

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, Judicial Member and Dr. M. L. Meena, Accountant Member]

I.T.A. No. 2110/Kol/2019
Assessment Year: 2015-16

Deputy Commissioner of Income-tax, Circle-6(1), Kolkata.	Vs	M/s. Orient Paper & Industries Ltd. (PAN: AAACO3279J)
Appellant		Respondent

Date of Hearing (Virtual)	28.07.2021
Date of Pronouncement	30.07.2021
For the Appellant	Shri Supriyo Pal, Addl. CIT
For the Respondent	Shri Akkal Dudhwewala, FCA

ORDER

Per Bench:

This is an appeal preferred by the revenue against the order of the Ld. CIT(A)-2, Kolkata dated 18.06.2019 for AY 2015-16.

2. Revenue appeal is time barred by 18 days and the revenue has filed a petition for condoning the delay. After hearing both the sides, we condone the delay and the appeal of revenue is admitted for hearing.

3. The sole ground of appeal of revenue reads as under:

“1. Whether on the facts and circumstances of the case as well as in law, Ld. CIT(A) has erred in deleting the addition of Rs.12,26,74,120/- regarding warranty expenses made by the AO by disallowing the additional claim by filing an application made by the assessee during the course of assessment.”

4. By preferring this ground of appeal, the revenue challenges the action of Ld. CIT(A) in deleting the addition of Rs.12,26,74,120/- in respect of warranty expenses. Facts in respect of this ground of appeal as noted by the AO at pages 8 and 9 of his order is that the assessee did not claim the deduction of Rs.12,26,74,120/- in its return of income. However, it claimed deduction during the assessment proceeding by filing a letter dated 19.12.2017 and the contents of the letter he reproduced at para 6 of page 8 of his order; and from a

perusal of the same it is revealed that the assessee company created provision for warranty relating to sale of electrical items during the relevant years. According to the assessee, the provision for warranty is not claimed in the year of creation. And the payment made against the warranty provision is claimed only in the year of payment. According to the assessee, this practice has been consistently followed in the past and accepted by the department in the assessments framed in the earlier years. Accordingly, for AY 2014-15 (preceding year), the assessee had created a provision for warranty of Rs.12,83,74,876/- and such provision for warranty was not claimed in computing the total income for the AY 2014-15. Thereafter, it was pointed out by the assessee that it paid Rs. 12,26,74,120/- in the relevant assessment year i.e. AY 2015-16 out of such provision for warranty for AY 2014-15 of Rs.12,83,74,876/- which was created but not claimed in the AY 2014-15.

5. It was also pointed out by the assessee that for AY 2015-16 i.e. the relevant assessment year under consideration, the assessee had made a provision for warranty of Rs.9,77,50,185/- and as was the consistent practice did not claim the provision of Rs.9,77,50,185/- created and debited to the P&L Account for the relevant assessment year i.e. AY 2015-16. However, in this relevant assessment year when the assessee filed the return of income it inadvertently omitted to claim the deduction in respect of the actual payment incurred for warranty expenses to the tune of Rs.12,26,74,120/- out of such provision made in the AY 2015-16 of Rs.12,83,74,876/- [which sum was disallowed/added in AY 2014-15]. And, therefore, he prayed before the AO that the amount of Rs.12,26,74,120/- actually paid by the assessee out of the provision for warranty of Rs.12,83,74,876/- of the preceding assessment year i.e. AY 2014-15 should be allowed while computing the income for the relevant AY 2015-16. And for consideration of this claim took support of the Hon'ble Supreme Court decisions which upheld the rule of consistency and also cited the CBDT Circular No. 114XL 35 of 1955 dated 11.04.1955 which says that the department should not take advantage of the assessee's ignorance and even if the assessee offers income which is not taxable, then the AO is duty bound to tax only the legitimate income. However, the plea of the assessee was not entertained by the AO who cited the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd. Vs. CIT 284 ITR 323 (SC) and has held that since assessee has not filed its claim by filing a

revised return of income the deduction cannot be allowed. Aggrieved the assessee preferred an appeal before the Ld. CIT(A), who was pleased to allow the claim by holding as under:

"Find that the AO has not considering the additional claim made by the Appellant during the course of assessment proceedings regarding allowance of warranty expense of Rs.12,26,74,120 paid/utilised during the year "but of warranty provision of Rs.12,83,74,876 created and offered to tax in computing taxable income under normal provision of the Act / book profit u/s.115JB of the Act in assessment year 2014-15. The provision of warranty of Rs.12,83,74,876 was created in assessment year 2014-15. Such provision of warranty was not claimed in computing the total income for the assessment year 2014-15. It was paid Rs.12,26,74,120 in assessment year 2015-16 out of such provision for warranty of Rs.12,83,74,876 created but not claimed in assessment year 2014-15 as it was inadvertently omitted to claim the payment for warranty expenses of Rs.12,26,74,120 made in assessment year 2015-16 out of provision of Rs.12,83,74,876 disallowed in assessment year 2014-15. The provision for warranty of Rs.12,83,74,876 created in assessment year 2014-15 was neither claimed nor allowed in assessing income for assessment year 2015-16. The AR has further submitted that this practice has been consistently followed in past and accepted in our assessment. The AO has not allowed the same while stating that there is no provision in the I.T. Act, 1961, allowing the assessee to make an amendment in the return of income by modifying as application at the assessment stage without revising the return of income. The decision of the Supreme Court of India in the case of Goetze (India) Ltd vs. CIT in 284 ITR 323 (SC) [2006] was referred. Since the assessee has not filed its claim by filing a revised return of income, the claim submitted as above is not applicable.

The AR of the appellant has also filed certificate showing amount of provision for warranty created and not claimed since assessment year 2007-08 to assessment 2016-17 and the same is placed at (Page No. 167 of Paper Book). The AO has not refuted the veracity of the claim made by the appellant. The AO has merely relied on Goetze India decision to disallow valid claim. The AR also placed his reliance on the ITAT "D" Bench, Kolkata in order dated 15.05.2019 vide ITA No.1663/Kol/2018 (Page No. 168 to 171 of Paper Book) in the case of Shekhavati Investments and Traders Ltd. (group company of the Appellant) for assessment year 2014-15 has held as under:-

"7. We note that the assessee may raise new grounds (for the issue which was not entertained by the Assessing Officer) during the appellate proceedings or before the Tribunal. We note as per the judgement of the Hon'ble Supreme Court in Goetz (India) Ltd. 284 ITR 323 the Assessing Officer may admit a new claim provided the assessee's claim it by filing revised return of income and as per the judgement of Hon'ble Supreme Court in Goetz (India) Ltd. Supra, Ld. CIT(A) and Tribunal may admit the additional claim/ground."

Keeping in view of the facts as mentioned above and aforementioned judicial precedents, it is clear from the facts above, that the Appellant has made a genuine mistake and the claim made is a legitimate claim, and not allowing the same will go beyond the provisions of the Income tax Act, as it provides for taxing only the "income" and nothing else. Accordingly, the AO is directed to delete the addition. In view of above, this ground of appeal is allowed."

6. Aggrieved by the aforesaid decision of the Ld. CIT(A), the revenue is in appeal before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee has made the payment of Rs.12,26,74,120/- on account of

warranty expenses which fact has been accepted by the AO by observing in his own words “*assessee had increased its income for AY 2014-15 by provision for warranty Rs.12,83,74,876/-. Out of such provision, assessee paid Rs.12,26,74,120/- in AY 2015-16. The assessee did not reduce the income for AY 2015-16 by the amount of warranty provision paid Rs.12,26,74,120/- out of provision disallowed in AY 2014-15.*” So, the AO accepted the fact that the assessee has paid Rs.12,26,74,120/- in the relevant assessment year i.e. AY 2015-16 and has claimed deduction of the same from the provision which created in respect of warranty expenses amounting to Rs.12,83,74,826/- for AY 2014-15. Thus, there is no dispute that the assessee has paid the amount of Rs.12,26,74,120/- in AY 2015-16 and that the assessee had not claimed deduction in the preceding assessment year 2014-15 in respect of the provision of Rs.12,83,74,876/-. Therefore, there is no dispute in respect of this fact of payment of warranty expenses to the tune of Rs.12,26,74,120/- and the department has not challenged the decision of the Ld. CIT(A) also in respect of this factual finding that the assessee had made payment of Rs.12,26,74,120/- regarding the warranty expenses. So, this factual finding of Ld. CIT(A) gets crystallized and attains finality.

8. Now the only question remaining is as to whether the assessee without making a claim for deduction in its return of income, claim the same without filing revised return of income. The Hon’ble Supreme Court in the case of Goetz (India) Ltd. (supra) has held that the AO is not empowered to allow the claim of an assessee if it has not claimed in the return of income or revised return of income. However, it was clarified in the said order itself by the Hon’ble Supreme Court that the appellate authorities like Tribunal has the power to admit new claims even if not raised in the return of income or revised return of income. The Hon’ble Supreme Court in Goetz (India) Ltd. (supra) has held as under:

“The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961.”

9. It is settled position of law that the Ld. CIT(A) enjoys plenary and co-terminus powers as that of AO and even has the authority to enhance the assessment. So the action of

the Ld. CIT(A) to entertain the claim of assessee which was inadvertently omitted by the assessee while filing return of income is in order and is in the spirit of the CBDT Circular (supra). The assessee had been consistently following the same method from AY 2007-08 in respect of expenses relating to warranty and the department has accepted the same. So, taking into consideration these facts also, and coupled with the fact that the AO having accepted that in this relevant assessment year, the assessee has made actual payment of Rs.12,26,74,120/- out of the provision created for warranty expenses for AY 2014-15, the Ld. CIT(A) has rightly admitted new claim of warranty expenses actually paid by the assessee to the tune of Rs.12,26,74,120/- and allowed the same, which does not require any interference from our part and, therefore, we confirm the same and dismiss the appeal of the revenue.

10. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 30th July, 2021.

Sd/- (Dr. M. L. Meena)
Accountant Member

Sd/- (A. T. Varkey)
Judicial Member

Dated: 30th July, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-6(1), Kolkata.
2. Respondent – M/s. Orient Paper & Industries Ltd., 13th floor, Birla Building, 9/1, R. N. Mukherjee Road, BBD Bagh, Kolkata-700 001.
3. The CIT(A)-2 Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata