

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DLEHI

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA. No 5450/Del/2017  
Assessment Year: 2011-12

Add. CIT,  
Spl. Range-2, New Delhi

M/s. Continental India Limited  
(formerly known as Modi Tyres  
Company Pvt. Ltd)  
Vs. NH-58, Roorkee Road,  
Modipuram,  
Meerut-250 110.  
**PAN:AAFCEM 5366B**

**(Applicant)**

**(Respondent)**

Appellant by: Sh. Jagdish Singh, Sr. DR  
Respondent by: Sh. Rohit Jain, Adv.  
Sh. Deepesh Jain, CA

Date of hearing: 16/3/2020

Date of order : 20/3/2020

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Challenging the order dated 31/3/2017 in appeal No. 455/14-15 of CIT(A)-2 passed by the learned Commissioner of Income Tax (Appeals)-2, New Delhi ("Ld. CIT(A)"), for the assessment year 2011-12,

in the case of M/s continental India limited ("the assessee"), Revenue preferred this appeal on the following grounds:-

2. Brief facts of the case, relevant for the disposal of this appeal are that the assessee is engaged in the business of manufacturing and trading of types of heavy vehicles. For the Assessment Year 2011-12 they have filed their return of income on 3/9/2011 declaring a loss of Rs.1,37,24,65,961/-. Assessment, however, by order dated 19/02/2014 passed under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was complete at the determination of the total loss of the assessee at a Rs.1,21,66,98,041/- by making certain additions/disallowances, namely, on account of provision for warranty to the tune of Rs.7,27,77,300/-, depreciation on licence fee to the tune of Rs. 55,34,331/-, loss on sale of capital work in progress to the tune of Rs.7,02,59,902/- and a processing fee to the tune of Rs. 71,96,387/.

3. Aggrieved by the action of the learned Assessing Officer, assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A) accepted the contentions of the assessee and allowed the appeal by directing the deletion of the additions/disallowances. Revenue however, has chosen to challenge in this appeal only the deletion of the additions to the tune of Rs.7,27,77,300/- on account of disallowance of provision for warranty and the addition of Rs. 71,96,387/-on account of processing fee and interest paid, on the above-mentioned grounds.

4. In respect of first ground, the counsel submitted that since the assessee is engaged in the business of manufacturing and trading of toys for heavy vehicles, which are sold along with warranty, the moment the sale takes place, the assessee places itself under the obligation to replace during the warranty period, free of cost, any competent suffering from manufacturing defects. Assessee, therefore, made a provision towards the warranty expenses to the tune of Rs.7,27,77,300/- during the relevant assessment year in their books of accounts.

5. Learned Assessing Officer, however, disallowed the same holding that the assessee could not prove the actual incurrence of liability under the warranty class on the basis of fixing a percentage on turnover and in the absence of any such details, prepared on scientific method for making such a provision, the provision is not allowable. Learned Assessing Officer held that such a provision was made on uncertain facts and without any scientific basis.

6. Ld. CIT(A) considered this aspect in detail, and as a matter of fact, found from the record that contrary to the observations of the learned Assessing Officer in the assessment order that no details are scientific method of computation of provision for warranty was filed by the assessee, the assessee in fact, furnish a computation of the provision for warranty along with its reply dated 17/02/2014. Ld. CIT(A), further found that in fact this issue had arisen in assessee's own case for the

earlier assessment year and such an addition was deleted by the Ld. CIT(A) in appeal No.580/14-15/IT/del/2015-16 vide order dated 15/10/2015 while following the decision of the Hon'ble Apex Court in the case of *Rotork Controls India Ltd vs. CIT 314 ITR 62*. Since the facts are similar, Ld. CIT(A) while following the decision of his predecessor allowed the contention of the assessee and directed the deletion of the addition.

7. It is the argument on behalf of the Revenue that the decision of various courts including the decision of the Hon'ble Supreme Court have already been considered and reply dated 17/02/2014 of the assessee was also considered by the learned Assessing Officer before making the addition on account of the disallowance of the provision of warranty expenses. Ld. DR further submitted that the addition made on this behalf is based on facts and the method of computation-whether it is based on actual basis or on estimate basis has to be checked and therefore, the matter deserves to be remanded to the file of the learned Assessing Officer for verification of such facts.

8. Per contra, it is the submission of the Ld. DR that the assessment order does not indicate that the learned Assessing Officer had considered the reply dated 17/2/2014 submitted by the assessee along with the details wherein the matter and basis for computation of the provision was given, and it being a caution of fact, Ld. CIT(A) after verifying the fact reached the conclusion that the observation of the

learned Assessing Officer as to the non-submission of details by the assessee is factually incorrect. Since the Ld. CIT(A) applied the law laid down by the Hon'ble Apex Court in the case of *Rotork Controls India Ltd. (supra)* to the facts he found on verification of record, the matter does not require any demand to the file of the learned Assessing Officer.

9. We have gone through the record in the light of the submissions made on either side. As rightly pointed out by the Ld. AR, assessment order nowhere show that the learned Assessing Officer considered the details furnished by the assessee along with the letter dated 17/02/2014 not ready comment on such details as to their consistency and genuineness. It is only on verification of the record Ld. CIT(A) found that the learned Assessing Officer added in observing that no details are scientific method of computation of provision for warranty was filed by the assessee, because such details to be found in record being filed alongwith the reply dated 17/02/2014. There is no reason for us not to believe the factual findings returned by the Ld. CIT(A) after going through the record. A reading of the orders of the authorities below not support the argument advanced on behalf of the Revenue.

10. Further, it could be seen from the record that against the order of the Ld. CIT(A) for assessment year 2010-11, Revenue preferred an appeal before the Tribunal in ITA No. 207 /Del/ 2016 and by order dated 19/3/2019 a coordinate Bench of this Tribunal while following the

decision of the Hon'ble Supreme Court in the case of *Rotork Controls India Ltd (supra)* upheld the findings of the Ld. CIT(A) in deleting the disallowance.

11. There is no dispute that the facts involved for this year are similar to the facts involved for the immediately preceding year, i.e. 2010-11. Since no change of facts and circumstances is pleaded and no decision to the contrary is brought to our notice, while following the decision of the Hon'ble Apex court in the case of *Rotork Controls India Ltd (supra)* we uphold the findings of the Ld. CIT(A) and while allowing ground No.1, direct the learned Assessing Officer to delete the disallowance and consequential addition.

12. Now coming to ground No. 2, it relates to the disallowance of expenditure to the tune of Rs. 71, 96, 387/-, and it is submitted that this is comprising of 2 components, namely, processing fee of Rs. 66, 18, 000/-and interest of Rs. 5,78,387/-in respect of the loan taken from spin investments (India) Ltd for business purpose. According to the assessee, under the loan agreement entered into by the assessee with M/s spin investments (India) Ltd on 22/3/2011, assessee has been under an obligation to pay an upfront fee of Rs. 66, 18, 000/-and also interested 19% thereon, which came to Rs. 5, 78, 380/-proportionately for the period between 22/3/2011 and 31/3/2011. The contention of the assessee has been that since the tax was not deducted at source by the

assessee, the assessee *Suo Moto* disallowed the upfront/processing fee in the return of income as is reflected in the computation of income.

13. Learned Assessing Officer again disallowed the upfront/process fee, which on verification of the details Ld. CIT(A) deleted stating that such an amount had already been added back in the computation of income of the assessee under the head "TDS not deducted-Annexure-IV of tax audit".

14. Ld. DR argued that from the perusal of grounds of appeal taken before the ITAT, the learned Assessing Officer mentioned that the assessee had offered Rs. 66, 18, 000/-paid as processing fee for taxation for non-deduction of TDS and Rs.5,78,387/- remained unexplained, and therefore, the question as to whether the assessee had correctly deducted TDS on remaining amount of Rs.5,78,387/-will have to be checked from the record.

15. This argument of the Ld. DR is untenable because having accepted that the assessee had offered Rs.66,18,000/- paid as processing fee for taxation, the assessing officer shall not be heard to say anything contrary. Finding of the Ld. CIT(A) do not suffer any legal infirmity. Insofar as the amount of Rs.5,78, 387/- is concerned, assessee had deducted the TDS on interest amount and, therefore, the addition is unsustainable. Ground No. 2 of the Revenue's appeal is devoid of merits and is dismissed.

16. In the result, appeal of the Revenue is dismissed.

Pronounced in open court on this the 20<sup>th</sup> March, 2020.

Sd/-

**(G.S. PANNU)**

VICE PRESIDENT

Dated: 20/3/2020

'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(K. NARASIMHA CHARY)**

JUDICIAL MEMBER

ASSISTANT REGISTRAR  
ITAT NEW DELHI