

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM & Shri M.Balaganesh, AM]

I.T.A No. 1033/Kol/2016

Assessment Year : 2006-07

The Indian Steel & Wire Products Ltd. -vs- DCIT, Circle-3, Kolkata
[PAN: AABCT 1067 C]
(Appellant) (Respondent)

For the Appellant : Shri S.M. Surana, Advocate

For the Revenue : Shri Robin Chowdhury, Addl. CIT Sr. DR

Date of Hearing : 04.10.2018

Date of Pronouncement : 26.10.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-1, Kolkata [in short the Id CIT(A)] in Appeal No. 428/CIT(A)-1/C-3/2008-09 dated 07.03.2016 against the order passed by the DCIT, Circle-3, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 26.12.2008 for the Assessment Year 2006-07.

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance made in the sum of Rs. 1,55,70,590/- treating the same as prior period expenses, in the facts and circumstances of the case.

3. Brief facts of this issue is that the assessee company filed its return of income for the assessment year 2006-07 on 25.11.2006 declaring total income of Rs. Nil after setting off brought forward loss of earlier years and claiming carry forward loss of Rs. 48,57,72,211/-. The assessee is engaged in the business of manufacturing of wire rods, wires, steel based rolls and castings. The assessee company during the year under consideration claimed an amount of Rs. 1,55,70,590/- in respect of 'short provision made towards spare parts in last year' payable to Tata Iron & Steel Company Ltd. (in short 'TISCO') under the head prior period items. The assessee received the materials from TISCO on 31.03.2005 relevant to assessment year 2005-06 and the said items were duly reflected in the closing stock as on 31.03.2005 by the assessee. Hence procurement of these stores from TISCO had been duly accounted for as balance sheet item in the books of accounts of the assessee as on 31.03.2005 relevant to assessment year 2005-06 itself. The assessee consumed the said materials from the inventory account in July 2005 and erroneously debited prior period expenses instead of consumption of stores. The assessee was under the bona fide belief that though the goods had reached the assessee on 31.03.2005 itself and the bill for the same was raised by TISCO on 31.03.2005 but the bills were received by the assessee in July 2005. Accordingly, the assessee thought that the said item when consumed, should be charged off to profit and loss account as a prior period item. The Id. AO disallowed the same that the said expenditure is not pertaining to the year under consideration which was upheld by the Ld. CIT(A). Aggrieved, the assessee is in appeal before us.

4. We have heard the rival submissions. At the outset, we find that there is no dispute that the assessee had included the receipt of goods in its closing stock as on 31.03.2005 itself, relevant to assessment year 2005-06 in respect of stores received from TISCO. In other words, the assessee by reflecting the receipt of stores from TISCO in its closing stock as on 31.03.2005 had offered to tax in assessment year 2005-06. Since the

assessee is in the practice of charging off to profit and loss account on consumption of the respective stores, which happened in July 2005 in the instant case and that the bills for the same from TISCO though dated 31.03.2005 were also received only in July 2005, the assessee instead of debiting the regular consumption of stores and spares, had debited prior period expenditure based on the date of bill. It is not the case of the revenue that the assessee had claimed the very same expenditure as deduction in assessment year 2005-06 also. In any case, there is no change in tax rates of the assessee company in both the years. There is no dispute about the nature of expenditure and genuinity of the expenditure by the revenue. Hence, the same cannot be disallowed ignoring the bona fide contentions of the assessee. In this regard, we would like to place reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Jagatjit Industries Ltd. reported in 339 ITR 382 (Del); CIT vs. Modipan Ltd. reported in 334 ITR 102 (Del). We also find that the Co-ordinate Bench of this Tribunal had also held this issue in favour of the assessee in the case of Hindusthan Gum and Chemical Industries Ltd. vs. ITO reported in 23 SOT 143. In view of the aforesaid facts and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in directing the ld. AO to grant deduction for consumption of stores and spares in the sum of Rs. 1,55,70,590/- in assessment year 2006-07. Accordingly, ground no. 1 raised by the assessee is allowed.

5. The last issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in upholding the disallowance made towards provision for warranty in the sum of Rs. 93,45,000/-, in the facts and circumstances of the case.

6. Brief facts of this issue is that the JMCO is a division of assessee company manufacturing roll which is sold to steel plant like Bokaro Steel Plant, Villai Steel Plant,

IISCO Steel Plant and other public/private sectors. As per roll industries manufacturing system, 5 years warranty is allowed to the customers towards life of a roll used in the steel plants. As per companies' policy, warranty claim is provided every year based on delivery of rolls and make adjustment every year on the basis of settlement of the claim. The company's policy is to claim the provision for warranty as a deduction every year. The assessee supplies rolls and castings to various customers under guarantee towards performance and workmanship. In case, the material falls within the guarantee period, the product is jointly inspected by its quality assurance team and the customer and if any manufacturing defect is observed from the product and is not as per the guarantee clause, the replacement roll is then given to the customers free of charge. The same is given under excise invoice where excise duty is payable and it is an expense borne by the company. Thus, a provision made towards warranty is based on percentage of sales as per the company's policy on past 5 year's sale details. The Id. AO however did not agree to this contention and proceeded to make disallowance of Rs. 93,45,000/- towards provision for warranty in the assessment. The Ld. CIT(A) granted partial relief to the assessee by observing as under:

"I have carefully considered the material before me. It is found that the AO's finding on the issue in question were based on the notes of accounts an amount of Rs.93,45,000/- remained as unpaid liability and was already offered by the assessee and was added back to the appellant's income. The appellant's AR has stated through the written submission that it had made a provision for doubtful debts on the ground that it may be payable in the future through the warranty clause against the materials supplied to the customer or to the parties and the AO had disallowed Rs. 48,48,000/- under the same head "Warranty -Claim" in the preceding year A.Y. 2005-06. Therefore the appellant's A/R has mainly contended that the disallowance of Rs. 48,48,000/- pertaining to the previous year, needs to be deducted. The appellant has also relied upon the judgment in the case of Rotork Controls India (P) Ltd vs. CIT wherein the A.O. has disallowed the provision of warranty claim that was a contingent liability. It was held by the honorable Supreme Court held that "Warranty became the integral part of the sale price of the Valve actuator(s), in other words, warranty stood attached to the sale price of the product and the reliable estimate of the expenditure towards such warranty was allowable as the business expenditure u/s 37(1) " .

After careful consideration of the submission, it is found that there is sufficient force in the contention of the appellant. However it is found that although provision for warranty was held to be an allowable expenditure u/s 37(1) but in the instant case the appellant has admittedly shown an amount of Rs 93,45,000/- as unpaid liability out of which an amount of Rs. 48,48,000/- was already subjected to tax by the A.O. in A.Y. 2005-06. Considering the totality of facts of the case the A.O is directed to delete the disallowance to the extent of Rs. 48,48,000/- out of the total disallowance of Rs. 93,45,000/-. This ground is partly allowed.”

Aggrieved the assessee is in appeal before us.

7. We have heard the rival submissions. We find the assessee during the year has debited a sum of Rs. 116.55 lacs towards for warranty claims in the profit and loss account. The assessee had disclosed following note in the notes on account forming part of the financial statement:

“During the current year, the company has changed its accounting policy for warranty on performance on rolls. Claims for warranties earlier accounted when claims were accepted and settled has now been provided for as a percentage of prior years’ claims to turnover. Accordingly, profit for the year is lower by Rs. 93.45 lakhs. (previous year : Nil)”

We find that the Id. AO had resorted to disallow the provision for warranty in the sum of Rs. 93,45,000/- based on the aforesaid note reflected in the notes on account of the assessee. But we find from the ledger account of provision for warranty claims (liability account) enclosed in page 96 of the Paper Book that the assessee reverses the provision on settlement of the claims by crediting to profit and loss account and make a fresh provision year on year in respect of probable and possible claims that could arise based on a scientific calculation and past experience of the assessee. We find that the assessee

had also given a breakup of entire provision of warranty claims (liability account) in the form of Affidavit enclosed in pages 97 and 98 of the Paper Book as under:

Opening balance of provision of warranty claims	Rs. 48.48 lacs
Add fresh provision during the year	Rs. 116.55 lacs

Total	Rs. 165.03 lacs
Less settled/paid during the year	Rs. 81.76 lacs
Closing balance as on 31.03.2006	Rs. 83.27 lacs.

It was pleaded that the provision has been made on a scientific basis based on past experience year on year and accordingly allowable as deduction. We find that the Id. AR also placed reliance on the decision of Hon'ble Supreme Court in the case of Rotork Controls Ltd. reported in 314 ITR 62 (SC) in support of his contentions but we find there is lot of confusion in the figures adopted by the assessee as well as by the Id. AO. It is the assessee who has mentioned the figure of Rs. 93,45,000/- in its notes on account stating that the profit in the year is less by the said figure. In the Affidavit filed by the assessee enclosed in pages 97 and 98 of the Paper Book it is pleaded that it is not known where the Id. AO had arrived the figure of Rs. 93,45,000/-. Moreover, in the grounds of appeal raised by the assessee before us the assessee has disputed only a sum of Rs. 68.07 lacs. The disallowance made by the Id. AO was Rs. 93,45,000/- and the relief granted by the Ld. CIT(A) was Rs. 48,48,000/-. In view of more errors in the figure of dispute to be adjudicated, and in the absence of clarification by the Id. AR in this regard at the time of hearing, we deem it fit and appropriate to remand the entire issue of provision for warranty claims to the file of the Id. AO for de novo adjudication. The Id. AO is directed to look into this issue afresh in accordance with law uninfluenced by earlier decision taken in this regard. Accordingly, ground no. 2 raised by the assessee is allowed for statistical purposes.

8. Ground no. 3 raised by the assessee is general in nature and does not require any specific adjudication.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 26.10.2018

Sd/-
[S.S. Godara]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 26.10.2018

SB, Sr. PS

Copy of the order forwarded to:

1. The Indian Steel & Wire Products Ltd., 7, Red Cross Place, Kolkata-700001.
2. DCIT, Circle-3, Kolkata, P-7, Chowringhee Square, Kolkata-700069.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches