IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.419/Mum./2023
(Assessment Year : 2016–17)

Dy. Commissioner of Income Tax
Circle–7(1)(1), Mumbai ……. Appellant

v/s

M/s. Mahindra Two Wheelers Ltd.
CTS 1556, Mahindra Towers
Pandurang Butkar Marg .....Respondent
P.K. Kurne Chowk, Worli
Mumbai 400 018 PAN – AAFCM6870J

Assessee by : Shri Viral Shah
Revenue by : Smt Mahita Nair

Date of Hearing – 12/07/2023	Date of Order – 17/08/2023

O R D E R

The present appeal has been filed by the Revenue challenging the impugned order dated 03/01/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["*learned CIT(A)*"], for the assessment year 2016–17.

2. In its appeal, the Revenue has raised the following grounds:–

> *"1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred to delete the addition made on disallowance of Rs 3,45,17,000/- being provision of warranty, when in fact provision was contingent in nature and same was not based on actual basis.*

2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred to delete the addition made on disallowance of Rs 3,45,17,000/- being provision of warranty, when in fact provision was not estimated by assessee on scientific basis and same was excess in nature and AO disallowed only the excess provision when no satisfactory scientific report was submitted by the assessee during the assessment proceedings.

3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred to delete the addition made on disallowance of Rs 3,45,17,000/- being provision of warranty without going into the merits of the case and merely relying on the judgment of the Hon'ble ITAT decision in the case of Mahindra and Mahindra Ltd vs DCIT (2020) in 117 taxmann.com 578 (Mumbai ITAT) which has not yet reached finality and is being contested before the Hon'ble Bombay High Court.

4. The learned CIT(A)'s order is contrary in law and on facts and deserves to be set aside.

5. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing."

3. The only dispute raised by the Revenue, in the present appeal, is against deletion of disallowance made on account of provision for warranty.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of manufacturing and selling motorised two-wheeler vehicles. For the year under consideration, the assessee filed its return of income on 23/11/2016, declaring total loss of Rs.625,45,70,016. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed from the financials filed by the assessee that the assessee has shown long-term provisions of Rs.3,45,17,000, as provisions for warranty and free service coupons. It was further observed that in the computation of income filed by the assessee, it has not added back that provision to its total income. Since the provision claimed by the assessee is contingent and

unascertained liability which is not an allowable expense and should not be allowed as a deduction, the assessee was asked to show cause as to why the provision be not added to its total income. In response thereto, the assessee filed its submissions. However, the Assessing Officer ("*AO*") vide order dated 28/12/2018, passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the provision for warranty and provision for free service coupons remained unpaid before the due date for filing the return of income. The AO further held that the assessee has not submitted the expert report/actuarial report to prove the business expediency of the expenditure incurred under this head. By treating the provisions as unascertained and contingent liability, the AO disallowed the provision of Rs.3,45,17,000 and added the same to the total income of the assessee.

5. The learned CIT(A), vide impugned order, following the decision of the coordinate bench of the Tribunal rendered in the case of the parent company of the assessee, i.e. Mahindra and Mahindra Ltd v/s DCIT: (2020) 217 Taxmann.com 578 (Mumbai ITAT) allowed the claim of provision for warranty expenses and deleted the addition made by the AO. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as under:-

> *"Provision for warranty Expenses*
>
> *i. The Appellant has submitted that Warranty expenses are determined on basis of actual sales and warranty expenses of last 5 years. Details of computing provision for warranty was enclosed in Annexure 3 and 4 to its submissions. Provision is made at different rates for different models worked out on past historical data.*
>
> *ii. An identical issue of Provision for warranty being created and claimed as a deduction was involved in the case of Parent Company of Appellant i.e. Mahindra & Mahindra Ltd. The Hon'ble ITAT in its judgment in the case of Mahindra and Mahindra Ltd vs DCIT(2020) in 117 taxmann.com 578 (Mumbai*

ITAT) allowed the said claim for Provision of warranty Expenses. The relevant part of judgment is reproduced as under:-

> *"In view of this, it could be safely concluded that there is no dispute with regard to the claim of deduction for provision for warranty based on scientific working and analysis made by the assessee and in order to avoid multiplicity of proceedings and especially in view of the fact that the issue is squarely covered by the decision of the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court supra, we are inclined to allow the claim of provision for warranty in the sum of Rs. 50,11,63,331 at our end itself. Accordingly, the concise ground No. 2 raised by the assessee is allowed."*

iii. In the present case the Provision for warranty was based on scientific working and analysis made by Appellant as outlined in para 6.4 of its submission alongwith Annexure 3 and 4 of submissions filed.

iv. Respectfully following the judgment of Hon'ble ITAT Mumbai on identical issue of Provision of warranty expenses in the case of parent company of Appellant (Mahindra and Mahindra Ltd.) the Appellant is allowed the claim of Provision for warranty expenses to the tune of Rs.3,45,17,000/-. The Action of AO in making the disallowance/addition of Rs.3,45,17,000/- is deleted."

Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. During the year, the assessee has shown provision for warranty of Rs.3,58,26,919, and provision for free service coupons of Rs.(-)13,10,373. Accordingly, the assessee has shown long-term provisions of Rs.3,45,17,000. As per the assessee, the provision for warranty is made on a scientific empirical basis and hence is allowable under the Act. It is the plea of the assessee that whenever any two-wheeler is sold, the said sale is covered by the warranty clause and the buyer is entitled to enforce this clause within the specified period/mileage provided that the defects in the vehicle noticed by the buyer are covered by the warranty. It is for such warranty expenses that the provision is created and claimed as a deduction. As per the assessee, the warranty expenses are determined on the basis of actual sales and warranty expenses of the last 5 years. Basis such working the average rate per vehicle sold is computed and extrapolated for the next 2

years. Accordingly, the provision is made at different rates for different vehicles (models) worked out on past historical data. The scientific working done by the assessee, as noted in the impugned order on pages 8-9, is as under:-

> *"The said scientific working done is explained below:*
>
> *a) Whenever any customer using our vehicle encounter any defect in vehicle which is covered under warranty clause and entitled to enforce same, he may bring vehicle to our authorised dealer or Authorised Service Centre (ASC) and get defective part replaced. A dealer or ASC prepare service card for part covered under warranty which is replaced. Primarily, dealer or ASC uses part from his stock and thereafter the said dealer or ASC claim the cost of part from company. The company, on receipt of part along with dealer / ASC claim with service card, duly approved by claimant customer, settles the claim of the dealer. While settling claims, the Appellant captures warranty vehicle chassis number.*
>
> *b) Based on claims settled, the total warranty cost incurred is worked out for vehicles which are still under warranty coverage during the year.*
>
> *c) Based on total actual cost as arrived above and no. of vehicles sold during the years, per vehicle cost is worked out.*
>
> *d) Based on the actual cost trend, the Appellant extrapolates warranty cost for unexpired period of warranty and provide for the same in books of accounts."*

7. Accordingly, the assessee submitted that the provision was created after making extensive working on a scientific basis and the same is backed by historical trends essential to determine the warranty provisions to be made and the actual expenses incurred against such sales subsequently. Further, since the provision is made on the basis of 5 years' actual expenditure on warranty, the data gets continuously updated each year and evened out so there are no unnecessary spikes in any year. Further, as per the assessee, it has claimed allowance for provision for the warranty on a regular basis in the past, and the same was accepted by the Revenue as an allowable expenditure till the assessment year 2013-14. For the assessment years 2014-15 and

2015-16, the assessee submitted that the provision for warranty was allowed by the learned CIT(A), and no further appeal was filed due to low tax effect.

8. From the above, it is evident that the provision made by the assessee was ascertained based on the actual expenses incurred on settlement of warranty schemes in earlier years and was based on the scientific exercise of making provision for warranty clause for each and every vehicle sold on a regular basis year on year. We find that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd. v/s CIT in 314 ITR 62. Therefore, in view of the above, we find no infirmity in the impugned order allowing the claim of provision for warranty expenses. Accordingly, grounds raised by the Revenue are dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 17/08/2023

Sd/-	**Sd/-**
G.S. PANNU	**SANDEEP SINGH KARHAIL**
PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 17/08/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai