

**| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**  
**&**  
**SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 1128/Kol/2016**  
**Assessment Year: 2007-08**

<b>The Indian Steel &amp; Wire Products Ltd.</b> <b>7, Red Cross Place</b> <b>Kolkata - 700001</b> <b>PAN: AAABCT1067C</b>	<b>V</b> <b>S</b>	<b>Income Tax Officer, Ward-3(2),</b> <b>Kolkata</b>
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**I.T.A. No. 1129/Kol/2016**  
**Assessment Year: 2010-11**

<b>The Indian Steel &amp; Wire Products Ltd.</b> <b>7, Red Cross Place</b> <b>Kolkata - 700001</b> <b>PAN: AAABCT1067C</b>	<b>V</b> <b>S</b>	<b>Deputy Commissioner of</b> <b>Income Tax, Circle-3, Kolkata</b>
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**अपीलार्थी/ (Appellant)**

**प्रत्यर्थी/ (Respondent)**

Assessee by : Shri Akshay Ringasia, C.A.

Revenue by : Smt. Ranu Biswas, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 29/03/2023

घोषणा की तारीख /Date of Pronouncement: 21/04/2023

**आदेश/ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

Both these appeals are filed by the assessee against two separate orders of the Learned Commissioner of Income Tax (Appeals) - 1, Kolkata, (hereinafter referred to as "ld. CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), in appeal no. 415/CIT(A)-1/Wd-3(2)/2009-10 for Assessment Year 2007-08 and appeal no. 161/CIT(A)-1/C-3(1)/2013-14 for Assessment Year 2010-11; respectively.

2. Assessee has raised the following grounds of appeal for the Assessment Year 2007-08:-

*“1. Commissioner of Income Tax (Appeal) illegally and arbitrarily and wrongly disallowed a sum of Rs. 21.75 lacs being warranty claims without considering correct fact of the case.*

*2. Commissioner of Income Tax (Appeal) also illegally and arbitrarily disallowed the asset written off of Rs. 31.32 lacs made during the year FY 2006-07 without considering correct facts.*

*3. Commissioner of Income Tax (Appeal) also illegally and arbitrarily disallowed employees leave salary of Rs. 68.38 lacs made during the year FY 2006-07 without considering correct facts.*

*4. Commissioner of Income Tax (Appeal) also illegally and arbitrarily disallowed gratuity of Rs. 46.06 lacs made during the year FY 2006-07 without considering correct facts.*

*5. That any other point or points may be urged, added or altered at the time of hearing.”*

3. Assessee has raised the following grounds of appeal for the Assessment Year 2010-11:-

*“1. Commissioner of Income Tax (Appeal) illegally and arbitrarily and wrongly disallowed a sum of Rs. 29,76,952/- being asset written off without considering correct fact of the case.*

*2. Commissioner of Income Tax (Appeal) also illegally and arbitrarily disallowed the provision for doubtful debts of Rs. 74,78,865/- made during the year FY 2009-10 without considering correct facts.*

*3. Commissioner of Income Tax (Appeal) also illegally and arbitrarily disallowed gratuity of Rs. 39,13,502/- made during the year FY 2009-10 without considering correct facts.*

*4. Commissioner of Income Tax (Appeal) also illegally and arbitrarily disallowed bonus of Rs. 52,73,735/- made during the year FY 2009-10 without considering correct facts.*

*5. That any other point or points may be urged, added or altered at the time of hearing.”*

4. From the above it is noted that Ground No. 2 for Assessment Year 2007-08 and Ground No. 1 for Assessment Year 2010-11 are identical. Similarly, Ground No. 4 in Assessment Year 2007-08 and Ground Nos. 3 & 4 for Assessment Year 2010-11 are common. Hence, we would deal with them together.

5. Brief facts of the case are that assessee is a wholly owned subsidiary of Tata Steel Limited (TSL). Return of income for Assessment Year 2007-08 was filed on 27/10/2007 and for Assessment Year 2010-11 on 23/09/2010. Case of the assessee was selected for scrutiny wherein certain additions were made against these assessments. Assessee went in appeal before the ld. CIT(A) who granted partial relief against the additions sustained by ld. CIT(A).

6. Now, assessee is in appeal before this Tribunal by taking the aforesaid grounds.

7. Ground No. 1 for Assessment Year 2007-08 is in respect of disallowance of provisions for warranty expenses of Rs.21.75 Lakhs. Ld. Assessing Officer had disallowed it by noting that it is a provision created during the year and no such expenditure has been incurred. The same was confirmed by ld. CIT(A). Before us, ld. Counsel for assessee submitted that, JEMCO is a division of assessee company manufacturing roll which is sold to steel plant like Bokaro Steel Plant, Bhilai Steel Plant, IISCO Steel Plant and other public/private sectors. As per roll industries manufacturing system, 5 years warranty is allowed to the customers towards life of a roll used in the steel plants. As per companies' policy, warranty claim is provided every year based on delivery of rolls and make adjustment every year on the basis of settlement of the claim. The company's policy is to claim the provision for warranty as a deduction every year. Assessee supplies rolls and castings to various customers under guarantee toward performance and workmanship. In case, the material falls within the guarantee period, the product is jointly inspected by its quality assurance team and the customer

and if any manufacturing defect is observed from the product and is not as per the guarantee clause, the replacement roll is then given to the customers free of charge. The same is given under excise invoice where excise duty is payable and it is an expense borne by the company. Thus, a provision made towards warranty is based on percentage of sales as per the company's policy on past 5 year's sales data. Ld. AO however did not agree to this contention and proceeded to make disallowance of Rs. 21,75,000/- towards provision for warranty in the assessment.

7.1. It was further submitted that, the said issue of allowability of warranty provisions is very well settled in case of *Rotork Controls India (P) Ltd vs. CIT [2009] 180 Taxman 422 (SC)* wherein ld. AO had disallowed the provision of warranty claim that was a contingent liability. It was held by the Hon'ble Supreme Court that "*Warranty became the integral part of the sale price of the Valve actuator(s), in other words, warranty stood attached to the sale price of the product and the reliable estimate of the expenditure towards such warranty was allowable as the business expenditure u/s 37(1)*".

8. The ld. Counsel for assessee submitted that, it is an undisputed fact that the said provisions had been created on a scientific basis. It is also a settled matter that the said provisions are allowable as deduction under section 37(1) vide the above referred to Hon'ble Supreme Court judgement. Thus, without finding any error in the facts submitted, both the lower authorities have erred in wrongly sustaining the addition/disallowance already settled in favour of the assessee by the Hon'ble Supreme Court.

9. Id. Counsel for assessee referred to the disclosure made in the notes to accounts forming part of the audited financial statements wherein disclosure contains:

*“(j) WARRANTY FOR PERFORMANCE OF ROLLS*

*Estimated liability in respect of Warranty for performance on Rolls is provided for as a percentage of prior year’s claims to turnover.”*

10. Considering the details furnished by the assessee and the decision of Hon’ble Supreme Court in the case of *Rotork Controls India (P) Ltd (supra)*, we find it proper to allow the claim of assessee. Accordingly, Ground No. 1 for Assessment Year 2007-08 is allowed.

11. Ground No. 2 for Assessment Year 2007-08 and Ground 1 for Assessment Year 2010-11 are in respect of disallowance against the asset written off. In this respect, Id. Counsel for assessee submitted that it was taken over by TSL and some old redundant assets were disposed off with the sale proceeds forming part of income. According to the Id. Counsel for the assessee, once the income is accepted, the loss thereon cannot be rejected. Assessee is a very old Company, about 80 years old and was taken over by Tata Steel Limited by a scheme of BIFR on 19.12.2003. After take over, the fixed assets were verified and tested year-on-year and the non-functional or redundant assets were scrapped. The sale proceeds as well as the loss thereof was recognized in the financial statement and is a part of the business income of the assessee. Thus, the loss on write-off of such fixed asset cannot be denied as revenue expenditure. That again the details thereof is not disputed and it is only the treatment of such write-off as revenue expense which is in dispute. The details of write-off and corresponding income offered to tax is enclosed at page 28 of the paper book.

12. We find that the present issue is covered by assessee's own case by the order of Coordinate bench of ITAT Kolkata passed in *ITA No.2147/Kol/2016* vide order dated 15.06.2018, wherein it was held that when sales was treated as revenue income, corresponding write-off has to be considered revenue expense as well. The relevant part of the order is reproduced below:-

*"3. We have heard Learned Departmental Representative strongly supporting the impugned disallowance of assets written off during the course of hearing. Case file suggests that although the Assessin Officer had quoted assessee's failure in filing all the necessary details of the asset written off, the taxpayers on the other hand pleaded before CIT(A) that it had declared the same in schedule-3 forming part of profit and loss account alongwith all debit and credit entries. Learned Departmental Representative fails to dispute the clinching fact that the assessee's income derived from sale of such scrap items stands assessed under the head "business income". Hon'ble Gujarat high court in [DCIT vs. Harjivandas Zaveri](#) 258 ITR 785 (Guj) holds such an income to be eligible for u/s 80IA deduction. The Revenue thereafter fails to rebut the fact that assessee had either written off the relevant scrap assets. We see no reason to agree with both the lower authorities' conclusion that this write off is not allowable as revenue expenditure as per the above income analogy. We make it clear that there is no item-wise dispute qua the assets written off scrap which has already been accepted as a revenue item for the purpose of assessment. We take into account all the above narrated facts to conclude that assessee is entitled to claim its write off the remaining scrap items as revenue expenditure. It succeeds in its sole substantive ground."*

13. Considering the above, there being no change in the material facts and law, ground no. 2 for Assessment Year 2007-08 and ground no. 1 for Assessment Year 2010-11, are allowed.

14. Ground No. 3 for Assessment Year 2007-08 is in respect of disallowance of provision of medical benefits of Rs.68.38 Lakhs which has been wrongly stated as leave salary. These were disallowed u/s 43B of the Act as the ld. Assessing Officer noted that these remained unpaid till the filing of return by the assessee. Ld. Counsel for assessee submitted that these expenses are actually the provisions for medical expenses based on actuarial valuation in accordance with Accounting Standards 15, issued by the Institute of

Chartered Accountants of India (ICAI). It was submitted that these expenses have been claimed on the basis of scientific calculation issued by an Actuary.

15. Assessee is a very old company established in early 1900's when there was no medical facility in the city of Jamshedpur. Assessee Company maintains a hospital for its employees, ex-employees and citizen living in and around, for their benefit. Thus, there are a lot expenses that has to be incurred in an uneven form like insurance, etc. Therefore, in accordance with Accounting Standard 15, it is mandated upon the Company to obtain a scientific actuarial valuation so as to match its revenue with expenses as per accrual system of accounting. Such methodology has been duly recognized and accepted by the Hon'ble Supreme Court in the case of *Rotork Controls (Supra)* as well. Considering the details of actuary valuation furnished by the assessee and claim of the assessee being in accordance with Accounting Standards-15, we find it proper to allow the claim of the assessee and accordingly, Ground No. 3 of the assessee is allowed.

16. Ground No. 4 for Assessment Year 2007-08 and Ground Nos. 3 & 4 for Assessment Year 2010-11 are in respect of disallowance of gratuity and bonus paid to employees by applying provisions of Section 43B of the Act.

17. In this respect, ld. Counsel for assessee, drew attention of the Bench to the certificates issued by the firm of Chartered Accountants M/s. HSBC & Co., certifying that the amounts payable towards gratuity and bonus have been paid before the due date of

filing of return. These certificates are placed in the paper book for both the years.

18. We find that the assessee had deposited the gratuity outstanding as on 31.03.2007 on 04.05.2007. A certification from the Company as well as a Chartered Accountant Firm is enclosed at page 48 of this submission certifying such payment before the due date of filing return under section 139(1). The same is allowable under section 43B of the Act. For the sake of convenience, the same is re-produced as under:

*"43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of -*

*(a) .....*

*(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees."*

18.1. The first proviso that exists as on date is:

*"Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid."*

19. For the impugned addition, all the payments were made before the due date of filing return under section 139(1), i.e., 31.10.2007. Thus, such payments were clearly deductible under section 43B. Accordingly, Ground No. 4 for Assessment Year 2007-08 and Ground Nos. 3 & 4 for Assessment Year 2010-11 are allowed.

20. Ground No. 2 for Assessment Year 2010-11 is in respect of disallowance of Rs.74,78,865/- towards claim of doubtful debts. Brief facts on this issue are as under:-

*"3.2.1 That the assessee Company was taken over by Tata Steel Limited under a BIFR scheme in year 2003.*

3.2.2 That the new management had to re-assess a lot of old assets and liabilities so as to uplift the assessee Company off its status of sick industry. Consequently, a lot of cleaning up also.

3.2.3 That in such process, the Company had identified debtors with ageing of more than 15 years and with no chance of recoverability. The list of such bad debtors are enclosed at page 39 of this submission.

3.2.4 That naturally such bad debts were written off. However, without denying the nature of such bad debts or the fact that such amount has not been recovered till date, the Department chose to add the same only because the same was transferred to an account by the name of Provision of bad debts.

3.2.5 That a simple alternate to above method could have been to net off such bad debts from the debtors itself. However, even in present treatment, the provisions have been reduced from debtors and represented. Thus, a mere change in nomenclature will not change the nature of bad debts and its allowability under the income tax law.

3.2.6 That the above method has been recognized as a valid method for claiming deduction of bad debt by the Hon'ble Supreme Court itself in case of TRF Limited Vs. CIT [2010] 190 Taxman 391 (SC)"

21. In this respect, Id. Counsel for assessee fairly submitted that the issue is covered against the assessee by the decision of Hon'ble Supreme Court in the case of *Principal Commissioner of Income-tax v. Khyati Realtors (P.) Ltd.* [2022] 141 taxmann.com 461 (SC), wherein it has been held as under:-

*"Section 36(1)(vii), read with section 28(i), of the Income-tax Act, 1961 - Bad debts (Advances) - Assessee-company, engaged in business of real estate and financing, advanced certain amount to a developer for booking commercial space in an upcoming construction project - However said project failed - Subsequently, since assessee could not recover said amount despite various attempts it wrote off same as bad debt - Assessing Officer disallowed said claim on ground that there was nothing on record to suggest that requirement of law that bad debt was written-off as irrecoverable in assessee's accounts for previous year had been satisfied and, thus, assessee's claim for deduction as a bad and doubtful debt could not have been allowed - However, High Court by impugned order held that where assessee in furtherance of its objects had entered into a commercial venture by booking commercial space with a developer, advance unrecoverable were clearly a business loss - It was noted that accounts of assessee nowhere showed that alleged advance was made in its ordinary course of business nor were there any material showing details like duration, terms, condition of loans - Further since assessee's claim was that*

*amount advanced was given to developer for acquiring an immovable property, it was in nature of capital expenditure and not business expenditure - Whether therefore assessee's claim of advance amount as bad debt could not be allowed and impugned order of High Court was to be set aside - Held, yes [Paras 18 and 19] [In favour of revenue]"*

22. Accordingly, Ground No. 2 for Assessment Year 2010-11 is dismissed.

23. In the result, appeal of the assessee for Assessment Year 2007-08 is allowed and for Assessment Year 2010-11, it is partly allowed.

**Order pronounced in the Court on 21 April, 2023 at Kolkata.**

Sd/-  
**(SONJOY SARMA)**  
**JUDICIAL MEMBER**  
Kolkata, Dated 21/04/2023  
*SJS*

Sd/-  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata