

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**(Before Sri Rajpal Yadav, Vice President & Sri Manish Borad, Accountant Member)**

**I.T.A. No.: 04/Kol/2021  
Assessment Year: 2005-06**

**DCIT, Circle-7(1), Kolkata.....Appellant**

**Vs.**

**M/s. BCH Electric Limited.....Respondent  
[PAN: AABCB 2076 M]**

**C.O. No.: 06/Kol/2021  
Arising Out of I.T.A. No.: 04/Kol/2021  
Assessment Year: 2005-06**

**M/s. BCH Electric Limited.....Appellant  
[PAN: AABCB 2076 M]**

**Vs.**

**DCIT, Circle-7(1), Kolkata.....Respondent**

**Appearances by:**

*Sh. Siddharth Jhajharia, FCA, appeared on behalf of the Assessee.*

*Sh. Biswanath Das, Addl. CIT, appeared on behalf of the Revenue.*

Date of concluding the hearing : March 23<sup>rd</sup>, 2022

Date of pronouncing the order : March 31<sup>st</sup>, 2022

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the Revenue and the Cross Objection filed by the assessee pertaining to the Assessment Year (in short "AY") 2005-06 are directed against the order of Id. Commissioner of Income-tax (Appeals)-11, Kolkata [in short Id. "CIT(A)"] dated 25.05.2020 vide Appeal No. [DIN]: ITBA/APL/M/250/2020-21/1027149872(1) which is arising out of the assessment order framed u/s 147 of the Income Tax Act, 1961 (in short the "Act") dated 22.03.2013 by DCIT, Circle-7, Kolkata.

2. First we take up the Revenue's appeal, wherein following grounds are raised:

“1. That on the fact and circumstances of the case, as to whether the Ld CIT(A) is justified to allow the appeal against assessment order in respect of deleting the addition made on warranty expenses?

2. That on the fact and circumstances of the case, as to whether the Ld CIT(A) is justified in allowing the additional depreciation?

3. That on fact and circumstances of the case, as to whether the Ld CIT(A) is justified in deleting the addition made on warranty expenses and additional depreciation in calculation of book profit?

4. That appellant craves the leave to make any addition, alteration, modification etc of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

3. There is a delay of 152 days in filing of the appeal. This delay was stated to be neither deliberate nor intentional but was due to the pandemic circumstances prevailing at that time. We take note of the pandemic situation where the movement of people was restricted and because of such practical situation, it was always not possible to follow the time of limitation regarding filing of appeal before various forums. This fact was also observed and taken cognizance of by the Hon'ble Supreme Court of India, in *Civil Original Jurisdiction, Suo Moto Writ Petition (Civil) No. 3 of 2020* dated 8<sup>th</sup> March, 2021. After hearing the parties and taking guidance from the judgment of the Hon'ble Supreme Court (supra), we condone the delay in filing of the appeal by the Revenue and proceed to hear the case on merits.

4. Brief facts as per the records are that the assessee is a limited company engaged in the business of manufacturing of electrical pumps, other equipments etc. Return of income for AY 2005-06 filed on 31.10.2005 declaring total income of Rs.1,82,37,158/-. The return was duly processed u/s 143(1) of the Act. Thereafter, the case was re-opened and assessment u/s 147 r.w.s. 143(3) of the Act was made, after making addition for disallowance of warranty expenses at Rs.85,81,254/- and disallowance of additional depreciation of Rs.66,81,900/-. Income assessed at Rs. 3,35,00,312/-.

5. Aggrieved, the assessee preferred appeal before the ld. CIT(A) and partly succeeded as the ld. CIT(A) dismissed the assessee's grounds challenged against the re-assessment proceedings but deleted the disallowance made for warranty expenses and additional depreciation.

6. Now, the Revenue is in appeal before this Tribunal against the addition deleted and the assessee has raised Cross Objection challenging the re-assessment proceedings.

7. As per the merits of the case are concerned, ld. D/R vehemently argued supporting the order of the ld. Assessing Officer (in short ld. "AO") and also stated in relation to the issue of additional depreciation that the assessee has failed to prove that the installed capacity has increased.

8. Per contra, ld. Counsel for the assessee submitted that the issue of warranty expenses is squarely covered by the decision of this Hon'ble Tribunal in assessee's own case for the past years and copies of the same orders are placed on record. As regards the issue of additional depreciation it was stated that certificate of Chartered Engineer has been filed and specifications of all the machines purchased has been given to prove that the installed capacity has increased. Normal depreciation has been allowed on the machines so purchased during the year and, therefore, the additional depreciation should be allowed to the assessee.

9. We have heard rival contentions and perused the records placed before us. Through ground no. 1 the Revenue has challenged the order of the ld. CIT(A) making disallowance of warranty expenses at Rs.85,81,254/-. We find that an amount of Rs. 85,81,254/- is debited in the profit & loss account towards warranty expenses. In the notes of account it is mentioned that it is a provision for warranty cost made as a percentage of sales and is based on past experience/technical estimates. Ld. AO, based on this note treated the alleged amount as provision. We, further, find that in assessee's own case this issue has come up before this Tribunal on various occasions and has been decided in the assessee's favour for AY 2006-07 & 2007-08 in ITA Nos. 1537 & 1538/Kol/2011 dated 18.12.2015, for AY 2008-09 in ITA No. 1336/Kol/2012 dated 18.03.2016 and for AY 2009-10 in ITA No. 1401/Kol/2013 dated 09.03.2018. Following finding has been given by this Tribunal in the decision for AY 2009-10 vide its order dated 09.03.2018:

*"5. The next issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the disallowance of Rs. 52,15,220/- towards provision for warranty, in the facts and circumstances of the case.*

5.1. The brief facts of this issue is that the assessee in its profit and loss account had debited a sum of Rs. 52,15,220/- on account of provision for warranty expenses. The ld. AO observed that similar debits were made by the assessee for assessment years 2007-08 and 2008-09 in the sums of Rs. 1,60,88,554/- and Rs. 3,62,820/- respectively which were held to be not allowable as deduction. The ld. AO observed that the said provision for warranty had not been made by the assessee on a scientific basis and hence, disallowed the same in this assessment year also following the action taken in assessment years 2007-08 and 2008-09. The Ld. CIT(A) went through the books of accounts and the audited financial statements wherein the break up for provision for warranty has been mentioned by the assessee by way of notes on account as under:

|   |                  |
|---|------------------|
| Opening balance as on 01.04.2008            | Rs. 74,76,910/-  |
| Add: Addition during the year               | Rs. 52,15,220/-  |
|   | -----            |
| Total                                       | Rs 1,26,92,130/- |
| Less: Utilized/ reversed during the year    | Rs. 82,79,110/-  |
|   | -----            |
| Closing Balance as worked out for provision |                  |
| For warranty as on 31.03.2009               | Rs. 44,13,020/-  |
|   | -----            |

It has also been mentioned in the audited financial statement notes on accounts vide Para 9 that “provision for warranty has been recognized based on estimate warranty claims on products sold during the last three financial years”. The Ld. CIT(A) observed that the provision has been made during the year under appeal also on scientific basis in line with what has been made by the assessee in the earlier years. The Ld. CIT(A) by following order of his predecessor in assessee’s own case for the assessment year 2007-08 and respectfully following the decision of Hon’ble Supreme Court in the case of CIT vs. Rotork Control India Ltd. reported in 314 ITR 62 (SC) held that the assessee had made provision for warranty on a scientific basis and accordingly is eligible for deduction for the same in the year of making the provision. Aggrieved the revenue is in appeal before us on the following grounds:

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the disallowance of provisions for warranty of Rs. 52,15,220/- made by the A.O. without having regard that such provisions of warranty were not made scientifically and not allowable in view of the principle laid down by the Hon’ble Supreme Court in the case of M/s Rotork Control India Limited [314 ITR 62(SC)]

4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the disallowance of provisions for warranty of Rs. 52,15,220/- made by the AO without having regard that such provisions of warranty were made to defer the liability of payments of taxes and the assessee company never had to incur such expenditure in the past.

5.2. We have heard the rival submissions. We find that this issue has already been held in favour of the assessee by the orders of this Tribunal for assessment years 2007-08 and 2008-09 in its own case vide orders dated 18.12.2015 and 18.03.2016 for assessment years 2007-08 and 2008-09 respectively wherein it was held that:

*“In view of the above facts and circumstances and the precedent of Hon'ble Supreme Court, since in the present case before us the provision for such warranty is being made on the basis of past experience and has been computed in a systematic and scientific manner, as in the present case, surely we have to appreciate that these warranty expenses are towards expenses which have been incurred or are likely to be incurred within the period for which warranty has been assured to the customers against the sale of products and as such, such expenses are deductible as business expenditure. Such expenditure having been incurred wholly for the purpose of business is fully allowable as business expenditure. Accordingly, we uphold the order of Ld. CIT(A). Hence, we dismiss both the appeals of revenue”.*

We find that the provision has been made during this year based on the transaction carried out in the last preceding three years on a scientific basis and this method has been consistently followed by the assessee in the past. In view of these facts and findings and respectfully following the decision of this Tribunal in the assessee's own case for the earlier years (supra), we hold that the Ld. CIT(A) had rightly deleted this disallowance and granted relief to the assessee. Accordingly ground nos. 3 & 4 raised by the revenue are dismissed.

6. The next issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the disallowance made in the sum of Rs. 18,93,809/- towards provision for non-moving inventory in the facts and circumstances of the case.

6.1. The brief facts of this issue is that the assessee company in this year made a provision of Rs 18,93,809/- towards provision for non-moving inventory and claimed the same as deduction in the return of income. The ld. AO observed that the same represents uncrystallized and unascertained liability debited to the profit and loss account and accordingly not allowable as expenses as per the provision of the Act. The assessee stated that as per its accounting policy on inventories, it has been mentioned in the notes on accounts to audited financial statements under the caption 'inventories' as under:

*“Inventories are valued at lower of cost or net realizable value. The cost is arrived at a weighted average basis and after considering provision for obsolescences. Finished goods & works-in-progress includes all the applicable manufacturing overheads.”*

Further in serial no. 11 of the tax audit report u/s 44AB of the Act, the tax auditor had specifically mentioned that there has been no change in or deviation from the method of accounting employed in the preceding years from the accounting standing prescribed u/s 145 of the Act. It was explained that according to the regular and consistent method applied every year since long, provision for non-moving inventory/ stock is made in the books of accounts. If the closing balance of such provision for non-moving inventory as on 31<sup>st</sup> March of financial year is higher than the opening balance of such provision as on 1<sup>st</sup> April of that year, then there is a net excess of the provisions made during that year which is offered for

disallowance in the return and computation of total income for that year. Conversely, if the closing balance of such provision as on 31<sup>st</sup> March of a financial year is less than the opening balance of such provision as on 1st April of that year, then there is a reduction of the provision during that year which is claimed as deduction from the total income. This procedure is followed every year by the assessee without any change or deviation. The assessee furnished a statement containing the workings of provisions for non-moving inventories for the assessment year 2009-10 wherein there was total reduction of Rs. 73,54,027/- as under:

- i) For non-moving inventory of raw materials and components (-) Rs. 54,60,218/-
- ii) For non-moving inventory of finished goods (-) Rs. 12,22,750/-
- iii) For non-moving inventory of store and spares (-) Rs. 6,21,059/-

Total (-) Rs. 73,54,027/- (Rs. 54,93,670/- as on 31.03.2009 less Rs. 1,28,47,697/- as on 01.04.2008).

The sum of Rs. 54,60,218/- being the amount of reduction in the provision for non-moving inventory of raw materials and components which is meant for use in manufacturing, was reduced from the manufacturing and operating expenses as per Schedule 10 of the audited accounts owing to the same and identical procedure followed from year to year and consequently the income enhanced by that amount of Rs. 54,60,218/-. But the said sum of Rs. 54,60,218/- being a negative figure of the provision, is ultimately deductible from the total income.

6.2. It was further stated that in the return and computation of total income for the assessment year 2008-09, the total excess provision of Rs. 39,75,753/- being a positive figure, was added back and offered for taxation as the closing balance of such provision as on 31.03.2008 was higher than the opening balance of such provision as on 01.04.2007. Conversely in assessment year 2009-10 the entire amount of reduction in the provision of Rs. 73,54,027/-, being a negative figure, was claimed by the assessee as deduction in its return for assessment year 2009-10.

6.3. It was further pointed out that the ld. AO did not spot even after making the said disallowance of Rs. 73,54,027/-. He further disallowed the sum of Rs. 18,93,809/- (12,22,750/- towards finished goods and Rs. 6,21,059/- towards store and spare parts) on account of the said provision for non-moving inventory on the ground that the same were uncrystallised and unascertained liability. It was pointed out before the Ld. CIT(A), that by this arbitrary action of the ld. AO, he had actually enhanced the income by a sum of Rs. 92,47,836/- (Rs. 73,54,027/- + Rs. 18,93,809/-) without even caring to consider the fact that the sum of Rs. 18,93,809/- is already included in the figure of Rs. 73,54,027/-.

6.4 The Ld. CIT(A) appreciated the aforesaid contention of the assessee and deleted the disallowance and granted relief to the assessee. Aggrieved the revenue is in appeal before us on the following ground:

5. That on the facts and in the circumstances of the case and in law, the CIT(Appeals) erred in giving relief to the assessee company by deleting the disallowance made on account of provision for non-moving inventory without considering that such provisions were uncrystallised and unascertained liability and, therefore, not allowable.

6.5. We have heard the rival submissions. We find that the Ld. CIT(A) had deleted the disallowance by observing as under:

*"I have carefully considered the submission put forth on behalf of the appellant along with the supporting details/documents, perused the facts of the case including the observation of the AO and other materials brought on record in respect of the disallowance of Rs. 18,93,809/- & Rs. 1,21,43,683/- relating to non-moving inventory. In respect of Rs. 18,93,809/-, it is seen that the disallowance has been made by the AO by treating the said amount as contingent in nature, whereas Rs. 1,21,43,683/- has been contended by the appellant as having been credited to the P&L a/c. and therefore, the appellant has contended that the said amount having been considered in the P&L a/c. should have been reduced in the computation of income which the AO did not considered. The AO in his assessment order has merely mentioned that the said sum of Rs. 18,93,809/- is not allowable as per the provisions of the Act and hence the disallowance and in respect of Rs. 1,21,43,683/- nothing has been mentioned by the AO. The appellant in his written submission has contended that the said sum of Rs. 18,93,809/- has already been considered in the computation of income and has already been disallowed by the appellant itself in the computation and hence it has been contended by the appellant that the AO has wrongly made such addition. In such respect, the appellant has submitted the working of the provision / reversal which is as follows:*

*(i) (-) Rs. 54,60,218 – Provision for non-moving inventory (raw material and component)*

*(ii) (-) Rs. 12,72,750 - Provision for non-moving inventory (finished goods)*

*(iii) (-) Rs. 6,21,059/- Provision for non-moving inventory (store and spare parts)*

*Total (-) Rs. 73,54,027/-*

*The appellant has contended that the AO has added a sum of Rs. 12,72,750/- & Rs. 6,21,059/- aggregating to Rs. 18,93,809/- without appreciating the fact that the said sums are actually reversal on account of non-moving inventory and actually it is a reduction only. Further, the appellant has also submitted a working of the provision which stands at Rs. 39,75,753/- which has already been added back in the computation of income .*

*In the background of these facts, I find that the AO has made such disallowance without appreciating the, facts in the matter and hence the addition so made in such respect is hereby deleted.*

*As regards the sum of Rs.1,21,43,683/-, the provision for non-moving inventory as on 01.04.2008 was at Rs. 1,28,47,697/- and the closing balance was Rs. 54,93,670/- and hence the sum of Rs. 73,54,027/- was credited in the P&L a/c. and for which the claim has been correctly made by the appellant in the computation of income, in view of the discussion so made earlier. Hence, this ground of the appellant is also allowed.*

*In view of the aforesaid facts and consistent treatment given by the assessee from year to year with regard to treatment of provision for non-moving inventory in the return of income, we hold that the Ld. CIT(A) had rightly deleted the disallowance made in this regard by the ld. AO. Accordingly, ground no. 5 raised by the revenue is dismissed.”*

10. From perusal of the above finding we find that the same issue has been dealt by this Tribunal in other assessment years in assessee's own case. Ld. D/R failed to controvert this fact.

11. We, therefore, taking consistent view and respectfully following the decision of this Tribunal, find no reason to interfere in the finding of the ld. CIT(A) deleting the alleged disallowance of warranty expenses made by the AO at Rs.85,81,254/-. Thus Revenue's ground no. 1 is dismissed.

12. Ground no. 2 relates to disallowance of depreciation of Rs. 66,81,900/-. We observe that during the year the assessee acquired and installed various plant & machineries costing Rs.6,78,40,001/- as shown in the fixed asset in Schedule no.-4 attached to the audited financial statement. The assessee manufactures boxes. It has claimed that before the purchase of the said machineries, the capacity of production was 75,000 boxes and after purchase of the new plant & machinery capacity has increased to 2,70,000 nos. of boxes. Additional depreciation @15% at Rs.6,69,28,037/- and Rs.66,81,900/- has been made by the assessee. In support of such claim a report of the Chartered Accountant u/s 32(1)(ia)(B) of the Act in the prescribed Form no. 3AA has been filed which provides the detailed list of the plant & machinery so purchased including tools and dies, a tabular chart giving details of expansion and summarized statement of the new addition of plant & machinery and electrical installation. We, further, notice that ld. AO has allowed the claim of normal depreciation of such items purchased during the year but denied the claim of additional depreciation mainly by observing that during the year assessee's production has not increased as claimed by the assessee. Before ld. CIT(A), the assessee provided the details and after going through the same, the ld. CIT(A) allowed the claim of the assessee observing as follows:

*“The discussion in the impugned assessment order is itself sufficient to examine to decide the issue.*

The dispute is only on interpretation of 'by way of increase in installed capacity by not less than ten percent' in the Section 32(1)(iia). The phrase is very simple and clear.

The AO's arguments for disallowance deviate from the very simple and clear meaning of the phrase. The AO's various arguments, and my remarks thereon, are:

| <b>AO's arguments</b>  | <b>My Observations/Remarks</b>  |
|--|---|
| That the aggregate of increase in installed capacity for all product-types is only at 11%  | Even by this aggregation, the installed capacity is above 10% - thus the assessee is eligible and entitled for the additional depreciation;<br>To scrutinize each and every product type of the assessee as to whether in each of them there is increase in installed capacity by 10% - the view is too myopic;<br>In the statute's relevant provision, nowhere is it mentioned that the installed capacity has to increase in each and every product type. This would be unrealistically idealistic.<br>The assessee's plank is that in the product type of Boxes - its installed capacity has increased from 75,000 to 2,70,000 - increase by 260%. This was the assessee's focus area. So be it. It is for the assessee to decide how to run his business, what product type to focus upon/market. |
| That the assessee, even in the preceding financial year, could not reach the production up to the installed capacity.                  | This is mere idealistic argument, rather out of context. Production is dependent on market demand - which is dependent on various economic and market factors.<br>Here too in the statute's relevant provision, nowhere is it mentioned that the production also has to increase up to that increased/full installed capacity.  |
| That only increase in installed capacity is only by certificate of a chartered engineer, and that the certificate is dated 20.03.2005, | Mere argument.<br>Regarding the date of the certificate, that the increase in installed capacity could not have been fully installed by 31.03.2005 - mere surmise; and it also self-defeats the other argument above, that the production is also to increase.<br>The increase in installed capacity is also evidenced by way of increase in the assets in the Balance Sheet - plant & machinery.   |

The assessee has fulfilled the condition of having increased its installed capacity by more than 10%. The assessee is entitled for the additional depreciation."

13. From perusal of the above finding of the Id. CIT(A) wherein each observation of the AO has been considered and the fact giving rise to the

increase in the installed capacity from 75,000 to 2,70,000 boxes has been considered and claim has been allowed, we find that the assessee has filed copy of the Chartered Engineer placed at page 219 to 222 of the paper book. The certificate dated 20.03.2005 certifies that machines are purchased during November, 2004 to January, 2005. In this certificate given by the Govt. approved valuer & Chartered Engineer, complete details of new machines namely Hydraulic Press Brake, CNC Turret Punch Press is appearing. These machines are purchased from some Bhartia Industries Limited and with installation of these machines, it is certified that installed capacity for manufacturing the boxes will increase to 2,70,000 nos. per annum from the present capacity of 75,000 per annum. It is not in dispute that the machines have been purchased and installed and, therefore, these machines certainly have increased production capacity of the assessee. For claiming the additional depreciation, the assessee has to prove that the new machines have been purchased, put to use and the capacity of production is increased. The actual production is not at all mandatory for claiming the additional depreciation. Provisions of Section 32(1)(iia) of the Act states that, in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31<sup>st</sup> day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to 15% of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii). Further, there are provisos to this Clause "ii", but they are not relevant for the instant issue. So, the fact remains as per this proviso the assessee is only required to acquire and install the machines, which in this case has been rightly done so by the assessee and is duly supported by the certificate of the Chartered Engineer as well as of Chartered Accountant which proves that the assessee has purchased the machines and installed the same and this resulted in increase in installed capacity of production of the assessee and, therefore, assessee is eligible for claiming the additional depreciation. We, therefore, under the given facts and circumstances of the case, are of the considered view that the assessee has rightly claimed the additional depreciation of Rs.66,81,900/- and, thus, find no infirmity in the finding of

the Id. CIT(A). Hence, the finding of the Id. CIT(A) is sustained. Ground no. 2 of the Revenue is dismissed.

14. Through ground no. 3, Revenue has challenged the order of the Id. CIT(A) deleting the addition of warranty expenses and additional depreciation in calculation of book profit. Since we have already confirmed the finding of the Id. CIT(A) deleting the addition for warranty expenses and deleting the disallowance of additional depreciation, this ground becomes infructuous and the same is also dismissed.

15. Ground no. 4 is general in nature which needs no adjudication.

16. In the result, the appeal filed by the Revenue is dismissed.

17. Now, we come to the Cross Objection filed by the assessee in C.O. No.: 06/Kol/2021.

18. At the outset, the Id. Counsel for the assessee requested for not pressing the grounds raised in this Cross Objection. Therefore, ground raised in C.O. No.: 06/Kol/2021 is dismissed as not pressed.

19. In the result, the appeal in I.T.A. No.: 04/Kol/2021 filed by the Revenue and the Cross Objection in C.O. No.: 06/Kol/2021 filed by the assessee are dismissed.

***Kolkata, the 31<sup>st</sup> March, 2022.***

Sd/-  
[Rajpal Yadav]  
**Vice President**

Sd/-  
[Manish Borad]  
**Accountant Member**

Dated: 31.03.2022

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **DCIT, Circle-7(1), Kolkata.**
2. **M/s. BCH Electric Limited, Block 1E, 216, AJC Bose Road, Kolkata-700 017.**
3. CIT(A)-11, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata