

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Laliet Kumar, Judicial Member**  
**And**  
**Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA Nos.272 & 273/Hyd/2024**  
(निर्धारण वर्ष/Assessment Years: 2011-12 & 2020-21)

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| ACIT, Circle 8(1)<br>Hyderabad | Vs. | Vijay Electricals Ltd<br>Hyderabad<br>PAN:AAACV7259B |
| (Appellant)                    |     | (Respondent)   |

C.O No.4/Hyd/2024  
(आ.अपी.सं / **ITA Nos.272/Hyd/2024**)  
(निर्धारण वर्ष/Assessment Year: 2011-12)

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|---|-----|--------------------------------|
| Vijay Electricals Ltd<br>Hyderabad<br>PAN:AAACV7259B    | Vs. | ACIT, Circle 8(1)<br>Hyderabad |
| (Appellant)   |     | (Respondent)                   |
| निर्धारिती द्वारा/Assessee by: Shri B Srinivasa Rao, CA |     |                                |
| राजस्व द्वारा/Revenue by: Shri Mookambikeyan, DR        |     |                                |
| सुनवाई की तारीख/Date of hearing: 23/07/2024             |     |                                |
| घोषणा की तारीख/Pronouncement: 29/07/2024                |     |                                |

**आदेश/ORDER**

**Per Laliet Kumar, J.M**

These two appeals filed by the Revenue are directed against the order dated 24.01.2024 of the learned CIT (A)-NFAC Delhi, relating to A.Ys. 2011-12 & 2020-21 and for the A.Y. 2011-12, the assessee has also filed a Cross Objection.

2. In the present case (ITA No.272/Hyd/2024 for the A.Y 2011-12), the Assessing Officer reopened the assessment for the assessment year 2011-12 on the ground that the assessee has incurred the expenditure of Rs.5,49,96,134/- towards the repair and rectification of transformer and the amount spent/expenditure incurred was adjusted against the provision of earlier years to the tune of Rs.53,08,754/-. However, the expenditure over and above i.e. 3,96,87,384/- along with the provision for the current year for Rs.3,97,33,809/- was debited to Profit and Loss account. In these facts, the Assessing Officer has reopened the assessment and after hearing the assessee, the Assessing Officer has made the assessment and the findings of the Assessing Officer are given in Para 5 & 6 of the assessment order which are to the following effect :

5. In response to the showcause notice, the assessee submitted that the claim towards rectification expenses consists of two components one being the actual expenditure incurred over and above the provisions made in the earlier years and other item being the provision for amount to be incurred as against the future liability in respect of the goods sold during the financial year under review. Accordingly, the rectification expenses claimed for the assessment year 2011-12 works out to Rs.7,94,21,193.48/-. The submissions of the assessee were carefully examined and the same is not acceptable.

6. It is seen from the details available, the outstanding provisions for warranty was at Rs.5,70,60,000/- as on 31.03.2010. However, the assessee adjusted only Rs.1,53,08,754/- of the total provisions available against Rectification Expenses of Rs.5,49,96,139/-. Thus excess of expenditure over the provision of Rs.3,96,87,384/- and current year provision of Rs.3,97,33,809/- totalling to Rs.7,94,21,193/- was debited to P& account. As per accounting principles, only provision which is an ascertained liability is an allowable expenditure. The provision made by the assessee is contingent in nature and is not an ascertained liability. Further, as per provisions of the Income Tax Act, the expenditure incurred only during the year was allowed in computing the income chargeable under the head 'Profits and gains of business or profession'.

Accordingly, the excess claim of expenditure of Rs.3,96,87,384/- towards Rectification expenses was disallowed and added to the total income.

(Addition: Rs.3,96,87,384/-)

3. Feeling aggrieved by the assessment order the assessee preferred an appeal before the learned CIT (A) and the learned CIT (A) granted part relief to the assessee and the findings in respect of Ground No.2 at page 12 & 13 is reproduced hereunder:

**Ground No. 2:-** The ground of appeal is in respect of disallowance of rectification expenses to the extent of Rs.3,96,87,384/- by the Ld. AO since the said provision made by the assessee was contingent in nature and not an ascertained liability as according to the Ld. AO, the expenditure incurred only during the year was allowable in computing the income chargeable to tax which was not the case of the assessee.

From the perusal of submissions made by the appellant, it is seen that the rectification expenses are nothing but a provision made by the appellant on account of the product warranty to rectify the products which

fail over a period of time. The warranty provision has been calculated on the basis of past experience and on the basis of the tests conducted by the appellant on an in house basis. The appellant has furnished the details, wherein the method has been consistently followed. Hence, the rectification expenses so arrived are on a scientific basis and has been consistently followed by the appellant over the years.

Reliance is hereby placed on the decision of Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd. vs. CIT reported in (2009) 314 ITR 62 (SC)

It is pertinent to mentioned that on similar facts on this issue, the appeal of the appellant has been allowed by my predecessor for assessment year 2016-17. Following, the stated decision of the CIT(A), the ground of appeal no 2 is hereby **Allowed**.

4. Feeling aggrieved by the relief granted by the learned CIT (A), the Revenue is in appeal before us and the assessee has filed C.O supporting the order passed by the learned CIT (A).

5. The learned DR has made two fold submissions :

i) The actual expenditure incurred by the assessee was Rs.5,49,96,139 and the actual expenditure is required to be adjusted against the provisions made by the assessee for rectification/repair of the transformer.

ii) The approach of the learned CIT (A) is not correct as the learned CIT (A) has restricted the set off of the actual expenditure to the extent of the provisions made for the year under consideration. It was further submitted that the learned CIT (A) has not discussed this issue and has decided the issue which is not the case of the Assessing Officer. It was submitted that the ld.CIT(A) has held that the provision if made based on historical and scientific basis are allowed to be debited in profit and loss account. **However, the ld.CIT(A) had lost his sight to the issue i.e whether the expenditure is required to be restricted to the provision for that year or it was required to be adjusted against the available provisions.** The ld.DR had submitted that even the provisions of Rs.153,08,574/- made by the assessee for the year under consideration was not based on historical and scientific basis. Even this aspect has not been examined by the ld.CIT(A).

6. Per contra, the learned Counsel for the assessee submitted that the provisions were made on the basis of scientific basis and the provision was made considering the warranty period of 18 to 60 months. The ld.AR submitted that if the provisions spread over to various years are exhausted in one year against the actual expenditure then no provision would be available in the subsequent assessment year and therefore, the approach of the ld.CIT(A) was correct in restricting the actual expenditure to the extent of provisions made by the assessee for the year under consideration. It was also submitted by the ld.AR that the issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case.

7. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A). Admittedly, the actual expenditure has exceeded the provision made. The question which was required to be answered by the learned CIT (A) was, whether the actual expenditure can be adjusted against the available provision or it is required to be restricted to the provision made for that year.

7.1. Unfortunately, the Id.CIT(A) has not decided this issue and has only adverted to the issue of whether the provision made on the basis of scientific and historical data is allowable expenditure or not. In our view, there cannot be any quarrel with respect of the above issue as held by the Hon'ble Supreme Court in the case of M/S. Rotork Controla India (P) Ltd vs Commnr. Of Income Tax reported in 180 Taxmann 422. However, the question which has not been answered by the learned CIT (A) is that whether the adjustment of the actual expenditure is required to be made against the provisions for the earlier years or for the current year ? As this issue has not been adjudicated by the Id.CIT(A), therefore, we deem it proper to remand the issue back to the file of the learned CIT (A) with a direction to re-adjudicate the issue. At this stage, we may like to point out that the decision of the Tribunal was on different facts of the case and is not applicable to the facts of the case in hand. Accordingly, the appeal filed by the Revenue and the Cross Objection filed by the assessee are treated as allowed for statistical purposes.

8. In the result, the appeal filed by the Revenue and C.O filed by the assessee are allowed for statistical purposes.

**ITA 273/Hyd/2024.**

9. With respect to this appeal, the ld.DR has pointed out that the ld.CIT(A) has passed cryptic order without examining whether the provisions were made on the basis of historical and scientific basis or not. It was submitted that in the order the ld.CIT(A) has reproduced the submissions of the assessee, where assessee had submitted that the provisions were made for seven years and based on the past provisions history, the provisions for current year were made.

10. The ld.AR on the other hand, submitted that the provisions were made on the basis of the historical data and therefore, the same is an allowable expenditure.

11. We have heard the rival submissions of both the parties and perused the material available on record. The hon'ble Supreme Court in the case of M/S. Rotork Controla India (P) Ltd vs Commnr. Of Income Tax, Chennai on 12 May, 2009, in Para 17 had held as under :

*“The principle which emerges from these decisions is that if the historical trend indicates that large number of sophisticated goods were being manufactured in the past and in the past if the facts established show that defects existed in some of the items manufactured and*

*sold then the provision made for warranty in respect of the army of such sophisticated goods would be entitled to deduction from the gross receipts under Section 37 of the 1961 Act. It would all depend on the data systematically maintained by the assessee.”*

12. From the reading of the above noted direction of the Hon'ble Supreme Court, it is clear that the Id.CIT(A) was required to examine the historical trend of the actual expenditure and provision for warranty made for the assessee in past and thereafter, was required to examine whether the warranty provisions were based on the said historical / empirical data or not. In the present case, the Id.CIT(A) without examining the historical / empirical data of expenditure incurred by the assessee for rectification / repair of transformers had approved the provisions made during the year. We cannot approve the same and accordingly, we direct the Id.CIT(A) to reexamine this issue and to give categorical finding after examining the historical / empirical data about the expenditure incurred for rectification / repair of transformers. Needless to say that the above said exercise is to be done after following the principles of natural justice. With these observations, this appeal of Revenue is also allowed for statistical purposes.

13. In the result, the appeal of Revenue is allowed for statistical purposes.

14. In the combined result, both the appeals of Revenue and Cross-Objection filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 29<sup>th</sup> July, 2024.

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| Sd/-<br><b>(MANJUNATHA, G.)<br/>ACCOUNTANT MEMBER</b> | Sd/-<br><b>(LALIET KUMAR)<br/>JUDICIAL MEMBER</b> |
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Hyderabad, dated 29<sup>th</sup> July, 2024

*Vinodan/sps*

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| 4    | DR, ITAT Hyderabad Benches  |
| 5    | Guard File  |

*By Order*