

IN THE INCOME TAX APPELLATE TRIBUNAL "RANCHI", BENCH, RANCHI

BEFORE SHRI S.S. GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.244 & 245/Ran/2017

(निर्धारणवर्ष / Assessment Years: 2007-08 to 2008-09)

Tayo Rolls Ltd. No. 3, Road No. 11, C.H. Area (North East) Bistupur, Jamshedpur-831001	Vs.	ACIT, Circle-3, Jamshedpur
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCT 0210 H		
(Assessee)	..	(Revenue)

Assessee by : Shri P.R. Mittal, Advocate

Respondent by : Shri P.K. Mondal, JCIT

सुनवाईकीतारीख/ Date of Hearing : 11/01/2019

घोषणाकीतारीख/Date of Pronouncement : 05/04/2019

आदेश / ORDER

Per Bench:

The captioned two appeals filed by the Assessee, pertaining to assessment years 2007-08 to 2008-09 respectively are directed against the separate orders passed by the Commissioner of Income Tax (Appeal)-Jamshedpur, which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Since these two appeals filed by the assessee contained common and identical issues therefore these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. In these appeals , however the assessee have raised multiple grounds of appeal, but at the time of hearing the main grievance of the assessee are concised and summarized as follows:

I. Ground no.1 raised by the assessee in I.T.A. No. 244/Ran/2017 for assessment year 2007-08 and ground no. 3 raised by the assessee in I.T.A. No. 245/Ran/2017 for assessment year 2008-09 are common and identical and relate to:

- a) Provision for warranty expenses of Rs. 50,66,000/- for A.Y. 2007-08 and
- b) Provision for warranty expenses of Rs. 1,48,13,000/- for A.Y. 2008-09

Since this is common and identical ground in both the years i.e. A.Y. 2007-08 warranty expenses of Rs. 50,66,000/- and A.Y. 2008-09 warranty expenses is to the tune of Rs. 1,48,13,000/- we take assessee's appeal in I.T.A. No. 244/Ran/2017 for assessment year 2007-08 as a lead case to adjudicate this common ground.

4. Brief facts qua the issue are that during the course of assessment proceedings the Assessing Officer has dealt this fact which is being reproduced as below:

PRODUCT WARRANTY CHARGES: The assessee has made provisions under this head of Rs. 284.66 lakhs as in previous years. The assessee was asked to furnish a year-wise details chart of such provisions which is reproduced below:

Year	Claim settled (Rs. Lakh)	Weight applied	Sale of Rolls excluding Excise duty	Claim as % of Sales	Average
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2005-06	148.16	4	10657	1.39	5.56
2006-07	234.00	5	11215	2.09	10.43

For reasons mentioned in earlier assessment years the said excess provision of Rs. 50,66,000/- lakhs is disallowed as facts remain the same.

5. On appeal, the Id. CIT(A) deleted the addition. Aggrieved the assessee is in appeal before us.

6. We have heard both the parties and perused the material available on record. We note that the assessee company manufactures and sells Iron and Steel Rolls to various metallurgical and non metallurgical industries. The Company, at the time of sale, gives a guarantee for performance of rolls in the customers' mill. In the event of failure of rolls to give the minimum guaranteed tonnage of roll due to manufacturing defect, the Company gives compensation for loss of life of roll or gives free replacement of the defective roll, as may be appropriate, after due examination of defect. The Company follows a scientific system of estimating warranty liability and making provisions for warranty every year by debit to Product Warranty Charges Account with Profit & Loss Account. This practice is consistently followed year after year and the amount debited in the Profit & Loss account is claimed as business expenditure. We would like to mention here that the matter is covered by the order passed by the Learned Commissioner of Income Tax (Appeal) in Appeal No. 312/JSR/2008-09 for the Assessment Year 2006-07 and the order passed by the Learned Jt. Commissioner of Income Tax for the Assessment Year 2009-10. Therefore, the department cannot take a different stand in A.Y. 2007-08 and in the A.Y. 2008-09. Following the principle of consistency the addition should not be made. In view of the above, the addition of Rs.50,66,000/- and Rs. 1,48,13,000/- under this head are liable to be deleted and accordingly we delete the addition.

7. Now we take the assessee's appeal in I.T.A. No. 245/Ran/2017 for assessment year 2008-09.

Ground no. 1 raised by the assessee relates to disallowance of Expenditure on scientific research of Rs. 11,07,899/-

8. Brief facts qua the issue are that the Assessing Officer disallowed the scientific research expenditure incurred by the assessee. The Assessing Officer was of the view the assessee's expenditure does not fit in the definition of the terms of scientific research which has been defined in Income Tax Act in section 43(4) which reads as ,

“Scientific research means any activity for the extension of knowledge in the field of natural and applied science including agriculture, animal husbandry and

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The submissions as furnished by the Id. AR of the assessee has been duly considered but it is important to point out that the assessee has failed to prove that expenditure is well within the definition of scientific research as defined in section 43(4) of the Act. The work of the assessee is just a liaising work with the users, to meet out the need of the customers. There is no element of scientific research as defined within the meaning of Act. Hence the claim of Rs. 11,07,899/- is being disallowed and added back to the total income of the assessee.

9. Aggrieved the stand so taken by the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer observing the following:

“4.3. I have gone through the order of the learned A.O. as well as the written submission made by the appellant. The Assessing Officer in his order has elaborately mentioned as to why the amount is disallowed whereas the assessee failed to bring any cogent material that the expenditure is an allowable deduction u/s 35(1). Section 35(1) states that the deduction is allowable if the expenditure incurred on in house research u/s 35(2AB). For an approval of the same, the assessee-company is required to make an application in Form No. 3CK before the secretary, Department of Scientific & Industrial Research on or before the due date of submission of Return of income and such application is duly approved by the prescribed authority. We do not find any such approval of prescribed authority. Hence expenses incurred is not eligible for deduction u/s 35(1). Therefore the Assessing Officer has rightly disallowed Rs. 11,07,899/-. Hence this ground is hereby dismissed.”

Aggrieved the assessee is in appeal before us.

10. We have heard both the parties and perused the material available on record. We note that section 35(1) of the Act clearly provides that the deduction is allowable if the assessee incurred the expenditure on in house research u/s 35(2AB) of the Act. We note that for an approval of the same the assessee

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11. Ground no. 2 raised by the assessee relates to disallowance of expenditure on brand equity of Rs. 32,88,000/-.

12. At the time of hearing, before us both Id. Counsel for the assessee as well as Id. DR for the revenue both have agreed that this issue needs to be remitted back to the file of Assessing Officer to identify whether expenses claimed by the assessee is royalty or normal business expenditure. Therefore, we send this ground to the file of Assessing Officer to verify whether the expenses claimed by the assessee is royalty or normal business expenditure. If it is normal business expenditure then TDS will not applicable. Therefore we direct the Assessing Officer to verify this factual aspect and decide the issue in accordance with law.

13. In the result, all the appeals of the assessee are partly allowed.

Order pronounced in the Court on 05.04.2019

Sd/-
(S.S.GODARA)

न्यायिकसदस्य / JUDICIAL MEMBER

दिनांक/ Date: 05/04/2019

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The captioned two appeals filed by the Assessee, pertaining to assessment years 2007-08 to 2008-09 respectively are directed against the separate orders passed by the Commissioner of Income Tax (Appeal)-Jamshedpur, which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Since these two appeals filed by the assessee contained common and identical issues therefore these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. In these appeals , however the assessee have raised multiple grounds of appeal, but at the time of hearing the main grievance of the assessee are concised and summarized as follows:

I. Ground no.1 raised by the assessee in I.T.A. No. 244/Ran/2017 for assessment year 2007-08 and ground no. 3 raised by the assessee in I.T.A. No. 245/Ran/2017 for assessment year 2008-09 are common and identical and relate to:

- a) Provision for warranty expenses of Rs. 50,66,000/- for A.Y. 2007-08 and
- b) Provision for warranty expenses of Rs. 1,48,13,000/- for A.Y. 2008-09

Since this is common and identical ground in both the years i.e. A.Y. 2007-08 warranty expenses of Rs. 50,66,000/- and A.Y. 2008-09 warranty expenses is to the tune of Rs. 1,48,13,000/- we take assessee's appeal in I.T.A. No. 244/Ran/2017 for assessment year 2007-08 as a lead case to adjudicate this common ground.

4. Brief facts qua the issue are that during the course of assessment proceedings the Assessing Officer has dealt this fact which is being reproduced as below:

PRODUCT WARRANTY CHARGES: The assessee has made provisions under this head of Rs. 284.66 lakhs as in previous years. The assessee was asked to furnish a year-wise details chart of such provisions which is reproduced below:

Year	Claim settled (Rs. Lakh)	Weight applied	Sale of Rolls excluding Excise duty	Claim as % of Sales	Average
2002-03	146.03	1	6817	2.14	2.14
2003-04	159.22	2	7400	2.15	4.30
2004-05	106.48	3	8375	1.27	3.82
2005-06	148.16	4	10657	1.39	5.56
2006-07	234.00	5	11215	2.09	10.43

For reasons mentioned in earlier assessment years the said excess provision of Rs. 50,66,000/- lakhs is disallowed as facts remain the same.

5. On appeal, the Id. CIT(A) deleted the addition. Aggrieved the assessee is in appeal before us.

6. We have heard both the parties and perused the material available on record. We note that the assessee company manufactures and sells Iron and Steel Rolls to various metallurgical and non metallurgical industries. The Company, at the time of sale, gives a guarantee for performance of rolls in the customers' mill. In the event of failure of rolls to give the minimum guaranteed tonnage of roll due to manufacturing defect, the Company gives compensation for loss of life of roll or gives free replacement of the defective roll, as may be appropriate, after due examination of defect. The Company follows a scientific system of estimating warranty liability and making provisions for warranty every year by debit to Product Warranty Charges Account with Profit & Loss Account. This practice is consistently followed year after year and the amount debited in the Profit & Loss account is claimed as business expenditure. We would like to mention here that the matter is covered by the order passed by the Learned Commissioner of Income Tax (Appeal) in Appeal No. 312/JSR/2008-09 for the Assessment Year 2006-07 and the order passed by the Learned Jt. Commissioner of Income Tax for the Assessment Year 2009-10. Therefore, the department cannot take a different stand in A.Y. 2007-08 and in the A.Y. 2008-09. Following the principle of consistency the addition should not be made. In view of the above, the addition of Rs.50,66,000/- and Rs. 1,48,13,000/- under this head are liable to be deleted and accordingly we delete the addition.

7. Now we take the assessee's appeal in I.T.A. No. 245/Ran/2017 for assessment year 2008-09.

Ground no. 1 raised by the assessee relates to disallowance of Expenditure on scientific research of Rs. 11,07,899/-

8. Brief facts qua the issue are that the Assessing Officer disallowed the scientific research expenditure incurred by the assessee. The Assessing Officer was of the view the assessee's expenditure does not fit in the definition of the terms of scientific research which has been defined in Income Tax Act in section 43(4) which reads as ,

“Scientific research means any activity for the extension of knowledge in the field of natural and applied science including agriculture, animal husbandry and

fishiring.” The expenditure referred or incurred includes all expenditures incurred for the prosecution, or the provisions of facility for the prosecution or scientific but do not include any expenditure incurred in the acquisition of right in, or arising out of scientific research. Further, the scientific research related to a business or class of business includes any scientific research which may lead to or facilitate and extension of that business and, or as the case may be, all business of that class.....”

The submissions as furnished by the Id. AR of the assessee has been duly considered but it is important to point out that the assessee has failed to prove that expenditure is well within the definition of scientific research as defined in section 43(4) of the Act. The work of the assessee is just a liaising work with the users, to meet out the need of the customers. There is no element of scientific research as defined within the meaning of Act. Hence the claim of Rs. 11,07,899/- is being disallowed and added back to the total income of the assessee.

9. Aggrieved the stand so taken by the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer observing the following:

“4.3. I have gone through the order of the learned A.O. as well as the written submission made by the appellant. The Assessing Officer in his order has elaborately mentioned as to why the amount is disallowed whereas the assessee failed to bring any cogent material that the expenditure is an allowable deduction u/s 35(1). Section 35(1) states that the deduction is allowable if the expenditure incurred on in house research u/s 35(2AB). For an approval of the same, the assessee-company is required to make an application in Form No. 3CK before the secretary, Department of Scientific & Industrial Research on or before the due date of submission of Return of income and such application is duly approved by the prescribed authority. We do not find any such approval of prescribed authority. Hence expenses incurred is not eligible for deduction u/s 35(1). Therefore the Assessing Officer has rightly disallowed Rs. 11,07,899/-. Hence this ground is hereby dismissed.”

Aggrieved the assessee is in appeal before us.

10. We have heard both the parties and perused the material available on record. We note that section 35(1) of the Act clearly provides that the deduction is allowable if the assessee incurred the expenditure on in house research u/s 35(2AB) of the Act. We note that for an approval of the same the assessee

company is required to make an application in form no. 3CK before the secretary, Department of Scientific & Industrial Research on or before the due date of submission of return of income and such application is duly approved by the prescribed authority. However the assessee has not done the technical process therefore we direct the assessee to complete the technical process and submit the relevant papers and approval before the Id. CIT(A). We direct the Id. CIT(A) to examine the assessee's entitlement whether the expenditure incurred is eligible u/s 35(1) of the Act and adjudicate the issue as per the provision of law. Therefore, we allow this ground for statistical purposes.

11. Ground no. 2 raised by the assessee relates to disallowance of expenditure on brand equity of Rs. 32,88,000/-.

12. At the time of hearing, before us both Id. Counsel for the assessee as well as Id. DR for the revenue both have agreed that this issue needs to be remitted back to the file of Assessing Officer to identify whether expenses claimed by the assessee is royalty or normal business expenditure. Therefore, we send this ground to the file of Assessing Officer to verify whether the expenses claimed by the assessee is royalty or normal business expenditure. If it is normal business expenditure then TDS will not applicable. Therefore we direct the Assessing Officer to verify this factual aspect and decide the issue in accordance with law.

13. In the result, all the appeals of the assessee are partly allowed.

Order pronounced in the Court on 05.04.2019

Sd/-
(S.S.GODARA)

न्यायिकसदस्य / JUDICIAL MEMBER

दिनांक/ Date: 05/04/2019

(SB, Sr.PS)

Sd/-
(A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

Copy of the order forwarded to:

1. Tayo Rolls Limited
2. ACIT, Circle-3, Jamshedpur
3. C.I.T(A)-
5. CIT(DR), Ranchi Bench, Ranchi .
6. Guard File.

4. C.I.T.- Ranchi

True copy

By Order

Assistant Registrar
ITAT, Ranchi Bench

IN THE INCOME TAX APPELLATE TRIBUNAL "RANCHI", BENCH, RANCHI

BEFORE SHRI S.S. GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.244 & 245/Ran/2017

(निर्धारणवर्ष / Assessment Years: 2007-08 to 2008-09)

Tayo Rolls Ltd. No. 3, Road No. 11, C.H. Area (North East) Bistupur, Jamshedpur-831001	Vs.	ACIT, Circle-3, Jamshedpur
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCT 0210 H		
(Assessee)	..	(Revenue)

Assessee by : Shri P.R. Mittal, Advocate

Respondent by : Shri P.K. Mondal, JCIT

सुनवाईकीतारीख/ Date of Hearing : 11/01/2019

घोषणाकीतारीख/Date of Pronouncement : 05/04/2019

आदेश / ORDER

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