IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.6524/Mum/2017
A.Y. 2012-13

Maquet Medical India Pvt. Ltd. Fulcrum "B" Wing, 204, 2nd Floor, Sahar Road Near Hyatt Hotel, Andheri (East), Mumbai-400 013 **PAN : AADCM8545J**	vs	The Deputy Commissioner of Income-tax, Range-10(2)(2), Aayakar Bhavan Mumbai-400 020
APPELLANT		**RESPONDENT**

I.T.A. No.5789/Mum/2017
A.Y. 2012-13

The Deputy Commissioner of Income-tax, Range-10(2)(2), Room No. 216-A, 2nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	vs	**Maquet Medical India Pvt. Ltd.** Fulcrum, 2nd Floor, Mehta Trade Centre, Sir M.V. Road, Andheri (East), Mumbai-400 099 **PAN : AADCM8545J**
APPELLANT		**RESPONDENT**

Present for the Assessee	Shri Niraj Sheth / Ninad Patade, AR
Present for the Department	Shi Anil Sant, Sr. DR

Date of hearing	23/11/2023
Date of pronouncement	12/12/2023

O R D E R

Per Bench:

These cross appeals by the assessee and the Revenue are against the order of Commissioner of Income Tax (Appeals)-17, (the CIT(A)) Mumbai dated 30.06.2020 for Assessment Year (AY) 2012-13.

2. The grounds raised by the assessee and the revenue are as under:

Assessee

"The Appellant objects to the order dated 30 June 2017 (received on 8 September 2017) passed by the learned Commissioner of Income-tax (Appeals) 17, Mumbai under Section 250 of the Income-tax Act, 1961 ('the Act') on the following grounds:

1. The Assessing Officer/Commissioner of Income-tax (Appeals) has erred in not granting credit of Dividend Distribution Tax under Section 115-0 of the Act as appearing in Form 26AS of the Appellant;

2. The Assessing Officer / Commissioner of Income-tax (Appeals) has erred in making an addition of Rs.5,13,731/- representing a mismatch between Form 26AS and the Return of Income without appreciating that the same has never accrued to the Appellant and is erroneously appearing in the said Form;

3. The Id. Assessing Officer / Commissioner of Income-tax (Appeals) has erred in levying interest under section 115-P of the Act on the amount of DDT liability without appreciating that the same has already been paid within the statutory timeline;

4. The ld. Assessing Officer / Commissioner of Income-tax (Appeals) has erred in levying interest under section 234D of the Act,

5. The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever modify all or any of the foregoing grounds of appeal at or before the hearing of the appeal. Each of the grounds of appeal is without prejudice to the other."

Revenue:

"1) "On the facts and circumstances of the case and in Law, the Ld.CIT(A) has erred in holding that the provision of warranty is an allowable expenditure even though it is an unascertained/contingent liability."

2) "On the facts and circumstances of the case, the Ld.CIT(A) erred in deleting the addition made for provision of warranty on the basis of order of ITAT in assessee's own case without considering the facts that the revenue has not accepted the decision and appeal is pending before the Hon'ble Bombay High Court."

3) The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer be restored."

3. The assessee-company is engaged in the business of marketing, selling and servicing medical equipments. The assessee filed the return of income for AY 2012-13 on 29.11.2012 declaring total income of Rs. 13,97,15,020/-. The assessee filed a revised return in order to revise the claim of TDS on 26.03.2014. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The AO completed the assessment by making additions as listsed below:

(i) Cessation of liability under section 41(1) –	Rs. 7,52,952/-
(ii) Unreconciled receipts as per Form 26AS vis-à-vis books of accounts. –	Rs. 5,13,731/-
(iii) Provision for warranty -	Rs. 3,34,46,445/-

4. Aggrieved the assessee filed the appeal before the CIT(A). The CIT(A) deleted the addition made by the AO towards cessation of liability under section 41(1) and also the provision made for warranty. The CIT(A) confirmed the addition made towards the difference between the amount appearing in Form 26AS and books of accounts. Before the CIT(A), the assessee also raised a ground stating that the AO has not given credit for the Dividend Distribution

Tax (DDT) paid by the assessee while making the computation of assessed income. The CIT(A) dismissed the ground raised by the assessee stating that the assessee cannot avail credit of Dividend Distribution Tax paid as per the provisions of section 115O(4). Against the said order of the CIT(A) both the assessee and revenue are in appeal before the Tribunal. We will first consider the assessee's appeal for adjudication.

I.T.A. No.6524/Mum/2017 – Assessee's appeal

5. **Ground No.1** is with regard to the AO not granting credit of Dividend Distribution Tax under section 115O of the Act. The Ld. AR submitted that the AO has not discussed anything in this regard in the assessment order, however, while preparing the statement of assessed total income the AO did not credit for the Dividend Distribution Tax paid by the assessee to the tune of Rs. 32,44,500/. The ld. AR further submitted that the CIT(A) while dismissing the ground has misunderstood the claim of the assessee that the assessee is claiming credit against the amount of tax which is incurred. The ld AR submitted that the assessee claiming the credit against the Dividend Distribution Tax payable and not regular tax payable. The ld. AR drew our attention to the relevant observations of the CIT(A) in this regard which is extracted below:

> *"**4.7 Ground No. 8-Credit of Dividend Distribution Tax not granted***
>
> *On perusal of the appellant's submissions, it appears that the appellant wants to claim the credit for the dividend distribution tax paid. As per section 1150(4) of the Act, tax on distributed profits paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit in respect of the amount of tax so paid shall be claimed by the company or by any other person.*

In term of the provisions of section 115O(4), the claim of the appellant to avail the credit of dividend distribution tax paid is incorrect and accordingly, this ground of appeal is ***dismissed.****"*

6. The ld. AR also submitted that a similar issue has been considered by the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2011-12 (MA No. 550/Mum/2017 dated 01.06.2020 arising out of ITA No. 6523/Mum/2017) wherein the Tribunal has directed the AO to allow credit for the Dividend Distribution Tax paid.

7. The ld. DR on the other hand relied on the order of the lower authorities.

8. We have heard the parties and perused the material on record. We noticed that in the income tax computation form which is annexed to the assessment order, the AO has computed the Dividend Distribution Tax payable by the assessee at Rs. 32,44,500/-, however, the said amount is shown as payable which would mean that the Dividend Distribution Tax paid by the assessee has not been adjusted/given credit. From the perusal of the order of the CIT(A) it is noticed that the CIT(A) has upheld the order of the AO for the reason that as per section 115O(4) of the Act, the tax on distributed profits shall be treated as the final payment of tax against the dividend declared and distributed and no further credit in respect of the amount of tax paid shall be claimed by the company or any other person. From the said observations of the CIT(A), it is clear that the credit is denied on the incorrect understanding of fact that the assessee is claiming credit for the Dividend Distribution Tax against regular tax payable by the assessee. During the course of assessment, the ld. AR drew our attention to the tax challans and the extract from Form 26AS (page 1 to 4 of PB) in order to substantiate the claim that Dividend Distribution Tax has been paid by the assessee for which the assessee is claiming credit against the Dividend

Distribution Tax shown as payable in the tax computation form of the assessment order.

9. We also noticed that a similar issue has been considered by the Co-ordinate Bench of the Tribunal in assessee's case in AY 2011-12 (supra) where it has been held that

> *"5. We have heard the authorized representatives for both the parties and also perused the order passed by the Tribunal while disposing off the appeal of the assessee in Maquet Medical India Private Limited Vs. Deputy Commissioner of Income-tax, Range 10(2)(2), Mumbai for Assessment Year 2011-12. Admittedly, the appeal of the assessee was dismissed by the Tribunal, for the reason, that the issue as regards quantification of DDT did not arise from the order passed by the CIT(A). On the other hand, the CIT(A) had declined the assesse"s claim on the basis of a misconceived fact that the assessee was seeking credit of DDT against its tax liability on the total income. We have given a thoughtful consideration and find substantial force in the contentions advanced by the ld. A.R. As observed by us hereinabove, the Hon"ble Apex Court had Court in the case of Kalyankumar Ray Vs. CIT (1991) 191 ITR 634 (SC) and CIT, Delhi Vs. Bhagat Construction Co. (P) Ltd. (2015) 60 taxman.com 334 (SC), had observed, that that computation/quantification of the „tax" and „interest" liability of an assessee, though carried out on a different sheet of paper and the A.O approves of it, either immediately or sometime later, would form part of the assessment order. Also, by way of an analogy drawn from the judgment of hte Hon'ble Apex Court in the case of Genpact India (P). Ltd. Vs. Dy. CIT (2019) 111 taxmann.com 402 (SC), it can safely be concluded that an assessee remains well within his right to assail by way of an appeal the quantification of tax and interest liability raised by the revenue against it u/ss. 115-O and 115-P of the Act. In the backdrop of our aforesaid observations, we are of the considered view that the declining on the part of the Tribunal to address the grievance of the assessee as regards the raising of the demand u/ss. 115-O (tax) and 115-P (interest) by observing that the issue as regards quantification of DDT did not arise from the order passed by the CIT(A), is not found to be in conformity with the settled position of law laid down by the Hon"ble Apex court in the afore mentioned judgments. As such, in the backdrop of the judgment of the Hon'ble Apex Court in the case of ACIT Vs. Saurashtra Kuth Stock Exchange Ltd. (2008) 305 ITR 227 (SC), wherein it was observed that a non-consideration by the Tribunal of a judgment of the jurisdictional High Court or the Hon"ble Supreme Court, though not brought to the notice of the Tribunal at the time of hearing of the appeal would constitute a*

"mistake apparent from record" which could be rectified under Sec. 254(2) of the Act. Accordingly, on the basis of our aforesaid observations, the order passed by the Tribunal while disposing off the appeal of the assessee is rectified. We herein restore the matter to the file of the A.O, who is herein directed to verify the claim of the assessee that though it had deposited DDT of Rs. 33,21,750/- u/s 115-O of the Act, vide a challan dated 17.05.2010 (as per "Form 26AS"), however, credit has been allowed only to the extent of Rs. 32,44,500/-. Resultantly, the impugned demand towards such short/deficit credit of DDT of Rs. 77,250/- u/s 115-O and interest u/s 115-P of Rs. 4,69,975/- had been raised by the revenue. In case the aforesaid claim of the assesses is found to be in order then the A.O shall give consequential effect to our aforesaid directions and vacate the demand raised in the hands of the assessee."

10. For the year under consideration from the evidences submitted by the assessee it is clear that the assessee had paid the Dividend Distribution Tax and that the Revenue has denied the credit based on the misunderstood fact that the assessee is claiming credit for the Dividend Distribution Tax against regular tax payable. This in our considered view is factually incorrect, since the assessee is seeking to adjust the Dividend Distribution Tax paid against the Dividend Distribution Tax payable computed by the AO. In view of this discussion and respectfully following the above decision of the Co-ordinate Bench in assessee's own case, we direct the AO to given credit to the extent of the Dividend Distribution Tax actually paid by the assessee as per the documentary evidences submitted by the assessee after giving a reasonable opportunity of being heard to the assessee. It is ordered accordingly.

11. **Ground No.3** with regard to levy of interest under section 115P of the Act on the amount of Dividend Distribution Tax payable. The AO has levied the interest under section 115P on the Dividend Distribution Tax payable without giving credit for the Dividend Distribution Tax actually paid by the assessee. We have already directed the AO to give credit for the Dividend Distribution

Tax actually paid by the assessee while adjudicating Ground No.1. Accordingly the AO is directed to examine levy of interest under section 115P which is consequential, after giving credit to the Dividend Distribution Tax actually paid in accordance with law.

12. **Ground No.2** is with regard to the addition made by the AO towards mismatch between form 26AS and the return of income. The AO during the course of assessment noticed that there are some discrepancies between the receipts appearing in Form 26AS with the books of accounts and called on the assessee to furnish reconciliation of the same. The assessee submitted a detailed reconciliation before the AO (page-8 to 26 of PB). After perusing the detailed submitted by the assessee, the AO noted that there are receipts from ten (10) party the receipts from whom have not been reflected in the books of account of the assessee totalling to Rs. 5,13,731/-. The assessee submitted before the AO that receipts do not pertain to the assessee and therefore, the same is not accounted as income. The assessee also submitted that no credit is claimed against the TDS deducted on the said amount which is wrongly shown as the receipts of the assessee. The AO did not accept the submissions of the assessee stating that there seems to no reason to suspect that 10 parties altogether will wrongly credit any amount to the assessee. On further appeal, the CIT(A) upheld the addition.

13. The ld. AR before us submitted that the assessee has submitted a very detailed reconciliation between Form 26As and books of accounts before the AO which is running to pages. The ld AR further submitted that the impugned receipts does not belong to the assessee and the same have been wrongly shown in the Form 26AS under assessee's name. The ld. AR also submitted that the

amounts shown in 26AS have not actually been received by the assessee and not accounted in the books of accounts. The ld AR argued that assessee cannot be asked to prove the negative fact that the impugned amount does not belong to the assessee and that the same is not received by the assessee. Accordingly the AO's contention that the onus of the assessee is not discharged is not correct. The Ld. AR also argued that the AO could have taken some alternate steps such summoning the party under section 133(6) etc., in order to satisfy himself that the claim of the assessee is correct or not. Instead the AO has simply proceeded to make the addition stating that there is no reason for the parties to wrongly give credit to the assessee in Form 26AS.The ld AR submitted that considering volume of transaction the details of which is already submitted by the AO, the assessee has no reason not to account for such a meagre amount to avoid tax.

14. The Ld. DR relied on the order of the AO.

15. We have heard the parties and perused the material on record. The assessee during the course of assessment has furnished a detailed reconciliation of the receipts as per From-26AS and books of accounts. The claim of the assessee is that the impugned receipts from 10 parties do not belong to the assessee and therefore, not accounted in the books of accounts. The assessee also claims that no credit for the TDS deducted is made by the assessee and this fact is not disputed by the AO. The AO made the addition stating that the assessee has not substantiated that the amounts are not received and that it does not belong to the assessee. In this regard, it is relevant to notice that the assessee in the reconciliation submitted before the AO has reconciled majority of line items running to 19 pages and only 10 receipts remain un-reconciled. Further the assessee categorically denied the 10 transactions with those entities in the impugned assessment year. We are

of the considered view that merely based on TDS statement in Form 26AS the addition cannot be made in the hands of the assessee. The assessee has reconciled all transactions except these 10 lines which the assessee is denying that they do not belong to the assessee and TDS credit is not claimed by the assessee which is an undisputed fact. Since, the assessee has denied the transactions, onus was on the Revenue to show that TDS reflected in Form 26AS is in respect of the amounts that have been received by the assessee during the relevant period. During the course of hearing nothing is brought on record by the revenue to this effect. The Hon'ble Bombay High Court in the case of RBNJ Naidu v. CIT 29 ITR 194 (Nag) has held that when an assessee denies that he is in receipt of income from a particular source, it is for the ITO to prove that the assessee received income and that the assessee cannot prove the negative. In view of this discussion we see merit in the contentions of the ld AR that the assessee cannot prove a negative. Since the Revenue did not bring anything to lead positive evidence with regard to the impugned amounts, the addition of Rs. 5,13,731/- is hereby deleted.

16. The assessee raised additional grounds with regard to refund of excess Dividend Distribution Tax paid in respect of non-resident shareholders and also deduction in respect of education cess and secondary and higher education cess on Income Tax. The additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence, placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit the additional grounds.

17. During the course of hearing, the ld. AR submitted that the additional ground pertaining to Education Cess is not pressed and hence, the same is dismissed as not pressed.

18. With regard to additional Ground No.1 on the refund of Excess Dividend Distribution Tax, the ld. AR fairly conceded that the issue is held against the assessee in view of the decision of the Hon'ble Supreme Court in the case of AO Vs. M/s Nestle SA (Civil Appeal No. 1420 of 2023 dated 19.10.2023). Therefore respectfully following the above decision of the Hon'ble Supreme Court, we dismiss the additional ground raised by the assessee claiming refund of refund of excess DDT paid on dividend to non-residents.

19. In the result, the appeal of the assessee is partly allowed.

ITA No. 5789/M/2017- Revenue's appeal

20. The assessee during the year under consideration has claimed a sum of Rs. 3,34,46,445/- as expenditure in the P&L A/c towards provision for warranty claims. The assessee during the course of assessment has made an elaborate submission dated 09.02.2015 explaining the basis on which the provision is made to substantiate that a scientific method is used for arriving at the amount of provision and also the details of the warranty provision made and the warranty utilized during earlier years i.e. from AY 2005-06. The assessee also submitted that the unutilized portion of the provision made towards warranty is reversed to the P&L A/c and is offered to tax. Therefore, the assessee submitted that the provision towards warranty claims should be allowed as a deduction. The assessee also relied on various judgments in support of the claim. The AO after perusing the various details submitted by the assessee held that the utilization to

provision ratio of the assessee comes to only 38.5% which goes to prove that the assessee has failed to make a reliable estimation of the future obligations with respect to warranty expenses and therefore disallowed the entire amount of provision made that is debited to the P&L A/c of the assessee. The CIT(A) allowed the issue in favour of the assessee by placing reliance on the decision of the Hon'ble Supreme Court in the case of M/s Rotork Control India Pvt. Ltd. Vs. CIT [314 ITR 62 (SC)] and also the decision of the Co-ordinate Bench in assessee's own case for the AY 2006-07 vide ITA No. 5145/Mum/2011.

21. The ld. DR submitted a details written submission the extract of which given below:

> ***"Reasons why provisions should not be allowed as deduction:***
>
> *a. The two conditions for allowability of the claim for provision of the warranty which requires to be satisfied are as under:-*
>
> *(i) There should be a present obligation as a result of past events resulting in outflow of resources*
>
> *(ii) Reliability estimate of the amount of obligation should be met*
>
> *b. In the present case, it is not disputed that the warranty was an integral part of sales made. However, the provision to that effect can be allowed only if reliable estimates of the amount of the obligation is made. As per the information given and as discussed in the paragraph No.6.7 of the assessment order, it was noted that over the years the Assessee has made warranty provisions aggregating to Rs. 78,35,26,558/-. However, only a sum of Rs. 10,92,91,326/- was only utilized. The utilization-to-provision ratio comes to 38.5% only. An amount of Rs.17,42,35,232/- remains unutilized. This indicates that the provisions made by the Assessee were substantially on the higher side.*
>
> *c. It is further noted that for almost a decade, the Assessee has never incurred or utilized warranty provisions of more than Rs.2,00,00,000/- in a single year. Despite this factual position, the Assessee had continuously created the exorbitant provisions and claimed it as an admissible deduction.*

d. The claim of the Assessee that the actual amount of expenses incurred towards warranty claim during the year under reference, which was adjusted against the provision aggregating to Rs.1,72,28,967/-, should be allowed as a deduction. This claim is also not acceptable because the said expenses were out of the provisions which were already claimed by the Assessee in preceding assessment years [Balance provision as on 31.03.2013 Rs.6, 17,77,237/- (Provision made during the year Rs.3,34,46,445/- + Actual expenses incurred Rs.1,72,28,967/-).

e. Assessee may have offered certain amounts by writing back, the excess provisions in subsequent years, however, the fact remains that as on 01.04.2012, Assessee carries an unutilized provision amounting to Rs.4,55,59,759/- which has already been claimed as an expense in earlier assessment years. The claim of the Assessee, for actually incurred expenses may be allowed in the assessment years to come when such provision is already exhausted. However, as on 31/03/2013, the said provision for warranty exists and therefore, no claim of expenses actually incurred during the year shall be allowed. Therefore, during the year, claim on such account was denied and the provision for warranty debited to the Profit & Loss Account for the year ended 31.03.2012 amounting to Rs.3,34,46,445/- (refer para 6.14) was disallowed and added back to the total income of the Assessee.

f. Further, since the provision made for warranty claims was only ad-hoc, arbitrary, defy and logic, devoid of any scientific or rational basis and in no way based on the past experiences, the same cannot be considered as a provision made for an ascertained liability. Therefore, in view of clause (c) of Explanation (1) to sub section (2) of section 115JB of the Act, the provision for warranty made, which a provision made for liabilities other than ascertained liabilities, was added back while computing the book profit u/s.115JB of the Act."

22. The ld. AR on the other hand argued that the provision is made based on the scientific method for each of the medical equipments sold by the assessee and drew our attention to the basis as mentioned in the assessment order:

"If we refer to assessee's submission dated 09.02.2016, point no. (vi), where it bring out that policy by which provision for warrant is recognized:

Particulars
Ventilator (CC)
Basic Warranty Rs.8250 p.a. per machine
Extended Warranty Rs.24,500 p.a. per machine (CMC)
Extended Warranty Rs.4,500 p.a. per machine (AMC)

Intra Iaortic Ballon Pump (IABP) CAIIW
Extended Warranty USD 1500 p.a. per machine (CMC)
Heart Lung Machine (CP)
Extended warranty on case to case basis with type of contracts and Equipment
OT lights/Tables(SWP):
Extended Warranty @0.25% of Sale Value
Spare Parts Warranty:
Actual Replacement within 6 months

23. The ld. AR also drew our attention to the provision made for warranty and the amount utilized towards warranty for AY 2005-06 to 2014-15 as tabulated below to submit that there are years in which the warranty utilised is more than the warranty provision and therefore, the disallowance cannot be made on the basis that utilization is less than the provision during the year under consideration.

Assessment Year	Warranty provision	Warranty Utilized	Difference	%
2005-06	5,633,877	3,877,800	1,756,077	31.17
2006-07	13,211,654	4,160,325	9,051,329	68.51
2007-08	17,590,687	4,108,409	13,482,278	76.64
2008-09	24,653,440	5,500,462	19,152,978	77.69
2009-10	3,955,467	10,465,643	(6,510,176)	(164.59)
2010-11	12,196,233	15,149,866	(2,953,633)	(24.22)
2011-12	12,538,263	14,892,692	(2,354,429)	(18.78)
2012-13	23,407,860	17,228,967	6,178,893	26.40
2013-14	13,548,641	14,691,382	(1,142,741)	(8.43)
2014-15	44,332,441	19,215,780	25,116,661	56.66
Total	**171,068,563**	**109,291,326**	**61,777,237**	

24. The ld. AR also submitted that this issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2007-07 (ITA No. 5145/Mum/2011 dated 26.08.2016) and that the Hon'ble Bombay High Court has dismissed the appeal filed by the Revenue against the said order of the Tribunal for the reason of lower tax effect. Therefore, the ld. AR submitted that the order of the Tribunal has reached finality and the fact being identical is applicable for the year under consideration also.

25. We have heard the parties and perused the material on record.

26. The assessee is in the business of trading and servicing medical equipments and provides standard warranty to its customers that is in the nature of basic warranty or extended warranty that may vary from 12 to 15 months. The assessee has been consistently following the practice of making provision towards the warranty and the same is claimed as a deduction. It is also noticed that at the ends of the warranty period the unutilized portion of the provision of warranty is reversed and credit to the P& L A/c thereby offering the same to tax. The reason for the disallowance by the revenue is that the basis of estimation for making the provision is not reliable since the utilization is only 38.5% for the year under consideration. We in this regard notice that a similar issue has been considered by the Co-ordinate Bench of the Tribunal in assessee's own case (supar) where it has been held that

> *"2.3 After going through rival submissions and perused the material on record, we find that such provision for warranty in the business of assessee of trading and servicing of specialized medical equipment. Assessee's contention that such warranty was necessary and was part of contract of sale was rightly accepted. As per accounting system regularly followed by assessee, such provision was made @ 2% of sales and would written back if in excess at the expiry of warranty period. In this background, CIT(A) observed that assessee's case is squarely*

covered by the decision of M/s. Rotork control India Pvt. Ltd. vs. CIT [2009] 314 ITR 62 (SC), wherein it was observed that the valve actuators manufactured by the assessee, were sophisticated goods and statistical data indicated that every year some of these were found defective; that valve actuators being a sophisticated items, no customer was prepared to buy a valve actuator without a warranty. Therefore the warranty became an integral part of the sale price; in words the warranty was attached to the sale price of the product. In this case the warranty provision had to be recognized because the assessee had a present obligation as a result of past event resulting in outflow of resources and reliable estimate could be made of the amount of obligation. Therefore the assessee had incurred a liability during the assessment year which was entitled to deduction u/s 37 of the IT Act. Facts being similar, so, following same reasoning, CIT(A) was justified in granting relief to assessee. This reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

27. The Co-ordinate Bench in the above case has held that the assessee has a present obligation as a result of past event and a reliable estimate has been made towards the amount of obligation and accordingly held that the deduction under section 37 should be allowed. On the perusal of the fact we noticed that the assessee have been claiming the warranty provision as expenditure and has been reversing the excess provision periodically and offering the same to tax. It is also noticed that there are years in which the amount utilized is for than the amount of provision made and therefore, we see merit in the contention that the provision cannot be disallowed on the ground of under utilization. In view of these discussions and respectfully following the decision of the Co-ordinate Bench in assessee's own case on identical fact, we see no infirmity in the decision of the CIT(A) in allowing the provision of warranty as a deduction under section 37(1) of the Act.

28. In the result, the appeal of the Revenue is dismissed.

29. In the result, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on 12/12/2023

Sd/-	**Sd/-**
(KULDIP SINGH)	**(MISS. PADMAVATHY S)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt. 12th December, 2023
SK Sr. PS

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

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2. प्रतिवादी /The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि ,आय.अपी.अधि ,.मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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Asstt. Registrar
ITAT, Mumbai