

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 2486 to 2488/PUN/2017

निर्धारण वर्ष / Assessment Years : 2012-13 to 2014-15

Tata AutoComp Hendrickson  
Suspensions Private Limited.  
Gate No.431/1, Medankarwadi,  
Chakan-Alandi Road, Tal. Khed,  
Pune-410 501  
PAN : AACCT4769Q

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-7, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 2615 to 2617/PUN/2017

निर्धारण वर्ष / Assessment Years : 2012-13 to 2014-15

The Deputy Commissioner of Income Tax,  
Circle-7, Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s.Tata AutoComp Hendrickson  
Suspensions Private Limited.  
4<sup>th</sup> Floor, Taco House, Damle Path,  
Off. Law College Road.  
Pune-411 004  
PAN : AAAAA4551B

.....प्रत्यर्थी / Respondent

Assessee by : Shri Percy Pardiwala

Revenue by : Shri S.B. Prasad, CIT

सुनवाई की तारीख / Date of Hearing : 18.09.2019

घोषणा की तारीख / Date of Pronouncement : 18.09.2019

### आदेश / ORDER

#### PER BENCH :

These bunch of cross-appeals preferred by the assessee and the Revenue emanates from the common order of the Ld. CIT(Appeals)-5, Pune dated 17.07.2017 for the assessment years 2012-13 to 2014-15 as per the grounds of appeal on record.

2. These cases were heard together. Since issues common and facts are similar, these cases are being disposed of vide this consolidated order.

3. At the very outset, the Ld. Sr. Counsel for the assessee submitted that assessee's appeal in ITA No.2486/PUN/2017 for assessment year 2012-13 and Revenue's appeal in ITA No.2615/PUN/2017 for assessment year 2012-13 may be taken as lead case for adjudication of these six appeals.

The Ld. Sr. Counsel for the assessee further submitted that with respect to the assessee's appeals, they are on the issue of "**Provision for warranty**", whereas, all the Revenue's appeal pertains to the issue of "**Administrative service charges**". That apart, the assessee has also preferred additional grounds which relates to the issue of "**Education Cess**".

First, we would adjudicate the additional ground preferred by the assessee regarding the claim of allowability of "**Education Cess**".

**ITA Nos.2486 to 2488/PUN/2017 (By Assessee)**  
**A.Ys.2012-13 to 2014-15**

**A. Adjudication of Additional ground- Education Cess:**

4. The Ld. Sr. Counsel for the assessee submitted that this issue is covered by the decision of the Pune Bench of the Tribunal in ITA No.1111 & 1112/PUN/2017 and CO No.23 & 24/PUN/2019 for the assessment year 2013-14 & 2014-15. The Co-ordinate Bench of the Tribunal, Pune on this issue has held and observed as follows:

“12. Referring to **Ground No.4**, the Ld. Counsel submitted that this ground relates to the **allowability of deduction in respect of the educational cess paid** by the assessee. The Ld. Counsel further submitted that this issue is covered in nature by virtue of the decision of the Hon’ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of *Chambal Fertilisers and Chemicals Ltd. Vs. JCIT, Range -2, Kota*.

13. On hearing both the parties on this issue, we find that this issue is covered one by the decision of the Hon’ble High Court of Judicature for Rajasthan Bench at Jaipur in the case of *Chambal Fertilisers and Chemicals Ltd. Vs. JCIT, Range -2, Kota* wherein substantial question of law No.3 is relevant in this regard (Para 3) and the same was adjudicated by the Hon’ble High Court at Para 12 of the judgment. The Hon’ble High Court on this issue held the said question No.3 is answered in favour of the assessee. For the sake of completeness, the said Paragraph is extracted as under:

“12. We have heard consel for the parties.

On the third issue in appeal no.52/2018, in view of the circular of CBDT where word “Cess” is deleted, in our considered opinion, the tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the **Cess is not tax** in that view of the matter, we are of the considered opinion that the view taken by the tribunal on issue no.3 is required to be reversed and the said issue is answered in favour of the assessee.”

From the above, it is evident that education Cess, which is not disallowable item, on its payment, the cess is an allowable expenditure as per provision of section 40(a)(ii) of the Act. Considering the settled

*nature of the issue as per the ratio laid down in the above referred case by the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur, **ground of Cross objection No.4 is allowed.***"

5. The Ld. DR fairly conceded that it is a covered issue in favour of the assessee.

6. We have perused the case records and heard the rival contentions. We observe that the Co-ordinate Bench of the Tribunal in the aforesaid case (supra.) has relied on the decision of the Hon'ble Rajasthan High Court in the case of Chambal Ferlitisers and Chemicals Ltd. Vs. JCIT, Range-2, Kota in ITA No.52/2018 dated 31.07.2018. Before the Hon'ble High Court in ITA No.52/2018, the **Question No.3** was "*Whether under the facts and circumstances of the case, the Ld.ITAT has not erred in holding that the education cess is a disallowable expenditure u/s.40(a)(ii) of the Act.*"

The Hon'ble High Court had observed therein that "*in the CBDT circular where word "Cess" is deleted and therefore, the Tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the Cess is not tax*". In that view of the matter, the Hon'ble High Court had held that the view taken by the Tribunal on **Question No.3** should be reversed and ordered accordingly the said issue was answered in favour of the assessee.

7. Respectfully following the view taken by the Co-ordinate Pune Bench of the Tribunal in the aforesaid case and in view of the ruling by the Hon'ble Rajasthan High Court, we allow these additional grounds raised before us in

respect of the allowability of deduction regarding "Education Cess" paid by the assessee. Thus, **additional grounds raised by the assessee are allowed.**

**B. Adjudication of the ground in appeal Memo- disallowance of provision for warranty :**

8. The Ld. Sr. Counsel for the assessee referring to the ground in appeal memo in respect of disallowance of warranty provision, invited our attention at page 695 of the paper book filed before us and referred to the decision of the assessee's own case by the Pune Bench of the Tribunal in ITA No.1416/PUN/2016 for the assessment year 2011-12 decided on 01.03.2019 wherein the ground No.1 in the appeal of the assessee, the same question arose regarding the disallowance of provision for warranty on the basis that the provision of warranty has not been created by following a scientific method. This issue is exactly the same issue in all the appeals of the assessee filed before us. In that case of the assessee, the Tribunal on the issue has held as follows:

*"8. We heard both the parties on the issue of allowability of provisions of warranty and perused the orders of the Revenue on one side and the paper book placed before us along with the various documents referred to by the parties before us. To start with, we examined the contents of page 49 of the paper book which deals with the "policy for warranty" in respect of both the systems mentioned above. For the sake of completeness, we proceed to extract the relevant para 1.3.15 and 1.3.16 of page no.49 of the paper book, which reads as under :-*

*"1.3.15 The Company has framed the policy for warranty wherein warranty" period as follows.*

**Lift Axle Suspension ( Paralift Suspension System for 8x2 trucks) system**

a) STRUCTURAL COMPONENTS:

*Warranty is 2 Years or 200,000km, whichever occurs first.*

b) *CONSUMABLE / WEARING COMPONENTS: Air Springs, Stabilizers, Bushes, Fasteners & Wear Pads (only in case wear pad separates out from the system): 1 year or 100,000, whichever occurs first.*

**6 Rod Tandem Bogie Suspensions systems**

a) *STRUCTURAL COMPONENTS: 3 Years or 3,00,000kms whichever is the earliest.*

b) *CONSUMABLE / WEARING COMPONENTS: Rubber bushes and bolster spring, polymer bearing, leaf spring assembly: 1 year or 100,000 kms only for tractor trailer application.*

*This period is counted once the vehicle is sold by TML in the market. The above warranty has been mentioned in the service circulars issued by TATA Motors.*

*1.3.16 The warranty cost is provided on the basis of actual warranty claims debited by TML for the last one year. The provision amount would be equal to average of last 4 quarters actual claims multiplied by 5 quarters in case of "Paralift" and 7 quarters in case of 6-Rod products. 5 quarters and 7 quarters represent the half of warranty period plus one quarter (assuming that vehicle to be sold after one month after build up). The same is based on above warranty policy. The amount so arrived would be carried forward and fresh claims would be adjusted against the opening provision. The provision amount would be calculated at the end of every quarter. In this regard, the actual provision working for AY 2011-12 is reproduced below for your goodselfs ready reference:*

*Rs. In INR*

<i>Particulars</i>	<i>Amount</i>	<i>Reference</i>
<i>Actual Warranty Claim received for the year 2010-11</i>	<i>1,73,30,055</i>	<i>Annexure-4</i>
<i>Add:Warranty Claims likely to be accepted in Future</i>	<i>2,45,16,733</i>	<i>Annexure-5</i>
<b><i>(Subtotal)</i></b>	<i>4,18,46,788</i>	<i>Refer page no.30 to 61</i>
<b><i>Warranty Provision as per P&amp;L</i></b>	<i>3,96,03,899</i>	

9. *From the above, it is evident that the warranty is claimable by the consumers for which the conditions are specified. Therefore, in our view, the assessee has **policy for payments** towards the warranty expenses. Therefore, in principle, we do not agree with the findings of the CIT(A), who held that deduction for warranty is not allowable.*

10. Regarding the **quantum also**, we find that, by the end of this year, the assessee created provisions to the tune of Rs.97.5 crores out of which near about Rs.81.72 crores was already incurred by the assessee. The contents of para 64 of the paper book with the data till financial year 2011-12 are extracted hereinbelow :-

**Details of provision for warranty and actual warranty claims**

Value in Rs.

Particulars	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Opening Balance	-	16,09,000	22,44,196	2,45,18,157
Add: Provisions made during the year (net of reversal)	22,41,000	41,52,506	3,96,03,899	5,15,90,363
Less: Utilization/actual warranty claims	<b>(6,32,000 )</b>	<b>(35,17,310)</b>	<b>(1,73,29,938)</b>	<b>(3,11,08,622)</b>
Closing Balance	16,09,000	22,44,196	2,45,18,157	4,49,99,898
Net movement in provision account during the year	16,09,000	6,35,196	2,22,73,961	2,04,81,741

**Basis for computing Rs.3,96,03,899/-**

	Actual YTD Mar 11	Avg of last 4 quarters	Warranty prov. Period	Prov. For future claims	Total debit to P&L
Lift Axle	1,16,21,727	29,05,432	5	1,45,27,159	2,61,48,885
26 T 6-Rod	57,08,328	14,27,082	7	99,89,574	1,56,97,902
Total	1,73,30,055	43,32,514		2,45,16,733	4,18,46,788
Opening Balance of Warranty Provision					22,42,889
P&L Impact for March 11					3,96,03,899

*11. From the above tables, it is evident that the sum of Rs.3,96,03,899/- was calculated based on the policy adopted by the company. This policy has not been found erroneous by the authorities in any forum. Therefore, it is wrong infer that the assessee does not have a policy and the contractual obligation to make the payment in principle and the quantification is also not found erroneous and unscientific by the authorities. It is also seen that unutilized provision is carried forward to the subsequent years by maintaining the opening and closing balances. Therefore, without bringing any evidence on record, the allegation of the Assessing Officer and the CIT(A) that the warranty expenses are not claimable is incorrect. We also find the assessee has been maintained this method in principle over the years and they are not disturbed conclusively. Therefore, we hold that the provisions created by the assessee are required to be allowed as claimed by the assessee. Accordingly, the grounds raised by the assessee in this appeal are allowed.”*

9. The Ld. DR fairly conceded that the issue is covered in favour of the assessee.

10. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncements placed before us on record. Both the parties agreed that the facts and circumstances are absolutely similar with regard to the case filed before us. That as a matter of fact, the Ld. Sr. Counsel for the assessee even demonstrated from the order of the Assessing Officer at Page No.81 of the paper book, Para-6.1 of the assessment order. We observe that in the assessee's own case for assessment year 2011-12 (supra.), the Tribunal has given catetorical findings stating that the policy adopted by the company was not found erroneous by the authorities in any forum and therefore, it is wrong to infer that the assessee does not have a policy and the contractual obligation to make the payment in principle and the quantification is also not found erroneous and unscientific by the authorities. It was also observed by the Tribunal that unutilized provision is carried forward to the subsequent years by maintaining the opening and closing balances. Therefore, without bringing any evidence on record, the allegation of the Assessing Officer and the CIT(A) that the warranty expenses

are not claimable was held to be incorrect. Further, the assessee has maintained this method in principle over the years and they are not disturbed conclusively and hence, these provisions were allowed as claimed by the assessee. Since, the facts and circumstances for this year as agreed by the parties herein are similar, respectfully following the aforesaid decision of the Tribunal on this issue, **we allow this ground raised before us.**

11. In the result, **appeals of the assessee in ITA Nos.2486 to 2488/PUN/2017 for the assessment years 2012-13 to 2014-15 are allowed.**

**ITA Nos.2615 to 2617/PUN/2017 ( By Revenue)**  
**A.Ys.2012-13 to 2014-15**

12. Revenue's appeals filed before us pertain to the only issue of deletion of disallowance of "**Administrative Service Charges**".

**C. Adjudication of the issue- Administrative Service Charges:**

13. The Ld. Sr. Counsel for the assessee invited our attention to Page 498 of the Paper book in the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax, in ITA No.1450/PN/2011 and cross appeal in ITA No.1454/PN/2011 for the assessment year 2006-07 decided on 09.12.2015 and therein, in the assessee's appeal, ground No.2 is as follows:

*"2. The learned CIT(A) erred in confirming the disallowance of administrative service charges paid to Tata Autocomp Systems Ltd. ("TACO") to the extent of Rs.1,50,63,122 out of Rs.2,00,84,162 under section 40(A)(2)(b) of the Income-tax Act on the grounds that the same is excessive and unreasonable having regard to services rendered by TACO and the legitimate business needs of the appellant."*

The facts relates to the issue that the assessee therein had claimed an expenditure of Rs.2,00,84,162/- on account of payment made to Tata Autocomp Systems Ltd ( in short 'TACO') on account of Administrative Support Services taken. That on this issue, the Tribunal has held as follows:

*“32. Now, coming to the case of quantum of remuneration to be allowed in the hands of assessee, where the CIT(A) has allowed expenditure @ 25% of total expenses and no basis has been given by the CIT(A) to allow the said expenditure @ 25% of the total. There is no basis for measuring such services and in the absence of any evidence brought on record to establish that the expenditure incurred by the assessee was excessive i.e. more than market value of the said services, we find no merit in the orders of authorities below in invoking provisions of section 40A(2)(a) of the Act. Accordingly, we modify the order of CIT(A) and direct the Assessing Officer to allow the expenditure in totality in the hands of the assessee as the said expenditure has been laid down in terms of the agreement agreed upon between the parties and is for carrying on of the business of the assessee more efficiently and is allowable as business expenditure. The grounds of appeal No.2 and 3 raised by the assessee are allowed and ground of appeal No.2 raised by the Revenue is dismissed.”*

13.1 The Ld. Sr. Counsel for the assessee further submitted that in this case referred before us (supra.), the Ld. CIT(Appeals) has given partial relief to the assessee whereas, the Tribunal reversing the said order of the Ld. CIT(Appeals) gave full relief to the assessee allowing the said expenditure in totality as business expenditure. The Ld. Sr. Counsel for the assessee further referred to the decision of the Pune Bench of the Tribunal in another case in ITA No.1029/PN/2013 & Ors for the assessment year 2006-07 in the case of DCIT Vs. Tata Toyo Radiator Pvt. Ltd., the copy of which is annexed at Page No.541 onward in the Paper book. Therein also in the assessee's appeal in ITA No.1034/PN/2013, the ground No.1 was as follows:

*“The learned CIT(A) erred in confirming the disallowance of administrative service charges paid to Tata Autocomp Systems Ltd. ("TACO") to the extent of Rs.2,79,24,130 out of Rs.3,72,32,173 under section 40(A)(2)(b) of the Income-tax Act, 1961 ("the Act") on the grounds that the same is excessive and unreasonable having regard to services rendered by TACO and the legitimate business needs of the appellant.*

The Pune Bench of the Tribunal on the issue had held and observed as follows:

*“16. Admittedly, the issue arising before us is identical to the issue before the Tribunal in Tata Johnson Controls Automotive Ltd. Vs. DCIT (supra) and following the same parity of reasoning, we hold that the said expenditure is to be allowed in entirety in the hands of assessee being paid in accordance with the terms of the Agreement agreed upon between the parties and for the purpose of carrying on the business of assessee more efficiently. It may be pointed out herein that the assessee had initially entered into an Agreement with TACO in 1997 and the said expenditure had been allowed in the hands of assessee from year to year. However, the assessee renewed the Agreement in 2006 and the expenditure for the first time was not allowed in the hands of assessee in assessment year 2006-07. We find no merit in the orders of authorities below in this regard and accordingly, we modify the order of CIT(A) and direct the Assessing Officer to allow the expenditure in entirety in the hands of assessee. It may be pointed out herein only that the issue vide grounds of appeal No.1 and 2 raised by the assessee in assessment year 2006-07 and grounds of appeal No.1 and 2 raised by the Revenue are similarly raised by both the parties in assessment years 2007-08 to 2009-10. Accordingly, we allow the claim of assessee vis-à-vis the said expenditure in all the years i.e. assessment years 2006-07 to 2009-10. The grounds of appeal No.1 and 2 raised by the assessee in all the appeals are thus, allowed and the grounds of appeal No.1 and 2 raised by the Revenue in all the appeals is thus, dismissed.”*

13.2 The Ld. Sr. Counsel for the assessee further submitted that all through out on this issue, a constant view has been taken by the Pune Bench of the Tribunal in favour of the assessee. That even, the Hon'ble Bombay High Court in the case of Pr. Commissioner of Income Tax Vs. M/s. Tata Toyo Radiator Pvt. Ltd. In ITA No.342 of 2017 and Ors have approved these payments and have given ruling in favour of the assessee.

14. The Ld. DR fairly conceded that the issue is covered in favour of the assessee by the decisions mentioned aforesaid.

15. We have perused the case records and heard the rival contentions. We have also given considerable thought to the judicial pronouncements placed

before us. That on careful perusal of these judicial pronouncements, it is crystal clear that the issue is covered in favour of the assessee and legal sanctity comes from the approval sanctioned by the Hon'ble Jurisdictional High Court. Thus, **grounds of the Revenue's appeal are dismissed.**

16. In the result, **appeals of the Revenue in ITA No.2615 to 2617/PUN/2017 for the assessment years 2012-13 to 2014-15 are dismissed.**

17. In the combined result, **appeals of the assessee are allowed and appeals of the Revenue are dismissed.**

Order pronounced on 18<sup>th</sup> day of September, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> September, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-5, Pune.
4. The Pr. CIT, Pune-4, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	18.09.2019	Sr.PS/PS
2	Draft placed before author	18.09.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		