

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 4022/Del/2018
(Assessment Year: 2011-12)

LG Electronics India Pvt. Ltd., A-Wing, 3 rd Floor, D-3, District Centre, Saket, New Delhi-110017 PAN: AAACL1745Q	Vs.	Pr. CIT – 5, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Ajay Vohra, Sr. Adv.; & Shri Aditya Vohra, Advocate
Department by:	Shri M. N. Shete, Sr. D.R.;
Date of Hearing :	23/11/2021
Date of pronouncement :	27/01/2022

ORDER

PER AMIT SHUKLA, J. M.

This appeal has been filed by the assessee against the order dated 28.03.2018, passed by the ld. Pr. Commissioner of Income Tax-5, New Delhi (hereinafter referred to Pr. CIT) under Section 263 of the Income Tax Act, 1961 (the Act) for the assessment year 2011-12.

2. In various grounds of appeal, the assessee has challenged various observations and findings of Ld. Pr. CIT in his revisionary jurisdiction u/s 263, setting aside the assessment order dated 12.02.2016 passed under Section 144C read with section 143(3) of the act.

3. Before us the ld. Sr. Counsel Mr. Ajay Vohra for the assessee submitted that the ld. Pr. CIT has set aside the assessment order, *firstly*, on the issue of provision for warranty to re-examine its allowability as revenue expenditure; and *secondly*, on disallowance under Section 40(a)(ia) of the Act. He pointed out that, in so far as issue of disallowance under Section 40(a) (ia) of the Act, the ld. AO in the set aside proceedings after verification has decided this issue in favour of the assessee. Finally, no disallowance under Section 40(a)(ia) of the Act has been made. Therefore, once this issue, has been decided in favour of the assessee, then it is no longer in dispute in the present appeal.

4. In so far as the issue raised in the impugned order on provision of warranty, the ld. Pr. CIT has categorically observed that in assessee's own case for the assessment years 2002-03, 2003-04, 2004-05 and 2007-08, such provision has been allowed and has been held to be not taxable by the Tribunal and the ld. Pr. CIT has only set aside the issue on the ground that the Department has filed an appeal under Section 260A of the Act against the order of the Tribunal for the said assessment year; and again similar issue has been decided by the Tribunal in favour of the assessee in the appeal for the assessment year 2008-09. His only point of setting aside is that the Assessing Officer should have seen the history of the case that this issue is not yet settled. Thus, he submitted that there is no error committed by the

Assessing Officer nor the order of the Assessing Officer can be said to be erroneous or prejudicial to the interest of Revenue, hence on this point Order of Ld. PCIT cannot be sustained.

5. The ld. DR relied upon the order of the ld. Pr. CIT.

6. From a perusal of the impugned order under Section 263, we find that the ld. Pr. CIT had finally set aside the assessment order on two issues, i.e., provision for warranty; and secondly, allowability of expenses claimed by the assessee for purchase of raw material and applicability of Section 40(a)(ia) of the Act. In so far as the issue of disallowance under Section 40(a)(ia), the ld. Pr. CIT directed the Assessing Officer to verify, whether the provision of Section 194C(3) of the Act is applicable and whether the assessee has excluded the value or not. Now as pointed out by the ld. Sr. Counsel, the ld. Assessing Officer vide order dated 29.12.2018 passed in pursuance of order under Section 263 of the Act, has given a finding that assessee has produced the copies of details of TDS certificate and details of suppliers and also the material which were not supplied to the assessee. AO found that the assessee had deducted TDS on the expenses as mandated by Section 194C(3), hence no addition was made. Thus, the issue of 40(a)(ia) of the Act as raised by the ld. Pr. CIT in the impugned order is no longer in issue and hence on this score matter is decided in favour of the assessee.

7. In so far as the issue relating to provision for warranty, the ld. Pr. CIT has made the following observations:-

“(a). Provision for Warranty: The issue at hand regarding allowability of provision for service warranty as expenditure. On merits too, assessee has strongly contended that the provisions for

service warranty was not taxable, being not a contingent liability and that the, method of determining the provision was the same each year.

Assessee has submitted that in its own case for A.Y. 2002-03, 2003-04, 2004-05 and 2007-08 such a provision was allowed as expenditure by Hon'ble ITAT, Delhi. From the records it is seen that the department has filed appeal u/s 260A against the order of the Hon'ble ITAT for the said assessment years. It is also seen that for the subsequent A.Y. - 2008-09 to A.Y. 2011-12, the assessee is before the Hon'ble ITAT agitating various issues including the issue of provision for service warranty. In other words the issue at hand has not reached finality in the case of the assessee. Therefore, decisions relied upon by the assessee cannot be applied blindly as facts of each assessee is different. Whether the method of calculating the provision is truly scientific or not and whether there is an element of contingency required to be properly examined. Clearly the AO has not seen the history of the case to find out that the issue has not yet been settled. For the year under consideration, admittedly the claim on account of provision for service warranty was not examined by the AO in so much as it was not discussed by the AO in the impugned order not queried. Thus, the Assessing Officer has not expressed any view on the matter and omission to do so has resulted in an order which is prejudicial to the revenue. “

8. From the perusal of the aforesaid observation of the Id. Pr. CIT, it is an admitted fact that this issue was covered in favour of the assessee by various orders of the Tribunal in the earlier years and the only reason assigned by the Id. Pr. CIT for setting aside the assessment order is that the Assessing Officer has not seen the history of the case and the issue has not been settled. Thus, it cannot be held that the assessment order is either erroneous or prejudicial to the interest of Revenue. Accordingly, on this issue also the order of the Id. Pr. CIT cannot be sustained. The order of the Id. Pr. CIT is set aside and the appeal of the assessee is allowed.

Order pronounced in the open court on : 27/01/2022.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 27/01/2022.

MEHTA

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1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	25.01.2022
Date on which the typed draft is placed before the dictating member	27.01.2022
Date on which the typed draft is placed before the other member	27.01.2022
Date on which the approved draft comes to the Sr. PS/ PS	27.01.2022
Date on which the fair order is placed before the dictating member for pronouncement	27.01.2022
Date on which the fair order comes back to the Sr. PS/ PS	27.01.2022
Date on which the final order is uploaded on the website of ITAT	27.01.2022
date on which the file goes to the Bench Clerk	27.01.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	

Date of dispatch of the order	
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