

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No.501/Bang/2016
(Assessment year: 2012-13)

Asst. Commissioner of Income Tax, Circle-1(1)(1), Bangalore.	Vs.	M/s. ABS India Pvt. Limited, #13, LR Mansion, 2 nd Stage, Opp. West Gate of Leela Palace, HAL Main Road, Bangalore – 560 008. PAN : AABC8841P
Appellant		Respondent

Revenue by	:	Shri. Sanjay Kumar, CIT-III
Assessee by	:	Shri. Ganesh S, Advocate

Date of hearing	:	28.11.2016
Date of Pronouncement	:	06.12.2016

ORDER

Per George George K, JM :

This appeal at the instance of revenue is directed against CIT(A)'s order dated 28.12.2015. The relevant AY is 2012-13.

2. The grounds raised read as follows:

1. The order of the Learned CIT (Appeals), 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 Learned CIT(Appeals) erred in allowing relief to the assessee by deleting the disallowance made of excess provision of warranty, without correctly appreciating the fact that the provision was not made on any scientific basis ensuring a fair degree of accuracy.
3. The Learned CIT(Appeals) erred in allowing relief to the assessee by placing reliance on the decision of Hon'ble ITAT in the assessee's own case for A.Y.2008-09, without appreciating that the issue has not reached finality in view of non-acceptance of the relied upon order by the Revenue and an appeal u/s.260A is pending before the Hon'ble High court of Karnataka.
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 and that of the Assessing Officer be restored.
5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.

3. Briefly, the facts of the case are as follows:

The assessee is a company engaged in the business of trading, servicing and maintenance of telecommunication products. For the assessment year 2012-13, the return of income was filed on 29.09.2012, declaring an income of Rs.5,24,53,320/-. The assessment under section 143(3) was completed vide order dated 28.11.2014. In the assessment completed under section 143(3), the AO had disallowed an amount of Rs.46,80,630/- as excess provision for warranty.

4. Aggrieved by disallowance of Rs.46,80,630/-, the assessee preferred an appeal to the first appellate authority. The CIT(A), following the tribunal's order for the assessment year 2008-09 in assessee's own case, decided the issue in favour of assessee.

5. Aggrieved, the revenue has filed the present appeal before the tribunal. At the very outset, the learned counsel for the assessee submitted that the issue in question is squarely covered by the order of the tribunal in assessee's own case for assessment year 2008-09 (in ITA No. 224/B/2012 order dated 19.10.2012). The learned counsel for the assessee further submitted that the methodology adopted for claiming of provision for warranty in the current assessment year is identical to the methodology adopted for assessment year 2008-09. The learned DR fairly agreed the issue in question is covered by the earlier order of the tribunal in assessee's own case (supra).

6. We heard the rival submission and perused the material on record. We find identical issues having similar facts, have been already adjudicated by the coordinate bench of the tribunal in assessee's own case for the assessment year 2008-09 (supra). The relevant finding of the tribunal in assessee's own case reads as follows:

6.5 We have heard both parties and carefully perused and considered the material on record. We find that an identical issue having similar facts had already been adjudicated by a

co-ordinate Bench of this Tribunal in ITA No.586/Bang/2006 dt.8.6.2007 in the assessee's own case for Assessment Year 2000-01 wherein the issue was adjudicated in favour of the assessee. The relevant findings are at paras 7 to 7.6 of the said order which are extracted hereunder :

"7. We have heard both the parties. This Bench in the case of Wipro GE Medical Systems Ltd. (supra) has considered the allowability of provision for warranty. In that case, provision was made as a fixed percentage of sales though such percentage varied for different products. The provision for warranty in the case of Wipro was made on scientific basis based on past experience. The Tribunal in that case held as under:-

"We have carefully considered the rival contentions and gone through the records. The Bombay Bench of the Tribunal in the case of Voltas Ltd. v Dy. CIT (supra) was concerned with an identical situation where the provision for trade guarantees during the warranty period in case of the assessee having scientifically worked out the anticipated the liabilities to be provided under mercantile system of accounting based on the past experience and in such a method of accounting based on the past experience and in such a method of accounting, no adhocism is involved The

accounting method followed by the assessee ensures that the gaps between the provision and the actual expenditure are made good in subsequent years. In those circumstances, the disallowance was not held to be justified. Similarly, in the case of Jay Bee Industries v DCIT (supra), the Tribunal held therein that the provision for expenditure on replacement during the warranty period is based on an estimated cost of repairs at 2 per cent of transformers sold. The method of estimating the cost of repairs was held to be allowable on the ground that the liability to carry out repairs/replacement accrued on the date of sale agreement. Such estimated liabilities are to be treated as trading expenses and must be allowed. The revenue in this case should have accepted the assessee's claim as following the method of accounting and as shown the basis for making such claims. The assessee has provided a meager percentage of sales as provision for warranty claim during the period for which the assessee has produced the details of warranty claims. The claim shows that the warranty expenses claimed as deduction is not abnormally high and the gap between the warranty provisions and the warranty expenditure incurred have narrowed down over years and in fact, the detailed study of these expenses clearly shows that there is a perfect neutralization between the expenditure incurred and the warranty claims claimed as deduction. In our view, the warranty liabilities are inbuilt in the sale price since all sales are with warranty liabilities. The liability towards warranty liabilities is certain and has accrued on the

date of sale and only the ascertainment could be said to be contingent which the assessee has estimated based on its past experience and in our opinion, the claims made by the assessee in this regard are most reasonable and are supported by some plausible material. In our view, the department is not justified in treating the liability as contingent. Following the principle laid down by several decisions of the Tribunal including that of the apex court in (1969) 73 ITR 53 (SC) (supra) we hold that the claim of the assessee is in order and should be accepted. The AO shall ensure that the assessee shall not claim the deduction again based on the expenditure in respect of warranty and after sales in the books of account maintained. With these observations, the assessee's ground on this issue is to be treated as allowed".

7.1 The above referred issue has again been considered by this Bench in the case of IBM India Ltd. v CIT (290 ITR 183) (AT). In this case, the counsel appearing for the assessee placed reliance on the following decisions:-

- CIT v Beema Mfrs. (P) Ltd. (130 Taxman 400)(Mad.)
- CIT v Indian Transformers Ltd. (270 ITR 259)(Ker.)
- CIT v Vintec Corporation Ltd. (278 ITR 337) (Delhi)
- Voltas Ltd. v DCIT (64 ITD 232) (Mum.)
- ITO v Wanson (India) Ltd. (5 ITD 102)(Pune)
- Jay Be Industries v DCIT (66 ITD 530) (ASR.)

This Bench after considering the decisions quoted by the learned AR, held as under:-

"We have carefully considered the relevant facts and the arguments advanced. The only reason to disallow the sum is that the liability is a contingent liability and not an accrued liability. We are unable to accept the contention. The liability to pay for warranty claims arises no sooner the sales are effected. The appellant has provided for liability on the basis of sales made during the year. Though the exact amount cannot be quantified, however, the sum is based on the scientific approach and based on past experience. Various High Courts relied by learned counsel for assessee has held that the liability in respect of such warranty claims is not a contingent liability but an accrued liability. The ITAT, Bangalore in the case of Motor Industries Co. Ltd. in ITA Nos.396 to 399/Bang/98 dated 31.5.2004 and the decision in the case of Wipro-GE Medical Systems Ltd. in ITA No.322-328/8ang)2001 dated 8.7.2002 has held that the liability towards warranty is inbuilt in the sale price itself and so the liability is not contingent but an ascertained one and to be allowed in the year of sales. We accordingly delete the disallowance of Rs. 4,92,69,808/-".

7.2 Learned Punjab and Haryana High Court in the case of CIT v Majestic Auto Ltd. (206 CTR 358) had an occasion to consider the allowability of provision for warranty claims. The P&H High Court considered the decision of the Apex Court in the case of Bharat Earth Movers Ltd. v CIT. In that case, leave encashment allowability was considered as allowable though such allowability is to be quantified and discharged at a future date. The Apex Court held that there may be some difficulty in the estimation thereof but that would not convert the accrued liability into a conditional one. The learned P&H High Court took into account the decision of Delhi High Court in Vintec Corporation (Supra) and accordingly held that warranty liability is not a contingent liability. If the assessee is maintaining the accounts on mercantile system on liability accrued, though to be discharged at a future date, would be a proper deduction while working out the profit and accounts of the business.

7.3 The Delhi High Court in the case of CIT v Sony India (P) Ltd. (160 Taxman 397) has held that liability arising out of a warranty is an allowable deduction even when amount payable by assessee is quantified and discharged in future.

7.4 From the above judgements, it is clear that liability on account of warranty is not a contingent liability and in a mercantile system of accounting, the same is to be provided, as such liability is incurred at the time of sale.

7.5 We have also noticed from the accounts that the assessee made a provision of Rs.65,44,404/- as provision for warranty on the basis of the sales. Since warranty period in respect of sales effected in the immediately preceding year expired, therefore, the excess has been written back and has been credited into P&L account. Such account written back is of Rs.41,24,882/-. Hence, the provision which is made in respect of sales for this year is Rs.24,20,522/-. Sales made during the year are of the order of Rs.1.90 crore. It cannot be accepted that there will be no warranty claim in respect of sales effected during the year, as the warranty period has not expired. It was explained to us that warranty given by the assessee varies from 12 months to 24 months. In respect of equipments provided to Defence, warranty is extended for 24 months. Looking to the quantum of sales effected during the year, the net provision of Rs.24,20,522/- debited in profit and loss account is not excessive. The assessee has submitted that it is in the business of selling the equipment since 1995 and the provision is being made on the basis of the past experience. Hence, we feel that learned CIT(A) was justified in deleting the addition.

7.6 It has been noticed by us that there is net credit of warranty in the asst. year 2002-03 to the extent of Rs.97.5 lakhs. In case the warranty provision of Rs.24.2 lakhs is disallowed then the same will have to be deducted from the net credit made in the asst. year 2002-03. The assessee has filed return for the asst. year 2002-03 and has paid the taxes on the basis of book profit. Thus, if the sum is added here, then the same will have to be excluded for the asst. year 2002-03. The Bombay High Court in the case of CIT v Nagri Mills Co. Ltd. (33 ITR 681) has held that if rate of tax is same, department should not fritter away its energy in fighting such matters. Hence we feel there will be no loss to revenue in case the order of the learned CIT(A) was to be accepted by the revenue."

This decision / finding was followed by another co-ordinate Bench of this Tribunal in ITA No.440/Bang/2011 dt.12.6.2012 in the assessee's own case for Assessment Year 2006-07.

6.6 We, therefore, respectfully following the aforesaid referred orders of the co-ordinate Benches of this Tribunal in the assessee's own case for Assessment Year 2000-01 in ITA No.586/Bang/2006 dt.8.6.2007 and for Assessment Year 2006-07 in ITA No.440/Bang/2011 dt.12.6.2012, delete the impugned disallowance of provision for warranty amounting to Rs.52,33,000 made by the Assessing Officer and confirmed by the learned CIT (Appeals). It is ordered accordingly.

7. Since the facts in the current assessment year viz., 2012-13 is identical to assessment year 2008-09, respectively following the order of the coordinate bench of the tribunal as in assessee's own case for the assessment year 2008-09, we hold that CIT(A) has justified in deleting the disallowance made by the AO as regards the provision for warranty.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 6th day of December, 2016.

Sd/-
(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place : Bangalore
Dated : 6/12/2016
/NS/

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore