IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-01-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

T.C.A.No.970 of 2010

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

Rane TRW Steering Systems Ltd. ... Respondent

Appeal filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 26.02.2010, passed in ITA No.0382/Mds/2009.

Against the order of the Assistant Commissioner of Income Tax Company Circle V(3), Chennai made in PAN/G.I.NO. AAACR3147C for the Assessment Year 2004-05 against the proceedings of the Commissioner of Income Tax, Chennai III in C.No.3033/9/III/2006-07 dated 07.01.2009 for the Assessment Year 2004-05.

For appellant : Mr.T.Ravikumar,
Senior Standing Counsel.

For respondent : Mr.R.Vijayaraghavan

JUDGMENT

[Judgment of the Court was delivered by Dr.Vineet Kothari,J.]

Revenue has filed this appeal under Section 260A of the Income Tax Act, in short, 'the Act', aggrieved by the order, dated 26.02.2010, passed by the Income Tax Appellate Tribunal, in short, 'the Tribunal', Madras 'D' Bench, in ITA No.0382/Mds/2009, for the Assessment Year 2004-2005.

2. The question of law, on which the appeal was admitted, is quoted below :

> "Whether on the facts and circumstances of the case, the Tribunal was right in quashing the revision order of the CIT with respect to the provision for warranty ?"

3. The learned Tribunal below has found that the provision made for warranty given by the assessee, who manufactures and sells auto components to its customers, to the extent of Rs.303.17 lakhs for the year in question was based on the percentage of the turnover and, therefore, the same was computed, based on a scientific method adopted by the Assessee consistently from year to year, and, following the decision of the Hon'ble Supreme Court in the case of CIT v. Rotork Controls India Ltd. (293 ITR 311), the Tribunal held that the proceedings initiated by the Revenue under Section 263 of the Act disallowing the provision for warranty was not justified. The relevant extract of the order of the learned Tribunal is quoted below for ready reference :

> "6. We have heard the rival submissions and perused the orders. We will first consider the issue relating to warranty provisions. It is an admitted position that a questionnaire was issued to the assessee on 18.10.2006 through which the Assessing Officer had called for a detailed note on the provision for warranty in the course of assessment. Para 6.2 of the impugned order of the ld. CIT clearly brings out this position. Ld. CIT has also mentioned at para 8.2 of this order that assessee had filed a detailed note as Annexure VI to its reply dated 2.11.2006 to the Assessing Officer, wherein process adopted for ascertaining the provision was given by it and assessee had also furnished a work out of the warrant provisioning. Once the details regarding the provision was asked by the Assessing Officer and reply furnished by the assessee, just because the Assessing Officer did not mention this claim in the assessment order would not mean that he had not applied his mind on this issue. Once the Assessing Officer calls for detailed note on provision for warranties, it is automatic that reply thereto by the assessee would be considered by him. Even in Schedule R, Note No.7 which is a part of the final accounts of assessee company,

it is mentioned that provision for product warranty claims were estimated at a percentage of sales on past experience. Tax auditors had clearly specified that such provision was not a contingent liability and assessee had relied on decisions of this Tribunal as well as those of Hon'ble Jurisdictional High Court in this regard. No doubt, at the time when the ld. CIT had passed impugned order u/s 263, decision of Hon'ble Jurisdictional High Court in M/s Rotork Controls India Ltd (supra) was on the side of the Revenue, that the provision for warranty claim was a contingent liability. But nevertheless this would not be sufficient to hold that the order of the Assessing Officer was erroneous at the time when he passed such order, since the decision of the Hon'ble Jurisdictional High Court came after the date of passing of the assessment order. Even otherwise, the Hon'ble Apex Court in the case of M/s Rotork Controls India Ltd (supra) has reversed the decision of the Hon'ble Jurisdictional High Court and held that where the past indicated that goods being manufactured had showed defects therein, then provision made for warranty in respect of such goods would be entitled to deduction u/s 37 of the Act. Only three conditions specified by the Hon'ble Apex Court are that there is a present obligation as a result of past event, there is probability that the outflow of resources would be required to settle such obligation and a reliable estimate would be made on the amount of obligation. Here the assessee has delineated the process adopted for ascertaining the provision, as also furnished work-out of warranties and had submitted it to the Assessing Officer and assessment was completed obviously after considering such records submitted by the assessee. Therefore, it cannot be considered that such order of the Assessing Officer suffered from any error which would also be prejudicial to the interest of the revenue. However, vis-a-vis second issue which is on the carry forward of loss of amalgamating company, nowhere in the return of income nor in computation statement, assessee had pointed out such losses to be that of amalgamating company and set off as to have been claimed u/s 72A of the Act. Even in the audit report, this factum was not mentioned. No doubt, assessee had filed a copy of the order of the High Court approving the amalgamation but this by itself would not be sufficient to hold that there was sufficient disclosure by the assessee and application of mind by the Assessing Officer. The Hon'ble Jurisdictional High Court would have approved a scheme of amalgamation, but quantum of loss that would be available to the amalgamated company for set off from that of amalgamating company would require examination. There is nothing on record to show that any such details were filed by the assessee or any examination was done by the Assessing officer in this regard. Therefore, we are of the opinion that the ld. CIT was right in taking the view that the order of the Assessing Officer was erroneous in so far as it was prejudicial to the interest of the revenue vis-a-vis the issue of carry forward amalgamated loss.”

4. Learned counsel for the appellant-Revenue, relying upon the decisions of this Court in the case of Renowned Auto Products Mfrs. Ltd. v. Income Tax Officer, ((2013) 354 ITR 127) (Mad), and Commissioner of Income Tax v. Forbes Campbell Finance Ltd., ((2013) 352 ITR 602 (Mad), urged before us that the provision made for the year in question to the extent of Rs.303.17 lakhs was excessive when compared to the actual claims made by the customers against the provision made for warranty charges in the previous years and, therefore, the Commissioner was justified in disallowing the same in Section 263 revisional proceedings for the year in question.

5. On the other hand, learned counsel for the respondent-assessee submitted that the assessee had been consistently following the practice of making a provision for warranty for about 1.59 percentage of the total turnover of the auto parts supplied to the customers and since there was a substantial increase in the turnover for the assessment year in question to Rs.228 crores as compared to Rs.165 crores in the preceding year, the quantum of provision had naturally gone up. The learned counsel also submitted that since the said method was consistently followed by the assessee year after year, making of such a provision on the said scientific and reasonable basis could not have been questioned by the Revenue, much less by initiating revisional proceedings under Section 263 of the Act.

6. Having heard the learned counsel for the parties, we are of the opinion that the appeal filed by the Revenue has no merit and the learned Tribunal was justified in setting aside the revisional proceedings under Section 263 of the Act. The judgments relied upon by the learned counsel for the Revenue do not apply on all fours to the facts of the present case, as, in the facts before the Court in the judgments cited, the Court had clearly noticed that the method of making a provision was neither explained by the assessee before the Tribunal nor was the same examined by the assessing authority and since an ad-hoc provision was only made by the assessee for such warranty, the assessing authority was justified in disallowing the same. We do not find similar facts before us in the present case. On the contrary, we find that the provision made on the basis of turnover on same or similar percentage year after year follows a rationale and scientific method of making a provision for such warranty. The actual claims made by the customers against such warranty provision cannot be the sole criteria, to be labelled as the scientific method, as contended by the Revenue, before us. It is the consistency and the commercial prudence of the assessee, in which the assessee chose to make a provision for warranty based on his total turnover figure, which cannot be said to be un-scientific, by any stretch of imagination. Such decisions, taken in normal commercial prudence, cannot be interfered with or superseded by the tax authorities.

7. Therefore, we are of the view that the learned Tribunal was perfectly justified in holding that the revisional proceedings under Section 263 of the Act in such circumstances were not at all justified. Accordingly, we answer the question of law, framed above, in favour of the assessee and against the Revenue.

8. This Appeal, filed by the Revenue, is liable to be dismissed and the same is, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
Madras 'D' Bench.

2. The Assistant Commissioner of Income Tax,
   Company Circle V(3), Chennai.

3. The Commissioner of Income Tax, Chennai III.

+1 cc to Mr.T.Ravikumar, Advocate Sr.No.795
+1 cc to Mr.Subbraya Aiyar, Advocate Sr.No.1384

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CSL/08.02.2019