

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'H' NEW DELHI)
BEFORE YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No. 3015/DEL/2017 (A.Y. 2011-12)

TK Elevator Private Limited (earlier known as ThyssenKrupp Elevator (India) Pvt. Ltd.) Plot No. 429, Functional Industrial Estate, Patparganj, Delhi PAN: AABCT6921F	Vs	Deputy Commissioner of Income Tax, Circle- 25(1), C. R. Building, New Delhi
Appellant		Respondent

ITA No. 3658/DEL/2017 (A.Y. 2011-12)

Assistant Commissioner of Income Tax, Circle- 25(1), Room No. 192A C. R. Building, New Delhi	Vs	TK Elevator Private Limited (earlier known as ThyssenKrupp Elevator (India) Pvt. Ltd.) Plot No. 429, Functional Industrial Estate, Patparganj, Delhi PAN: AABCT6921F
Appellant		Respondent

Assessee by	Ms. Shashi M. Kapila, Adv & Sh. Sushil Kumar, Adv	
Revenue by	Sh. S. K. Jadhav, CIT (DR)	
Date of Hearing	08/01/2026	
Date of Pronouncement	11/02/2026	

ORDER

PER YOGESH KUMAR, U.S. JM:

The captioned appeals are filed by the assessee as well as the Revenue pertaining to Assessment Years 2011-12 challenging the Final Assessment Orders passed by Deputy Commissioner of Income Tax, Circle -25(1), New Delhi dated 18/05/2015 respectively u/s

143(3) r.w. Section 144C(3) of the Income Tax Act, 1961 ('Act' for short). The grounds of Appeal are as under:

ITA No. 3015/DEL/2017 (A.Y. 2011-12) (Assessee)

"The below mentioned grounds are without prejudice to each other.

1. That the order of the learned Commissioner of Income-tax (Appeals)-19, New Delhi ["CIT(A)"] is bad both in law and on facts of the case.

2. That, on facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the disallowance of warranty provision amounting to Rs. 91.15.153, based on erroneous observations and irrelevant considerations.

2.1. That the learned CIT(A) has erred in ignoring the submissions made by the assessee in respect of the expenditure incurred in relation to warranty obligations, and thereby drawing erroneous conclusions on the facts.

2.2. That the learned CIT(A) has erred in not following the decision of Hon'ble Supreme Court in Rotork Control v. CIT [2009] 180 Taxman 422 (SC) and Hon'ble Delhi High Court in CIT v. Vinitec Corp Pvt Ltd (2005) 278 ITR 337, on same facts.

3. That the learned CIT(A), based on erroneous observations and irrelevant considerations, has erred in confirming the addition amounting to Rs. 2,20,05,000 on account of transfer pricing adjustment in respect of the assessee's international transaction with regard to payment of Corporate Mark Fee to its associated enterprise, namely ThyssenKrupp AG.

3.1. That the learned CIT(A) has erred in upholding arm's length price ("ALP") of the Corporate Mark Fee, claimed at 0.5% of sales, as 'Nil', without computing the ALP under 'most appropriate method as required under the Act read with Income-tax Rules, 1962.

3.2. That the learned CIT(A) has erred in observing that no benefit is derived by the assessee from the use of Corporate Mark and thereby confirming disallowance of whole of the payment by the assessee as Corporate Mark Fee, not permissible under the provisions of section 92CA of the Act.

3.3. *That the learned CIT(A) has erred in not following the decision of Hon'ble Delhi High Court in the case of CIT v. EKL Appliances Ltd [2012] 345 ITR 241 relied upon by the assessee on similar issue, squarely applicable on facts of the assessee's case.*

4. *That the learned CIT(A) has erred in confirming levy of interest under section 234A, 234B, 234C and 234D.*

That the appeal is within time as the order of learned CIT(A) was received on 3rd April 2017.”

ITA No. 3658/DEL/2017 (A.Y. 2011-12) (Revenue)

1. *The impugned order of the Ld. CIT(A) is bad in law as well as on facts of the case.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,00,11,865/- made on account of advance from customers ignoring the fact that the amount have been shown in the balance sheet as liability without routing them brought the P & L account which is not permissible under the accrual system of accounting.*
3. Brief facts of the case are that, the Assessee filed return of income at Rs. 28,75,34,083/- for Assessment Year 2011-12. The return filed by the Assessee has been revised declaring the same income, however, the Assessee revised the claim of TDS in the revised return. The cases of the Assessee was taken up for scrutiny and an assessment order came to be passed u/s 143(3) read with Section 1444C of the Act by making Transfer Pricing Adjustment of Rs. 2,20,05,000/- addition on account of advance from customers of Rs. 12,00,11,865/- made disallowance of depreciation of intangible assets of Rs. 1,46,65,121/- and also disallowed provision of warranty of Rs. 91,15,153/-. As against the assessment order dated 18/05/2015,

Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 10/03/2017, deleted the addition of Rs. 12,00,11,865/- made on account of advance from customers, sustained the disallowance of Rs. 91,15,153/- and also sustained the addition of Rs. 2,20,05,000/- made on account of transfer pricing adjustment in respect of Assessee's international truncation with regard to payment of Corporate Mark Fee to its AE namely ThyssenKrupp AG. Aggrieved by the above deletion of the addition, the Revenue preferred the above Appeal and as against sustaining the disallowance/addition mentioned above, Assessee preferred the captioned Appeal on the respective grounds mentioned above.

ITA No. 3015/DEL/2017 (Assessee's Appeal)

4. Ground No. 1 of the Assessee is general in nature, which requires no adjudication. Ground No. 2 and its sub ground are regarding disallowance of warranty provision amounting to Rs. 91,15,153/-. The Ld. Counsel for the Assessee submitted that the issue involved in the Ground No. 2 is squarely covered in Assessee's own case for Assessment Year 2005-06 and 2006-07 in ITA No. 956/Del/2009 and ITA No. 3354/Del/2010 for A.Y 2005-06 & A.Y 2006-07. Further submitted that said orders of the Tribunal have been affirmed by the Hon'ble High Court of Delhi, thus, sought for allowing the Appeal.

5. Per contra the LD. Assessee's Representative relying on the orders of the lower authorities sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. The identical issue was subject to judicial scrutiny before the Tribunal in Assessee's own case for Assessment Year 2005-06 and 2006-07 in ITA No. 956/Del/2009 and ITA No. 3354/Del/2010 and the Co-ordinate Bench of the Tribunal decided the issue in favour of the Assessee in following manners:-

“The Ld. Assessee's Representative submitted that warranty provision has been made on the basis of 3% of the budgeted material cost covered towards the product warranty and free maintenance services. He submitted that the company based on scientific basis and the past record provided warranty. He further stated that the Assessee provides the amount of warranty expenditure for which sale price has been recovered from the buyers in the sale and further the expenditure incurred are debited to the provision account and balance provision is carried forward. In anyway, he submitted that issue is squarely covered in favour of the Assessee by the decision of the Hon'ble Supreme Court by Rotork Controls India Pvt. Ltd. vs. CIT 314 ITR 62.

29. We have carefully considered the rival contentions. The Assessee at the time of sale of elevators provides product warranty free from defects in material and workmanship.. The period of warranty is 18 months or 12 months as per contract. The Assessee provides 3% of material for product warranty. The amount actually incurred is separately charged to profit and loss account and provision is written back on monthly basis. The Assessee regularly follows this method of accounting. Hon'ble Supreme Court in 314 ITR 62 has held that provision is a liability, which can be measured by using a substantial degree of estimation, and warranty is an obligation in future for past event of sale. In view of this we find no infirmity in the order of the Ld. CIT(A) in allowing the claim of the Assessee or royalty expenditure of Rs. 4586744/-.”

7. The said order of the Tribunal in ITA No. 956/Del/2009 and ITA No. 3354/Del/2010 has been reportedly affirmed by the Hon'ble High Court of Delhi. In view of the above, we allow Ground No. 2 and its sub grounds and delete the disallowance made thereon and allow the provision for warranty of Rs. 91,15,153/- as deduction.

8. Ground No. 3 and its sub grounds are regarding fee for license for use the ThyssenKrupp Corporate mark/logo of parent of ThyssenKrupp Group.

9. The Ld. Counsel for the Assessee vehemently submitted that,an identical License Agreement was entered into by parent 'TKAG' with another subsidiary company, which was subject to legal scrutiny, which has been adjudicated before the Pune Bench of the Tribunal in the case of ThyssenKrupp Electrical Steel India Pvt. Ltd. vs. DCIT [ITA No. 297/Pun/2017]. Further submitted that the Co-ordinate Bench of the Tribunal addressed the issue of charging license fee for previous services which were made free of cost and held that the parent company has the right to monetize its intellectual property and commercial decisions to charge for previously free services between related parties cannot be questioned if the rate charged falls within the arm's length range. Thus, sought for allowing the Appeal.

10. Per contra, the Ld. Department's Representative relying on the orders of the Lower Authorities sought for dismissal of the order of the Ld. CIT(A).

11. We have heard both the parties and perused the material available on record. It is the specific contention of the representative of the Assessee that, an identical agreement has been considered by the Pune Bench of the Tribunal in the case of ThyssenKrupp Electrical Steel India Pvt. Ltd. vs. DCIT in ITA No. 297/Pun/2017 and the issue has been decided in favour of the Assessee therein. Further contended that the facts of that case are identical to the facts of the Assessee, which is squarely covered in favour of the Assessee. Without expressing any view on the facts of the case, we remand the matter to the file of the A.O. with a direction to the Assessee to produce both the agreements i.e. agreement of ThyssenKrupp Electrical Steel India Pvt. Ltd. and the agreement of the Assessee and if the terms and the conditions of the agreements and the facts and circumstances are identical, the A.O. is directed to verify the same and decide the issue as per the findings of Pune Bench of the Tribunal in ITA No. 297/Pun/2017, accordingly the Ground No. 3 and its sub grounds are partly allowed for statistical purpose. All the contentions of the Assessee are kept open.

ITA No. 3658/DEL/2017 (Revenue's Appeal)

12. The solitary grievance of the Revenue in its Appeal is against the deletion of the addition of Rs. 12,00,11,865/- made on account of advance from customers. The ld. Department's Representative submitted that the Ld. CIT(A) deleted the addition ignoring the fact that the amount have been shown in the balance sheet as liability without routing them through the P & L Account, which is not permissible under accrual system of accounting. Thus, sought for allowing the Appeal.

13. Per contra the Ld. Assessee's Representative submitted that the issue involved in the appeal of the Revenue is no more res-integra as the said issue has been decided by the Tribunal for Assessment Year 2005-06 to 2007-08 and the orders of the Tribunal have been affirmed by the Jurisdictional High Court, wherein accepted the accounting treatment given by the Assessee to 'advance received from customers' by relying on the principal determined in the case of Taparia Tools Ltd. (SC) (2015) 55 Taxmann.com 361. Thus, sought for dismissal of the Appeal of the Revenue.

14. We have heard both the parties and perused the material available on record. The issue involved in the Revenue's Appeal has been decided in Assessee's own case for Assessment Year 2005-06 to 2007-08 in ITA No. 1214/2018, ITA No. 1233/2018 and ITA No.

1269/2018 by the Hon'ble High Court of Delhi and the Tribunal for Assessment Year 2009-10 in ITA No. 4043/Del/2015 and ITA No. 3805/Del/2015 and for 2010-11 in ITA No. 1996/Del/2016 also decided the very same issue in favour of the Assessee. In view of the same, by relying on the settled principals of law, we find no merits in the grounds of Appeal of the Revenue, accordingly, we dismiss Grounds of Appeal of the Revenue.

15. In the result, appeal of the Assessee in ITA 3015/Del/2017 is partly allowed for statistical purpose and Appeal of the Revenue in ITA No. 3658/Del/2017 is dismissed.

Order pronounced in the open court on 11th February, 2026

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:- 11.02.2026
R.N, Sr.P.S*

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

