

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA**

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

**I.T.A. No. 1151/Kol/2016
Assessment Year: 2009-10**

***J.C.I.T (OSD) CIR-11(1) Kolkata.....Appellant
P-7, Chowringhee Square,
Kolkata - 700 069***

***M/s. Marathan Electric Motors Ltd.....Respondent
58, Taratala Road,
Kolkata - 700 024
[PAN : AAFCA 5012 Q]***

Appearances by:

*Shri Arindam Bhattacharjee, Addl. CIT, appearing on behalf of the Revenue.
Mrs. Sreemati Ghosh, FCA appearing on behalf of the Assessee.*

Date of concluding the hearing : December 05, 2017

Date of pronouncing the order : December 13, 2017

ORDER

Per P.M. Jagtap, AM

This appeal is preferred by the revenue against the order of Ld. CIT (Appeals) - 9, Kolkata dated 29.02.2016.

2. The assessee in the present case is a company which is engaged in the business of manufacturing electric motors and fans. The return of income for the year under consideration was filed by it on 29.09.2009 declaring a total income of Rs. 34,75,90,860/-. During the course of assessment proceedings, it was noticed by the A.O. that the provision for warranty amounting to Rs. 4,16,57,160/- created by the assessee during the year under consideration has not been added back in the computation of total income. For the said reason as well as other reasons given in the assessment order, he made an addition of Rs. 4,16,57,160/- to the total income of the assessee on account of

disallowance of provision for warranty. During the course of assessment proceedings, the assessee also could not establish on evidence the business expediency of the expenses claimed on account of foreign travelling, telephone and freight. The assessee further failed to produce the relevant bills and vouchers to support and substantiate its claim for the said expenses. The A.O., therefore, made a disallowance of Rs. 14,45,673/- being 10% of the foreign travelling expenses and Rs. 9,68,825/- being 20% of the telephone expenses and Rs. 47,91,729/- being 10% of freight expenses claimed by the assessee. He also disallowed the club expenses of Rs. 1,27,258/- claimed by the assessee on the ground that they were personal in nature and not incurred wholly or exclusively for the purpose of assessee's business. Accordingly, the total income of the assessee was determined by the A.O. at Rs. 39,65,81,500/- in the assessment completed under section 143(3) vide an order 30.12.2011.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) disputing the various disallowances made by the A.O. During the course of appellate proceedings before the Ld. CIT(A), it was submitted on behalf of the assessee that provision for warranty was never debited to the profit & loss account and there was thus no question of making any disallowance on account of the said provision. Keeping in view this submission made by the assessee, the Ld. CIT(A) directed the A.O. to verify the claim of the assessee and delete the addition made on account of provision for warranty if the same is found to be not

debited in the profit and loss account. He also deleted the disallowance made by the A.O. out of travelling expenses, telephone expenses, freight expenses and club expenses on the ground that the claim of the assessee for the said expenses was not verified by the A.O. and disallowance was made on estimate basis without pointing out any specific defects. The Ld. CIT(A) thus allowed substantial relief to the assessee and aggrieved by the same, the revenue has preferred this appeal before the Tribunal.

4. The revenue has raised the following grounds in its appeal:

“1. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in directing the A.O. to delete the addition of Rs. 4,16,57,160/- relying on assessee’s submission that amount was not debited to the Profit & Loss Account.

2. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 14,45,673/- on account of travelling expenses.

3. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 9,68,825/- on account of telephone expenses.

4. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 47,91,729/- on account of freight expenses.

5. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,27,258/- on account of club expenses.

5. We have heard the arguments of both the sides and also perused the relevant material available on record.

6. As regards the issue involved in ground no 1, it is observed that the Ld. CIT(A) vide his impugned order has directed the A.O. to verify the claim of the assessee that the provision for warranty was not debited to the profit & loss account and delete the disallowance made on account of provision for warranty if the same is found to be not debited to profit & loss account. In our opinion, there is nothing wrong in this direction given by the Ld. CIT(A) to the A.O. because if the amount of provision for warranty is not debited to the profit & loss account by the assessee, there is no question of adding back the said amount in the computation of the total income and the disallowance made by the A.O. is liable to be deleted. Even the learned DR has not been able to raise any contention in this regard. We, therefore, uphold the impugned order of the Ld. CIT(A) on this issue and dismiss ground no 1.

7. As regards the issue involved in ground no 2 to 5, it is observed that the disallowances made by the A.O. on account of various expenses are deleted by the Ld. CIT(A) on the ground that the A.O. did not verify the claim of the assessee for the said expenses and made disallowances on estimate basis without pointing out any specific defects. It is however, observed from the perusal of the assessment order that the relevant details in order to establish the business expediency of the relevant expenses were not furnished by the assessee during the course of assessment proceedings before the A.O. Even the supporting documents in the form of bills and vouchers

were not produced by the assessee to support and substantiate its claim for the said expenses. As rightly contended by the learned DR, onus in this regard was on the assessee and since there was a failure on the part of the assessee to discharge the same, the A.O. had no option but to make a disallowance on estimate basis. As further contended by him, the Ld. CIT(A) however overlooked this vital aspect and deleted the disallowances made by the A.O. by wrongly putting the entire onus on the A.O. We find merit in this contention of the learned DR. The learned counsel for the assessee however has submitted that sufficient opportunity was not given by the A.O. to the assessee to produce the relevant details and documents in support of its claim for the various expenses during the course of assessment proceedings. She has contended that these details and documents are regularly maintained by the assessee and if opportunity is given by sending the matter back to the A.O., assessee shall produce the same for verification before the A.O. Keeping in view these submissions made by the learned counsel for the assessee, we consider it fair and proper and in the interest of justice to set aside the impugned order of the Ld. CIT(A) on these issues and restore the matter to the file of the A.O. for deciding the said issues afresh on merit in accordance with law after giving proper and sufficient opportunity to the assessee to support and substantiate its claim for the relevant expenses by furnishing the relevant details and documents. Ground no 2 to 5 of the revenue's appeal are accordingly treated as allowed for statistical purposes.

8. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order Pronounced in the Open Court on 13th December, 2017.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 13/12/2017

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Marathan Electric Motors Ltd., 58, Taratala Road, Kolkata – 700 024.
2. JCIT (OSD) Cir-11(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata