

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “C” BENCH, BENGALURU**

**Before Shri George George K., Judicial Member  
and  
Ms. Padmavathy S., Accountant Member**

<b>ITA No. 534/Bang/2022</b> (Assessment Year: 2012-13)		
SKF Engineering & Lubrication India Pvt. Ltd. (formerly Lincoln Helios (India) Ltd & SKF Engineering & Lubrication India Ltd No.249/250, Bommasandra Indl. Area, Phase 3, Hosur Road Bengaluru 560099 PAN – AAACL2061P  (Appellant)	vs.	JCIT, Circle - 4(1)(1) BMTC Building 80 Feed Road, 6th Block, Koramangala Bengaluru 560095  (Respondent)

Assessee by:	Shri Deepak Chopra, CA
Revenue by:	Smt. Priyadarshini Baseganni, Addl. CIT
Date of hearing:	22/09/2022
Date of pronouncement:	26/09/2022

**ORDER**

**Per: Padmavathy, A.M.**

This appeal is against the order passed by the National Faceless Appeal Centre (NFAC), Delhi in appeal No. CIT(A), Bengaluru-4/10071/2018-19 dated 29.04.2022 for AY 2012-13.

2. The assessee raised the following grounds of appeal: -

- “1.1 *The learned Commissioner of Income-tax (Appeal) has erred in dismissing the appeal filed by the appellant and in confirming the assessment order passed by Assessing Officer. On proper appreciation of facts and law, the learned Commissioner of Income tax (Appeals) should have quashed the order passed by the Assessing Officer.*
- 1.2. *The Assessing Officer having passed the original order on proper application of mind and after considering all the issues, the present*

*impugned assessment order passed by the learned assessing officer and as confirmed by the learned CIT(A) is only on account of change of opinion and therefore also the orders of lower authorities deserves to be quashed.*

- 1.3. *There was no erroneous order at all so as to cause any prejudice to the interest of revenue. There being no earlier erroneous order, the impugned assessment order passed U/s. 143 r.w.s 263 of I.T. Act, 1961 has no legs to stand and is to be quashed. The learned CIT(A) has erred by upholding the order of the learned assessing officer which under applicable law and facts of the case deserves to be quashed.*

*[Tax effect of above ground : Rs 33,84,980/-1*

*Without prejudice:*

- 2.1. *The learned Commissioner of Income tax (Appeals) has erred in upholding the addition of Rs. 49,20,000/- as made by Assessing Officer by holding provision for liquidated damages as unascertained liability.*
- 2.2. *On proper appreciation of facts of the appellant's case and applicable legal provisions, the addition of Rs. 49,20,000/- is erroneous and is liable to be deleted.*
- 2.3. *The addition as made in the assessment order resulting only in timing differences without resulting in any additional revenues to the exchequer ought to have been deleted by the learned CIT(A).*

*[Tax effect of above ground : Rs 33,84,980/-1*

*Without further prejudice,*

3. *Alternatively and without acceding, the lower authorities upon holding provision for current year as unascertained liability ought to have at least*
- a) *allowed deduction in current year in respect of provisions made in the preceding year.and*
- b) *allowed deduction for current year's provisions in the income computation of subsequent year.*

*[Tax effect of above ground : Rs 33,84,980/-]*

4. *In view of the above and on other grounds to be adduced at the time of hearing, it is requested that impugned assessment order be quashed or at least disallowance of Rs. 49,20,000/- be deleted.*

*[Tax effect of above ground : Rs 33,84,980/-]"*

3. The assessee is in the business of automated lubrication systems, manual lubrication equipment and industrial pumping systems. The assessee returned total income of Rs.37,18,54,400/- for AY 2012-13 vide revised return

of income. The case was selected for scrutiny and an assessment order was passed under Section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (the Act) on 16.02.2015 wherein the assessee company's income was assessed at Rs.37,74,93,367/-. Subsequently notice under Section 263 of the Act dated 26.12.2017 was issued by the PCIT stating that the order under Section 143(3) r.w.s. 144C(13) of the Act dated 16.02.2016 is erroneous and prejudicial to the interest of Revenue because the assessee has been allowed deduction for provision for liquidated damages on Rs.49,20,000/- which was an unascertained liability. The PCIT did not accept the submissions made by the assessee with regard to the allowability of liquidated damages and proceeded to pass an order under Section 263 of the Act dated 06.02.2018 setting aside the assessment order and directed the AO to verify the claim of the assessee with regard to the provision of liquidated damages and redo the assessment. Accordingly the AO passed an order under Section 143(3) r.w.s. 263 of the Act dated 05.06.2018 disallowing the provision for liquidated damages stating that it is in the nature of unascertained liability.

4. On further appeal the CIT(A) confirmed the order of the AO. Aggrieved the assessee is in appeal before the Tribunal.

5. Before us the learned A.R. submitted that the assessee is under contractual obligation to pay liquidated damages since the purchase orders raised by the customers or the contracts entered into by the assessee with its customers contain a clause for payment of liquidated damages by the assessee if the assessee fails to deliver the lubricating systems/products on or before the schedule delivery date. The learned A.R. also submitted that the provision for liquidated damages is accrued for the financial year ended on 31.03.2012 on the basis that the liability has accrued for the year ended, though the actual payment would happen on a later date. According to the learned A.R. the assessee is following mercantile system of accounting and therefore the

liability to pay liquidated damages which is accrued during the year under consideration has to be provided for in the books of account and the fact that liquidated damages are payable on a later date will not dilute the liability that has accrued to the assessee. The learned A.R. further submitted that the PCIT has claimed that the details of the provisions for liquidated damages was not submitted by the assessee which is not factually correct since the assessee has submitted the detailed working of the provision made towards liquidated liability before the lower authorities (pages 65 & 66 of paper book).

6. The learned D.R., on the other hand, submitted that the liability to pay the liquidated damages is arising at future date and therefore it cannot be stated to be an ascertained liability. The learned D.R. therefore supported the orders of the lower authorities.

7. We have heard the rival contentions and perused the material on record. The assessee during the year under consideration has made a provision for liquidated damages for an amount of Rs. 49,20,000/-. The AO during the revision proceedings has disallowed the said amount on the basis that the calculation of liquidated damages is based on percentage agreed upon the time of purchase order and at the time of making the provision the assessee would not be aware of the date of delivery which a future date. Against the appeal filed by the assessee before the CIT(A) the disallowance was upheld on the basis that the liability would arise only on actual supply and therefore the provision made for the year under consideration is an unascertained liability. The CIT(A) in this regard relied on the decision of the Hon'ble Madras High Court in the case of FFE Minerals India (P.) Ltd. vs. JCIT (2018) 98 taxmann.com 170 (Madras). We perused the working submitted by the learned A.R. with regard to calculation of liquidated damages which is extracts as below: -

Sl. No.	Customer Name	Sales Order No.	ED CLAUSE IN PO (Y/N)	Delv as per PO	Weeks Delay as on 31-Mar-12	Per Week ED %	Max % LD	Max Weeks for LD	Basic Value	LD Amount
1	SIEMENS VAI METALS TECHNOLOGIES PVT	1003997	Y	30/07/2011	35	1.00%	10.00%	10.00	1,62,00,000	16,20,000
2	SIEMENS VAI METALS TEC1 NOLOGIES PVT	1004371	Y	30/09/2011	27	1.00%	10.00%	10.00	8,97,000	89,700
3	HUMBOLDT WEDAG INDIA PVT. LTD.	1004015	Y	31/08/2011	31	0.50%	5.00%	10.00	40,00,649	2,00,032
4	HUMBOLDT WEDAG INDIA PVT. LTD.	1004014	Y	31/08/2011	31	0.50%	5.00%	10.00	40,00,649	2,00,032
5	HUMBOLDT WEDAG INDIA PVT. LTD.	1004016	Y	31/08/2011	31	0.50%	5.00%	10.00	40,00,649	2,00,032
6	HUMBOLDT WEDAG INDIA PVT. LTD.	1004571	Y	28/03/2011	1	0.50%	15.00%	30.00	16,32,000	8,160
7	HUMBOLDT WEDAG INDIA PVT. LTD.	1004576	Y	28/03/2012	1	0.50%	5.00%	10.00	6,88,500	3,443
8	L&T-MHI Turbine Generators Pvt. Ltd	1004218	Y	10/01/2012	12	0.50%	5.00%	10.00	62,00,000	3,10,000
9	ITC LIMITED	1004174	Y	30/11/2011	18	0.50%	5.00%	10.00	2,00,000	10,000
10	ITC LIMITED	1004414	Y	29/02/2012	5	1.00%	10.00%	10.00	53,93,630	2,69,682
11	THYSSENKRUPP INDUSTRIES INDIA PVI	1004003	Y	15/11/2011	20	0.50%	5.00%	10.00	4,52,000	22,600
12	THYSSENKRUPP INDUSTRIES INDIA PV1.	1004007	Y	30/09/2011	27	0.50%	5.00%	10.00	46,50,000	2,32,500
13	ABHIJEET PROJECTS LTD	1003845	Y	25/12/2011	14	1.00%	10.00%	10.00	22,00,000	2,20,000
14	HOWDEN AIR & GAS INDIA PVT. LIMITED	1004465	Y	15/01/2012	11	0.50%	5.00%	10.00	38,00,000	1,90,000
15	BEML LIMITED	1004176	Y	31/10/2011	22	0.50%	5.00%	10.00	7,40,139	37,007
16	BEML LIMITED	1004177	Y	30/11/2011	18	0.50%	5.00%	10.00	14,80,277	74,014
17	BEML LIMITED	1004178	Y	31/01/2012	9	0.50%	5.00%	10.00	14,80,277	66,612
18	BEML LIMITED	1004631	Y	30/03/2012	1	0.50%	5.00%	10.00	7,98,140	3,991
19	SMS INDIA PVT. LTD.	1004556	Y	01/03/2012	5	0.50%	5.00%	10.00	67,50,000	1,68,750
20	ANUPAM INDUSTRIES LTD.	1004234	Y	09/09/2011	30	0.50%	5.00%	10.00	7,19,600	35,980
21	ANUPAM INDUSTRIES LTD.	1004235	Y	09/09/2011	30	0.50%	5.00%	10.00	21,00,000	1,05,000
22	INOX WIND LTD	1003914	Y	10/05/2011	47	1.00%	5.00%	5.00	26,95,000	1,34,750
23	PAUL WORTH INDIA PVT. LTD.	1004115	Y	15/09/2011	29	0.50%	5.00%	10.00	13,67,000	68,350
24	PAUL WORTH INDIA PVI LTD	2008647	Y	04/01/2012	13	0.50%	5.00%	10.00	10,99,759	54,988
25	MUKAND LTD.	1002590	Y	30/05/2010	44	0.50%	5.00%	10.00	12,00,000	60,000
26	MUKAND LTD.	1002849	Y	30/05/2010	44	0.50%	5.00%	10.00	12,40,000	62,000
27	MAITHAN SPAT LIMITED	1001798	Y	15/01/2009	12	1.00%	5.00%	5.00	19,93,791	99,690
28	MAITHAN SPAT LIMITED	1003558	Y	15/01/2009	12	1.00%	5.00%	5.00	2,23,000	11,150
29	ELECON ENGINEERING COMPANY LTD.	1003848	Y	22/03/2011	2	0.50%	5.00%	10.00	2,25,000	2,250
30	ELECON ENGINEERING COMPANY LTD.	1004242	Y	10/11/2011	21	0.50%	5.00%	10.00	2,25,000	11,250
31	ELECON ENGINEERING COMPANY LTD.	1004393	Y	08/11/2011	21	0.50%	5.00%	10.00	2,62,000	13,100
32	ELECON ENGINEERING COMPANY LTD.	1004407	Y	10/11/2011	21	0.50%	5.00%	10.00	6,25,500	31,275
33	ELECON ENGINEERING COMPANY LTD.	1004469	Y	08/11/2011	21	0.50%	5.00%	10.00	1,35,900	6,795
34	ELECON ENGINEERING COMPANY LTD.	1004637	Y	08/02/2012	8	0.50%	5.00%	10.00	5,50,000	22,000
35	ELECON ENGINEERING COMPANY LTD.	1004638	Y	08/02/2012	8	0.50%	5.00%	10.00	2,75,000	11,000
36	ELECON ENGINEERING COMPANY LTD.	1004656	Y	08/03/2012	4	0.50%	5.00%	10.00	2,75,000	5,500
37	TENOVA HYPER THERM PVT. LTD.	1004314	Y	31/10/2011	22	0.50%	5.00%	10.00	12,80,000	64,000
38	LARSEN & TOUBRO LTD.	1004283	Y	20/09/2011	28	0.50%	5.00%	10.00	3,00,700	15,035
39	LARSEN & TOUBRO LTD.	1004671	Y	29/02/2012	5	1.00%	10.00%	10.00	2,00,000	10,000
40	LARSEN & TOUBRO LTD.	1004673	Y	29/02/2012	5	1.00%	10.00%	10.00	7,19,264	35,963
41	METAL ENGINEERING & TREATMENT	1003854	Y	31/03/2011	53	0.50%	5.00%	10.00	8,00,000	40,000
42	L N V Technology Private Limited	1004109	Y	01/08/2011	35	0.50%	5.00%	10.00	3,77,400	18,870
43	L N V Technology Private Limited	1004110	Y	01/08/2011	35	0.50%	5.00%	10.00	3,77,400	18,870
44	BIHARAT HEAVY ELECTRICALS LTD	2007079	Y	20/03/2011	2	0.50%	15.00%	30.00	3,24,657	3,247
45	BIHARAT HEAVY ELECTRICALS LTD	2007960	Y	10/09/2011	29	0.50%	15.00%	30.00	1,30,106	18,865
46	ESSAR STEEL INDIA LIMITED.	2008827	Y	07/05/2011	47	0.50%	5.00%	10.00	2,24,795	11,240
47	ABP PVT. LTD.	1004167	Y	15/09/2011	29	0.50%	5.00%	10.00	2,13,180	10,659
48	AJM ENGINEERS	2009130	Y	12/02/2012	7	0.50%	5.00%	10.00	1,06,701	3,735
49	BHUSHAN POWER & STEEL LTD.	1004603	Y	05/03/2012	4	0.50%	5.00%	10.00	1,14,000	2,280
50	BHUSHAN POWER & STEEL LTD.	2008804	Y	27/12/2011	14	0.50%	5.00%	10.00	24,938	1,247
51	McNALLY SAYAJI ENGINEERING LTD.	1004537	Y	30/03/2012	1	0.50%	10.00%	20.00	1,85,640	928
52	McNALLY SAYAJI ENGINEERING LTD.	1004797	Y	30/03/2012	1	0.50%	10.00%	20.00	2,55,000	1,275
53	ISL STAINLESS LTD.	1004689	Y	24/03/2012	1	0.50%	5.00%	10.00	4,21,800	2,109
54	SIEMENS VAI METALS TECHNOLOGIES (P)	1004666	Y	30/03/2012	1	0.50%	5.00%	10.00	3,60,000	1,800
55	ESSAR STEEL LIMITED	2008856	Y	28/02/2012	5	0.50%	5.00%	10.00	14,341	359
56	RAJSHREE SUGARS & CHEMICALS LTD.	2008989	Y	30/01/2012	9	1.00%	5.00%	5.00	6,640	332
57	SUNFLAG IRON & STEEL CO. LTD	1004647	Y	21/03/2012	2	0.50%	5.00%	10.00	19,776	198
58	FLSmith Private Ltd.	2009388	Y	30/03/2012	1	0.50%	5.00%	10.00	19,263	96

Total

49,22,740

Expense Debited to P&amp;I. /c

49,22,740

Difference

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On perusal of the above workings it is noticed that the provision is made up to the last date of the financial year, i.e. 31.03.2012. The assessee has considered the delivery date as per the purchase order/clause in the contract and calculated the delay up to 31.03.2012. It is also noticed that the amount of liquidated damages is calculated as a percentage of the basic value of the purchase order/contract. This would mean that the provision for liquidated damages is created for the period relevant to the year under consideration. Though the actual damages would be paid only on delivery of lubrication systems or products, the liability, in our view, has to be provided for under the mercantile system of accounting. We see no merit in the contention that the provision made is an unascertained liability on the basis that the liability to pay would arise on a future date.. The CIT(A) relied on the decision of the Hon'ble Madras High Court in the case of FFE Minerals (supra) while upholding the disallowance. In our view this case is distinguishable from assessee's case since the fact of the said case is different to the extent that only negotiations and discussion took place and the final amount of liquidated damages was computed much later. In assessee's case, however, the provision is made based on the terms agreed with the customer and it relates to the period relevant for the year under consideration. In view of the above discussion we hold that the provision made for liquidated damages is an ascertained liability and should be allowed as a deduction. The disallowance made by the AO in this regard is deleted.

8. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open Court on 26<sup>th</sup> September, 2022.

Sd/-

**(George George K.)**  
**Judicial Member**

Bengaluru, Dated: 26<sup>th</sup> September, 2022

n.p. /Desai S Murthy/

Sd/-

**(Padmavathy S)**  
**Accountant Member**

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

*By Order*

*Assistant Registrar  
ITAT, Bengaluru*