

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.985/Hyd/2018
(Assessment Year : 2014-15)**

M/s. Konark Refrigeration Industries Pvt. Ltd.,
Hyderabad.
PAN AACCK 6564EAppellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 2(1), Hyderabad.Respondent.

Appellant By : Shri K. Lenka.
Respondent By : Smt. N. Esther. (D.R.)

Date of Hearing : 31.05.2021.
Date of Pronouncement : 25.08.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2014-15 arises from the Commissioner of Income Tax (Appeals)-8, Hyderabad's order dt.22.02.2018 passed in case No.0252/CIT(A)-8/Hyd/2016-17 in proceedings under Section 143(3) of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Coming to the assessee's twin substantive grounds raised in the instant appeal challenging correctness of both the learned lower authorities' action disallowing its interest payment(s) of Rs.10,19,727 paid to NBFC companies u/s. 40a(ia) on account of non-deduction of TDS and disallowance of warranty service charges claimed of Rs.9,56,120; respectively, we notice at the outset with the able assistance coming from taxpayer as well as the Revenue's side that the former issue herein deserves to be restored back to the Assessing Officer to be examined in light of 40a(ia) second proviso inserted vide Finance Act, 2012 w.e.f. 1.4.2013 that the same would not come into play in case the assessee concerned is not the as in default as per section 201(1) first proviso. And more particularly in view of the fact that the recipient(s) concerned already stands assessed under the provisions of the Act. Faced with this situation, we deem it appropriate to restore the instant former issue of 40a(ia) disallowance of Rs.10,19,727 back to the Assessing Officer for his necessary factual verification.

3. We next proceed to notice that the factual position is no different qua the latter issue of warranty expenditure charges disallowance of Rs.9,56,120 since neither the Assessing Officer nor the CIT(A) have considers the corresponding three aspects of the same based on historic trends and scientific estimation followed by appropriate provision as per hon'ble apex court's land mark decision in **Rotor Controls India P. Ltd. Vs. CIT** (2009) 314 ITR 62 (SC). We thus restore the instant second issue as well back to the Assessing Officer to be examined afresh in foregoing terms within three effective opportunities of hearing.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 25th Aug.,2021.

Sd/-

(L.P. SAHU)

Accountant Member

Sd/-

(S.S. GODARA)

Judicial Member

Hyderabad, Dt. 25.08.2021.

* Reddy gp

Copy to :

1.	M/s. Konark Refrigeration Industries Pvt. Ltd., 13-175/2A/3A & 4A, APIE, Balanagar, Hyderabad-500 018
2.	DCIT, Circle 2(1), Hyderabad.
3.	Pr. C I T-2, Hyderabad.
4.	CIT(Appeals)-8, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.