

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.4171/Del/2018
(ASSESSMENT YEAR 2012-13)**

ACIT Circle-27(2) New Delhi	Vs.	M/s Weir India Pvt. Ltd. Office No.912 & 914 9 th Floor, DLF Tower A Plot No.10, Jasola District Centre New Delhi-110025 PAN-AAACW0042P
(Appellant)		(Respondent)

Assessee by	Shri Vishal Kalra, Adv. Ms. Sumisha Murgai, CA & Sh. Kshish Gupta, CA
Respondent by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	14/05/2024
Date of Pronouncement	22/05/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi ["Ld. CIT(A)", for short], dated 29/03/2018 for Assessment Year 2012-13.

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

“1. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the disallowance of Rs.1,88,28,226/- for A.Y.2012-13 on account of provision for warranty”

2. The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. The brief facts of the case are, the assessee filed its return of income on 30/11/2012 declaring total loss of Rs.26,01,28,439/-, which was processed u/s 143(1) of the Income Tax Act, 1961 (‘the Act’ for short). The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, the AR of the assessee attended from time to time and submitted the relevant information as called for.

4. The assessee is engaged in the business of Manufacturing, Sale and Servicing of valves and other flow control products. During the assessment proceedings, the Assessing Officer asked the assessee to substantiate for the amount created provision for warranties amounting to Rs.1,88,28,226/- being contingent in nature and why the above said provision for warranties should not

be added back to the income of assessee. In response, the assessee submitted as under:-

- *The company in the ROI filed has not disallowed the provision for warranty expenditure as the same represents ascertained liability.*
- *The company submits that based on past on the experience in the past years (i.e considering the instances of defects reported in past years). a realistic estimate of the probably warranty.*
- *The anticipated liabilities under the unexpired warranties which are based on realistic estimates made by company would be in the nature of commitments to the customers, which would be discharged by the company in future.*
- *If any surplus provision is identified by the company the same would be reversed and offered to Tax.*
- *Should your goodself disallow the provision for warranty expenditure, then the company should be allowed to claim deduction upon reversal of the said provisions amount or upon incurring any actual warranty expenditure thereof.”*

5. After considering the submissions of the assessee, the Assessing Officer rejected the same and observed that the assessee has not properly replied to give the details that what percentage was the expenses on yearly basis and what factor had been there in earlier years. On claiming expenses of warranties, which could specifically be applied and allowances be made. The assessee has not submitted any details of provisions made in the earlier years and how much actually warranties were paid and also how much provisions were carried over/restated. Therefore, assessee failed to

justify the above claim which is purely contingent in nature and the same was also admitted by the assessee in Tax Audit Report duly certified by the Statutory Auditors. Accordingly, he proceeded to make the addition.

6. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and submitted a detailed submissions in support of its claim relating to quantification of expenses, provision of warranties declared as contingent in tax audit report and admissibility in succeeding year. For the sake of clarity, the same are reproduced below:

II. Quantification of expenses.

“a. The AO has failed to appreciate that the provisions are always based on reasonable estimates, which are determined on the basis of past experience and there is always a possibility of excess or short provision, if any made by the Appellant. He failed to appreciate that excess provisions, if any made in the preceding years were reversed in accordance with the accounting principles during the succeeding years and offered to tax.

b. The above contention of the Appellant is also supported by the Apex Court in case of Rotork Controls India (P) Ltd vs. CIT, (supra) wherein, it held, while analysing conditions for deductibility of provision for warranty expense, it reiterated that the excess/surplus provision for warranty, if any, is reversed to the profit and loss account and has been offered to tax as income in the year of reversal.

c. In the instant case, the Appellant company has estimated the probable warranty cost based on its experience in past, by taking into account the

nature of the spare parts sold/services provided, instances of defects reported in past, periodicity of warranty and the nature of commitment. Hence, the same cannot be said to be unascertained or contingent liability.

d. The AO has also failed to take cognizance of the fact that the Appellant have an established methodology for identifying and ascertaining the quantum of provision required to meet the warranty cost.

e. In case if any surplus provision is identified by the Company, the same would be reversed and offered to tax in the year of identification. The same is evident from the observations made by the assessing officer as well that the company has reversed a portion of the provision for warranty made in past.

f. It is also submitted that a mere reversal of the provision made in past years does not indicate that the provision was not made on a reasonable basis. This is because; the Appellant would only make an estimate of the provision for the warranty expenditure that might be incurred in future. Further, the Supreme Court's specific observation (as mentioned above) that surplus provisions, if any, should be reversed and offered to tax, would indicate that there are always chances of the provision made in past years, being excessive or falling short of the actual warranty expenditure being incurred by the Appellant.

g. Thus, by applying the decision of the Supreme Court to the facts of the present case, it is submitted that the claim for provision for warranty obligations should be allowed as a deduction under section 37(1) of the Act.

12. Provision for Warranty shown as contingent in nature in Tax Audit report.

a. AO has considered the opinion provided by the tax auditor that the provision for warranty is contingent nature and has accordingly disallowed the same.

b. The Appellant submits that the Tax Audit report is an opinion given by the Tax Auditor on various particulars covered in the annexures to the Tax Audit Report.

c. Further, the AO has also failed to appreciate that the tax audit report only provides for the current year provision made, without evaluating and reporting on the actual utilization in the subject year or in the subsequent years.

d. We submit that it is purely a management decision to forecast the future outflow of resource, consider the probability of occurrence and provide for the same in the books of account.

e. An expression of opinion by the tax auditor cannot restrict the management from considering the requirement to provide for a liability.

13. On admissibility in succeeding year.

a. Notwithstanding and without prejudice to the above, we submit that should your goodself disallow the provision for warranty, then the Appellant should be allowed to claim deduction on the reversal of said provision on the principal that the same expenditure cannot be doubly disallowed.

Prayer

In light of the above submission, the Appellant submits that the observation of the AO that the warranty claim is made on an unrealistic basis is legally and factually incorrect and hence we request your goodself to delete the addition on account of provision for warranty.

During the course of appellate proceeding, the AR of the appellant was directed to file details of provision of warranty for last three assessment year and succeeding two assessment years. In response, vide letter dated 28.03.2018, the AR of the appellant submitted as under:

"We refer to the personal hearing our Authorized Representative had with your goodself on 26.03.2018, wherein your goodself has requested to furnish certain details with respect to the ongoing appeal for the subject A.Y.

In this connection, we submit as under.

S. No	AY	Total Sales	Warranty provision created during the year	Percentage of turnover	Warranty provision written back/utilized
1.	2009-10	20,00,16,850	20,00,000	1%	20,00,169
2.	2010-11	19,00,20,255	58,57,278	3%	38,00,405
3.	2011-12	97,51,48,619	96,56,130	1%	4,09,332
4.	2012-13	2,37,72,98,337	1,88,28,226	1%	2,31,300
5.	2014-15	2,02,08,50,764	1,42,63,456	1%	1,55,76,380

We request you to take the above on record and oblige.

7. After considering the detailed submissions of the assessee, the Ld. CIT(A) allowed the claim made by the assessee by relying on the decision of Hon'ble Supreme Court in the case of *Rotok Controls India (P) Ltd. vs. CIT [2009] 314 ITR 62 (SC)* and observed that assessee has been creating provision @ 1% over the years and also this claim was admitted by the Department in subsequent Assessment Years. Accordingly, he allowed the claim made by the assessee.

8. At the time of hearing, the Ld. DR submitted that assessee is creating warranty provision every year and in assessee's own case in Form 3CD, it was declared as contingent liability, therefore, the contingent liability cannot be allowed. In this regard, he relied on the findings of the Assessing Officer and he objected to the findings of the Ld. CIT(A).

9. On the other hand, the Ld. AR brought to our notice detailed findings of the Ld. CIT(A) and the relevant submissions made by the assessee which was reproduced at page 3 to 11 of the appellate order. Further, he submitted that the assessee

consistently creating a provision for warranties @ 1% over the years except in Assessment Year 2010-11 wherein it was created @ 3%. The assessee adopts tested and proved methods to make the provision, therefore, the creation of provision warranty at 1% of total sales which is reasonable estimate. He brought to our notice a table submitted before the Ld. CIT(A) at page-11 of the order.

10. Considered the rival submissions and material placed on record, we observed that over the years assessee creates a provision for warranty @ 1% of the total sales and the costs of warranty is incorporated in the sale price charged to the customers. As per the practice adopted by the assessee, the assessee creates the provision at the end of the every year @1% and the difference between warranty provision made and actual expenditure incurred in the subsequent year are written back in its books of account and the same are being offered to tax. Therefore, there is no excess or shortage claimed made by the assessee. We observed that the estimated the probable warranty cost based on its experience by taking into account nature of

spare parts and services provided, nature of warranty and relevant commitments, it has included the relevant cost of warranty in the sales price charged to the customer and in case of claim in the same year or in the subsequent year, the same are adjusted against the warranty provisions and if there is any excess provision created in the previous year, it is right back in the books and offered to tax. This method of accounting is similar in the case of *Rotok Controls India (P) Ltd. vs. CIT (supra)*. Therefore, we do not see any reason to disturb the findings of the Ld. CIT(A), who has decided the issue by relying on the decision of *Rotok Controls India (P) Ltd. vs. CIT (supra)*. Accordingly, the appeal filed by the Revenue is dismissed.

11. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 22nd May, 2024.

Sd/-

(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 22/05/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI