

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 3307/DEL/2017 (A.Y 2010-11)**

**(THROUGH VIDEO CONFERENCING)**

L G Electronics India (P) Ltd. A- Wing (3 <sup>rd</sup> Floor), D-3, District Centre Saket New Delhi AAACL1745Q <b>(APPELLANT)</b>	Vs	Pr. CIT Aayakar Bhawan 2D Block-A, Sector-24 Noida  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ajay Vohra, Sr. Adv, Sh. Aditya Vohra, Adv, Sh. Neeraj Jain, Adv &amp; Sh. Arpit Goyal, CA</b>
<b>Respondent by</b>	<b>Sh. V. K. Mishra, CIT(DR)</b>

<b>Date of Hearing</b>	<b>29.10.2020</b>
<b>Date of Pronouncement</b>	<b>09.12.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 29/3/2017 passed by Principal Commissioner of Income Tax, Noida u/s 263 of the Income Tax Act, 1961 for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

**GROUND OF APPEAL**

1. *That on the facts and circumstances of the case and in law, the impugned order dated 29.03.2017 passed by the Ld. Principal Commissioner of Income-*

tax, Noida (Pr. CIT), under section 263 of the Income-tax Act, 1961 ('the Act') is without jurisdiction, illegal and bad in law.

2. That the Ld. Pr. CIT erred on facts and in law in holding that the assessment order dated 12.01.2015 passed by the assessing officer under section 143(3) read with section 144C of the Act was erroneous and prejudicial to the interests of the revenue in as much as the assessing officer did not examine the deduction claimed for provision of service warranty expenditure.

2.1 That the Ld. Pr. CIT erred on facts and in law in holding that the assessment order was erroneous since neither any query was raised nor any discussion was made in the assessment order on the aforesaid issue. That the Ld. Pr. CIT erred on facts and in law in not appreciating that the view taken by the assessing officer that the provision for service warranty was allowable expenditure was a plausible view, ousting the jurisdiction of Ld. Pr. CIT under section 263 of the Act.

3. That the Ld. Pr. CIT erred on facts and in law in not appreciating that since the deduction for provision of service warranty expenditure was in accordance with the appellate decisions in the appellant's own cases for earlier assessment years, the assessment order cannot be regarded as erroneous or prejudicial to the interests of the Revenue, warranting exercise of revisionary jurisdiction under section 263 of the Act.

3.1 That the Ld. Pr. CIT erred on facts and in law in setting aside the assessment order, while exercising jurisdiction under section 263 of the Act, without recording any prima facie finding on the merits qua allowability of deduction for provision of service warranty expenditure claimed by the appellant, thereby not demonstrating as to how and why the original assessment order was prejudicial to the interests of the Revenue.

4. Without prejudice, that the Ld. Pr. CIT erred on facts and in law in not appreciating that the provision for service warranty amounting to Rs. 42 crores, was allowable u/s 37(1) of the Act.

3. The assessee is a Private Limited Company engaged in manufacturing

and trading of electronics, home appliances, IT Products. The assessee filed return online on 29/09/2010 declaring total income of Rs. 405,68,98,702/-. The case was selected for scrutiny and notice u/s 143(2) dated 6/9/2011 was issued and served upon the assessee. The assessee filed revised return online on 28/3/2012 declaring total income of Rs. 383,53,48,016/-. During the year, the assessee disclosed total sales of Rs. 104,504 million excluding the excise duty and trade discounts etc. Besides this, assessee also disclosed other income of Rs. 2,407 million. Assessee disclosed net profit of Rs. 4,721 million in the profit and loss account. In computation of total income, the assessee claimed exempt income of Rs. 31,03,82,304/- u/s 10B of the Income Tax Act and deduction of Rs. 1,37,44,966/- and Rs. 1,04,500/- u/s 80JJAA and 80G of the Income Tax Act. The assessee revert out the total income in the revised return at Rs. 383,53,48,016/- after claiming the receipt of Rs. 25,42,18,072/- being UP Sales Tax subsidy as capital receipts, additional disallowance of provision of expenses of Rs. 6,08,66,231/- and allowance of provision of expenses of Rs. 2,81,98,845/-. The Transfer Pricing Officer proposed to make an adjustment of Rs.11,97,49,20,511/-. Hence an addition of Rs.11,97,49,20,511/- was proposed to made to the income of the assessee in the draft assessment order dated 31.03.2014. Aggrieved by the draft assessment order, the assessee filed objection before the DRP and the DRP issued direction on 30/12/2014 rejecting the objections of the assessee. The Assessment Order was passed on 12.01.2015. The notice u/s 263 was issued on 8/6/2016. The assessee filed reply dated 28/7/2016. The Pr. CIT passed an order dated 29/3/2017 u/s 263 of the Income Tax Act, 1961. Thereby cancelling the assessment order and restoring the matter back to the file of the Assessing Officer with direction to make fresh verification on the points mentioned in the said order.

4. Being aggrieved by the order under Section 263, the assessee filed appeal before us.

5. The Ld. AR submitted that there was no error in the assessment order in allowing the claim of the assessee regarding provisions for service warranty amounting to Rs. 420 million. During the course of assessment proceedings, the assessee furnished the audited financial statements for the year ending 31/3/2010 wherein the amount of provision for service warranty amounting to Rs. 420 million was disclosed under Schedule 'N' "Administration and Selling Expenses" forming part of profit and loss account. The Ld. AR further submitted that in assessee's own case for Assessment Year 2002-03, 2003-04, 2004-05, the Tribunal has allowed provision for service warranty as allowable expenditure. In light of the above, the assessment order cannot be labeled as erroneous on the ground that the claim of provision for service warranty escaped the Assessing Officer's attention and was allowed without due application of mind, notwithstanding that the above issue was not discussed by the Assessing Officer in the assessment order. The Ld. AR further submitted that merely because the assessment order is silent about the issue in word will not ipso facto mean that it was passed without necessary enquiry as regards such issue and confer jurisdiction on CIT(A) to revise the assessment order u/s 263 of the Act. When the Assessing Officer was aware of nature of claim of the assessee and thereafter the assessment order was passed. The order sought to be revised was passed after due application of mind by the Assessing Officer and cannot be termed as erroneous and prejudicial to the interest of revenue on grounds of lack of enquiry so as to be subjected revision u/s 263 of the Act. The Ld. AR further submitted that without prejudice to the aforesaid in regards to the merits of the case, during the year the assessee has accounted provision for service warranty amounting to Rs 420 million. The assessee is generally providing one year warranty on sale of its product. As per its accounting policy, the service warranty expenses are provided in the books of account based upon well established scientific and realistic methods. The assessee has the provisions of warranty liability having regard to the past factor of actual expenses incurred by the assessee towards warranty liability. The assessee has worked out the amount of liability by applying the multiplying factor on the

total sale made during the year on the basis of past result and experience gain by the assessee in preceding years. Further, sales price included the component of service warranty. The income stands increased by this element of service warranty being income embedded in the sales price accordingly as a matching concept provision for service warrant expenses of Rs. 42,06,31,88/- should be allowed as expenses on an approval basis, as the same is embedded, sales credibility to profit and loss account. The issue regarding deductibility of provision for warranty claim is a well settled position. The same is allowable as a deductible expenses for tax purposes as the provisions for warranty is an accrued liability. The Ld. AR relied upon the decision of the Tribunal in assessee's own case for Assessment Year 2007-08 vide order dated 8/12/2014 which was decided in favour of assessee and deleted the addition relating to provision for service warranty.

6. The Ld. DR submitted that the Pr. CIT has rightly held that the Assessing Officer has not examined the issue of allowability of provision for service warranty. Whether the method of calculating the provisions is truly scientific or not and whether there is an element of assumption required to be properly examined. The Assessing Officer allowed the claim of expenses of the assessee without any verification or enquiry. Therefore, this is a case of no enquiry in respect of an expense of provisional nature. In respect of expenses, every year is different and specific facts of the case means examination of the same in each year. Particularly in the case of a provisions only because the expenditure of similar nature was allowed by the Tribunal in the earlier year does not preclude the revenue from examining the facts of the cases in the instant year. Once the expense is claim on provision basis, it needs to be examined whether the claim has been made on a scientific basis or not. In proceedings u/s 263, the issue is whether the Assessing Officer allowed and expense claim by the assessee without making any enquiry. By making no enquiry/query, the Assessing Officer has not given any finding on the matter and in the proceedings has allowed the expenses claimed by the assessee and therefore,

has passed an order which is erroneous as well as prejudicial to the interest of Revenue. The Ld. DR relied upon the decision of Hon'ble Supreme Court in case of Danial Merchants Pvt. Ltd. Vs. ITO (Appeal No. 2396/2017 dated 29/11/2017). The Ld. DR submitted that Pr. CIT is entitle to revise the assessment order u/s 263 on the ground that the Assessing Officer did not make any proper enquiry while accepting the explanation of the assessee.

7. We have heard both the parties and perused the material available on record. The Assessing Officer/TPO at the time of allowing expenses has not looked into each and every expenses/provisions which was shown in the return and audited accounts of the assessee during the assessment proceedings. During the hearing, the Ld. AR has submitted that the audited financial statements was filed and these facts were brought on record vide reply dated 28/07/2016 to the show cause notice u/s 263. But nowhere, the Ld. AR has shown that the Assessing Officer/TPO has specifically asked the details and bifurcations of the expenses claim by the assessee including the provisions of service warranty. The aspect of provision for service warranty has to be looked into year to year basis and it cannot be said that since the said provision has been allowed in prior years by the Tribunal, gives the permission to the Assessing Officer/TPO not to look into the year under scrutiny in which the actual expenses or provisions was made by the assessee. In fact, the Assessing Officer/TPO never raised any query as relates to provisions for service warranty at the time of Assessment Proceedings/ TP proceedings. There is no explanation asked by the Assessing Officer/ TPO to verify the actual claim of the provisions for service warranty in the present assessment year. Thus, the invocation of Section 263 provisions was rightly called for by the Pr. CIT. In case of Daniel Merchants Pvt. Ltd. (supra), the Assessing Officer has not made proper inquiry and the Hon'ble Apex Court has held the order under Section 263 as proper order. In the present case the Assessing Officer/TPO has not at first instance, raised any query related to provisions for service warranty. Merely stating that the merit of service warranty is as per the various decisions

of the Tribunal and High Court, does not make an erroneous Assessment Order, just and proper. The Assessing Officer/TPO should have been verified the said issue on merit at the time of Assessment Proceedings, which the Assessing Officer/TPO failed to do so. Therefore, Pr. CIT while invoking Section 263 has clearly set out that the assessment order is erroneous and prejudicial to the interest of the Revenue. The Pr. CIT has the power to invoke Section 263 for further enquiry of escapement of income. In the present case, the Assessing Officer has not looked into this aspect, thereof, the Pri. CIT has rightly passed the order u/s 263. Hence, the appeal of the assessee is dismissed.

8. In result, appeal of the assessee is dismissed.

**Order pronounced in the Open Court on this 09<sup>th</sup> Day of December, 2020**

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 09/12/2020  
*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

