

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2016

PRESENT

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MRS.JUSTICE S. SUJATHA

ITA No.295/2015

BETWEEN

M/s. Dell International Services India
Private Limited
(formerly known as Dell Computers (I) Pvt.Ltd.,
Divyashree Greens
No.12/1, 12/A & 13/1
Koramangala Inner Ring Road
Domlur
Bangalore-560071.Appellant

(By Sri.K.R.Vasudevan & Sri. P. Dinesh, Advocate)

AND

The Assistant Commissioner of Income Tax
Circle 11(1)
C R Building
Queens Road
Bangalore-560 001. ...Respondent

(By Sri.K.V.Aravind, Advocate.)

This Income-tax appeal is filed under Section 260-A of Income-tax Act, 1961, praying to set aside the order passed by the ITAT, Bangalore in ITA Nos.362/Bang/2007 and 363/Bang/2007, dated 13.02.2015 relating to Assessment years 2002-03 and 2003-04 respectively to the extent of the issues raised as above.

This appeal coming on for Admission, having been heard and reserved on 1ST February 2016, coming on for pronouncement of Judgment this day, **S.Sujatha J.**, delivered the following

JUDGMENT

This appeal is filed by the assessee challenging the order passed by the Income Tax Appellate Tribunal, "A" Bench, Bangalore dated 13.2.2015 in ITA Nos. 362 & 363/BANG/2007 relating to the assessment years 2002-03 and 2003-04.

2. Brief facts of the case are that the assessee/company which is engaged in the marketing and distribution of software systems and storage devices, computer consultancy and solutions, had filed its return of income for the relevant assessment years. During the assessment proceedings under Section 143(3) of the income tax Act, 1961 (the 'Act' for short), the Assessing Officer observed that the assessee has created provision for warranty during the relevant assessment years and the expenditure claimed was disallowed by the Assessing Officer. Aggrieved, the assessee preferred appeals before the Appellate Commissioner which were allowed by following the decision

of the Tribunal in the case of **CIT vs Wipro GE Medical Systems** (80 TTJ 455). Being aggrieved, revenue had preferred the appeals before this Court in ITA Nos.448/2008 c/w ITA 449 and 1039/2008. This Court by order dated 26.09.2012 remanded the matter back to the Tribunal. The Judgment of this Court reads thus:

“The Supreme court in the case of Rotork Controls India P. Ltd. Vs Commissioner of Income-Tax reported [2009] 314 ITR 62(SC) has held in para-10 that the provision for warranty could be made is permissible if the requirements stated in para-10 are fulfilled. In that view of the matter, the appeals are allowed and the common order dated 16.11.2007 passed in ITA No.363/BNG/2007 and ITA No.362/BNG/2007 and the order dated 06.06.2008 passed in ITA No.1123/BNG/2007, by the ITAT, Bangalore are set aside and the matters are remanded to the Tribunal for disposal in accordance with law.”

3. Pursuant to the Judgment passed by this Court, the Tribunal reconsidered the matter and finally, remanded the matter to the Assessing Officer for a limited purpose of verification as to whether the assessee's provision for warranty is based on the past history or

actual expenditure incurred by the assessee on account of such warranty.

4. Being aggrieved by the said order passed by the Tribunal the assessee is before this Court raising the following substantial questions of law:

“1. Whether on facts and circumstances of the case, the Appellate Tribunal is correct in remanding the matter to the Assessing Officer for verifying whether the Appellant’s provision for warranty is based on the past history or actual expenditure incurred by the Appellant on account of such warranty whereas the Honorable High Court had remanded the issue for a limited point on whether the requirements stated in Para-10 of the decision of Rotork Controls India Private Limited vs. Commissioner of Income-tax[(2009)314 ITR 62] are fulfilled.

2. Whether the Appellate Tribunal was correct in remanding the matter to the assessing officer rather than deciding the case as per the law, as directed by the Hon’ble High Court.

3. Whether the remanding of the matter now to the assessing officer is beyond the scope of the remand ordered by the Hon’ble High Court.

4. Whether on the facts and circumstances of the case, the Appellate Tribunal was correct in remanding the matter

involving a legal issue to the Assessing Officer.

5. *Whether the Appellate Tribunal has erred in remanding the matter to the Assessing Officer though all the evidences to demonstrate the principles were available on record.*

6. *Whether the Appellate Tribunal is justified in remanding back the matter to the Assessing Officer for verification, even though it was satisfied that the provision for warranty was created on scientific and reasonable basis”.*

5. Heard the learned counsel Sri K R Vasudevan for the appellant and Sri K V Aravind, learned counsel appearing for the revenue.

6. Learned counsel appearing for the assessee would contend that this Court while disposing off the appeals filed by the revenue, placing reliance on para. 10 of the Judgment of the Apex Court in the case of **Rotork Controls India (P). Ltd., vs. Commissioner of Income-tax, Chennai** reported in ((2009)180 TAXMAN 422 (SC) has remanded the matter to the Tribunal for disposal in accordance with law. The Tribunal after examining the case of the assessee in the light of the Judgment of the

Apex Court in Rotark Controls' case (supra) has positively held that the methodology adopted by the assessee for estimating the warranty are based on the actual expenditure incurred by the assessee on such products in the earlier assessment years on account of warranty liability. However, having held so, remanded the matter to the Assessing Officer for further inquiry regarding the provision made by the assessee for warranty, whether is based on the past history or actual expenditure incurred by the assessee, contrary to the directions issued by this Court in the earlier round of litigation i.e., ITA Nos.448/2008 and connected matters. It is further contended that the Tribunal ought to have exercised its discretion in verifying any figures regarding the provision, being the last fact finding authority. The order passed by the Tribunal goes beyond the scope of remand made by this Court which is untenable and calls for interference by this Court.

7. Per contra, learned counsel appearing for the revenue Sri Aravind would justify the order passed by the

Tribunal. It is contended that the order of remand made by the Tribunal is not an open remand and it is only for the limited purpose to verify the figures adopted by the assessee to explain the estimate of provision for warranty during the relevant assessment years, whether is actually expended by the assessee on account of such warranty or not. It is also emphasized that the Tribunal was compelled to make this remand order in view of certain documents filed by the assessee in support of its claim relating to the assessment years 2003-04, 2006-07 and 2010-2011. Accordingly, he seeks to confirm the order passed by the Tribunal and to answer the questions of law in favour of the revenue and against the assessee.

8. We have given our anxious consideration to the submissions made by the parties. It is an admitted fact that on the appeal filed by the revenue challenging the order passed by the Tribunal giving relief to the assessee as regards the provision made for warranty, this Court placing reliance on the Judgment of the Apex Court in **Rotork Controls' case (supra)** remanded the matter to the

Tribunal for disposal in accordance with law. The jurisdiction of the Tribunal being a last fact finding authority, is empowered to examine the documents placed by the assessee in support of its claim. It is settled law that remand is not a power to be exercised in a routine manner and should be used fairly as an exception only when the facts warranted such course of action. When the materials are available on record, the Tribunal ought to have arrived at a conclusion rather than further remanding the matter back to the Assessing Officer that too, after giving a positive finding that the methodology adopted by the assessee is on a scientific and reasonable basis.

9. We observe that no proper reasoning has been given by the Tribunal for exercising the power of remand. The directions issued by this Court while remanding the matter to the Tribunal is not considered by the Tribunal in the true spirit. It was the obligation cast on the Tribunal to examine the case of the Assessee in the light of the Judgment of the Apex Court in ***Rotork Controls' case (supra)*** and to come to a decision. But, remanding the

matter to the Assessing Officer is in disregard to the Judgment of this Court and as such we are of the opinion that the order passed by the Tribunal is unsustainable.

10. Accordingly, we set aside the Order passed by the Tribunal and remand the matter to the Tribunal to consider the case of the Assessee in the light of the directions issued by this Court in ITA No.448/2008 and connected matters dated 26.9.2012 and to decide the matter, applying the principles of law laid down by the Apex Court in ***Rotork Controls' case (supra)***.

11. For the foregoing reasons, we answer the questions of law raised, in favour of the Assessee and against the Revenue.

12. In the result, the appeal is allowed. The impugned order of the Tribunal is set aside and the matter stands remitted back to the Tribunal, with a direction to dispose of the appeal in accordance with law after providing an opportunity of hearing to the parties, as expeditiously as

possible preferably within a period of three months from the date of receipt of certified copy of this Judgment. All contentions are left open. The parties are directed to appear before the Tribunal on 2.3.2016 without further notice.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Brn/AN/-