

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**IT(TP)A Nos.1179 & 1180(B)/2012  
(Assessment years : 2007-08 & 2008-09)**

The Asst. Commissioner of Income-tax  
Circle-11(1)  
Bangalore

Appellant

**Vs**

M/s Acer India Pvt. Ltd.  
Embassy Heights, 6<sup>th</sup> Floor, No.13,  
Magrath Road,  
Bangalore  
**PAN No.AACCA1237A**

Respondent

**Revenue by : Shri G.R.Reddy, CIT, DR-I  
Assessee by : Shri Sharath Rao, CA**

**Date of hearing : 27-10-2015**

**Date of pronouncement : 04-11-2015**

**ORDER**

**PER SHRI JASON P BOAZ, AM:**

These are appeals by the revenue directed against the order of the CIT(A)-II, Bangalore both dated 21-06-2012 for the assessment years 2007-08 & 2008-09.

2. The assessee preferred appeal before the CIT(A) and submitted as follows;

2.1 The assessee is a company engaged in manufacture and trading of personal computers. Note book computers, servers, peripherals and IT related products. The assessee filed the return of income for the assessment year 2008-09 on 30-09-2008 and the assessment was completed u/s 143(3) of the iT Act on 02-12-2011. While completing he assessment the AO made disallowance of Rs.10,85,61,747/- as warranty provision.

*“Details in respect of provision for warranty*

*The movement in the provision for warranty account during the assessment year 2007-08 is outline below:*

<i>Particulars</i>	<i>80IB Unit</i>	<i>Non-80IB Unit</i>	<i>Total</i>
<i>Op. Balance as on April, 1, 2006</i>	<i>100,307,498</i>	<i>39,108,300</i>	<i>182,372,553</i>
<i>Add:Provision created during the year</i>	<i>44,089,408</i>	<i>32,267,614</i>	<i>76,357,022</i>
<i>Less:Payments made during the year</i>	<i>55,730,304</i>	<i>41,840,524</i>	<i>97,630,828</i>
<i>Closing Balance as on March 31,2007</i>	<i>88,606,602</i>	<i>29,535,390</i>	<i>161,098,747</i>

*We wish to submit that the provision for warranty expenses created during the year amounting to Rs.76,357,022/- represents the amounts set aside for meeting warranty obligation of Acer and the same has been computed based on a scientific and technical estimate of costs to be incurred in meeting these obligations over the period of warranty. Subsequently, actual warranty expenditure incurred during the year amounting to Rs.97,630,828/- has been adjusted against the balance available in the provision for warranty expense account.*

*In this regard, your goodself has proposed to disallow the provision for warranty created during the year. Further, your goodself has acknowledged that the actual warranty expenditure incurred during the year is higher than the corresponding provisions created during the year, and thereby noted that a portion of the actual warranty expenditure incurred during the year pertains to the opening balance in the provision for warranty expense account. Accordingly, your goodself has requested us to submit submissions on allowability of amount of actual warranty expenditure that pertains to opening balance in the provision for warranty expenses account in computing the assessed income for the AY: 2007-08.*

*In this regard we wish to reiterate that the provision for warranty is created every year as per the accounting policy followed by the company, considering the warranty obligations attached to the sale of Acer's products. Accordingly, these provisions have been claimed as tax deductible expenses on a year to year basis. Further, the said issue has been held in favour of the company by the*

*Hon'ble Bangalore ITAT for the AY: 2004-05 vide order ITA No.774 & 877(Bang.)08 dated January 30, 2009.*

*Considering that the provision for warranty created on a scientific basis has been upheld to be an allowable expense in the assessee's own case and further considering that the Supreme Court has in the case of Rotork Controls India Pvt.Ltd Vs CIT (223 CTR 425) upheld that warranty provisions are an allowable deduction. It is submitted that the entire provision for warranty amounting to Rs.76,357,022/- ought to be allowed as a deduction.*

*Without prejudice to the above, in the event the provision for warranty expenses created during the year is proposed to be disallowed by your goodself in the computation of taxable income of the Company, we wish to submit that appropriate relief ought to be granted to the Company by disallowing only the net warranty provision (after reducing the actual warranty expenses incurred during the year) as against the gross warranty provision.*

*The above view is in conformity with the position adopted by the AO in computing the assessee income of Company for prior AY's whereby only the net warranty provision (after reducing the actual warranty expenses incurred during the year) has been disallowed, i.e in computation of taxable income of the Company of prior AY's, the AO has disallowed the provision for warranty expenses created during the year and allowed a deduction only towards the actual warranty expenses incurred during the year.*

*As indicated in the table above in the current year as the payouts for warranty are in excess of the provision*

*created during the year, disallowance of the amount of provision would not arise considering that the disallowance would be for the net warranty provision (after reducing the actual warranty expenses incurred during the year).*

3. The CIT(A) held that for the assessment 2008-09 the assessee adopted scientific method for warranty provision, after going through the submissions of the assessee. The CIT(A) observed that the method adopted by the assessee in computing provisions of warranty on a year to year basis and the same is consistent and the assessee has elaborately explained the provision in the Financial Statements mentioned in his submissions. The CIT(A) pointed out that the method adopted by the assessee with regard to the warranty provisions remains the same for all these years. Therefore, the AO was not correct in concluding that the method followed is different from the earlier year. Further, the issue is squarely covered by the orders of the ITAT for AY: 2004-05 and 2005-06 as mentioned by the assessee. Therefore, the CIT(A) directed the AO to follow the decision of the Hon'ble Tribunal in the assessee's own case for the assessment years 2004-05 and 2005-06 and grant the relief accordingly.

4. For the assessment year 2007-08 the CIT(A) held as follows;

*“The assessee filed return of income for the assessment year 2007-08 on 30-10-2007 and the assessment was completed u/s 143(3) of the IT Act on 03-12-2010. While*

*completing the assessment the AO made disallowance of Rs.7,63,57,022/- as warranty provision. This was disallowed by the AO and brought to tax for the very same reason given by him in the assessment order for the assessment year : 2008-09. The only issue raised in the appeal is relating to the disallowance of warranty provision. The issue is squarely covered by the orders of the ITAT for the assessment years 2004-05 and 2005-06 as mentioned in Para-2 above. Therefore, the AO is directed to follow the decision of the Tribunal in assessee's own case for the assessment years 2004-05 and 2005-06 and grant the relief accordingly".*

4.1 The department has filed grounds of appeal for 2007-08 as follows;

*" 1. The order of the ld.CIT(A) in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.*

*2. The ld. CIT(A) has erred in deleting the addition amounting to Rs.7,63,57,022/- made on account of disallowance of provision of warranty debited to P&L account, without appreciating the facts and circumstances under which the disallowance was made by the AO.*

*3. The ld. CIT(A) erred in allowing the relief, relying on the decision of the Hon'ble ITAT in assessee's own case for earlier years, which has not reached its finality and appeals u/s 260QA of the IT Act, 1961 have been filed before the Hon'ble High Court against such orders.*

*4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed in so far as the above mentioned issue is concerned and that of the AO be restored.*

*5. The assessee craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal”.*

5. The department has filed grounds of appeal for assessment year 2008-09 as follows;

*“ 1. The order of the ld.CIT(A) in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.*

*2. The ld.CIT(A)has erred in deleting the addition amounting to Rs.10,85,61,747/- made on account of disallowance of provision of warranty debited to P & L account, without prejudice to the facts and circumstances under which the disallowance was made by the AO.*

*3. The ld. CIT(A) has erred in allowing relief to the assessee relying on the judicial decision cited by the assessee, holding that the provision for warranty has been created in a scientific manner based on past experience, without appreciating that the extent of provision made during the relevant previous year ended on 31-03-2008 was higher than the provision made in the preceding assessment years.*

*4. The ld. CIT(A) erred in allowing he relief, relying on the decision of the ITAT in assessee’s own case for earlier years, which has not reached its finality and appeals u/s 260A of the IT Act, 1961 have been filed before the Hon’ble High Court against such orders.*

*5. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of*

*the CIT(A) be reversed in so far as the above mentioned issue is concerned and that of the AO be restored.*

*6. The assessee craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal”.*

6. Only ground no.3 is added to that of grounds raised by the department for the assessment year 2007-08.

7. At the time of hearing learned Chartered Accountant for the assessee placed on record copies of the following orders of this Tribunal in assessee's own case:

- (i) ITA No.774 & 877/Bang/08 dt,30-1-2009 for the assessment year 2004-05, and*
- (ii) ITA No.784/Bang/2010 dt.25-2-2011 for assessment year 2005-06 ITA 22(Bang)/2011*

7.1 By placing the above decisions on record, the Chartered Accountant submitted that the very same point at issue was the subject matter of appeals in those two appeals.

8. The learned counsel for the assessee submitted that with reference to ITA No.1179(B)/12 there is a reversal where the provision for warranty created during the year is Rs.21,273,806/- and by way of note it has been highlighted that the provision for warranty expenditure is net off

payments made during the year. With respect to assessment year 2008-09 the counsel referred to pages 201 & 202 where the provision for warranty created during the year is Rs.108,561,747/- and is highlighted by note that provision for warranty expenditure is net off made during the year.

9. We have also heard the learned Departmental Representative and considered the facts and materials on record including the decisions cited before us.

9.1 While dealing with the issue in the order dated 30-1-2009 in ITA No. 774/Bang/2010 it has been observed as under:

*“5. We have heard the rival contentions and perused the material available on record. We are of the considered view that the assessee’s case clearly falls in line with the legal ratio set out by the various appellate decisions cited at Bar in so far as the provision for warranty stood crystallized as soon as the sale was made which a customer would like to be fulfilled within the warranty period and is at the cost of an assessee’s goodwill. Therefore, the residual amount purported to have been held by the Assessing Officer as an excess provision cannot be considered as a contingent provision and not an ascertained liability. The warranty period continues beyond an year which fact was rightly considered by the ld.CIT(A) confining to the various decisions such as IBM India Ltd. (supra) reported in 290 ITR*

*(AT) 183. Similar view has been taken by other co-ordinate Benches of the Tribunal therefore requires no further deliberation. In the light of the above, we hold the view that the decision of the Id.CIT(A) requires no further interference on the issue. The revenue's appeal stands dismissed."*

10. Again in the order dated 25-2-2011 in ITA No.784/Bang/2010, it has been observed as under:

*"11.2 The assessee creates provision for warranty based on the estimation of expenditure likely to be incurred on the past sales made on yearly basis at then prevailing market prices for spares and labour. For the relevant previous year, the assessee estimated the warranty liability at Rs.12,76,77,530/- and created a provision only for Rs.12,16,75,204/- in the books of account by charging a provision of Rs.8,24,29,136/- to the debit in the P&L account and claimed it as ITA 22(Bang)/2011 Page 5 of 7 deduction. The assessee company had created the provision based on the estimation of warranty liability, which is based on failure rates of the past year data/experience and industry trends and not on adhoc basis. The assessee has not changed the method of computing the warranty provision and it has been followed consistently.*

*11.3 The decision of the Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd. 314 ITR 62 would be squarely applicable to the facts of the case. The Hon'ble Supreme Court has held that provision made on past experience is a scientific method and is the most appropriate method. The relevant extract of the decision is provided below:-*

*'In this case, we are concerned with Product Warranties. To give an example of Product Warranties, a company dealing in computers gives warranty for a period of 36 months from the date of supply. The said company considers following options: (a) account for warranty expense in the year in which it is incurred; (b) it makes a provision for warranty only when the customer makes a claim; and (c) it provides for warranty at 2% of turnover of the company based on past experience (historical trend) .....*

*Under the circumstances, the third option is most appropriate because it fulfills accrual concept as well as the matching concept. For determining an appropriate historical trend, it is important that the company has a proper accounting system for capturing relationship between the nature of the sales, the warranty provisions made and the actual expenses incurred against it subsequently".....*

*If warranty provisions are based on experience and historical trend(s) and if the working is robust then the question of reversal in the subsequent two years, in the above example, may not arise in a significant way'.*

11. In the assessee's own case in identical facts for the immediately preceding year, the Tribunal in ITA No.22/Bang/2011 assessment year 2006-07 vide order dated 16.03.2012 has decided the issue in favour of the assessee, following the orders of the Tribunal for earlier years namely. 2004-05 and 2005-06.

12. Following the above decisions for the earlier years passed by the Co-ordinate Bench of Bangalore, we hold that the CIT(A) is not justified in upholding the disallowance of provision for warranty and accordingly dismiss the ground of appeal of the revenue on this issue.

13. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open Court on the 4<sup>th</sup> November, 2015.

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

**Dated:** 04-11-2015

Place: Bangalore

**am\***

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A) Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

**Sd/-**  
**(ASHA VIJAYARAGHAVAN)**  
**JUDICIAL MEMBER**

By order

AR, ITAT, Bangalore