

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

**(BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 629 & 1124/AHD/2015 &
ITA No. 160/AHD/2016
(Assessment Years: 2010-11 to 2012-13)**

Dy. CIT, Circle-1(1)(1), Ahmedabad	V/S	M/s Amtech Electronics (India) Ltd. E-6, GIDC Electronics Zone, Gandhinagar-382028
(Appellant)		(Respondent)

PAN: AABCA 2793A

**Appellant by : Shri S. K. Dev, Sr. D.R.
Respondent by : Shri T. P. Hemani & P.B. Parmar,AR**

(आदेश)/ORDER

Date of hearing : 19 -07-2018

Date of Pronouncement : 15-10-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These three appeals have been preferred by the Department against the order of the ld. CIT(A). Grounds are common in all the Assessment Years only

figures and Assessment Years are different. Therefore, for the sake of convenience, we would like to dispose of all the appeals together.

2. In ITA No. 629/Ahd/2015 for A.Y. 2010-11, Department has taken following grounds of appeal:

Disallowance of Provision for Warranty Expenses:-

3. During the course of the assessment proceedings, it is seen that the assessee has claimed provision for warranty expenses of Rs. 1,28,85,450/-. The provision of warranty as claimed by the assessee is being claimed at a rate of 2.25% of sales though actual utilization has consistently remained much lower as reflected in the table below:

Provision for warranties	Ay 2007-08	AY 2008-09	AY 2009-10	AY 201 0-11
At the beginning of the year	2,624,632	3,752,694	4,294,678	6,773,290
Arising during the year	3,752,694	4,294,678	6,773,290(a)	12,885,450©
Utilized during the year	441769	181,971	431 ,360	372,842(b)
Unused amount reversed	2,182,863	3,570,723	3,863,318	6,400,448
At the end of the year provision	3,752,694	4,294,678	6,773,290	12,885,450

Table 1 (source : Assessee's submission dtd 21.02.13)

4. From the above table, it can be seen that assessee has continuously utilized a very small amount. During the year, it is ©- [(a)-(b)] which comes to 64,85,002 and this net amount is debited to profit and loss account during the year. Therefore it is clear that though the assessee is utilizing merely a very small portion of the provision created each year but still creating huge provision without any basis to reduce profit and defer the payment of taxes. The method is not scientific as it is not based on any past analysis and is an attempt to reduce actual profits. The past analysis would rather depict that actual warranty expense has either remained constant or have even declined. Therefore, the assessee vide order sheet entry dtd.21/02/2013 was requested to explain as to why excess warranty provision over and above the average warranty expenses should not be disallowed.
5. Thereafter assessee filed reply before the ld. A.O. citing several case laws that in the past also. There were warranty expenses were in assessment year 2007-08, it was 1.87% of sales, in A.Y. 2008-09, it was 2.00%, in A.Y. 2009-10, it was 2.37% and in A.Y. 2010-11, it was 1.79% and in Assessment Year 2009-10, assessee expenses of warranty was 105% of the provisions made in the said assessment year whereas in assessment year 2010-11, assessee expenses on warranty was 80% of the total amount kept for provision for warranty. But ld. A.O. was not convinced with the reply and he made disallowance of provisions for warranty expenses of Rs. 1,25,25,450/-.
6. Now we come to ground relating to deleting the addition of Rs. 52,43,994/- made on account of disallowance of unutilized MODVAT/CENVAT credit.

7. On examination of column No.22(a) of 3CD Report, it is seen that unutilized CENVAT credit at the end of the year is as under:

Particulars	Others
Available CENVAT credit	19555840
utilized CENVAT credit	14311846
unutilized CENVAT credit	5243994

8. The assessee followed exclusive method for accounting CENVAT as against inclusive method mandated under section 145A of the Act. The assessee vide order sheet entry dated 22/10/2012 requested to explain as to why unutilized CENVAT credit of Rs.52,43,994/- has not been offered for income.
9. In response to the notice of ld. A.O., assessee filed reply and gave several case laws in his favour and stated that Section 145A has not effect in income of an assessee. If excise duty payable finished goods lying in stock as on 31st march 2010 work t to Rs. 27,06,211 and said duty is payable only when roods are cleared for dispatch and sale. If duty is added on finished goods stock, there would be corresponding excise liability for payment of the same amount of Rs. 27,06,211/- for which provision has to be made and debited to P & L a/c. Hence, there will not be any ultimate impact on profitability.
10. Accounts-Valuation of closing stock-Excise duty-Excise duty is levied on goods manufactured by an assessee and it is not cost of goods purchased-It is not a part of manufacturing cost-It can be termed as post-manufacturing cost-Unless and until it is entered on one side as an item of cost, it cannot be taken as a component of the value of the closing stock on the other side-Assessee

under the Excise Act is not required to discharge the liability to pay duty levied upon the manufacture of excisable goods, till such goods are removed from the factory premises, or a bonded warehouse-Mere production or manufacture by itself would not be sufficient. Though there might be levy under s. 3 of the Excise Act, yet neither the rate nor the value would be determinable till the point of time of removal of the excisable goods from the factory premises and hence the scheme itself indicates that so far as an assessee is concerned, he incurs liability to pay excise duty only upon both the event taking place, namely, manufacture of excisable goods and removal of excisable goods-For the purpose of IT Act, the position in law cannot be different-The Act does not provide for any contrary interpretation, i.e., what is contrary to the position prevailing under the excise law-Assessment year being 1997-98, s. 145A cannot be invoked-Further, excise duty was neither paid nor payable under the law, hence s. 145A was not attracted-Tribunal was therefore justified in law in excluding the excise duty at the time of valuation of the closing stock of finished goods at the end of the accounting period.

11. But ld. A.O. was not convinced with the reply of the appellant and made addition of Rs. 52,43,994/-.
12. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) who allowed the appeal of the assessee.
13. Now appellant is before us.
14. We have gone through the relevant record and impugned order. Assessee is engaged in the business manufacturing AC drives and soft starters. AO found

that assessee had debited Rs. 1,28,85,450/- towards "Provision for warranty". AO was not convinced with the amount of such provision broadly on the following counts:

- > Actual warranty expenses were much less than provision for warranty;
- > Provision for warranty has been made on estimation basis and not on scientific basis;
- > Reliable estimate of such obligation (i.e. third condition as per AS-29) has not been made;
- > Though assessee has debited "Provision for warranty", it has also debited travelling expenses and salary for CSD (i.e. Customer Support Development) Department separately.

15. Hence, AO restricted deduction in respect of "Provision for warranty" to Rs.3,60,000/- (i.e. average of past four years) and disallowed balance sum of Rs. 1,25,25,450/- (i.e. Rs. 1,28,85,450 - Rs.3,60,000).

16. Prior to dealing with above objections, the following facts pertaining to the case of the assessee may kindly be appreciated.

17. Assessee sells AC drives, soft starters, etc. and provides warranty for free replacement of parts of machines for the prescribed period i.e. If during the warranty period, some problem arises in the parts of machines, then assessee shall have to replace the same. It a standard practice to provide warranty in this competitive word.

18. Based on the past experience, assessee has created "Provision for warranty", a substantial part of which has been disallowed by AO.

19. Assessee incurs following types of expenditure in the course of fulfilling its obligation towards warranty during the warranty period:

- > Cost of material (i.e. cost of pans to be replaced free of cost): such cost is debited as "Warranty expenses";
- > Travelling cost (i.e. cost incurred on travelling by the staff in the course of providing services during warranty period); Such cost is debited separately in P&L a/c;
- > Salary cost of CSD Department 5, 45%; Such cost is also separately debited in P&L a/c;

20. Since "travelling cost" and "salary of CSD Dept." is separately debited, the amount of "cost of material" debited under the head "warranty expenses" is very low. However, the actual warranty cost is summation of the above three expenses.

20. A chart showing details of "Provision for warranty" and "Actual Warranty expenses" (all three expense) incurred by the assessee for AY. 09-10 & 10-11 was furnished along with supporting evidences before A.O. vide letter dated 18.03.2013.

22. A perusal of the above reveals the following picture:

Particulars	A.Y. 2009-10	A.Y. 2010-11
Provisions for Warranty (A)	Rs. 67,73,290/-	1,28,85,450/-
Actual Warranty expenses (B)	Rs. 71,27,337/-	Rs. 1,02,68,158/-
Difference (A-B)	Rs. 3,54,047/-	Rs. 26,17,292/-
Ratio of Actual expenses as Compared to provisions	105%	80%

(B/A* 100)		
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23. A comparative chart, as above, for last four years is placed at Pg.117 of P/B and the same reveals the following picture:

Particulars	A.Y. 07-08	A.Y. 08-09	A.Y. 09-10	AY 10-11
Sales (Rs)	15,01,07,740/-	19,08,74,577/-	30,10,35,118/-	57,26,86,678/-
Provision %	2.5%	2.25%	2.25%	2.25%
Provision (Rs)	37,52,694/-	42,94,678/-	67,73,290/-	1,28,85,450/-
Actual exps.	28,00,692/-	38,09,867/-	71,27,337/-	1,02,68,158/-
% of expenses a to provision	75%	89%	105%	80%
% of expenses as to sales	1.87%	2.00%	2.37%	1.79%

24. From the above table, the following aspects become clear:

- > "Actual expenses" incurred as compared to the "provision of warranty" are in the range of 75-105%;
- > "Actual expenses" incurred as compared to "sales" are in the range of 1.79-2.37% as against "provision" created @ 2.25-2.5% of sales;

25. Thus, actual warranty expenses incurred by the assessee are almost consistent as regards its proportion to sales of respective years. Also there is no major variation in "provision" as compared to "actual expenses".

26. Hence, it can be reasonably said that provision created by the assessee on the basis of past experience is a reliable and appropriate estimate.

27. At this stage, it is clarified that assessee deals in large number of products such as AC drives, soft starters, etc. as is evident from the quantitative details forming part of Tax Audit Report (Pgs. II8-133 @ 132 of P/B).

28. As regards the first objection raised by AO, AO did not consider "travelling expenses" and "Salary cost CSD Department" while arriving at the "actual cost" and hence, the actual cost was found to be much less as compared to "provision for warranty". As is evident from the above tables, ratio of "actual expenses" as to "provision" is in the range of 75-105% in last four years; Hence. AO's observation is erroneous and ill-founded;

29. As regards the second objection raised by AO, assessee has estimated provision for warranty based on past experience in the range of 2.25-2.5% of sales against which, actual expenses are in the range of 1.79-2.37% of sales. In fact, assessee had made provision (a, 2.5% in AY 2007-08 but thereafter, such provision has been reduced to 2.25% AY 2008-09 onwards on the basis of experience of the assessee. Thus, such estimation was based on past experience and there is not much difference in the actual expenses. Thus, in a way, approach adopted by assessee is scientific. Accordingly, AO was not correct in holding that provision was based on estimation and not backed by scientific method.

30. As regards the third objection raised by AO. assessee's estimate is absolutely reliable as there is not much variation in the actual expenses as compared to provision for warranty and also the actual expenses are in the range of 1.79-2.37% of sales i.e. very much near to the percentage of provision.

31. As regards the fourth objection raised by AO, it is submitted that AO failed to understand the accounting treatment adopted by the assessee. Assessee creates "Provision for warranty" and debits the same to P&L a/c. In the next year, such provision is reversed by crediting P&L a/c after deducting amount utilized and thereafter, various expenses incurred for warranty services like travelling and salary of CSD are debited. AO has completely overlooked the fact that excess provision is reversed by crediting P&L and therefore, even if other two expenses are separately debited, the same has nullifying effect in light of reversal of provision by crediting the P&L a/c.

32. Thus, all the objections raised by AO are on account of not considering "travelling expenses" and "salary cost of CSD" as part of "actual warranty expenses". Had AO taken pains to consider details furnished by the assessee, he would not have reached the above conclusion.

33. Hon'ble Apex Court, in the case of "Rotork Controls Pvt. Ltd. vs. CIT - 314 ITR 62 (SC)", has held that "provision" recognized upon fulfillment of following conditions (which are in line with AS-29 on "Provisions, Contingent liabilities and Contingent Assets ") shall be allowable u/s 37:

- a) There is a present obligation as a result of past event;
- b) It is probable that an outflow of resource embodying economic benefits will be required to settle the obligation;
- c) A reliable estimate can be made of the amount of obligation;

34. AO did not dispute fulfillment of first two conditions. Rather, as per AO, only the third condition was not satisfied (Para 2.10, Pg.13 of Asst. Order). However, as discussed above, a reliable estimate of provision for warranty can be very well

made based on the past experience. Thus, AO's objection is unwarranted and uncalled for.

35. Under such circumstances, "provision for warranty" created by assessee satisfies all the criteria laid by Hon'ble Apex Court in the case of Rotork Controls supra, as well as AS-29. Hence, the same is allowable as deduction u/s 37 of the Act.

36. In light of the above, CIT(A) has rightly deleted the impugned addition. The same be held so now.

37. The Hon'ble Apex Court in the matter of M/s. Excel Industries Ltd. (supra) it is held that in the absence of any material change justifying the Revenue to take a different view of the matter-and if there was not change it was in support of the assessee. :

"We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

"On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

38. In the light of the above, in our considered opinion, ld. CIT(A) has rightly deleted the impugned addition and he has passed detailed and reasoned order and same does not require any kind of interference at our end.

39. In the result, we allow this ground of appeal.

40. Now we come to ground relating to deleting the addition of Rs. 52,43,994/-.

41. AO, upon finding that assessee follows "Exclusive method" of accounting, made addition of Rs.52,43,994/- u/s 145A in respect of "unutilized CENVAT credit" on the count that it must be added to "closing stock" of raw material.

42. AO failed to appreciate that the assessee has been consistently following "Exclusive method" of accounting for years.

43. If any adjustment w.r.t. CENVAT is made in the amount of "closing stock", then corresponding adjustments need to be made in the amounts of "opening balance", "purchases" and "sales" as well. Once all such adjustments are made, there would be no impact on profit and loss of the year by inclusion of excise duty or other credits to the value of closing stock.

44. The above fact is evident from Annexure "A" to Tax Audit Report placed at [Pgs.118-133@128ofP/B](#).

45. It is mandatory for an assessee to follow "Exclusive method" of accounting for valuation of inventories in light of AS-2 on "Valuation of Inventories" issued by ICAI. However, as per S.145A, an assessee is to follow "Inclusive method" of accounting.

46. In any case, there is no impact on profitability whether an assessee follows "Exclusive method" or "Inclusive method". Accordingly, no addition is called for u/s 145A. Reliance is placed on the followings:

- > CIT vs. Indo Nippon Chemicals Ltd. - 261ITR 275 (SC)
- > ACIT vs. Narmada Chematur Petrochemicals - 327 ITR 369 (Guj)
- > DCIT vs. M/s. AIA Engineering Ltd. - ITA 1122/Ahd/2015 (Annexure "A");

47. In any case, amount lying with the excise authorities could not have been claimed as refund by the assessee and hence, it cannot be treated as an income in the hands of the assessee.

48. In light of the above, impugned addition has been rightly deleted by CIT(A).

49. The Co-ordinate Bench in ITA No. 1122/Ahd/2015 in the matter of DCIT vs. M/s. AIA Engineering Ltd. has given relief to the assessee while dismissing the appeal of the department with following observation:

"5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The issue in the present case is with respect to the addition of unutilised CENVAT credit to the closing stock. We find that the Id.CIT(A) while deciding the issue in favour of assessee has given a finding that assessee is following exclusive method of accounting whereby the excise duty is not included in the valuation of stock and raw-materials as the excise duty paid and collected is not made part and parcel of the Profit & Loss A/c. He has further given a finding that assessee has complied with the provisions of section 145A of the Act and the effect of including excise duty in valuation of closing stock does not affect the profit and is Revenue neutral. He has further relied on the decision of Hon'ble Gujarat High Court in the case of Narmada Chematur Petrochemicals Ltd.(supra). Before us, Revenue has neither controverted the finding of Id.CIT(A) nor has placed any contrary binding decision in its support. We further find that the Hon'ble Apex Court in the case of Indo Nippon Chemicals (2003) 261 ITR 375 has held that unavailed MODVAT credit cannot be construed as income

and there is no liability to pay tax on such unavailed MODVAT credit. In view of the aforesaid facts, we find no reason to interfere with the order of the ld.CIT(A). Thus, this ground of Revenue is dismissed."

4. We see no reason to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the same, we see no reasons to interfere in the conclusions arrived at by the Id. CIT(A). Accordingly, we confirm the order of the learned CIT(A) and dismiss the appeal of the Revenue.

5. In the result, appeal of the Revenue is dismissed. Pronounced in the open court today on the 26th day of September, 2017.

50. In the light of the above facts and circumstances and respectfully following the Co-ordinate Bench order, we dismiss this ground of appeal and in our considered opinion, ld. CIT(A) has rightly deleted the addition.

51. Now we come to in ITA No. 1124/Ahd/2015 for A.Y. 2011-12. The revenue has taken following grounds of appeal:

(1) The Ld. CIT(A) has erred in directing the AO to delete the addition made on account of provision of warranty of Rs.1,13,04,286/-.

(2) The Ld. CIT(A) has not appreciated the fact that the assessee has claimed provision for warranty expenses at Rs.1,13,04,286/- @ 2.25% of sales though actual utilization has consistently remained much lower

(3) The Ld. CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above.

52. Since similar grounds have been decided against the department and we have confirmed the order of the ld. CIT(A) in immediate preceding year, therefore, we dismiss this appeal as well.

53. Now we come to in ITA No. 160/Ahd./2016 for A.Y. 2012-13. The revenue has taken following grounds of appeal:

(1) *The Id, CIT(A) has erred in directing the AO to delete the addition made on account of provision of warranty of Rs. 1,07,93,493/-.*

(2) *The Id. CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above.*

54. Since already we have dismissed the appeal of the department in ITA No. 629/Ahd/2015, we following the same and dismiss this ground of appeal.

55. In the result, all three appeals filed by the Revenue are dismissed.

Order pronounced in Open Court on	15- 10- 2018
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Sd/-

(PRAMOD KUMAR)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 15/10/2018

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad