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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 641/2017

NOKIA SIEMENS NETWORKS INDIA PVT. LTD.

..... Appellant

Through : Ms. Rashmi Chopra, Sh. Amit
Shrivastava and Sh. Ankur Goyal, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-VI,

..... Respondent

Through : Sh. Ruchir Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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23.11.2017

The assessee/appellant claims to be aggrieved by the impugned order of the Income Tax Appellate Tribunal which directed a remit to the CIT(A) on the question of provision for liquidated damages and warranty. The appellant urges that the permissibility of the claim – which appears to have been added back under Section 41 of the Income Tax Act, 1961 has been noted by the judgment of the Supreme Court in *Rotork Controls India Pvt. Ltd. v. CIT* 314 ITR 62 (SC), which turned down the Revenue's contention that such provisions are “contingencies” or “unascertained liabilities”.

It is submitted that having regard to the restricted nature of the claim which is more by way of appreciation of the precedents, the course adopted by the ITAT was not appropriate; rather it should have

decided the issue.

Learned counsel for the respondent urges that the issue with respect to such provision – i.e. for liquidated damages and warranty is pending adjudication before the ITAT for another year in the assessee's case.

Having regard to the statements made, the Court is of the opinion that the impugned order of the ITAT requires to be modified; instead of the remand to the CIT(A), the Court hereby directs the ITAT to decide the issue with respect to provision for liquidated damages and warrants – claimed by the assessee as expenses, in this appeal along with the appeals for AY 2005-06, said to be pending before it. The parties shall be present before the ITAT on 28.11.2017 when the other appeals are listed.

The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 23, 2017/ajk