

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 399/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2010-11

Consolidated Construction Consortium Ltd.,
No.3, 2nd Link Street,
CIT Colony, Mylapore
Chennai – 600 004.

The ACIT,
vs. Corporate Range - 1,
Chennai.

PAN: AAACC 4214B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./**ITA Nos.: 845 & 2799/CHNY/2019**

निर्धारण वर्ष/Assessment Years: 2010-11 & 2011-12

The DCIT,
Corporate Circle 1(2),
Chennai.

Consolidated Construction Consortium Ltd.,
vs. No.3, 2nd Link Street,
CIT Colony, Mylapore,
Chennai – 600 004.

(अपीलार्थी/Appellant)

PAN: AAACC 4214B

(प्रत्यर्थी/Respondent)

निर्धारितीकी ओर से/Assessee by

: Shri S. Sridhar, Advocate

राजस्वकीओरसे /Revenue by

: Shri T. Vasanthan, CIT

सुनवाई की तारीख/Date of Hearing : 27.06.2023

घोषणा की तारीख/Date of Pronouncement : 30.08.2023

आदेश / O R D E R**PER MAHAVIR SINGH, VICE PRESIDENT:**

These cross appeals by the assessee and Revenue in ITA No.399 & 845/CHNY/2019, are arising out of order of the Commissioner of Income Tax (Appeals)-1, Chennai in ITA No.250/CIT(A)-1/2017-18 dated 31.12.2018. The assessment was framed by the ACIT(OSD), Corporate Range 1, Chennai, for the assessment year 2010-11 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.03.2015. The appeal by the Revenue in ITA No.2799/CHNY/2019 is arising out of the order of the order of the Commissioner of Income Tax (Appeals)-5, Chennai in ITA No.80/CIT(A)-5/2014-15 dated 25.07.2019. The assessment was framed by the DCIT, Company Circle 1(3), Chennai, for the assessment year 2011-12 u/s.143(3) of the Act.

Revenue's appeal in ITA Nos.845 & 2799/CHNY/2019

2. The only common issue in these two appeals of Revenue is as regards to the order of CIT(A) allowing the claim of deduction on provision for retention money. The facts and circumstances are exactly identical in both the years on this issue and hence, we will take the facts from assessment year 2010-11 in ITA

No.845/CHNY/2019. The grounds raised by the Revenue read as under:-

2. The Ld. CIT(A) erred in allowing the claim of deduction Rs.35,10,38,957/- being provision for retention money on account of shortfall amount between the valuation of Work In progress(WIP) under Realisable Sale Value method for Income tax purposes and percentage completion method for computation of income for book purposes.

3. The Ld. CIT(A) erred in applying the decision of the Hon'ble High court Madras in CIT v. East Coast Constructions India Ltd [(2007) 160 taxmann 399 (Madras)] to the present case as the facts of both the cases are distinct and different. In the cited judgement, the assessee was carrying on business of construction and amounts retained by parties as a percentage of bills raised to be paid after contract was completed, were to be treated as income of assessee only when the moneys were actually received eventhough assessee was following mercantile method of accounting. However, in the present case, the retention money arises on account of shortfall between the valuation of Work in progress under Realisable value method for income tax purposes and percentage completion method for computation of income for book purposes.

3. Brief facts are that the AO disallowed the claim of deduction of retention money amounting to Rs.35.10 crores for the assessment year 2009-10. The AO noted that the deduction claimed was reckoned as the difference between closing realizable value as on 31.03.2009 and 31.03.2010 and further reduced by the work-in-progress as per the books of accounts. Further the AO noted that the amount collected as retention money of Rs.2,27,19,813/- was returned by the assessee as income. The AO rejected the assessee's claim that the assessee had regularly adopted the

percentage completion method providing for reduction in actual payments as well as actual realization. Therefore the AO noted that during the relevant previous year, the assessee has already utilized a different accounting method i.e., realizable sale value method for valuation of opening and closing stock and thereby claimed deduction of retention money. The AO rejected the assessee's claim of deduction on the ground that retention money is in the nature of unascertained liability and this will become ascertained as soon as the contractee admits the bill. But the CIT(A) allowed the claim of assessee by following the decision of Hon'ble Madras High Court in the case of CIT vs. East Coast Constructions & Ind. Ltd., (2007) 160 taxmann 399 by observing as under:-

“12. CIT(A)'s inferences and decision:

(i).....

(ii) The Madras High Court in the case of CIT, Chennai vs. East Coast Constructions & Ind. Ltd (2007) 160 taxmann 399 (Madras) had discussed the issue regarding the amounts retained by the parties as a percentage of bills raised to be paid after the contract was completed. In their order dated January 21, 2006, the Hon'ble High Court ruled that the retention money was to be treated as income of the assessee only when the moneys were actually received even though the assessee was following mercantile system of accounting. While elaborating on the issue, the jurisdictional High Court maintained that the retention money was payable to the assessee only after inspection by the other party. If the other party was not satisfied with the appellant's work, the said retention money was not payable. The assessee was entitled to receive the retention money after completion of the contract. When the assessee had no right to receive the retention money, he had no right to enforce for payment. In the instant case, the appellant excluded the retention money that was receivable from the

clients and offered the amounts collected as retention money by the appellant as income. The appellant is thus entitled to receive the retention money only after satisfactory execution and completion of the contract and the date of the billing. Hence, as per the ruling of the jurisdictional High Court in the case of East Coast Constructions (cited supra), the retention money has to be treated as income only when the contract satisfactorily completed. Therefore, there is considerable merit in the appellant's contention regarding their claim of deduction of retention money and it is hereby accepted in principle. However, it is noted that whereas the amounts excluded for the A.Ys. 2006-07 to 2013-14 stood at Rs.1,98,84,85,166/-, the amounts included in the total income by way of retention money for the subsequent A.Ys. 2012-13 to 2017-18 amounted Rs.1,57,84,70,551/-. The A.O, while giving effect to this order may take into account and verify the movement of the transactions of the appellant with the JVs concerned, the date of completion of the contracts and the quantum of retention money received and offered by the appellant for tax in the subsequent assessment years. The appellant is requested to furnish the requisite details in support of his claim to the A.O. This ground of appeal is partly allowed.”

Aggrieved, now Revenue is in appeal before the Tribunal.

4. At the outset, the Id.counsel for the assessee filed copy of Tribunal's order in assessee's own case in ITA No.594/Mds/2014 for the assessment year 2007-08 and stated that the Tribunal vide para 12, 12.1 & 12.2 has allowed the claim of assessee with giving certain directions to the AO. We noted that the Tribunal in para 12 had considered the issue as under:-

12. We have heard both the parties and perused the material on record. Generally, the expenditure which is actually incurred or is incurred in a relevant year would be allowed as deduction while computing the income from business. Such a liability has to be in praesenti. However, at the same time, it relates to the works undertaken by the assessee, completed contract

method of accounting is followed which is consistent with the Accounting Standards and these Accounting Standards also laid down the norms indicating the particular point of time when the provisions for all known liabilities and losses have to be made. The making of such a provision by the assessee appears to be justified more so when the assessee had recognized gain as well on such project during the assessment year under consideration. This appears to be in consonance with the principle of matching cost and revenue as well. The reason given by the Department is that the retention money which is receivable was not recognized as income as such, retention payment also cannot be allowed as deduction while computing the income of the assessee. As rightly argued by the assessee, both these are governed by different Accounting Standards. Retention payment is governed by AS-7 issued by ICAI, New Delhi. On the other hand, retention money receivable is governed by AS-9. What is applicable to retention money receivable cannot be applied to retention money payable as these are governed by different Accounting Standard. Further it is undisputed that whenever assessee incurred expenditure on the project it is admissible for deduction. The only dispute raised by the Revenue is regarding the year of liability of expenditure. Considering that the assessee company is assessed at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure is, in any case, revenue neutral. We are reminded of the classic observation made by the Bombay High Court in the case of CIT vs Nagri Mills Co. Ltd, 33 ITR 681 which reads as under:

“ We have often wondered why the income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every

now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other."

12.1 The aforesaid observation of the Bombay High Court was reiterated by the Delhi High Court in the case of CIT vs Shri Ram Pistos and Rings Ltd, 220 CTR 404, as under:

"Finally, we may only mention what has been articulated by the Bombay High Court in CIT v. Nagri Mills Co. Ltd. [1958] 33 ITR 681 (Bom) as follows : . . .

In the reference that is before us there is no doubt that the assessee had incurred an expenditure. The only dispute is regarding the date on which the liability had crystallized. It appears that there was no change in the rate of tax for the assessment year 1983-84 with which we are concerned. The question, therefore, is only with regard to the year of deduction and it is a pity that all of us have to expend so much time and energy only to determine the year of taxability of the amount."

12.2 Further, in our opinion, the provision for accrued liability which has to be discharged at a future date by the assessee is an allowable expenditure. In the case of CIT vs Micro Land Ltd, 347 ITR 613[Karnataka High Court], the assessee claimed deduction u/s 37 of the Act for provision for future warranty. The Assessing Officer opined that provision for future warranty is contingent liability and cannot be allowed. The Supreme Court in the case of Rotork Controls India Pvt. Ltd vs CIT, 314 ITR 62, held that the provision made by the assessee for warranty claims on the basis of past experience is allowable deduction u/s 37 of the Act. In the case of Bharat Earth Movers vs CIT, 245 ITR 428, the Supreme Court held that where the assessee has incurred expenditure which is more than the provision for warranty obligation made in the books of account, it cannot be said that the provision made by the assessee is not capable of being estimated with the reasonable certainty though actual quantification was not possible and therefore, the Tribunal was justified in allowing the deduction. The Delhi High Court in the case of CIT vs Ericsson Communications P. Ltd, 318 ITR 340, held that provision for warranty claims on scientific basis which is consistently applied by the assessee for its business was allowable as

deduction. The Madras High Court in the case of CIT vs Luk India Pvt. Ltd, 239 CTR 440, held that provision for warranty claimed by applying the settled principles of having regard to the fact that claim was based on a scientific approach and it was worked out on the average of previous year's warranty settlement is allowable expenditure. Same view was taken by the jurisdictional High Court in the case of Kone Elevator India Pvt. Ltd vs ACIT, 340 ITR 46. Further, the Supreme Court in the case of Calcutta Co. Ltd vs CIT, 37 ITR 1, held that where the assessee was following the mercantile system of accounting is entitled for deduction of the expenditure which is incidental to the business on accrual basis though it was not actually incurred during the relevant accounting year. The Kerala High Court in the case of CIT vs Indian Transformers Ltd, 270 ITR 259, held that provision created by the assessee for after sales services based on warranty was towards a definite and ascertained liability. On the basis of relevant facts the provision cannot be treated as a contingent liability and therefore, the same was allowable as deduction. Same view was taken by the Delhi High Court in the case of CIT vs Whirlpool of India Ltd, 242 CTR 245, wherein held that the assessee consistently making provision for warranty on the basis of actuarial valuation in respect of machines sold during the year could not be precluded from revising this provision after taking into consideration that warranty period of the goods sold under warranty was exceeding and provision already provided in a particular year is falling short of the expected claim that may be received. Such a provision is based on scientific study and actuarial basis and to be allowed as a business expenditure. Hence, in our opinion, the provision for payment made by the assessee towards sub-contract is allowable expenditure as the assessee recognized the revenue from the said contract as income in the assessment year under consideration. Further, we make it clear that the assessee cannot claim the same expenditure on actual payment basis, otherwise it amounts to double deduction – one on the basis of accrual and another on the basis of actual payment. Hence, we direct the Assessing Officer to allow this retention money payment only on accrual basis and not on actual payment basis. With these observations, we remit this issue to the file of the Assessing Officer for quantification. This ground is partly allowed.

5. When this was confronted to Id. CIT-DR, he could not controvert the above fact situation.

6. After hearing both the sides and going through the facts of the case, we noted that this issue is squarely covered but the AO will examine the claim of assessee and assessee cannot claim the same expenditure on actual payment basis again otherwise it will amount to double deduction one on the basis of accrual and another on the basis of actual payment. Hence as observed in earlier order by the Tribunal, we direct the AO to consider that finding and accordingly allow the claim of assessee. This issue of Revenue's appeal is dismissed with directions.

7. Similar are the disallowance made in assessment year 2011-12 in ITA No.2799/Chny/2019. Since the facts and circumstances are identical, taking a consistent view, we dismiss this issue in assessment year 2011-12 also with similar directions. Accordingly, both the appeals of the Revenue are dismissed with directions.

Assessee's appeal in ITA No.399/CHNY/2019

8. The only issue in this appeal of assessee is as regards to the order of CIT(A) sustaining the addition made by AO of Rs.114,82,57,398/- being difference in reporting closing work-in-progress and presumed charge of work-in-progress. For this

assessee has raised various grounds which are argumentative in nature and the relevant grounds 2, 3 & 4 read as under:-

2. The CIT (Appeals) erred in sustaining the addition of Rs.114,82,57,398/- as quantified in the assessment order in para 6 pertaining to the presumed discrepancy on the understanding of financial accounting in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that having elaborately brought to the notice at every stage of the proceedings including in the letter/submissions dated 25.07.2018, the presumed difference in reporting closing WIP and presumed charge of VWIP as per para 6 of the assessment order was wrong, erroneous, unjustified, incorrect and not sustainable in law.

4 The CIT (Appeals) failed to appreciate that the difference in closing WIP as arrived at para 3.1 of the assessment order on various facets which constituted the disputed addition was wrong, erroneous, unjustified, incorrect and not sustainable in law while not appreciating the reconciliation provided at every stage of the present proceedings.

9. Brief facts are that the assessee is a public limited company engaged in the business of civil construction. As regards to the above addition, there are two elements (i) difference between closing work-in-progress as per balance sheet and as per profit & loss account amounting to Rs.97,34,89,994/- and (ii) excess work-in-progress debited at Rs.17,47,67,404/-. During the course of hearing before us, the Tribunal vide order sheet entry dated 02.01.2023 called for remand report in regard to both the items with the following directions:-

“The Department is directed to call a remand report from the AO in regard to reconciliation on addition on account of difference in closing work-in-progress amounting to Rs.97,34,89,994/-. Similarly, the AO will give remand report on difference in opening work-in-progress as on 01.04.2009 amounting to Rs.17,47,67,404/-. The AO will examine the accounts of the assessee as well as the consortium i.e, SPV special purpose vehicle created by assessee along with Hervepomerleau International CCCLJV(HPICCCCLJV). The assessee will produce the required documents and details before the AO.”

Accordingly, the assessee appeared before AO and filed reconciliation statement on account of difference in closing work-in-progress as per balance sheet viz-a-viz the profit & loss account. The AO in this remand report dated 06.03.2023 vide F.No.Remand Report/AAACC4214B/CC-1(1)/2022-23 has considered the difference of Rs.97,34,89,994/- being arising due to consolidation of accounts of the assessee company with that of the SPV (special purpose vehicle). The AO reported the entire facts after considering the documents, accounts and submissions of the assessee. The AO reported as under:-

4.4 It is seen from the submissions of the assessee company that the Assessee Company CCCL had, for the first time, while finalizing the accounts of year ended 31.03.2010 (FY 2009-10), consolidated its numbers with the SPV Herve Pomerleau International (HPI) Consolidated Construction Consortium Limited (CCCL)(PAN:AAAAH3430N) and such consolidated status of Accounts are considered in the public domain, in line with the principles enunciated under AS 7 – Construction Contracts. Also, the assessee company submitted that M/s.CCCL (i.e the Assessee Company) had undertaken certain projects for the SPV, for which it had received payments from them. Accordingly, the assessee company

submitted that while consolidating the accounts of both the assessee company and the SPV, the intercompany adjustments was necessitated.

4.5 As per the submission of the assessee company, the Contract WIP as reported in the Balance Sheet and as per its submission during remand proceedings is tabulated as under:-

	AS PER AUDITED BALANCE SHEET	AS PER ASSESSEE SUBMISSION
	Rs.	Rs.
Ongoing Jobs		
CCCL	47,85,82,37,817	47,85,82,37,817
SPV	3,22,99,07,148	3,22,99,07,148
	51,08,81,44,965	51,08,81,44,965
Less: Inter Company Adjustment	8,72,23,725	1,06,07,13,719
Less : Progress Payments		
CCCL	40,87,86,32,876	40,87,86,32,876
SPV	2,53,35,42,041	2,53,35,42,041
	43,41,21,74,917	43,41,21,74,917
Less: Inter Company Adjustment	0	97,34,89,994
Progress Payments	43,41,21,74,917	42,43,86,84,923
	7,58,87,46,323	7,58,87,46,323
Add: Contract Cost relating to Future activities		
CCCL	1,66,27,51,655	1,66,27,51,655
SPV	40,94,26,867	40,94,26,867
Contract Cost relating to Future Activities	2,07,21,78,522	2,07,21,78,522
Closing WIP	9,66,09,24,845	9,66,09,24,845

4.6 From the above table it could be seen that in Balance Sheet the assessee company has reported ongoing jobs at Rs.5100.09 Crores as against Rs.5002.74 Crores reported as Increase/Decrease in WIP in Profit & Loss Account.

4.7 The assessee company vide its submission has stated that the net figure of Inter Company Adjustment Rs.8,72,23,725/- was considered in the Balance Sheet.

4.8 However, while arriving at increase/decrease in WIP in the Profit & Loss Account, the Inter Company Adjustment under ONGOING JOBS was taken as Rs.1,06,07,13,71 9/- and the Inter Company Adjustment under PROGRESS PAYMENTS was considered at Rs. 97,34, 89,994/-. The assessee has submitted that net of these two figure results in Rs.8, 72, 23,725/- which was reported in the Balance Sheet.

4.9 It is seen from the submissions of the assessee company, that the inter-company transactions had been adjusted in line with AS 21 of IGAAP and the concluded difference under the Assessment Order to the extent of Rs.97,34,89,994/- is purely a compensating aspect between two components (a) - ongoing jobs (b) - Progress payments inter-se which has not vitiated the total closing inventory at Rs.9,66,09,24,855/-. Hence in order to verify the veracity of Inter Company Adjustment under ONGOING JOBS and PROGRESS PAYMENTS following details were called for vide letter dt. 02.02.2023: -

Bills/Invoices raised by M/s. CCCL to Herve Pomerleau International (HP) CCCL JV to the tune of Rs. 106.07 Crores with supporting Bank Account Statements.

4.10 The assessee company vide its submission dated 10.02.2023 has furnished details of bills raised by the assessee on Herve Pomerleau International (HPI) CCCL JV for Rs.106,07,13,719/- (along with copies of invoices available) which consists of two Job Nos. viz., IC 605 & IC 634 :-

IC 605

S.No.	Description	Amount
1	CCCL Rab3	67,13,339
2	CCL Rab 5	4,51,36,191
3	CCL Rab 5	5,61,51,549
4	CCL Rab 6	5,78,92,509
5	Rab 7 CCL	7,90,68,373
6	Rab 7 Revised Bill	81,60,106
7	CCCL Rab 8	7,14,02,135
8	CCCL Rab 9	7,04,68,844

9	Rab 10 CCL	6,03,98,566
10	CCCL Rab 11	10,32,09,136
11	CCCL Rab 12	10,97,54,630
12	CCCL Rab 13	8,82,55,152
13	CCCL Rab 14	7,77,83,523
14	Rab Miscellaneous	22,14,244
Total		83,66,08,297

IC 634

S.No.	Description	Amount
1	Adayar Bridge CCCL Rab	14,47,09,359
2	CCCL Adayar Rab	2,95,66,800
3	Adayar Site CCCL PYMT CCCL Rab	32,94,47,286
4	CCCL Rab 4 Adayar Site	4,33,12,494
5	CCCL Rab 5 Adayar Site	9,70,69,483
Total		2,24,10,542

4.11 The assessee company furnished details of receipt of Rs.97,34,89,994/- as progress payments from SPV. The assessee company submitted copy of bank account statement, highlighting Progress Payments received from SPV, copy of Cheques received from SPV towards Progress payments. The assessee company also submitted Ledger Account of the assessee company in the books of SPV viz., Herve Pomerleau International (HPI) CCCL JV for the F.Y.2009-10. Further, the assessee company submitted that balance receivable as on 31.03.2010 from SPV was Rs.8,72,23,725/- being the difference of bills raised and progress payments.

4.12 It is verified from ledger copies and bills/invoices/vouchers, copy of bank statements submitted by the assessee company that during the A.Y.2010-11 the assessee company has raised bills on SPV for Rs.1,06,07,13,719/- for the jobs IC 605 and IC 6344 and received payment of Rs.97,34,89, 994/-. The difference of these two amounting to Rs.8,72,23,725/- is balance receivable from SPV as on 31.03.2010.

4.13 In the Balance Sheet, the assessee has deducted that the amount receivable of Rs.8,72,23,725/- from ONGOING JOBS and arrived at Closing WIP at Rs.9,66,09,24, 845/-. As tabulated in Para No.4.5 above, it

could be seen that the assessee has only taken the net figure of bills raised and amount received i.e, Rs.8,72,23,725/- while arriving at Contract WIP. Further, it is seen that there is no difference in Closing WIP of Rs.9660.92 Crores in either way of calculation.

4.14 As submitted by the assessee when Inter Company Adjustment towards bill raised of Rs.1,06,07,13,719/- is to be deducted from Ongoing Jobs, similarly payment received to the tune of Rs.97,34, 89, 994/- have to be deducted from Progress Payments as inter Company Adjustment. This will have same impact on Closing WIP.

4.15 Thus, the difference between Closing WIP as per Balance Sheet vis-a-vis the Profit and Loss Account of Rs.97,34,89,994/- is due to the fact that the consolidation of accounts of the assessee company and SPV was done for the first time during the F.Y.2009 -10 and also due to Inter Company Adjustment as elaborated above.

10. The Id.CIT-DR as well as the Id.counsel for the assessee agreed that the AO has verified this closing work-in-progress as per balance sheet and the profit & loss account and there is actual difference exists amounting to Rs.97,34,89,994/-. We noted that the AO himself has verified the factual difference arising between closing work-in-progress between merged accounts, however to ensure we again refer back this issue to the file of the AO who will examine the difference during the course of giving effect to the order of this Tribunal. Hence, this issue is allowed for statistical purposes.

11. As regards to excess claim of opening work-in-progress of Rs.17,47,67,404/-, the AO on the directions of ITAT submitted the remand report considering the capital work-in-progress of Dollars Colony, JP Nagar, Bangalore, Jeypore Colony, Padmavathiyar Street, Chennai and ongoing jobs, the closing work-in-progress of SPV and considered that the difference arose due to reclassification of assets and consolidation of accounts of the assessee company and that of the SPV. The AO reported in his remand report of factual verification as under:-

5.5 In order to verify the same, the following details were called for vide letter dt. 02.02.2023: -

It is seen from the financials that difference in Closing WIP on 31.3.2009 & 31.03.2010 was on account of Rs.3.74 Crores carried to Capital WIP. In the light of the above, please provide details regarding the Capital WIP of Jeypore Corporate Office and Bangalore Regional Office with supporting documents. Also specify whether the same has been carried to fixed assets and any depreciation has been claimed on the same, in the following Assessment Years.

5.6 The assessee has submitted that this Comprises of two components as under, which are self-generated buildings in two different locations, the details of which are as under - Capital Work in Progress forming part of the fixed assets of the Assessee Company

Particulars	Amount as at 31.03.2009 (Rs.)	Purpose of the Building
Dollars Colony, JP Nagar, Bangalore	42,26,672	For regional office of Bangalore
Jeypore colony, Padmavathiyar Street, Chennai	3,31,87,261	For Corporate Office
Total	3,74,13,933	

5.7 Dollars Colony, JP Nagar, Bangalore

During the course of FY 2009-10, the above said building had since been completed after incurring the expenditure during the said year, and the total expenditure incurred in this regard had since been capitalized under the following heads of the Assets category.

Sl.No.	Particulars	Amount Capitalized (Rs.)
a.	Addition to "Building"	1,60,15,261
b.	Addition to "Furniture & Fixtures and Office Equipments" (Together	1,86,64,593

##Corroborated with the schedule 4 of the Audited Financials under the respective category of assets

In as much as of the capitalization of the above during the Fin. Year 2009-10, the depreciation has since been provided for in the Books of Account in line with the Companies Act read with corresponding IGAAP- AS 10. Further depreciation has also been claimed in respect of the above assets as set out in section 32 of the Income Tax Act, 1961 while arriving the total income for the tax purposes.

5.8 Jeypore colony, Padmavathiyar Street, Chennai

While this is forming part of the Capital Work in Progress right from its first year of construction and the same sums up to the total of Rs. 3,31,87,261 /- as at 31.03.2009. Thereafter this construction continued during the succeeding years from FY 2009-10 to FY 2013-14 and remaining incomplete even as of today including the latest FY 2021-22 - as at 31.03.2022. The year wise summation is extracted and furnished hereunder:-

FY	Description	Amount (Rs.)	Cumulative (Rs.)
2008-09	Cost Incurred during the FY	3,31,87,261	3,31,87,261
2009-10	Cost Incurred during the FY	3,74,62,875	7,06,50,136
2010-11	Cost Incurred during the FY	7,25,54,931	14,32,05,067
2011-12	Cost Incurred during the FY	6,03,18,051	20,35,23,118
2012-13	Cost Incurred during the FY	1,68,00,678	22,03,23,796
2013-14	Cost Incurred during the FY	54,87,917	22,58,11,713
2014-15	Brought Forward	-	22,58,11,713
2015-16	Brought Forward	-	22,58,11,713
2016-17	Brought Forward	-	22,58,11,713

2017-18	Brought Forward	-	22,58,11,713
2018-19	Brought Forward	-	22,58,11,713
2019-20	Brought Forward	-	22,58,11,713
2020-21	Brought Forward	-	22,58,11,713
2021-22	Brought Forward	-	22,58,11,713
	Total Cost as on 31.03.2022	22,58,11,713	
	Closing balance as on 31.03.2022		22,58,11,713

5.9 The assessee also furnished ledger extract (First 10 pages and last 10 pages due to large number of pages) in respect of individual items incurred during the corresponding years from FY 2008-09 to FY 2013-14 for the purpose of appropriate corroboration. The assessee has submitted that the above said building, continued to be incomplete and hence carried on as capital work in progress throughout the above financial years and furnished the details of extract of the Annual Accounts for the latest year - FY 2021-22 in support thereof.

5.10 In as much as of the above building is incomplete and carried on as capital Work in progress no depreciation has either been claimed under the Companies Act or under the provisions of the Income Tax Act, 1961.

5.11 The submission of the assessee company is considered carefully. The assessee company has reclassified the Opening WIP as on 01.04.2009 into fixed assets (Capital WIP) amounting to Rs.3,74,13,933/- in respect of the assets located at Dollars Colony, JP Nagar, Bangalore and Jeypore colony, Padmavathiyar Street, Chennai. The assessee has also claimed depreciation in respect of the building located at Bangalore and in respect of the building located at Chennai the assessee has submitted that the depreciation has not been claimed as building is incomplete.

5.12 It is seen from Schedule-4 forming part of Balance Sheet as on 31.03.2010 addition to buildings of Rs.3,76,90,625/- is reported and depreciation has also been claimed.

5.13 From the details submitted by the assessee and details available on record, the assessee company's contention that Closing WIP as on 31.03.2009 to the extent of Rs.3,74,13,933/- has been reclassified as Fixed

Assets and the same is purely a Balance Sheet classification which does not have any impact on the revenue is found to be acceptable.

5.14 With regard to the difference in Closing WIP as on 31.03.2009 and Opening WIP as on 31.03.2010 to an extent of Rs.21,21,81,337/-, the assessee company has submitted that inclusion/addition of the SPV's closing stock as at 31.03.2009 for is necessitated due to the consolidation of both the entities accounts for the year ended 31.03.2010 for the first time.

5.15 It is seen from Schedule-4 (Current Assets) of M/s. Herve Pomerleau International (HPI) CCCL JV as on 31.03.2010 under Contract WIP an amount of Rs.21,21,81,337/- is reported as Ongoing contracts as on 31.03.2009 and an amount of Rs.322,99,07,148/- is reported as Ongoing contracts as on 31.03.2010.

5.16 The assessee company has reported Ongoing Jobs of Rs.51,00,09,21,240/- in Consolidated Balance Sheet as on 31 .03.2010 which is inclusive of Ongoing Jobs of SPV amounting to Rs.3,22,99,07,148/-. The details of the same is tabulated as under:-

	As per Balance Sheet (Rs.
Ongoing Jobs	47,85,82,37,817
CCCL	3,22,99,07,148
SPV	51,08,81,44,965
Less: Inter Company Adjustment	8,72,23,725
Ongoing Jobs	51,00,09,21,240

5.17 Thus, the difference of Rs.17,67,47,404/- was purely due to the fact of both reclassification of the Asset and consolidation of accounts of the assessee company and SPV for the first time as elaborated above,

12. When this was confronted to Id.counsel for the assessee as well as the Id.CIT-DR, both agreed that the AO have given factual remand report and agreed that the difference arose on reclassification of assets and consolidation of accounts.

13. After hearing both the sides and going through the remand report of AO, we feel that the AO has examined this aspect in his remand report but to be doubly sure, he can re-verify the difference while giving appeal effect to the order of this Tribunal. Hence the AO can re-verify this issue also and accordingly, this issue is also allowed for statistical purposes.

14. In the result, the appeals filed by the Revenue in ITA Nos.845 & 2799/CHNY/2019 are dismissed and the appeal filed by the assessee in ITA No.399/CHNY/2019 is allowed for statistical purposes.

Order pronounced in the open court on 30th August, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 30th August, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee

2. राजस्व/Revenue

3. आयकरआयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.