

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.7831/Del/2017

निर्धारणवर्ष/Assessment Year: 2009-10

Rohde & Schwarz India P. Ltd. A-27, 1 st Floor, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi.	<u>बनाम</u> Vs.	DCIT Circle 21(2) New Delhi.
PAN No. AAACR3267P		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Sh. S. Krishnan, Adv.
राजस्वकीओरसे /Revenue by	Sh. Gaurav Pundir, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	12.07.2021
उद्घोषणाकीतारीख/Pronouncement on	13.07.2021

आदेश /O R D E R

PER MAHAVIR PRASAD, J.M.

This appeal has been preferred by the assessee against the order of Ld. CIT(Appeals)-25, appeal number 335/17-18 order dated 11.09.2017 arising out of penalty order dated 14.03.2016. The assessee has taken following grounds of appeal: -

“Based on the facts and circumstances of the case, the Appellant respectfully submits that:

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in confirming the penalty levied on various additions:*
 - i) *Disallowance of Rs. 27,04,807/- being the amount set apart as provision for warranty, as no service was rendered in the assessment under consideration and the same has been offered to tax in the next years in which the warranty services have been rendered. Especially when the copy of the ITAT's order the Appellant's own case for AY 2007-08 and 2008-09 in Appeal No. ITA No. 894/Del/2012 & ITA No. 520/Del/2013 respectively was*

- produced, where the Hon'ble ITAT relying on Rotork Controls India P. Ltd. 314 ITR 62 has held in favour of the Appellant.*
2. *Disallowance of Rs. 72,93,983/- on account of non-deduction of tax u/s 40(a)(i)*
 - a) *Especially when all the details were submitted before the Ld. Deputy Commissioner of Income Tax at the time of assessment and no inaccurate particulars were furnished and all the additions are deleteable.*
 - b) *The order of the Hon'ble ITAT for the AY 2007-08 & 2008-09 vide appeal no. ITA No. 894/Del/2012 & ITA No. 520/Del/2013 respectively was produced before the Ld. CIT(Appeals) where such additions have been deleted.*
The Ld. CIT(Appeals) has further erred in relying on Judgment of Hon'ble Delhi High Court in the case of Zoom Communication Pvt. Ltd., especially when the Appellant has not concealed any material fact or factual information given by it found to be incorrect.
 3. *The Ld. CIT(Appeals) has further erred in imposing penalty on the amount of Rs. 1,09,80,204/- being the amount added to the income by the Appellant Suo motto, due to the change in the method of accounting and especially when the appellant had a change in the method of accounting in the year ended 2010 the income pertains to the previous years have been considered in the respective years, and the additions have been Suo motto offered to tax in AY 2007-08 & 2008-09 also.*
 4. *The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.*
 5. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal."*

2. When matter was taken up for hearing Ld. AR mentioned that in quantum proceedings coordinate bench in ITA No. 793/Del/2015 for AY 2009-10, dated 09.03.2018 out of three grounds two grounds have been set aside to the file of Ld. CIT(A) and requested that if present appeal is also restored back to the file of Ld. CIT(A) same will meet end of the justice.

3. On the other hand, Ld. Sr. DR has no objection if matter sent back to the file of Ld. CIT(A). Therefore, after going through the pleadings and considering the prayer of Ld. AR, we restore the matter back to the

file of Ld. CIT(A) to decide penalty proceedings alongwith quantum matter.

4. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 13/07/2021

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Dated: 13.07.2021

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi