आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी . मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./**I.T.A.No.567/Chny/2016**

(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s. Eaton Power Quality Pvt Ltd. 2, E.V.R Street, Sedarapet, Puducherry-605 111.	Vs	Deputy Commissioner of Income Tax, Circle-1, Puducherry.
PAN: AAACC 6943R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./**I.T.A.No.1689/Chny/2016**

(निर्धारणवर्ष / Assessment Year: 2011-12)

Deputy Commissioner of Income Tax, Circle-1, Puducherry-605 003.	Vs	M/s. Eaton Power Quality Pvt Ltd. 2, E.V.R Street, Sedarapet, Puducherry-605 111.
		PAN: AAACC 6943R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Mr. Vishal Kalra, Advocate
प्रत्यर्थीकीओरसे/Revenue by	:	Dr. S. Palani Kumar, CIT

सुनवाईकीतारीख/Date of hearing	:	27.07.2022
घोषणाकीतारीख /Date of Pronouncement	:	09.09.2022

आदेश / O R D E R

PER G. MANJUNATHA, AM:

These cross appeals filed by the assessee as well as Revenue are directed against final assessment order passed by the Assessing Officer u/s.143(3) r.w.s 144C(13) of the Income Tax Act, 1961, dated 28.01.2016, in pursuant to directions of the DRP., Mumbai, dated 14.12.2015 u/s.144C(5)

of the Income Tax Act, 1961, and relevant to the assessment year 2011-12. Since, facts are identical and issues are common, for the sake of convenience, appeals filed by the assessee as well as Revenue were heard together and are being disposed off, by this consolidated order.

2. At the outset, we find that there is a delay of 69 days in appeal filed by the revenue. During the course of hearing, learned DR present for the Revenue submitted that delay in filing of appeal is that records pertaining to this case were not traceable mainly due to shifting of office from main building to rented building which caused delay of 69 days. The delay in filing appeal is neither intentional nor willful, but for the unavoidable reasons, therefore, delay may be condoned in the interest of justice.

3. Having heard both sides and considered reasons given by the learned DR, for condonation of delay, we are of the considered view that reasons given by the Revenue for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act, for condonation of delay and hence, delay in filing of appeal is

condoned and appeal filed by the Revenue is admitted for adjudication.

ITA No.567/Chny/2016 (Assessee's appeal):

4. The first issue that came up for our consideration from the assessee appeal is transfer pricing adjustment of Rs.3,67,52,455/- in respect of international transactions pertaining to payments made to Associated Enterprises for receipt of Headquarter services on the ground that same were not at arm's length price. The facts with regard to impugned dispute are that the assessee is a domestic company engaged in the business of trading of UPS and Direct Current power system etc. and also provides maintenance services for these items in India. The assessee company is 100% subsidiary of Eaton Corporation, USA. During the year under consideration, the assessee has entered into various international transactions with its AE, including payments for Headquarter services. During the course of assessment proceedings, reference was made to TPO to determine ALP of international transactions of the assessee with its AEs. The TPO, during the course of proceedings, after considering relevant submissions of the assessee opined that the assessee could not provide

necessary evidences to substantiate payments made to AE for shared services (headquarter services) except filing certain e-mail correspondence between the assessee and its AE and therefore, rejected arguments of the assessee and made upward adjustment of Rs.3,67,52,455/- towards Headquarter services.

5. The learned A.R for the assessee referring to agreement between the assessee and AE, submitted that the assessee is availing certain services from its Headquarter for various services and for this purpose a Shared Services agreement between Eaton (China) Investment Company Ltd. and Shared Internal Audit Service agreement with Eaton (China) Investment Company Ltd. has been entered into. The learned AR further submitted the assessee has benchmarked all international transactions, including payments for Headquarter services under TNMM with OP/ sales as profit level indicator and claimed to be tested party. The assessee has also furnished copy of agreement between the parties along with invoices and e-mail correspondence to prove rendering of services by the AE. The TPO as well as DRP rejected arguments of the assessee and made nil adjustment towards

cost of shared services and disallowed entire amount paid to AE for Headquarter services. The learned AR further submitted that similar issue has been considered by the Tribunal for earlier assessment years, where under identical circumstances, issue has been set aside to the file of the TPO / Assessing Officer for determining ALP of payments made to AE for shared services.

6. The learned DR, on the other hand, supporting order of the learned DRP submitted that the TPO has given various reasons to make Nil adjustment towards payment made to AE for shared services on the basis of evidences filed by the assessee, as per which except agreement and few e-mail correspondence, the assessee could not file any evidence to justify rendering of services. The learned DR further submitted that the learned DRP has called for remand report on the issue and at this stage also, the assessee could not file any evidences. Therefore, the DRP has rightly concluded that when intra-group services are considered to be sham, question of bundling all transactions, including payments for shared services cannot be made.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee claims to have made certain payments to AE for Headquarter services. As per agreement between the assessee and its AEs, the assessee claims to have availed certain services, including services in pursuant to Standard WHQ agreement between Eaton Corporation and the assessee, Shared services agreement between Eaton (China) Investment Company Ltd. and Shared Internal Audit Services Agreement with Eaton (China) Investment Company Ltd. and with Moller Electric Pte Ltd. We find that except need based agreement for rendering services and few e-mail correspondence between the assessee and AE, no other credible evidence was filed before the TPO, to justify payments made for Headquarter services. Even from e-mail correspondence between the assessee and AE, nothing is discernible whether AE has provided some services or not. Therefore, on the basis of e-mail correspondence itself, it cannot be held that AE has rendered services for which the assessee has made payments.

8. Be that as it may, the fact remains that an identical issue has been considered by the Tribunal in the assessee's own case for earlier assessment year and under identical set of facts, the Tribunal has set aside the issue to the file of the Assessing Officer to determine ALP of payment made to AE for shared services, in light of agreement between the parties and evidences to justify claim of services being rendered by the AE. Therefore, considering fact that the issue has been set aside to file of the TPO for earlier years, we are of the considered view that for this year also, the issue needs to go back to the file of the TPO to reconsider the issue in light of various evidences filed by the assessee for justifying services rendered by the AE against payment made for Headquarter services. Hence, we set aside the issue to file of the TPO and direct TPO to re-examine the issue in accordance with law.

9. The next issue that came up for our consideration from appeal of the assessee is disallowance of management fees paid to AE, namely Eaton Technologies Pvt. Ltd. u/s.37(1) of the Income Tax Act, 1961. The assessee has debited an amount of Rs.1,62,04,532/- under the head 'management fee' for corporate cost allocation. The Assessing Officer has

disallowed management fee on the ground that except certain e-mail correspondence, the assessee could not file any evidences for rendering services by the AE. The learned AR for the assessee submitted that an identical issue has been considered by the Tribunal for earlier assessment year and after considering relevant facts has set aside the issue to file of the TPO for fresh consideration.

10. The learned DR, on the other hand, supporting order of the learned DRP submitted that except few email correspondence, the assessee could not file any evidences to justify payment of management fees to AEs. Therefore, the DRP has rightly upheld disallowance of management fees and their order should be upheld.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee claims to have paid management fees to Eaton Technologies Pvt. Ltd. towards various services, including providing services for human resources development and administration, services with regard to audit, finance and statutory compliance services, legal support services, corporate

communication and marketing support services etc. The Assessing Officer as well as DRP disallowed management fees paid to AE on the ground that the assessee could not prove rendering of services and benefit derived from service rendered by AE to justify payment of management fees. We find that except certain flow chart showing various corporate services of enterprises, the assessee could not file any evidence to justify rendering of services to justify management fee paid to sister concern. Although, the assessee has filed certain e-mail communication between the assessee and sister concern, but nothing is available from such e-mail correspondence to ascertain whether AE has rendered certain services. It is well settled principle of law by the decisions of various courts that the onus is on the assessee to bring all material facts on record to substantiate its claim, when the claim is made towards any expenditure. Further, mere production of vouchers in support of claim for deduction of expenditure would not prove claim made by the assessee is allowable. In this case, except routine flow chart explaining certain services of corporate entity, no other evidence has been placed on record to justify claim of payment of management fee. Therefore, we are of the considered view

that that there is no error in the reasons given by the Assessing Officer as well as DRP to sustain disallowance of management fee paid to sister concern. Hence, we are inclined to uphold findings of the DRP and reject ground taken by the assesse.

12. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

ITA No.1689/Chny/2016: (Revenue appeal):

13. The only issue that came up for our consideration from the Revenue appeal is that deletion of additions made towards provision for warranty. During the year under consideration, the assessee by following accrual system of accounting had made provision for warranty expenses having regard to contractual obligation with its customers towards products supplied. The assessee claims that provision made for warranty expenses is on the basis of past experience and such provision is estimated on scientific method. The Assessing Officer has disallowed provision for warranty on the ground that in the previous financial years, the assessee is adding back provision for warranty expenses in statement of total income and claimed deduction for actual expenditure incurred for warranty.

However, for the impugned assessment year, the assessee has changed method of accounting of warranty expenses and as per which claimed deduction towards provision made for warranty expenses and also claimed deduction towards actual expenditure incurred for warranty expenses. Therefore, the Assessing Officer opined that when the assessee is claiming deduction for warranty expenses on the basis of provision, it should have added actual expenditure in the computation. Since, the assessee has not done, the Assessing Officer has disallowed provision for warranty expenses.

14. The learned DR submitted that the learned DRP has erred in deleting additions towards warranty expenses on different reasons without appreciating fact that the assessee has claimed deduction towards provision made for warranty expenses as well as actual expenditure incurred for warranty expenses. The learned DR referring to financial statements for the assessment year 2011-12 submitted that in Schedule 15 'operating expenses,' the assessee has debited a sum of Rs.2,33,15,603/- under the head 'warranty' and claimed that it pertains to provision made for warranty expenses in light of decision of the Hon'ble Supreme Court in the case of M/s.

Rotork Controls India Pvt.Ltd. Vs. CIT (314 ITR 62). Further, the assessee had once again, claimed deduction towards actual expenditure incurred towards warranty amounting to Rs.3,20,60,542/-. In other words, the assessee has claimed deduction towards provision made for warranty as well as actual amount incurred towards warranty expenses, contrary to its own accounting principles followed for earlier assessment years, where it was claiming deduction towards warranty expenses only on actual basis, but not on provisions. The Assessing Officer, after considering relevant facts has rightly disallowed provision made for warranty expenses amounting to Rs.2,33,15,603/-, however, the DRP without appreciating facts has simply deleted additions made by the Assessing Officer .

15. The learned AR for the assessee, on the other hand, supporting order of the DRP submitted that upto the assessment year 2010-11, the assessee was claiming deduction towards warranty expenses on actual utilization, even though, provision is made for warranty expenses in the books of account. However, from the assessment year 2011-12 onwards, on the basis of judgement of the Hon'ble Supreme Court in the case of M/s.Rotork Controls (India) P.Ltd. Vs.CIT

(supra) has claimed deduction towards provision made for warranty expenses. The DRP, after considering relevant facts has rightly deleted additions made by the Assessing Officer and their orders should be upheld.

16. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee is in the business of sales and support services of UPS has created provision for warranty expenses on products sold in India. The assessee claimed that provision created for warranty expenses is on the basis of past experience and such provision has been made on scientific basis. The assessee further claimed that although, it was claiming deduction on actual utilization basis upto assessment year 2010-11, but it has changed accounting method from the impugned assessment year on the basis of decision of the Hon'ble Supreme Court in the case of M/s.Rotork Controls (India) P.Ltd. Vs.CIT (supra) and argued that provision for warranty expenses is deductible, if such provision is made on scientific basis.

17. We have gone through reasons given by the Assessing Officer to disallow provision for warranty expenses in light of

various arguments advanced by the learned counsel for the assessee and we find that in the books of account, the assessee is making provision for warranty expenses on accrual basis based on past experience. There is no dispute with regard to provision created for warranty expenses and method followed by the assessee. In fact, the Assessing Officer has not disputed quantum of provision created by the assessee for warranty expenses. The only dispute is with regard to change in method of accounting followed for claiming deduction towards warranty expenses. It was observation of the Assessing Officer that upto assessment year 2010-11, although, the assessee made provision for warranty expenses in the books of account on accrual basis, but such provision has been added back to total income in the statement of total income and deduction is claimed towards actual expenditure incurred for warranty on utilization basis. Further, from the impugned assessment year, the assessee has claimed deduction towards warranty expenses on the basis of provision created in the books of account and also on the basis of actual utilization in the statement of total income. Therefore, the Assessing Officer has disallowed deduction towards amount claimed on the basis of

provision for warranty expenses, but allowed deduction for warranty expenses on utilization basis, because the assessee has not added back provision in the statement of total income like in earlier financial years. We find merit in reasons given by the Assessing Officer to disallow provision for warranty expenses for simple reason that when the assessee is all along claiming deduction towards warranty expenses on actual utilization, then there is no reason for the assessee to claim deduction towards warranty expenses on the basis of provision created in the books of account as well as actual expenditure incurred in the statement of total income. No doubt, if the assessee is claiming deduction towards warranty expenses on provision basis, then it cannot claim deduction towards actual expenditure, unless such deduction is over and above amount of provision created in books of account, because it amounts to double deduction. In this case, it was argument of the learned counsel for the assessee that the assessee is claiming deduction for warranty expenses only on the basis of provision created in books of account, but whatever deduction claimed in the statement of total income is over and above provision made in the books of account. We find that arguments of the

learned counsel for the assessee is fallacious, because as per details filed by the assessee towards historical amounts of provision created for warranty expenses and actual utilization, which is available on page 129 of paper book filed by the assessee for the financial year 2010-11, the assessee has unutilized provision for warranty, including opening balance brought forward from earlier financial year is about 9.55 crores, whereas actual utilization for warranty expenses for the financial year 2010-11 is Rs.3.20 crores, leaving behind closing balance of provision for warranty expenses of Rs.6.33 crores. From the above, it is very clear that the assessee has claimed excessive deduction of provision for warranty expenses, although, it has incurred less amount for providing warranty to its customers. Therefore, we are of the considered view that there is no error in reasons given by the Assessing Officer to disallow provision for warranty expenses by allowing actual expenditure incurred towards warranty expenses. The learned DRP deleted additions made by the Assessing Officer on different grounds without appreciating reasons given by the Assessing Officer to disallow excess provision made for warranty expenses. Hence, we reverse findings of the DRP and

uphold additions made by the Assessing Officer towards disallowance of provision for warranty expenses.

18. In the result, appeal filed by the Revenue is allowed.

19. To sum up, appeal filed by the assessee is partly allowed for statistical purposes and appeal filed by the Revenue is allowed.

Order pronounced in the open court on 9th September, 2022

Sd/-	Sd/-
(वी. दुर्गा राव)	**(जी. मंजुनाथ)**
(V. Durga Rao)	(G. Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 9th September, 2022.
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.