IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.1.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case No.1834 of 2008

India Nippon Electricals Ltd.,
Aalim Centre,
82, Dr.Radhakrishnan Salai,
Chennai 600 004. .... Appellant

Vs.

The Assistant Commissioner of
Income Tax, Company Circle II(3)
Chennai 600 034. ..... Respondent

Tax Case filed under Sec. 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 10.4.2008 in ITA No.1055/Mds/2006, against the order dated 18/01/2006 passed by the Commissioner of Income Tax Appeals III, Chennai 600 034 made in ITA NO.279/2005-06/CIT(A)III and against the order dated 24/03/2005 passed by the Assistant Commissioner of Income Tax, Company Circle II(3), Chennai-34.

For Appellant : Mr.R.Vijayaraghavan for
M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT

(Judgment of the court was delivered by DR.ANITA SUMANTH,J.)

Assessee has come up in appeal, challenging an order of the Income Tax Appellate Tribunal dated 10.4.2008 in respect of Assessment Year 2002-2003.

2. The Tax Case stands admitted on the following questions of law:-

i) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the Provision for Warranty is not an ascertained liability ignoring the actual expenditure incurred and hence not an allowable deduction?
ii) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the expenditure incurred towards buy back of shares is not an allowable deduction?

3. The first question of law raised and admitted for consideration relates to allowance of provision created towards Warranty viz., whether the provision of Warranty is an ascertained liability and whether such expenditure incurred is an allowable deduction.

4. The appellant had created a provision for a sum of Rs.32,49,192/- towards Warranty. A sum of Rs.19,85,097/- was reversed as excess provision and the balance of Rs.12,64,0995/- claimed on actual basis. The provision was disallowed by the Assessing Officer as unascertained. In appeal, the Commissioner of Income Tax (Appeals) was of the view that the assessee had followed a scientific method for ascertaining the claim towards Warranty and, relying on a decision of this High Court in Commissioner of Income Tax v. Beema Manufactuers Private Limited (130 Taxman 400), allowed the same. The Revenue preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal, following the decision of this High Court in CIT v Rotark Controls India (P) Limited ((2007) 293 ITR 311), decided the issue in favour of the Revenue. It is in the aforesaid circumstances that the assessee is before us in Tax Case under section 260A of the Income Tax Act ('Act').

5. The decision of this Court in the case of Rotark Controls (supra) relied on by the Tribunal has been reversed by the Supreme Court in the case of Rotark Controls India (P) Limited v. CIT ((2009) 314 ITR 62). The judgement settles the position that though the principle of estimation of a contingency liability is not the norm, one can take into account the nature of business carried on, the historical trend of the business and the method of evaluation of claims over the years in determining whether the provision would be ascertained or otherwise. In the present case, the provisions created towards warranty is based on systematic maintenance of data and proper scientific evaluation of the same.

6. In the light of the judgment in the case of Rotark Controls India (supra), question No.1 is answered in favour of the assessee and against the Revenue.

7. As far as the second question of law is concerned, Mr.Vijayaraghvan, fairly concedes that the issue has to be held against the assessee in the light of the judgments of the Supreme Court in Brooke Bond India Ltd. v. CIT (225 ITR 798 (SC)) and Punjab State Industrial Development Corporation Ltd. v. Commissioner of Income Tax (225 ITR 792 (SC)). Question No.2 is answered against the assessee.

8. In fine, the Tax Case is allowed in part, as indicated above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Ssk/sl.

To

1. Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai.

2. The Assistant Commissioner of
Income Tax, Company Circle-II(3)
121, M.G. Road, Chennai 600 034.

3.The Commissioner of Income Tax Appeal III,
Chennai-34.

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srg 5/3/2019