

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.223/Bang/2020
Assessment year : 2008-09

Toyota Kirloskar Motors Pvt. Ltd., Plot No.1, Bidadi Industrial Area, Bidadi, Ramanagara Dist. 562 109. PAN: AA ACT 5415B	Vs.	The Deputy Commissioner of Income Tax, LTU Circle 1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Padamchand Khincha, CA
Respondent by	:	Shri Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.02.2021
Date of Pronouncement	:	02.03.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 11.12.2019 of the CIT(Appeals), Bengaluru-10 for the assessment year 2008-09.

2. The effective grounds of appeal raised by the assessee are as follows:-

“2. Grounds relating to disallowance of warranty provision of Rs. 1,67,32,832

2.1. The learned CIT(A) has erred in confirming the disallowance of claim of provision for warranty amounting to Rs. 1,67,32,832. On facts and in the circumstances of

the case and law applicable, provision for warranty amounting to Rs. 1,67,32,832/- is to be fully allowed as /deduction as claimed in the return of income.

- 2.2. The learned AO and CIT(A) have erred in not appreciating that, as there was a shift in the basis of warranty claim from payment basis to provision basis, the difference between cumulative provision and cumulative payment pertaining to earlier years was claimed during the year under consideration in order to ensure uniformity.
- 2.3. The learned AO and CIT(A) have erred in concluding that since the impugned claim of provision for warranty did not relate to the year under consideration, the same is not allowable.
- 2.4. The learned CIT(A) has erred in concluding that the impugned deduction can be claimed only by filing revised returns of income for respective years, by relying on the decision of the Apex Court in Goetze (India) Ltd v CIT 284 ITR 323.

3. Grounds relating to reversal of provision in subsequent years

- 3.1. The learned AO and CIT(A) have erred in not appreciating the fact that impugned provision disallowed is subsequently reversed to the extent of Rs. 1,63,40,806 in financial year 2009-10 which has suffered tax in the said year. Therefore, only the balance amount of provision of Rs. 3,92,026 [Rs. 1,67,32,832 less Rs. 1,63,40,806] should be considered for disallowance, if any.
- 3.2. The learned CIT(A) has erred in concluding that the reversal of provision made in the financial year 2009-10 is not relatable to the impugned provision for warranty claimed during the year under consideration.
- 3.3. Assuming without admitting that the provision for warranty amounting to Rs. 1,67,32,832/- is to be disallowed, the reversal of provision for warranty and

offered to tax in the AY 2010-11 amounting to Rs. 1,63,40,806 should not be assessable to tax.”

3. The brief facts of the case are that in this case assessment u/s 143(3) r.w.s. 144C was completed on 16.10.2012. Subsequently, the CIT (LTU) Bangalore vide order u/s 263 dated 26.03.2015 found the order u/s 143(3) erroneous and prejudicial to the interest of revenue because the AO had allowed an amount of Rs.1,67,32,832 claimed as warranty provision by the assessee for the AY 2008-09 which otherwise related to earlier years. Accordingly, the CIT set aside the order u/s 143(3) dated 16.10.2012. The AO concluded the assessment u/s 143(3) r.w.s. 263 on 28.09.2015 making addition of Rs.1,67,32,832 on account of claim of excess warranty provision.

4. While computing the income, the AO made the following computation:-

Particulars	Amount in Rs.	Amount in Rs.
Total Income as per order dated 16/10/2012		462,90,59,697
Add: Claim of excess warranty provision		1,67,32,832
Revised Total Income		464,57,92,529
Tax thereon @ 30%	139,37,37,759	
Surcharge @ 10%	13,93,73,776	
Education Cess @ 3%	4,59,93,346	
Total Tax Payable		157,91,04,880
Less: Relief		2,20,588
Tax Payable		157,88,84,292
Less: TDS	22,81,86,447	
Advance Tax	85,30,27,000	108,12,13,447

5. Now the contention of the Id. AR by way of grounds 2 & 3 is that AO should have started computation in the assessment order passed u/s. 143(3) r.w.s. 263 dated 28.9.2015 after giving effect to the order of the ITAT, since in this assessment year the assessee went in appeal before the Tribunal challenging the assessment order wherein certain relief has

been granted by the Tribunal. The AO should have considered this while passing the giving effect order to the 263 order. Accordingly, the Id. AR stated that the AO has not considered the relief granted by the appellate authority on earlier occasion and started computation as per the assessment order dated 16.10.2012. This has created a higher demand of tax.

6. The Id. DR relied on the order of CIT(Appeals).

7. We have heard the parties and perused the material on record. In this case, the AO when he passed the giving effect order u/s. 143(3) r.w.s. 263 of the Act on 28.9.2015 the Tribunal order had not been passed. Hence the AO stated computation in the 143(3) r.w.s. 263 order dated 28.9.2015 from the total income as per the original assessment order dated 16.10.2012 @ Rs.462,90,59,697, wherein he has not given the benefit of TP adjustment which was reduced to Rs.14,18,47,658 vide assessment order giving effect to ITAT order for AY 2008-09 on 20.1.2016. However, since the order giving effect to ITAT order for AY 2008-09 was not passed at the time of passing the order giving effect to 263 order on 28.9.2015, the AO had not considered it. However, this was noticed by the CIT(Appeals) and he has given a direction to reduce the original TP adjustment from Rs.97,82,11,238 to Rs.14,18,47,658. In other words, the AO is directed by the CIT(A) to start the computation of total income as mentioned in Order Giving Effect to the ITAT order dated 20.1.2016.

8. With regard to disallowance of warranty provision of Rs.1,67,32,832, we find that the CIT(Appeals) in his order passed u/s. 263 observed that in the assessment year under consideration the assessee has claimed excess deduction of Rs.1,67,32,832. It was found that the provision is not created during the year, but it pertains to provisions created in the earlier

years which has been allowed in the respective assessment years. It was submitted before the CIT(A) that the excess provision of Rs.167,32,832 claimed in the AY 2008-09 as excess provision for earlier years represents provision for warranty voluntarily disallowed in earlier years less the actual payments/reversal made for warranty expenses. It was pointed out by CIT(A) pointed out that from AY 2004-05, the assessee started claiming the provision created in the books as deduction which was restricted by the AO to the actual payment and allowed in earlier years. From the AY 2004-05 onwards, the whole of the provision is allowed based on the appellate orders of ITAT / High Court. Since upto AY 2003-04, the actual expenses being allowed, there cannot be any reversals on incurring of the provision amount. From the AY 2004-05 onwards since the provision is allowed, the excess provision over and above the actual expenses was brought to tax. There cannot be any unclaimed expenses upto AY 2003-04 and from AY 2004-05 onwards, there cannot be any provision disallowed which the assessee could claim in the subsequent years. As such, the claim as assessee at Rs.167,32,832 which was claimed as earlier provision for warranty during this AY 2008-09 was directed to be disallowed by the CIT(Appeals) in his order u/s. 263 dated 26.3.2015. The same was complied by the AO in his Order Giving Effect to the 263 order passed u/s. 143(3) r.w.s. 263 dated 28.9.2015. Now the contention of the Id. AR is that if it is disallowed in AY 2008-09, the same should be allowed in AY 2010-11 on the ground that it has offered the amount in AY 2011-12.

9. The contention of the Id. DR is that the assessee had not furnished requisite details before the lower authorities for claiming such deduction in AY 2010-11.

10. Admittedly, this deduction cannot be allowed in the assessment year under consideration as warranty provision was allowed on actual basis. However, the actual claim of assessee that it should be allowed as a

deduction in AY 2010-11 on the ground that it was offered to tax in AY 2011-12, requires examination of the records by the AO on production of the same by the assessee in the relevant AY 2010-11. This claim of assessee cannot be considered in the present AY 2008-09, as the AY 2010-11 or 2011-12 is not before us for adjudication. The assessee may take appropriate remedial action in the relevant assessment year, if so advised. With these observations, we dismiss the ground relation to allowability of warranty provisions in this assessment year.

11. In the result, the appeal by the assessee is dismissed..

Pronounced in the open court on this 2nd day of March, 2021.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 02nd March, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.