

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.400 OF 2012

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE-12(4), C.R. BUILDING
QUEENS ROAD, BANGALORE.

... APPELLANTS

(BY SRI. K.V. ARAVIND, ADV.,)

AND:

M/S. AMCO BATTERIES LTD.,
3RD FLOOR, TOWER BLOCK
UNITY BUILDINGS, J.C. ROAD
N.R. SQUARE, BENGALURU-02.

... RESPONDENT

(BY SRI. S. PARTHASARATHI, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 03.07.2012 PASSED IN ITA NO.1166/BANG/2011, FOR THE ASSESSMENT YEAR 2008-09, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN.

(I) ALLOW THE APPEAL AND SET ASIDE THE ORDERS DATED 03.07.2012 PASSED BY THE ITAT, BANGALORE, IN ITA NO.1166/BANG/2011 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX OFFICER, CIRCLE-11(1), BANGALORE.

THIS ITA COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2008-09. The appeal was admitted by a bench of this Court vide order dated 12.01.2013 on the following substantial question of law:

- (i) *Whether the Tribunal was correct in holding that the provision for warranty of Rs.3,98,18,294/- is allowable as deduction when the assessee has not made provision on a scientific basis as enunciated by the Apex Court in Rotork Controls India Pvt. Ltd., vs. CIT, 314 ITR 62?*
- (ii) *Whether the Tribunal was correct in*

holding that the assessee is entitled for deduction when excess provision towards warranty made in the previous years is not offered to tax by reversing the entries as laid down by the Apex Court in Rotork Controls India Pvt. Ltd. Vs. CIT, 314 ITR 62?

2. Facts leading to filing of this appeal briefly stated are that assessee filed the return of income for the Assessment year 2008-09 declaring income of Rs.2,17,18,047/-. The return was processed under Section 143(1) of the Act and was selected for scrutiny. Thereafter, a notice under Section 143(2) of the Act was issued. The assessee for the Assessment year 2008-09 had claimed provision for warranty for a sum of Rs.3,98,18,294/-. The Assessing Officer by an order dated 29.11.2010 inter alia held that provision for warranty made for Assessment year 2008-09 to the profit and loss account has been made for an amount of Rs.9,80,90,650/-. The assessee has incurred actual

expenditure to the extent of Rs.5,82,72,356/-. Thus, a sum of Rs.3,98,18,294/- debited to profit and loss account is still outstanding in the nature of provision. It was also held that there is no provision under the Act to allow any expenditure, which is in the nature of provision and is contingent. Accordingly, a sum of Rs.3,98,18,294/- was disallowed and was added to the total income.

3. Being aggrieved, the assessee filed an appeal. The Commissioner of Income Tax (Appeals) by an order dated 29.11.2010 dismissed the appeal and affirmed the order passed by the Assessing Officer. The assessee thereupon filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal', for short). The Tribunal by an order dated 03.07.2012 inter alia held that the provision for warranty was made every year in accordance with accounting standards 29 prescribed by Institute of Chartered Accountants. It was further held that In the

instant case, the assessee had made provision on the basis of sale and also the actual trend of the last few years and the provision was worked out scientifically every year. It was further held that Commissioner of Income Tax (Appeals) grossly erred in not allowing provision for warranty for the concerned Assessment year on the ground that the ratio between the actual and provision is less than 70 : 100. The Tribunal held that the warranty provision made by the assessee for the concerned Assessment year is justified and no addition is called for. In the result, the appeal preferred by the assessee was allowed. Being aggrieved, the revenue is in appeal before us.

4. Learned counsel for the revenue while referring to the decision of the Supreme Court in '**ROTORK CONTROLS INDIA (P.) LTD. VS. COMMISSIONER OF INCOME-TAX, CHENNAI**', **(2009) 180 TAXMAN 422 (SC)** submitted that a provision is recognized only when an enterprise has a

present obligation as a result of a past event, it is probable that an outflow of resources will be required to settle the obligation and a reliable estimate can be made of the amount of obligation. It is further submitted that until and unless the aforesaid conditions are satisfied, no provision can be recognized. It is urged that the Tribunal has failed to take into account the law laid down by the Supreme Court in the aforesaid decision and has made a reference to accounting standard 29. Therefore, the order passed by the Tribunal has passed in violation of law laid down by the Supreme Court and deserves to be quashed. On the other hand, learned counsel for the assessee submitted that provision for warranty was allowed in previous years and in para 7 of the order passed by the Commissioner of Income Tax (Appeals), the law laid down by Supreme Court in the case of Rotork Controls India (P) Ltd. supra has been taken note of and it has been held that estimation of the provision for the Assessment year 2008-09 is not

scientific and reasonable. The aforesaid finding has been set aside by the Tribunal and the order passed by the Tribunal does not call for any interference.

5. We have considered the submissions made by learned counsel on both the sides and have perused the record. The only issue, which arises for consideration in this appeal is whether the principles laid down by the Supreme Court in Rotork Controls India (P) Ltd. Supra have been taken note of while deciding the issue of estimation of provision for the Assessment year 2008-09. At this stage, it is relevant to extract para 8 of the order passed by the Commissioner of Income Tax (Appeals), which reads as under:

I have considered the rival submission. I find the A.O. is not justified in holding that in all cases the provision is to be disallowed as expenditure. This has become the strict law of the past after the pronouncement of the Supreme Court in several cases that a provision can also become an allowable

deduction if it is computed with a certain degree of certainty. The locus classicus on the subject M/s Rotrok Controls India Pvt. Ltd., vs. CIT (2009) 314 ITR 62 (SC)

The legal principles enunciated in that Rotork case has been analyzed by me in case of M/s Apple India (P) Ltd., ITA No.77/DC-11(1)/A-I/10-11, dated 22.09.2011.

The relevant portions are extracted below:-

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Thus I have concluded that if the ratio between actual expenditure and provisions is 70:100 then the provision be considered ascertainable and therefore deductible. On this premises I have allowed deletion of additions in appellants own case in Assessment years 2005-06 and 2007-08. But each case is different on facts. The assessee also admits that sales of the company has grown by leaps and bounds. This year the ratio between actual expenditure and warranty provision is 59:100 and therefore do not meet the parameter fixed by me i.e.,

70:100 on the basis of which the additions of Assessment years 2005-06 and 2007-08 had been deleted. In view of the above I do not consider the estimation of provision in this year is scientific and reasonable. However, the allowance of actual expenditure reduced by the A.O. and disallowance of the balance is found justified. The addition is upheld. The related grounds of appeal are dismissed.

6. Thus, from close scrutiny of paragraph 9, it is evident that the principles laid down by the Supreme Court in Rotork Controls India (P) Ltd. Supra had been taken into account by the Commissioner of Income Tax (Appeals) and the estimation of provision for the Assessment year 2008-09 has been found to be unscientific and unreasonable. The Tribunal has noted that admittedly, the Commissioner of Income Tax (Appeals) has considered the same working method of provision in previous two years and allowed the provision. It was further held that the Commissioner of Income Tax (Appeals) did not allow the provision for

warranty for the Assessment year on the ground that the ration between the actual and the provision is less than 70:100. It was further held that the ratio adopted by the Commissioner of Income Tax (Appeals) is imaginary and arbitrary and is without any basis. It was also held that provision of warranty was made every year in accordance with accounting standards 29 and the provision is worked out scientifically every year merely because, the provision has come down to 59:100, the same cannot be disallowed. Accordingly, the finding recorded by the Commissioner of Income Tax (Appeals) that estimation of provision is unscientific and is unreasonable has been set aside. Thus, it is evident that the conditions laid down by the Supreme Court to assess a provision have been met in the instant case. Therefore, the submission made by learned counsel for the revenue that neither Commissioner of Income Tax (Appeals) nor Tribunal has examined the ratio laid down in Rotork Controls India (P) Ltd. Supra does not deserve

acceptance.

In view of preceding analysis, the substantial questions of law framed are answered against the revenue and in favour of the assessee. In the result, the appeal fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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