the method of the accounting followed. According to the assessee the foreseeable loss is on account of ascertained liability of provisions of expenses.

2.1 After considering the submission of the assessee, the Ld. Assessing Officer rejected its contentions, observing as under:

*"4.2 The submission of the assessee has been considered but not found acceptable. At the outset, it is noted that the issue of unforeseen/foreseeable/future losses was subject*



*matter of appeal before the Hon'ble ITAT for Assessment Year 2004-05 in the assessee's own case, wherein the Hon'ble ITAT had held that the claim of such losses is allowable to the assessee. Subsequently, the appeal of the Revenue challenging the said decision of Hon'ble ITAT has been admitted before the Hon'ble Bombay High Court as per the order of the Hon'ble High Court dated 03.04.2017 in ITXA/620/2014, wherein the Hon'ble High Court has admitted the substantial Questions of Law as to whether such losses being in the nature of contingent expenditure are permissible in terms of section 37 of the Act and as to whether the accounting procedures (Accounting Standard 7) can override the provisions of the Act. It is noted that neither the amount represented by the "provision for foreseeable losses" is an expenditure incurred in the year under consideration, nor any ascertained liability has arisen in respect of the said amount. It is seen from the detailed working (as reproduced hereinbefore) on the basis of which the aforesaid amount is derived that the quantification of the same is based on "Estimated contract cost". First, by comparing the estimated contract cost with the value of the contract as per the contract agreement, the assessee works out the figure of estimated loss from the contract. Then, by applying the percentage completion method (percentage of cost incurred so far vis-a-vis the estimated cost) to the aforesaid estimated loss from the contract, the assessee determines the part as "actual loss" to be recognized till the present year and the remaining part is treated as "Foresceable losses". After deducting the part of such "foreseeable losses" as has already been debited in the earlier years, the assessee claims the remaining part as deductible expenditure in the current year in the form of "provision for foresceable losses". It is thus seen that the amount of "provision for foreseeable losses" is worked out on the basis of estimates only. Further, the same represents likely losses to be incurred in future years as the project progresses. While preparing the Books of Accounts of the company, the same may be debited in the Profit and Loss account as per the requirements of AS-7 which primarily seems to be rooted in the prudence principle. However, allowing the same as a permissible deduction for computation of income of the current year for tax purposes is not acceptable, since it is merely an estimate of the likely*



*losses that may be incurred in the future years. The same cannot be accepted to be an allowable deduction for computing the business income of current year and is liable to be disallowed under section 37 of the Act. In view of the above discussion, the claim on account of 'provision for foreseeable losses' amounting to Rs. 2,45,07,479/- is hereby disallowed and added to the total income of the assessee. Penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 are initiated separately for furnishing inaccurate particulars of income."*

3. On further appeal, the Ld. CIT(A) allowed relief to the assessee both on the account of disallowance in respect of 14A as well as disallowance of foreseeable losses. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. Before us, the Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 368.

5. In ground No. 1, the Revenue has challenged deletion of disallowance of Rs.21,74,000/- u/s 14A of the Act.

5.1 The Ld. CIT(A) in para 4.1 of the impugned order has recorded that during the year under consideration, there was no exempted income was earned by the assessee and thus no disallowance u/s 14A has been made by the Assessee. The Assessing officer made disallowance u/s 14A of the Act as according to him expenditure in relation to income not included in total income was to be disallowed u/s 14A of the Act in cases even no exempted income was earned during the relevant year. The Ld. CIT(A), however, relied on the



decision of the Coordinate Bench of ITAT in assessee's own case for assessment years 2014-15 and 2015-16.

5.2 We have heard rival submission of the parties on the issue in dispute of disallowance u/s 14A of the Act. The ld CIT(A) has deleted the disallowance observing as under:

*"4.1 During the assessment proceedings, the A observed that the assessee had made certain investments in joint ventures and equity shares, the income arising out of which was not included in the total income. The assessee was asked to explain as to why disallowance u/s. 14A r.w. Rule 8D should not be made. In response, the assessee made certain submissions which were found to be unsatisfactory by the AO. The AO was of the view that expenditure in relation to income not includible in total income is to be disallowed u/s. 14A even when no exempt income is earned during the year. Therefore, disallowance u/s. 14A r.w. Rule 8D amounting to Rs. 21,74,000/- was made by the AO.*

*4.2 During the appellate proceedings, it was submitted by the appellant that the Hon'ble ITAT in appellant's own case for A. Ys. 2014-15 and 2015-16, on similar facts and circumstances, had decided the issue in favour of the appellant by deleting the disallowance u/s. 14A. The relevant portion of the Hon'ble ITAT order in ITA No. 5869 & 5870/Mum/2018 dated 21.04.2021, is reproduced as under:-*

*"..it could be seen that assessee had not made any physical investment in joint ventures and the figures represent in the investment schedule is nothing but the share of profit from joint ventures over all the years and hence, the entire computation mechanism provided in Rule 8D(2) of the Rules fails as the substance of the transaction would prevail over its form. Though the assessee had shown that the accumulated share of profits from joint ventures under the head investment', it is effectively a current account transaction or loans given to the joint*



*ventures by the assessee and the same does not partake the character of actual investments, if any, made by the assessee in the joint venture. Hence, we hold that the entire computation mechanism of Rule 8D(2) of the Rules fails and hence, there could not be any disallowance u/s. 14A of the Act that could be made in the facts and circumstances of the instant case. Accordingly, Ground Nos. 2 & 3 raised by the assessee for both the years are allowed."*

*4.2.1 As the issue is identical to that of the year under consideration, I have no reason to deviate from the findings of the Hon'ble ITAT. Therefore, respectfully following the decision of the Hon'ble ITAT, the disallowance of Rs. 21,74,000/- u/s. 14A is deleted.*

*Accordingly, Ground Nos. 1 to 4 of the appeal are allowed."*

5.3 We find that during the year under consideration no exempt income has been earned by the assessee and therefore, following the finding of the Hon'ble Delhi High Court in the case of **Cheminvest Ltd. v. CIT (2009) 317 ITR 86**, no disallowance can be made in the case of the assessee. Accordingly, we uphold the disallowance deleted by the Ld. CIT(A) on the issue in dispute and ground No. 1 of the appeal of the Revenue is accordingly dismissed.

6. The ground No. 2 of the appeal of the assessee relates to disallowance of Rs.2,45,07,479/- u/s 37(1) of the Act in respect of provision for 'foreseeable losses'. It is the contention of the Assessing Officer that foreseeable losses worked out on the basis of estimate for future expenses, which being unascertained liability, same are not allowable u/s 37(1) of the Act. However, the Ld. CIT(A) following the finding of his predecessor in the case of the assessee



for assessment year 2004-05 , wherein he has relied on finding of the Tribunal in the case of the assessee in earlier years , deleted the disallowance.

6.1 Before us, the Ld. Departmental Representative (DR) submitted that foreseeable losses have been computed by the assessee on the basis of expenses which were though not incurred in the year under consideration, but were to be incurred in future years for completion of the relevant works contract project. According to the Ld. DR same was contingent expenditure and not ascertained liability for the year under consideration and thus it was not to be allowed u/s 37(1) of the Act. The Ld. DR further submitted that the assessee has not filed any details of those expenses which would be incurred in future years and in absence of which, even the estimate was without any foundation or documentary basis. The Ld. DR further submitted that the issue of allowability of foreseeable losses has to be seen vis-à-vis each year on the basis of facts of the claim made and the Ld. CIT(A) is not justified in deleting the disallowance merely following the Tribunal decision in earlier years without examining the facts of the year under consideration and applying the ratio of the said decision over the facts of the year under consideration. He submitted that issue in dispute should be restored back to the file of the assessing officer for verification of the estimation of actual expenses.



6.2 The Ld. Counsel of the assessee on the other hand provided working of 'foreseeable losses' for the year under consideration as under :

**ITD Cementation India Limited**  
**A.Y. 2016-17**

**Working of Foreseeable loss for AY 2016-17**

(Rs. in Crores)

Sr. No.	Project No.	Name of the Project	Contract Revnue recognised till 31-03-2016	Expected revenue to be recognised till completion of project	Estimated Total Revenue	Actual cost incurred till 31-03-2016	Expected cost to be incurred till completion of project	Estimated Total Cost	Estimated Profit/(loss)	% completion	Loss recognised in the books of account	Foreseeable loss recognised in the books of account
			[A]	[B]	[C = A + B]	[D]	[E]	[F = D + E]	[G = C - F]	[H = D / F * 100]	[I = G * H]	[J = G - I]
1	28813BL	PWD2	230.22	14.73	244.95	253.01	16.18	269.20	(24.25)	93.99	(22.79)	(1.46)
2	28713BL	PWD1	242.64	11.19	253.83	258.35	11.91	270.26	(16.43)	95.59	(15.70)	(0.72)
3	32814CH	Bayaweaver Noida	5.24	0.04	5.28	6.44	0.04	6.48	(1.20)	99.46	(1.20)	(0.01)
4	30413CF	VSP Vizag	25.25	0.18	25.42	27.38	0.19	27.57	(2.15)	99.31	(2.13)	(0.01)
5	31513CF	CMRL Chennai	59.11	1.43	60.54	62.55	1.52	64.06	(3.53)	97.63	(3.44)	(0.08)
6	16710DL	Sasan Road Bridge - RIL	31.22	0.56	31.77	33.45	0.59	34.04	(2.27)	98.25	(2.23)	(0.04)
7	30513DW	CC50, Delhi	119.51	3.64	123.15	147.21	4.48	151.68	(28.53)	97.05	(27.69)	(0.84)
<b>Total</b>			<b>713.18</b>	<b>31.76</b>	<b>744.94</b>	<b>788.39</b>	<b>34.90</b>	<b>823.29</b>	<b>(78.35)</b>		<b>(75.19)</b>	<b>(3.17)</b>
											<b>Less: Foreseeable Losses already recognised in FY 2014-15</b>	<b>(0.72)</b>
											<b>Foreseeable Losses recognised in the year under consideration</b>	<b>(2.45)</b>

6.2.1 The Ld Counsel referred to column 'J' of above table and submitted that foreseeable losses of Rs. 2.45 crores has been claimed as per the expected increase in cost of the project and resultant additional loss which will arise from project in future at the time of completion of the project.

6.2.2 The Ld. Counsel however submitted that corresponding to the estimated increase in projected total cost, the assessee has incurred cost on the said projects in the subsequent years and sometimes said cost actually incurred is more than the cost which was estimated in the year under consideration, therefore, there is



no revenue loss in the claim of the foreseeable losses. The relevant details submitted by the assessee are reproduced as under:

**ITD Cementation India Limited**  
**A.Y.: 2016-17**

**Comparison of foreseeable loss provided in A.Y. 2016-17 with actual cost in next year**

(Rs. in Crores)

Sr. No.	Project No.	Name of the Project	Expected additional cost provided in AY 2016-17	Actual Additional Cost incurred in AY 2017-18	Excess cost incurred in AY 2017-18
			A	B	C = B - A
1	28813BL	PWD2	16.18	29.07	12.89
2	28713BL	PWD1	11.91	29.09	17.18
3	32814CH	Bayaweaver Noida	0.04	0.04	0.01
4	30413CF	VSP Vizag	0.19	0.37	0.18
5	31513CF	CMRL Chennai	1.52	2.22	0.70
6	16710DL	Sasan Road Bridge - RIL	0.59	0.00	(0.59)
7	30513DW	CC50, Delhi	4.48	10.69	6.21
<b>Total</b>			<b>34.90</b>	<b>71.48</b>	<b>36.58</b>

6.2.3 The Ld. Counsel further submitted that the assessee is otherwise eligible for deduction u/s 80IA of the Act and deduction to the extent of Rs.209.30 crores was available in the year under consideration, thus the entire exercise by the Revenue was tax neutral. Further, the Ld Counsel relied on decision in the case of the **CIT v. Harikishan Jethalal Patel reported in ITR 168 472 (Gujarat)** and submitted that it would not be permissible to grant a second inning to the revenue for verification or examination of the estimated expenses in respect of each project for carrying out mere fishing inquiry.



6.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that the foreseeable losses are arising from the estimation or projection of expenses in respect of each project, which are yet to be incurred and undisputedly not incurred in the year under consideration. The first contention of the assessee is that since the identical foreseeable losses have been allowed to the assessee in earlier years by the Tribunal, therefore, following the rule of the consistency, said losses should be allowed to the assessee in the year under consideration also. The finding of the Tribunal in ITA No. 2991/Mum/2011 for AY 2004-05, deleting the disallowance of 'foreseeable loss' is reproduced by the Id CIT(A) in para 5.2 of the impugned order is extracted for ready reference as under:

*"5.2 During the appellate proceedings, it was submitted by the appellant that the Hon'ble ITAT in appellant's own case for A.. 2004-05, on similar facts and circumstances, had decided the issue in favour of the appellant by deleting the disallowance u/s. 37(1). The relevant portion of the Hon'ble ITAT order in ITA No. 2991/Mum/2011 dated 17.05.2013, is reproduced as under:-*

*"14. We have considered the rival submissions and perused the orders of the lower authorities. We have also the benefit of going through the AS-7 issued by ICAI. At the very outset, it would not be out of place to consider the provisions of Sec. 145 of the Act. Sec. 145(2) of the Act provides that the Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income. It is a fat that AS-7 has not been notified by the Central*



Government. This does not mean that the assessee is precluded from following AS-7. A perusal of the provisions of Sec. 145 show that Accounting Standards which have been notified by the Central Government have to be mandatorily followed by the assessee. But this does not mean that the assessee cannot follow other Accounting standards issued by ICAI. ICAI being the highest accounting body of the country, created by an Act of Parliament, Accounting Standards issued by it cannot be brushed aside lightly. On the contrary, if an assessee is following the Accounting Standards issued by ICAI, it would give more credibility and authenticity to its account. AS-7, inter-alia, provides:

.....

15. It is not in dispute that the assessee is executing fixed price contract which means that the contractor has agreed to a fixed contract price or rate in some cases subject to cost escalation prices. As per AS-7, the assessee is entitled to make provision for foreseeable losses.

.....

18. A similar view has been taken by the Tribunal in the case of *Jacobs Engineering India P. Ltd.* (2009 TO 533) wherein the assessee's claims of foreseeable losses were allowed irrespective of method of accounting in terms of AS-7. In the case of *Dredging International* in 48 SOT 430 (2011), the issue before the Tribunal was whether us. 37(1) of the Act provision for foreseeable loss made in accordance with guidelines of AS-7 and duly debited in audited accounts of company is an allowable expenditure. The Tribunal decided the case in favour of the assessee and held 'yes' it is an allowable expenditure. The Tribunal while deciding this issue has also considered the decision of *Mazagaon Dock* (29 SOT 356).

19. Considering the facts of the case in the light of the accounting standards and the decisions of the Tribunal (*supra*), and as no distinguishing cases have



*been brought on records by the revenue, reversing the findings of the Ld. CIT(A), we direct the AO to recomputed the business profits by allowing the losses provided by the assessee in its books. The appeal filed by the assessee is allowed.”*

*5.2.1 As the issue is identical to that of the year under consideration, I have no reason to deviate from the findings of the Hon'ble ITAT. Therefore, respectfully following the decision of the Hon'ble ITAT, the disallowance of Rs. 2,45,07,479/- U/S. 37(1) is deleted. It is however clarified that the appellant shall not be entitled to avail deduction of this amount in any other year, as it would tantamount to double deduction. Should such a benefit have been availed by the appellant, the same shall be brought to the notice of the AO and may be withdrawn.*

*Accordingly, Ground No. 5 of the appeal is allowed.”*

6.4 We note that the Tribunal (supra) has allowed the claim of 'foreseeable losses' on the ground that same was claimed following the accounting standard AS-7 of Institute of chartered Accountant of India (ICAI) without any factual finding whether the provision of the expenses were in the nature of ascertained liability. As far as allowance of provision of expenses u/s 37(1) of the Act, the Coordinate bench of Tribunal in the case of L'orial India I.T.A. No. 1198/Mum/2021 (A.Y. 2016-17) I.T.A. No. 802/Mum/2022 (A.Y. 2017-18) has analysed that accrual of liability of expenses is different from liability to pay and liability is ascertained, moment the liability of expense is accrued. The relevant finding is reproduced as under:

*“11. The next issue urged in AY 2016-17 relates to the disallowance of claim of Provision for expenses. The assessee had made “Provision for outstanding expenses” to the tune of*



Rs.96,28,68,265/- as per the requirement of mercantile system of accounting and claimed the same as deduction. Since it had not deducted tax at source from the above said provision claimed as deduction, the assessee voluntarily disallowed 30% of the above said claim u/s 40(a)(ia) of the Act. The AO treated the above said provision as 'unascertained liability' and accordingly took the view that the same is not allowable as deduction. The AO noticed that the assessee has voluntarily disallowed 30% of the expenses u/s 40(a)(ia) of the Act and further a sum of Rs.68,04,24,906/- has been included in the Transfer pricing adjustment. Accordingly, the AO deducted the above said amount of Rs.68.04 crores from the claim of Rs.96.28 crores and from the balance so arrived, he allowed further deduction of 30% (voluntarily disallowed u/s 40(a)(ia) of the Act) and accordingly disallowed net balance of Rs.19,77,10,351/-. The Ld DRP also confirmed the same. L'Oreal India Private Limited 14

12. We heard the parties on this issue and perused the record. The assessee has made provision for expenses for the services availed by it by the year end, for which bills have not yet been received. However, the tax authorities have noticed that the "liability to pay" the expense shall arise only when the bills are received by the assessee. Since the bills have not been received, there was no liability to pay the expenses. Accordingly, the tax authorities have taken the view that, in the absence of any liability to pay for these expenses as at the year end, the provision for expenses so created by the assessee shall fall under the category of "unascertained liability" and accordingly not allowable as deduction.

13. There is no dispute with regard to the fact that the assessee is following "mercantile system of accounting". Under the mercantile system of accounting and also as per the requirement of AS-29 issued by the Institute of Chartered Accountants of India (ICAI), a provision for expenses should be made when:- a. an enterprise has a present obligation as a result of past event. b. it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation, and c. a reliable estimate can be made of the amount of obligation. Hence it is imperative for a concern, following mercantile system of accounting, to provide for all known expenses and losses as at the year end, even if the relevant bills have not been received. As per standard accounting practices, not providing for known expenses/losses would, in fact,



*distort the operating results of the business concern and it would not reflect true and fair profit of the year. We have noticed that the assessee has provided for expenses for which services have been availed by it, meaning thereby, the liability towards those expenses has already accrued to the assessee. However, the actual liability to pay shall arise only upon on production of bills by the service provider. Thus, there is distinction between “accrual of liability” and “liability to pay for expenses”. There should not be any dispute that the “accrued L’Oreal India Private Limited 15 liability” cannot be considered as “unascertained liability”. Accrued liability is an ascertained liability, but the liability to pay it has not arisen. We notice that the the tax officials have been carried away by the fact that the liability to pay shall arise upon the assessee only after the receipt of the relevant bills and have not considered its accrual. The fact that there was an obligation upon the assessee to pay for the liability as a result of past event cannot be denied. By belated receipt of bills, the payment only gets postponed, but not the liability that has already accrued to the assessee. It is also fact that the assessee has been providing for known expenses and losses year after year and the said provision has been verified by the statutory auditors of the assessee company. The Ld A.R submitted that the provision for expenses so created has been accepted by the AO in the past. Accordingly, we are of the view that the tax authorities are not justified in holding that the Provision for expenses is an unascertained liability. As per the accounting principles discussed above, it is an ascertained liability and the same is eligible for deduction while computing total income. Accordingly, we direct the AO to delete the disallowance of Provision for expenses.”*

6.5 The Tribunal in above decision has held the for ascertained liability, the liability to incur expenses should be accrued and raising of bills for expenses is not mandatory. For expenses to accrued, the services must have been rendered by the supplier party under terms of agreement with the assessee. Thus the expenditure has to be crystallized in the year under consideration for eligible for deduction u/s 37(1) of the Act.



6.6 Be the position of allowability of provision of expenses as per the precedent mentioned above, however, on perusal of the facts of the year under consideration, we find that issue in dispute is slightly different from the provision of expenses. In the case assessee is following percentage completion method for recognising profit or loss from the construction projects. The Institute of chartered accountants of India(ICAI) has issued a detailed guidelines regarding recognising profit following percentage completion method in the form of AS-7. Relevant clauses of said AS-7 are 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 (c) the amount of profits expected to arise on other contracts which are not treated as a single construction contract in accordance with paragraph 8.*

*Changes in Estimates*

*37. The percentage of completion method is applied on a cumulative basis in each accounting period to the current estimates of contract revenue and contract costs. Therefore, the effect of a change in the estimate of contract revenue or contract costs, or the effect of a change in the estimate of the outcome of a contract, is accounted for as a change in accounting estimate (see Accounting Standard (AS) 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies). The changed estimates are used in determination of the amount of revenue and expenses recognised in the statement of profit and loss in the period in which the change is made and in subsequent periods.”*



6.7 Thus, the estimate of change of total cost of the project needs to be taken for working of percentile of completion of contract as per AS-7. Those guidelines are in conformity with provision of various section of the Act, according to which wherever the assessee is following mercantile method of accounting, the income is to be assessed on receipt or accrual, whichever is earlier and similarly liability of the expenses also to be considered on accrual basis. Under the percentage completion of method, the revenues recognised from the project in proportion of the work completed and accordingly profit or loss from the project is reported. The assessee following the percentage of completion method has recognised the profit or loss from the relevant construction projects, which have been summarised in the table above. For the year under consideration, the assessee has further escalated the cost of the projects and reworked the profit or loss to be recognised from the projects following the AS-7 as per clause 35 reproduced above. In other words, the assessee has further estimated the loss from those projects in future years. On perusal of the table of computation of foreseeable loss of Rs. 2.45 crores submitted by the assessee, we find that column 'E' is detail of expected cost to be incurred for completion of the project in future years. Taking into consideration this projected total cost of each project shown in column 'E', the assessee has recognized profit or loss from each project upto the year end in column 'I' of the above table applying the percentage completion method. Thus estimated cost on the project to be



incurred in future years has been taken for computing percentage profit or loss for the year under consideration. But for the purpose of income-tax, assessee has claimed total loss or profit from the project, which would arise on 100% completion of project as per column 'G' of the above table. This additional loss has been claimed from each project in the year under consideration, which has been termed as 'foreseeable loss' as computed in column 'J' of the above table. This claim is however neither supported by the AS-7 nor allowable under the provisions of the Act as held by the Tribunal in the case of 'L'orial India (supra)'. We also note the assessee has enhanced the projected cost to be incurred in future years as per column 'E' of the table, which has varied the denominator for computation of percentile of work or project completed ( for the purpose of recognizing profit/loss under percentage completion method of Contracts) also resulting into increase in total loss from the project. But, when being asked by the bench to provide details of such estimation, the Id Counsel expressed his inability in providing such details. This "foreseeable loss" has yet not been accrued because assessee has not completed the 100% work of the project. This amount of foreseeable loss will accrue only on completion of the project and it is premature at this stage. The claim of yet to be accrued loss is even against the principles of recognizing profit/loss under the percentage completion method. The decision of the Tribunal (supra) in earlier years is without considering the facts of the case in hand, therefore we are not



relying upon the same. As far as Rule of consistency cited by the learned counsel of the assessee is concerned, we find that the Hon'ble Supreme Court in the case of Distributors (Baroda) Pvt. Ltd. 155 ITR 120 has held that there is no heroism in continuing the error and it should be rectified at earliest. Accordingly, we reject the contention of the assessee for allowing the foreseeable losses as ascertained liability under the provisions of section 37 of the Act.

6.8 As far as second contention of the learned counsel of incurring of expenses in the subsequent years, is concerned we are of the opinion that the claim of foreseeable loss is allowable in the year of incurring of the expenses and not in the year prior to that. As far as contention of the revenue neutral exercise, same can be ascertained only after due verification by the Assessing Officer of the impact of allowing or not allowing the foreseeable losses. No such computational calculation has been filed before in support of the contention of having no revenue impact and therefore we accordingly reject the contention of the learned counsel of the assessee.

6.9 As far as the decision cited by the Ld. Counsel in the case of Harikishan Jethalal Patel (supra) is concerned, we find that facts which are essential for delivery of justice cannot be ignored merely for the reasons that lower authorities have not brought the same on the record. However in the instant case, we are not restoring the issue in dispute to the file of the Assessing Officer, because as far



facts of the year under consideration are concerned no further verification required. Hence ratio in the case cited by the assessee is not applicable over the facts of the case. The ground No. 2 of the appeal of the Revenue is accordingly allowed.

7. In the result, the appeal of the Revenue is partly allowed.

**Order pronounced in the open Court on 26/07/2023.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 26/07/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**