

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य एवं
श्री एस. जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3155/Chny/2019
निर्धारण वर्ष /Assessment Year: 2010-11

The Dy. Commissioner of-
Income Tax,
Corporate Circle-1(1),
Chennai-600 034.

v. M/s.Amco Batteries Ltd.,
803, Addison Building,
Anna Salai,
Chennai-600 002.

[PAN: AABCA 1726 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by	:	Mr.Suresh Periasamy, JCIT
Assessee by	:	Mr.R. Vijayaraghavan, Adv.
सुनवाई की तारीख/Date of Hearing	:	09.11.2020
घोषणा की तारीख/Dt. of Pronouncement	:	22.12.2020

आदेश / O R D E R

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, in ITA No.179/17-18/CIT(A)-4/AY: 2010-11 dated 12.09.2019 for the AY 2010-11.

2. M/s.Amco Batteries Ltd., the assessee, is engaged in the business of manufacturing & trading of batteries. While making the assessment for the AY 2010-11, the Assessing Officer (in short "AO") disallowed the provision of warranty mainly for the reason that there was a vast variation in ratio

between the actual expenses & the provision created. On appeal, the Ld.CIT(A) upheld the assessment. On assessee's appeal, this Tribunal remitted the issue back to the AO to examine the issue afresh. In the revision order, the AO held, inter alia, that in the absence of any new material brought to his notice, no deviation in the disallowance made in the Assessment Order is required, which was confirmed by the Ld.CIT(A) and accordingly, sustained the quantum of disallowance made in the original Assessment Order. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (A). The Ld.CIT(A) after examining the assessee's submission, material and after considering the fact that the ITAT allowed the assessee's similar claim in the assessment years 2005-06, 2007-08 & 2009-2010 allowed the assessee's appeal. Aggrieved, the Revenue filed this appeal with the following grounds:

1. *The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.*
2. *The learned CIT(A) erred in allowing provision for warranty without appreciating the addition on account of provision for warranty was made after comparing the previous year records?*
3. *The learned CIT(A) erred in allowing provision for warranty without appreciating the fact that the provision for warranty created during the relevant year is exorbitant compared with the historical trend of expenditure incurred towards warranty in the past and assessee has not rationally explained the steep increase based on cogent evidence in support of his claim?*
4. *The learned CIT(A) erred in allowing provision for warranty without appreciating the addition on account of provision for warranty was made after comparing the previous year records?*
5. *Whether the Ld.CIT(A) was correct in to allow assessee's appeal in consonance with the decision of Hon'ble Apex Court in the case of Rotork Control vs. CIT where in the Apex Court clearly emphasized that the provision should be scientifically established, whereas in the instant case, the assessee never produced any details, evidences inspite of direction from the Hon'ble ITAT?*

6. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.*

3. The case was heard through videoconferencing. The Ld.DR presented the case on the lines of grounds of appeal, supra, and pleaded to restore the order of the AO. Per contra, the Ld.AR submitted that the provision of warranty is recognized by the assessee in compliance with the Accounting Standard-29 (AS-29) as prescribed by the ICAI at the time of sale and not at the time of settlement. The assessee's similar claim in the AYs 2005-06 & AY 2007-08 was upheld by the Ld.CIT(A). On Revenue's appeal, for the AY 2005-06, the Hon'ble ITAT in ITA No.352/Bang/2010 & in ITA No.142/Bang/2010 dated 21.03.2011 confirmed the order of the Ld.CIT(A) holding that the estimation is fair and reasonable. For the AY 2007-08 also, the Hon'ble ITAT upheld the order of the Ld.CIT(A) on this issue in ITA No.378/Bang/2011 dated 31.01.2012. However, in the order related to AY 2008-09 on this issue, the Ld.CIT(A) held that the ratio between the actual and the provision was less than 70:100 during the period relevant to the AYs 2005-06 & 2007-08, therefore, he (the Ld.CIT(A)) considered such provision is ascertainable and hence deleted the additions made by the AO in those assessment years. However, since this ratio is 59:10 for the AY 2008-09, which does not meet the parameter fixed by him i.e. 70:100 in the earlier years, supra, and hence, the Ld.CIT(A) did not consider the estimation of provision made for the assessment year 2008-09 as a scientific & reasonable one and accordingly, upheld the addition made by

the AO. Aggrieved, the assessee filed an appeal before the Hon'ble ITAT and the Hon'ble ITAT allowed assessee's appeal holding that the arbitrary ratio of 70:100 assumed by the Ld.CIT(A) is without justification & unwarranted in ITA No.1116/Bang/2011 dated 03.07.2012 for the AY 2008-09. Against this order, the Revenue filed an appeal before the Hon'ble High Court of Karnataka, which upheld the order of the Hon'ble ITAT in ITA No.400 of 2012 dated 25.08.2020. The Ld.AR inviting our attention to the Paper Book, submitted that though the assessee pleaded that it is complying with the AS-29 as per which warranty is recognized at the time of sale and not at the time of settlement and furnished relevant materials viz., the method of determination of provision of warranty, liability movement of warranty provisions from AY 2008-09 to 2015, statement showing the provision vs. settlement for accounting years i.e. 2007 to 2015, etc., and clearly explained that warranty is recognized at the time of Sale and not at the time of settlement. Therefore, the provision goes up if the sales goes up in any year & also if the settlement goes up, it is factored in the provision. Since the warranty period is prorated over a period of 12-36 months, accordingly the settlements will also prolong for three years from the year in which the provision is made, the AO failed to appreciate it in the order giving effect, for the reasons that the Ld.CIT(A) originally upheld the assessment order. When the assessee clearly explained before the Ld.CIT(A) based on such materials that the provision is made on a scientific manner talking into account the relevant factors, which was also duly recognized and upheld by the ITAT & the Hon'ble High Court, supra, etc.,

the Ld.CIT(A) correctly allowed the assessee's appeal. Hence, the Revenue is not justified in alleging that the assessee's method is not scientific and hence, he pleaded to dismiss the Revenue's appeal.

4. We heard the rival submissions and gone through relevant material. The assessee in compliance with the Accounting Standard 29 (AS-29) as prescribed by the ICAI claimed provision for warranty. Its claim was disallowed for the reason that there is vast variation in ratio between the actual expenses & the provision created. Therefore, it is not scientific. However, the assessee submits that it is following AS-29 and the provision of warranty is made on the basis of sale and also the actual trend of the last four years and then the provision is worked out scientifically. In this regard, let us examine this issue historically. The assessee's similar claim in the AYs 2005-06 & 2007-08 was allowed by the Ld.CIT(A), which was also upheld by the Hon'ble ITAT, Supra. However, during the appeal related to AY 2008-09, the Ld.CIT(A) refused to allow the claim for the reason that the ratio between the actual and the provision which was 70:100 during the AYs 2005-06 & 2007-08 but it was 59:100 in AY 2008-09 and hence he held that the assessee's estimation of provision is not scientific & reasonable. Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal, which allowed the appeal. Aggrieved against that order, the Revenue filed an appeal before the Hon'ble High Court of Karnataka. The relevant portion of the judgment in ITA No.400 of 2012 dated 25.08.2020 related to the AY 2008-09, is extracted as under:

A.O. and disallowance of the balance is found justified. The addition is upheld. The related grounds of appeal are dismissed.

6. Thus, from close scrutiny of paragraph 9, it is evident that the principles laid down by the Supreme Court in Rotork Controls India (P) Ltd. Supra had been taken into account by the Commissioner of Income Tax (Appeals) and the estimation of provision for the Assessment year 2008-09 has been found to be unscientific and unreasonable. The Tribunal has noted that admittedly, the Commissioner of Income Tax (Appeals) has considered the same working method of provision in previous two years and allowed the provision. It was further held that the Commissioner of Income Tax (Appeals) did not allow the provision for warranty for the Assessment year on the ground that the ratio between the actual and the provision is less than 70:100. It was further held that the ratio adopted by the Commissioner of Income Tax (Appeals) is imaginary and arbitrary and is without any basis. It was also held that provision of warranty was made every year in accordance with accounting standards 29 and the provision is worked out scientifically every year merely because, the provision has come down to 59:100, the same cannot be disallowed. Accordingly, the finding recorded by the Commissioner of Income Tax (Appeals) that estimation of provision is unscientific and is unreasonable has been set aside. Thus, it is evident that the conditions laid down by the Supreme Court to assess a provision have been met in the instant case. Therefore, the submission made by learned counsel for the revenue that neither Commissioner of Income Tax (Appeals) nor Tribunal has examined the ratio laid down in Rotork Controls India (P) Ltd. Supra does not deserve acceptance.

In view of preceding analysis, the substantial questions of law framed are answered against the revenue and in favour of the assessee. In the result, the appeal fails and is hereby dismissed.

From the above, it is clear that the assessee has been consistently following this method, which has been found by the Hon'ble ITAT, to be scientific and the conditions laid down by the Hon'ble Apex Court is also met, supra, which has also been upheld by the Hon'ble High Court, supra. Therefore, we do not find any merit in the Revenue's appeal and hence, dismiss the same.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 22nd day of December, 2020, in Chennai.

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 22nd December, 2020.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF