

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.549/Bang/2015
Assessment Year: 2010-11

Ingersoll Rand International (India) Pvt. Ltd. (formerly known as Ingersoll Rand International (India) Limited) 8 <sup>th</sup> Floor, Tower D, IBC Knowledge Park, No.4/1, Bannerghatta Main Road Bangalore  <b>PAN NO :AABCI3371E</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-3(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

IT(TP)A No.487/Bang/2015
Assessment Year:2010-11

Deputy Commissioner of Income-tax Circle-3(1)(1) Bangalore	<b>Vs.</b>	Ingersoll Rand International (India) Pvt. Ltd. (formerly known as Ingersoll Rand International (India) Limited) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri K.R. Vasudevan, A.R.
<b>Respondent by</b>	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	10.02.2022
Date of Pronouncement	:	21.02.2022

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

These cross appeals are directed against the assessment order dated 30.1.2015 passed by the A.O. for assessment year 2010-11 u/s 143(3) r.w.s 144C in pursuance of directions given by Ld. Dispute Resolution Panel (“DRP”). In the appeal filed by the assessee, following issues are contested:-

- a) Addition made on account of transfer pricing adjustment
  - b) Disallowance of provision for warranty
  - c) Disallowance of a part of software expenses treating as capital expenditure and other part u/s 40(a)(i) of the Income-tax Act,1961 [‘the Act’ for short] for non-deduction of tax at source.
2. The revenue is in appeal assailing the relief granted by Ld DRP in respect of transfer pricing adjustment.
3. The Ld. A.R. submitted that assessee is engaged in the business of providing “Information Technology and Engineering Services” to its Associated Enterprises. He submitted that the assessee also distributes security and safety products. The assessee bench marked its international transactions on the TNM method. The Ld. A.R. submitted that the Transfer Pricing Officer (TPO) has considered the services rendered by the assessee as “Information Technology Enabled Services” (ITES) and accordingly selected comparables which are providing BPO/KPO services. The ld. A.R. submitted that TPO had recharacterized the activities of the assessee in the similar manner in assessment year 2008-09 & 2009-10 also. When the dispute reached the Tribunal, the ITAT has remanded the issue of transfer pricing adjustment to the file of

TPO. Accordingly, he prayed that the entire TP issues may be restored to the file of TPO, following the decision rendered by coordinate bench in the assessee's own case in assessment years 2008-09 & 2009-10 in ITA Nos.1557/Bang/2012 & 259/Bang/2014 dated 25.10.2019.

4. We heard Ld. D.R. on this issue. The TPO had recharacterized the activities of the assessee in AY 2008-09 and 2009-10 also and since the same was disputed by the assessee before the Tribunal, the ITAT has restored the issue of transfer pricing adjustment to the file of the TPO by the coordinate bench with the following observations:-

*"11. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The main dispute between the assessee and the department is with regard to characterization of services rendered to its AE. The assessee claims that services rendered to its AE are in the nature of engineering design services. The TPO has accepted the fact that the assessee is into mainly engineering design services; however, he has characterized the services rendered by the assessee to AE as ITES/BPO services. We find that although the assessee is mainly into the activity of providing engineering design services but, it is also into the activity of providing ITES services to its AE which is evident from the fact that the assessee has itself in its TP study has accepted the fact that the proportion of ITES and the integration services rendered to its AE when compared with the engineering as well as outsourcing services is very insignificant and hence the international transactions have been aggregated to determine the ALP. When the assessee is having different stream of services including engineering design services and ITES services, it has to furnish complete segmental details while carrying out its TP study. But, the assessee has aggregated its services while carrying out TP study to determine ALP of international transactions with AE. At the same time, the TPO has recharacterized services rendered to the AE into ITES services without assigning any reasons as to how services rendered by the assessee are coming within the ambit of ITES services. Therefore, we are of the considered view that there are some lapses from both sides while determining ALP of international services with AE. We, further, noted that the Co-ordinate Bench of ITAT, in the case of Continental Automotive Components (India) Pvt. Ltd. (supra)*

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*has considered identical issue and restored the issue back to the file of the TPO/AO for characterization of services rendered by the assessee to its AE. Therefore, considering the facts and circumstances of this case and also consistent with view taken by the Co-ordinate Bench, we restore the issue to the file of the TPO for denovo consideration and to decide the issue of characterization of services rendered by the assessee to its AE. We, further, noted that as observed by the learned DR although the assessee is deriving revenue from two segments, but failed to provided separate segmental details in its TP study and therefore the assessee is directed to segregate its services into engineering design services and ITES services for the purpose of determination of ALP of international transactions with its AE.”*

Accordingly, following the above said decision, we restore this issue to the file of the AO/TPO with similar directions.

5. The next issue relates to disallowance of provision for warranty. The Ld. A.R. submitted that the assessee has been providing for warranty liability on accrual basis on the basis of percentage of sales at the end of each year. The details of provision made as on 31.3.2010 are as under:

4.3 The details of the provision as on 31<sup>st</sup> March 2010 are as under:

Warranty Provision as on 31/March/2010		
	Sales	Warranty
Warranty Provision @ 1.30% on Sales 2007-08	133,443,078	1,734,760
Warranty Provision @ 1.30% on Sales 2008-09	139,295,644	1,810,843
Warranty Provision @ 1.30% on Sales 2009-10	195,798,628	2,545,382
		<b>6,090,986</b>

4.4 Considering the above balance to be maintained, during the year under consideration, the Company created the Provision for warranty amounting to Rs. 11,77,163. The summary of the "Provision for warranty Account" is as under:

Particulars	Amount (Rs.)
Balance in Provision for warranty as on 1April 2009 (A)	62,04,118
Actual warranty expenses incurred during the year (B)	12,90,296
Balance (C) = (A-B)	49,13,822
Provision required as on 31March 2010 based on the sales during the year and goods which are still under warranty (D)	60,90,985
Amount (E) = (D-C) – Provision created during FY 2009-10	11,77,163

The ld. A.R. submitted that the assessee placed reliance before the AO on the decision rendered by Hon'ble Supreme Court in the case of Rotork Controls Pvt. Ltd. Vs. CIT (2009) 180 Taxman 422. The A.O. disallowed the provision amount of Rs.11,77,163/- holding that the assessee is not following scientific basis and the same was also confirmed by Ld. DRP.

6. The Ld. A.R. submitted that an identical disallowance was made in AY 2011-12 in the assessee's own case and the co-ordinate bench Tribunal has restored this issue to the file of AO for examining it afresh in its order passed in IT(TP)A No.650/Bang/2016 dated 18.2.2020.

7. We heard Ld. D.R. on this issue and perused the record. We notice that the assessee had placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd. (supra) and also the decision rendered by Hon'ble Delhi High Court in the case of CIT Vs. Goetz India Ltd. (2010) 8 Taxmann.com 303. The contention of the assessee is that it is following a scientific method for determining the amount to be provided for warranty liability. We notice that the AO has rejected the claim without finding fault with the method adopted by the assessee to determine the quantum of provision. This is not justified. When the assessee is following a scientific method consistently which also approximately corresponds with the actual expenditure incurred subsequently, then there is no reason to disallow the provision for warranty as held by Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd. (supra). Accordingly, in AY 2011-12, the Tribunal has restored this issue to the file of the AO for examining it afresh. Accordingly, following the

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decision rendered by the coordinate bench in the assessee's own case for assessment year 2011-12, we restore this issue to the file of the AO for examining it afresh.

8. The last issue relates to disallowance of software expenses. The A.O. noticed that the assessee debited an amount of Rs.66,61,945/- as software expenses and claimed the same as deduction. The A.O. noticed that the assessee has deducted tax at source from the amount of Rs.53,49,303/- and did not deduct tax at source on the balance amount of Rs.13,12,642/-. Accordingly, the A.O., following the decision rendered by Hon'ble High Court of Karnataka in the case of Samsung Electronics Ltd. disallowed the amount of Rs.13,12,642/-, which did not suffer TDS. With regard to the remaining amount of Rs.53,49,303/-, the A.O treated the same as capital expenditure and allowed depreciation @30% thereon. Accordingly, he disallowed the balance amount of Rs.38,14,512/-. The Ld. DRP upheld the disallowance subject to correction of some clerical mistake pointed out by the assessee.

9. The ld. A.R. submitted that the issue whether software expenses is capital or revenue in nature has been decided by the special bench in the case of Amway India Enterprises (2008) 111 ITD 112. With regard to the disallowance u/s 40(a)(i) of the Act, the Ld. A.R. submitted that the decision rendered by Hon'ble Karnataka High Court in the case of Samsung Electronics Ltd. (supra) has since been reversed by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (LL 2021 SC 124). Accordingly, he prayed that both the issues, viz., software expenses disallowed as capital in nature and disallowed u/s 40(a)(i) of the Act require re-examination by considering the above said decisions.

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10. We heard the Ld. D.R. on this issue and perused the record. We find merit in the submissions of Ld. A.R. Accordingly, we restore both the issues relating to software expenses to the file of the A.O. for examining them afresh in the light of above said decisions and also any other decision, information or explanations that may be furnished by the assessee before him.

11. We shall now take up the appeal filed by the revenue. All the grounds urged by the revenue relate to transfer pricing adjustment only. Since we have restored the entire transfer pricing issue to the file of the AO/TPO, while considering the appeal of the assessee in the earlier paragraphs, the grounds urged by the revenue does not require separate adjudication i.e., all the issues urged by the revenue are also required to be restored to the file of the AO/TPO. Accordingly, we restore all the issues to the file of TPO/AO.

12. In the result, both the appeals of assessee as well as revenue are treated as allowed for statistical purposes.

Order pronounced in the open court on 21<sup>st</sup> Feb, 2022.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 21<sup>st</sup> Feb, 2022.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.