

Acit 3(1)(2), Mumbai vs Gran Electronics P.Ltd, Mumbai on 22 October, 2018

"G"

IN THE INCOME TAX APPELLATE TRIBUNAL "G"

BENCH,

MUMBAI

BEFORE SHRI JOGINDER SINGH, VICE PRESIDENT
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

./I.T.A. No.3518/Mum/2017

(/ Assessment Year : 2011 -12)

ACIT 3(1)(2)
R.No 607, 6 t h floor,
Aayakar Bhavan,
Mumbai-400020

/ M/s. Gran Electronics
Pvt. Ltd.,
v. C-171, Mittal Court,

Nariman Point,
Mumbai-400021
./ PAN: AAACH0383A

(/Appellant)

..

(/ Respondent)

Revenue by:

Shri. Chaudhary Arun Kumar
Singh

Assessee by :

Shri. Mayank Chauhan &
Shri. Bhupendra Karkhanis

/Date of Hearing : 10.10.2018

/Date of Pronouncement : 22.10.2018

/ O R D E R

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 3518/Mum/2017, is directed against appellate order dated 27.01.2017 passed by learned Commissioner of Income Tax (Appeals)-8, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2011-12, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 10.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2011-12.

I.T.A. No.3518/Mum/2017

2. The grounds of appeal raised by Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

1. "Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has

erred in deleting the disallowance of Rs. 82,51,140/- being provision for warranty & maintenance expenses without appreciating the fact that the said provision is in the nature of unascertained liability only and needed to be added back to the total income as well as to the book profit of the assessee.

2. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.

3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The assessee is engaged in the business of manufacturing & trading of electrical and electronic appliances. The AO observed during the course of assessment proceedings u/s. 143(3) r.w.s. 143(2) that the assessee has not added back the provision of warranty expenses amounting to Rs. 82,51,140/- out of total provision of Rs. 2,22,51,139/- debited to Profit and Loss Account while computing the income. The assessee was asked by the AO to explain the same , to which the assessee submitted before the AO as under:-

".....We are in business of manufacture and trading in Electrical & Electronic Appliances which involves substantial material cost which varies from time to time during the warranty period, depending on date of sale of the product and we are bound to rectify any defects reported. by the customers. Hence, it is a liability in present and obligation arises at the time of sale itself.

It is submitted that the same is not to be added back in Computation of Book Profits u/s 115JB of the Act also for following reasons :

I.T.A. No.3518/Mum/2017 The provision of warranty is not a provision for meeting unascertained liability within the meaning of clause (c) of Explanation I to section 115JB(2) of the Act. A warranty provision is a liability in present and is ascertained based on the customers' claims record. There is obligation on the company to attend to warranty claims which arise no sooner the sales are affected.

We rely on the following decisions wherein it has been held that the liability under warranty claims arises no sooner the sales are affected, which has definitely arisen in the accounting year and is allowable on estimate on the basis of past record.

1. IBM India Ltd v. CIT(A) 105 ITD 1 (Bang.)
2. Voltas Ltd. v. DCIT 64 ITD 232 (Mum)
3. Majestic Auto Ltd. 296 ITR 309 P&H
4. Usha Martin Inds Ltd. 288 ITR 63, AT., Cal. S.B.

5. Bharat Earth Movers, 245 ITR 428 S, C. which held that liability had actually arisen and deduction is allowable even if quantified and paid later.

6. Rotork Controls (I) Ltd. 314 ITR 62 S.C. - allowed as integral part of sale price.

Thus, warranty provision cannot be said to be a provision to meet an unascertained liability and hence does not get covered under clause (c) of the Explanation I to section 115JB(2) or any other clause to that section. Hence, the same cannot be added for computing the book profit and tax payable u/s 115JB. We also rely upon the decisions of Supreme Court in the cases of Apollo Tyres Ltd., V. CIT, 255 ITR 273 & Malayala Manorama Co Ltd. 300 ITR 251 affirming it, as per which no adjustment other than those specifically given in section can be made while working out "book profit"

Under the above circumstances, it is submitted that provision for warranty can not be added while computing book profit under section 115JB of the Act also....."

4. The AO rejected the contentions of the assessee and held that Rs. 82,51,140/- is not a provision for warranty & maintenance expenses rather it is an excess provision for warranty & maintenance expenses which was written back during the year, but not credited to Profit and Loss Account. It was observed by the AO that the assessee I.T.A. No.3518/Mum/2017 was required to add back such written back provision while computing the total income under the normal provisions. The AO directed to add back the said excess provision for warranty and maintenance expenses amounting to Rs. 82,51,140/- to the income of the assessee under the normal provisions as in the view of the AO the same is unascertainable and contingent liability. The AO also observed that the assessee has also not followed any scientific and consistent method to ascertain the expenses that could accrue on account of warranty and maintenance. The AO thus directed to add back the said provision which is in excess of the warranted expenses to the tune of Rs. 82,51,140/- to the income of the assessee both under the normal provisions as well while computing book profit u/s 115JB of the 1961 Act, as in the opinion of the AO the said amount of Rs. 82,51,140/- towards warranty provision is purely a provision towards an unascertained liability and therefore is required to be added to income of the assessee both under the normal provisions as well under the provisions of Section 115JB of the 1961 Act, vide assessment order dated 10.03.2014 passed by the AO u/s 143(3) of the 1961 Act.

5. Aggrieved by the assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal before learned CIT(A) and made detailed submissions as under:-

"1.1 During the relevant previous year the appellant had made incremental provision for warranty and maintenance expenses by debiting a sum of Rs.82,51,140/- (net) in the Profit and Loss A/c for meeting the claims of customers to whom the products have been sold. The details of such provision for warranty and maintenance expenses are given in Note No. 13 of Schedule 15 of Notes to Accounts and the balance in provision is reflected in schedule 8B of provisions. Thus, the said provision is debited to profit and loss account to arrive at the Net Profit and the book profit u/s. 115JB of the Act.

1.2 It is submitted that the appellant company is engaged in the business of Manufacturing and Trading of Electrical and Electronic appliances. On account of the I.T.A. No.3518/Mum/2017 warranty given with the products sold by the appellant Company, it has to maintain a warranty provision for meeting the warranty claims of the customers. Such claims arise after the sales are affected and these provisions are already inbuilt in the sale price. Further, considering the nature of business of the company, it will be appreciated that the warranty claims from the customers are bound to occur year after year in different degrees. The amount of such claims likely to arise on the number of products sold is determined based on past experience and history. Therefore, the said provision for expenses is an allowable deduction.

1.3 It is submitted that the appellant company has made the said provision in accordance with the requirements of Accounting Standard-29 on Provisions, Contingent Liabilities and Contingent Assets (AS-29) and on the basis of the past experience in respect of such expenditure of the appellant company. AS-29 came into effect in respect of accounting periods commencing on or after 1-4-2004. Paragraph 14 of the AS 29 is as under:

"14. A provision should be recognized when:

(a) an enterprise has a present obligation as a result of a past event;

(b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation;

and

(c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision should be recognised."

1.4 Thus, a provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized.

Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow of resources from the enterprise embodying economic benefits.

A past event that leads to a present obligation is called as an obligating event which is an event that creates an I.T.A. No.3518/Mum/2017 obligation which results in an outflow of resources. It is only those obligations arising from past events which exist independently of the future conduct of the business of the enterprise, that are recognized as a provision. For a liability to qualify for recognition, there must be not only present obligation but also the probability of an outflow of

resources to settle that obligation. Where there are a number of obligations (e.g., product warranties or similar contracts), the probability that an outflow will be required in settlement is determined by considering the said obligations as a whole. In this connection, it may be noted that in the case of a manufacture and sale of one single item, the provision for warranty can constitute a contingent liability not entitled to deduction under section 37. However, when there is manufacture and sale of an army of items running into thousands of units of sophisticated goods, the past event of defects being detected in some of such items leads to a present obligation which results in an enterprise having no alternative but to settle that obligation. In the instant case, the assessee had been manufacturing and selling electrical and electronic appliances. It has been in the business since past many years. Over the years, the assessee had been manufacturing these consumer electronic appliances in large numbers. Being sophisticated items, customers prefer to purchase these items only with warranty. Therefore, warranty became an integral part of the sale price of the valve actuator(s). In other words, warranty stood attached to the sale price of the product. Therefore, warranty provision needed to be recognized because the assessee was an enterprise having a present obligation as a result of past events resulting in an outflow of resources. A reliable estimate is made of the amount of the obligation. In short, all the three conditions for recognition of a provision are satisfied in the instant case.

1.5 A company dealing in variety of items may give warranty for a specified period from the date of supply. The said company may consider following options: (a) account for warranty expense in the year in which it is incurred; (b) it makes a provision for warranty only when the customer makes a claim; and (c) it provides for warranty at 2 per cent of turnover of the company based on past experience (historical trend). The first option would be unsustainable since it would tantamount to accounting for warranty expenses on cash basis, which is prohibited both under the Companies Act, 1956 as well as by the Accounting Standards which require accrual concept to be followed. The second option is also inappropriate, since it I.T.A. No.3518/Mum/2017 does not reflect the expected warranty costs in respect of revenue already recognized (accrued). In other words, it is not based on a matching concept. Under the matching concept, if revenue is recognized, the cost incurred to earn that revenue including warranty costs has to be fully provided for. In the instant case, when consumer appliances were sold and the warranty cost was an integral part of that sale price, then the assessee had to provide for such warranty cost in its account for the relevant year, otherwise the matching concept would fail. In such a case, the second option is also inappropriate. Under the circumstances, the third option is the most appropriate because it fulfills accrual concept as well as the matching concept.

The assessee company makes assessment of the warranty provisioning policy and scrutinises the historical trend of warranty provisions made and the actual expenses incurred against it. On this basis, a sensible estimate is made. The warranty provision for the products is based on the estimate at the year end of future warranty expenses. Such estimates are reassessed every year. Hence, on the facts and circumstances of the instant case, provision for warranty is rightly made by the assessee because it has incurred a present obligation as a result of past events. There is also an outflow of resources. A reliable estimate of the obligation is also possible. Therefore, the assessee had incurred a liability during the relevant assessment years and it was entitled to deduction under section 37(1). Therefore, all the three conditions for recognizing a liability for the purpose of provisioning stood

satisfied in the instant case.

1.6 Thus, the company has made the provision for warranty and maintenance expenses as the same falls within the above criteria and meets the conditions stated in AS-29. The company has made such provision on regular basis in earlier as well as subsequent years, which is evident from the accounts of the company for subsequent years. A sum of Rs.10,44,118/- is appearing as provision for warranty & maintenance expenses under the head Current Liabilities and Provisions on the liability side of Balance Sheet of the appellant company as at 31st March, 2011. Note No. 13 of notes to account gives the details of provision for warranty & maintenance, which is reproduced below:

"As-, requires by Accounting Standard 29 "Provisions, Contingent Liabilities and Contingent Assets" issued by institute of Chartered Accountants of India, the disclosure I.T.A. No.3518/Mum/2017 with respect to provision for warranty and maintenance expenses is as follows:

Rupees

- a) Amount at the beginning of the year 74,13,640
- b) Additional provision made during the year 82,51,140
- c) Amount used 72,07,022
- d) Amount at the end of the year 84,57,758"

The warranty in many of the products runs for more than one year. Thus, the provision made in the books of account is based on past experience and on realistic basis and cannot be said to be unascertained liability.

1.7 Reliance in this regard is placed on the following decisions:

- a) Rotork Controls India (P.) Ltd, v. CIT 314 ITR 62 (SC) wherein the Hon'ble Supreme Court has held that if the historical trend indicates that a large number of sophisticated goods were being manufactured in the past and if the facts established show that defects existed in some of the items manufactured and sold, then the provision made for warranty in respect of the army of such sophisticated goods would be entitled to deduction from the gross receipts under section 37.
- b) IBM India Ltd. v. CIT(A) 105 ITD 1 (Bang.) Wherein it was held that the liability towards warranty is inbuilt in the sale price itself and so the liability is not contingent but an ascertained one and to be allowed in the year of sales.
- c) Commissioner of Income-Tax, Patiala v. Jay Bee Industries [2008] 171 Taxmann 386 (PUNJ. & HAR.) Wherein it was held that provision of warranty for

repairs/replacement is an existing liability at time of sale and is allowable as deduction.

d) Chicago Pneumatic India Ltd. v. DCIT 15 SOT (Mum.) Wherein it was held that, the provision for warranty claims was made on the basis of claims received and report of service engineers. The followed the method of making provision in a scientific manner based upon the terms and conditions of warranty agreement, hence, it was an ascertained liability The provision made was deductible I.T.A. No.3518/Mum/2017 even if the actual amount incurred was a little less than the provision.

e) M/s Sony India (P) Limited v. Deputy Commissioner of Income Tax 118 TTJ 865 (Del) Wherein it was held that no addition can be made to the book profits u/s. 115JB of the Act in the case of provision for warranty expenses as the same constitute an ascertained liability.

f) Indian Oil tanking Ltd, v. ITO, 10(3)(3), Mumbai [2009] 120 ITD 237.

Wherein it was held that A.O. could not make addition of provision of performance warranties to net profit of assessee for arriving at its book profit for the purpose of section 115JB.

g) Hero Briggs & Stratton Auto Ltd. v. CIT 161 Taxman 127 (Delhi) Wherein it has been held that once assessee is maintaining his account on mercantile system and a liability has accrued, though to be discharged at a future date, it would be proper to allow deduction of same while working out profit and loss accounts of his business under section 115JA.

h) Voltas Ltd. v. DCIT 64 ITD 232 (Mum.) Wherein it was held that the liability on account of warranty claim for the unexpired period was in present and although it was liable to be discharged at a future date, the taxpayer was entitled for deduction on account of provision made for the said liability. He also held that the said provision for warranty being not for an unascertained liability, the addition thereof made by AO while computing the book profit u/s 115JB was not permissible.

In view of the above, the assessee prays that the expenditure in form of provision for warranty expenses be allowed as business expenditure . 37(1) of the Act being wholly and exclusively incurred for business purposes.

2.0 Reg.: Ground of Appeal No. 2 - Addition of Rs.82,51,140/- to book profit computed u/s. 115JB being provision for warranty & maintenance expenses debited to Profit and Loss Account:

2.1 During the relevant previous year the appellant had debited a sum of Rs.82,51,140/- in the Profit and Loss A/c as provision for warranty & maintenance expenses for I.T.A. No.3518/Mum/2017 meeting the claims of customers to whom the products have been sold.

2.2 The learned assessing officer added back the said provision for warranty & maintenance expenses for the purpose of calculating book profit u/s. 115JB. He held that the said provision was for meeting unascertained liabilities within the meaning of clause (c) of Explanation I to section 115JB (2) of the Income Tax Act, 1961.

In this regard, it is submitted that the appellant company is engaged in the business of Manufacturing and trading of consumer electrical and electronic appliances. On account of the business requirement, the appellant Company has to maintain a warranty provision for meeting the warranty claims of the customers. Such claims arise after the sales are affected and these provisions are already inbuilt in the sale price. Further, considering the nature of business of the company, it will be appreciated that the warranty claims from the customers are bound to occur year after year in different degrees. Therefore, the said liability of provision cannot be said to be unascertained in nature and hence is not covered within meaning of clause (c) of Explanation 1 to section 115JB(2) of the Act.

2.3 It is submitted that the appellant company has made the said provision in accordance with the requirements of Accounting Standard-29 on 'Provisions, Contingent Liabilities and Contingent Assets' (AS-29) and on the basis of the past experience in respect of such expenditure of the appellant company. AS-29 came into effect in respect of accounting periods commencing on or after 1-4-2004. Paragraph 14 of the AS 29 is as under:

"14. A provision should be recognized when:

(a) an enterprise has a present obligation as a result of a past event:

(b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation;

and

(c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision should be recognised."

Thus, the company has made the provision for warranty and maintenance expenses as the same falls within the above criteria and meets the conditions stated in AS-29.

I.T.A. No.3518/Mum/2017 The company has made such provision on regular basis in subsequent years, which is evident from the accounts of the company for subsequent years. A sum of Rs. 10,44,118/- is appearing as provision for warranty & maintenance expenses under the head Current Liabilities and Provisions on the liability side of Balance Sheet of the appellant Company as at 31st March, 2011. Note No. 13 of notes to account gives the details of provision for warranty, which is reproduced below:

"As requires by Accounting Standard 29 "Provisions, Contingent Liabilities and Contingent Assets" issued by institute of Chartered Accountants of India, the disclosure with respect to provision for warranty and maintenance expenses is as follows:

Rupees

- a) Amount at the beginning of the year 74,13,640
- b) Additional provision made during the year 82,51,140
- c) Amount used 72,07,022
- d) Amount at the end of the year 84,57,758"

The warranty in many of the products runs for more than two years. Thus, the provision made in the books of account is based on past experience and on realistic basis and cannot be said to be unascertained liability.

2.4 It is submitted that section 115JB of the Income Tax Act, 1961 prescribes the payment of Minimum Alternate Tax on book-profits of the company. The term "book profit"

means the net profit as shown by the profit and loss account prepared in accordance with the Part II and III of Schedule VI of the Companies Act, 1956. The sections 210 and 211 of the Companies Act, 1956 read with Schedule VI require every company to prepare its accounts in accordance with the Accounting Standards issued by National Advisory Committee on Accounting Standards or by Institute of Chartered Accountants of India. It will be appreciated that the said provision is required to be made as per AS-29. Since, in the present case, book-profits have been computed by complying with the requirements of AS- 29 and in accordance with provisions of the Companies Act, 1956; no further additions can be made to the book- profit under section 115JB for the purpose of computing minimum alternate tax payable by the company.

2.5 Furthermore, it is also submitted that as per explanation (c) to section 115JB, Liabilities other than I.T.A. No.3518/Mum/2017 ascertained liabilities, i.e. only unascertained liabilities can be added back to the profit for calculating the book profit under section 115JB. The word 'ascertained' as per the Webster's II New Riverside University Dictionary means 'to make certain'. Thus, ascertained liability means a liability which is certain or known. In the instant case provisions made for granting warranty by the appellant is for ascertained liability. Therefore, the said provision for warranty liability being made on basis of calculation as per past experience cannot be added back while computing book profit under section 115JB. Reliance is placed on the decision in the case of Bharat Earth Movers (SC) 112 Taxman 61/ 245 ITR

428. which states that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in present though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.

2.6 Further, the accounts of a company are prepared by following the provisions of the Companies Act 1956 and section 209 (3) of the companies Act directs that accounts of a company should show fair view of the state of affairs and the provisions of Part II of schedule VI to the Companies Act had to be applied in the context of the method of accounting followed by the appellant. If cash method of accounting is followed, it will not be necessary to make a provision for outstanding liabilities/assets. As per Companies Act, the every company is required to follow mercantile method of accounting i.e. accrual basis of accounting. If mercantile method of accounting is followed, it will be necessary to make provision for all outstanding income and outstanding liabilities in the accounts. In order to present a 'true and fair view' of the profit and loss of the business under mercantile method, it will be necessary to ensure that all liabilities are adequately provided. Therefore, in order to make compliance with various sections of the Companies Act, the appellant has made provision for liabilities/assets by following the mercantile system of accounting.

2.7 In the instant case, the appellant company, has prepared the profit and loss account as per Parts II and Part III of Schedule VI to the Companies Act, the profit and I.T.A. No.3518/Mum/2017 loss account was audited and certified by the statutory auditors of the company and approved by the company in general meeting and there after filed before the Registrar of Companies who has the statutory obligation to examine and to be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. There is also no adverse opinion by the auditors in this regard. Sub-section (2) of section 115JB does not empower the Assessing officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. Therefore, the Learned Assessing Officer, in the present case has acted against the provisions of the Act and wrongly added back these provisions while computing book profit. We would like to invite your attention towards the decisions of the Hon'ble Delhi High Court and Hon'ble Income Tax Appellant Tribunal on the same identical facts:

1. CIT vs. Becton Dickinson India (P) Limited [Delhi High
2. Samay Electronics (P) Ltd. Vs. DCIT [2006] 99 ITD 236 (Rajkot)
3. ACIT Vs. BalarampurChini Mills Ltd [2007] 109 ITD 146 (Kol).

The Hon'ble Supreme Court in Apollo Tyres Limited Vs. CIT [2002] 255 1TR 273 (SC) had held the same rationale as explained above. The Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act. Where the accounts of a company

has been prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act and section 115J is made for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. Subsection (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company and accordingly held that while determining the 'book profit' under section 115J, the Assessing Officer could not recompute the profits in the profit and loss account by excluding provisions made for arrears of depreciation.

2.9 Reliance is also placed on the following decisions:

a) M/s Sony India (P) Limited v. Deputy Commissioner of Income Tax 118 TTJ 865 (Del) I.T.A. No.3518/Mum/2017 Wherein it was held that no addition can be made to the book profits u/s 115JB of the Act in the case of provision for warranty expenses as the same constitute an ascertained liability.

b) IBM India Ltd. v. CIT(A) 105 ITD 1 (Bang.) "

Wherein it was held that the liability towards warranty is inbuilt in the sale price itself and so the liability is not contingent but an ascertained one and to be allowed in the year of sales.

c) Commissioner of Income-Tax, Patiala v. Jay Bee Industries [2008] 171 Taxmann 386 {PUNJ. & HAR.) Wherein it was held that provision of warranty for repairs/replacement is an existing liability at time of sale and is allowable as deduction.

d) Deputy Commissioner of Income-Tax, Circle 4(1), New Delhi v. LG Electronics (I) Ltd. [2009] 29 SOT 167 (Delhi) Wherein it was held that where the assessee had made provision of warranty liability having regard to past factor of actual expenses incurred by it towards warranty liability and also the assessee had worked out amount of liability by applying a multiplying factor on total sale made during year on basis of past result and the aforesaid method had been followed by assessee uniformly right from first year of commencement of production, the liability accrued to assessee though to be discharged at a future date and thus it was to be allowed as deduction while working out profits and gains of assessee's business.

e) Indian Oiltanking Ltd. v. ITO , 10(3)(3), Mumbai [2009] 120 ITD 237.

Wherein it was held that A.O. could not make addition of provision of performance warranties to net profit of assessee for arriving at its book profit for the purpose of section 115JB.

f) Hero Briggs & Stratton Auto Ltd. v. CIT 161 Taxman 127 (Delhi) wherein it has been held that once assessee is maintaining his account on mercantile system and a liability has accrued, though to be discharged at a future date, it would be proper to allow deduction of same while working out

profit and loss accounts of his business under section 115JA.

2.10 As regards the retrospective amendment to section 115JB by Finance Act (No. 2) 2009 w.e.f. 1-4-2001, by I.T.A. No.3518/Mum/2017 inserting clause (i) to Explanation 1 of the said section, we have to submit that the same applies to provision made for diminution in value of any asset.

It will be appreciated that this provision is in respect of a liability and not for value in any asset.

2.11 In view of the above submissions and the judicial decisions, the appellant respectfully prays that provision for warranty should not be added back while computing book profit u/s 115JB of the Act as the same is an ascertained provision."

6. The contentions as were made by the assessee before learned CIT(A) found favour with Ld. CIT(A) who was pleased to delete the additions as were made by the AO , vide appellate order dated 27.01.2017 passed by learned CIT(A), by holding as under:-

"5. DECISION I have carefully considered the facts of the case, assessment order, submissions and contention of the appellant as summarised above and the relevant case laws pertaining to the issues to be decided .

5.1.1 These grounds relate to disallowance of Rs. 82,51,140/- being amount of provision for warranty & maintenance expenses and consequential addition to book profit u/s 115JB. The assessing officer has discussed this issue at para 4 of his order. He has observed that the impugned amount is not provision for warranty and maintenance but excess provision which has written back during the year but not credited in P&L account. He further observed that the appellant has not followed any scientific and consistent method to ascertain the expenses that could accrue on account of warranty and maintenance. With these observations, the assessing officer has made the disallowance and consequential addition to book profit u/s 115 JB.

5.1.2 There is no dispute that the appellant company is engaged in the business of manufacturing and trading in electrical and electronic appliances. On account of the warranty given with the products sold by the appellant Company, it has to maintain a warranty provision for meeting the warranty claims of the customers. Such claims arise after the sales are affected and these provisions are already inbuilt in the sale price. Further, considering the nature of business of the company, it will be I.T.A. No.3518/Mum/2017 appreciated that the warranty claims from the customers are bound to occur year after year in different degrees. The amount of such claims likely to arise on the number of products sold is determined based on the past experience and history.

5.1.3 I have considered the assessing officer's order as well as the appellant's authorised representative's submission. I find that the appellant submits that the provision has been made for an ascertained liability based on past experience. The

product is covered under warranty. In the past, provisions have been made and utilised for payments under warranty. Thus, the provision cannot be said to be for any unascertained liability. Even the judgements relied upon by the appellant clearly hold that the provision for warranty is not an unascertained liability and hence, cannot be added to book profit computed u/s. 115JB of the Act. It is thus recognised that a provision for warranty sells a number of items and past experience shows that in some cases defects are found resulting in settling a warranty obligation. The liability has to be estimated in a reliable manner based on past experience. In view of the above, clause 'c' of section 115JB of the Act which deals with unascertained liabilities is not applicable in the afore-stated facts of the appellant's case. Hence, the addition so made by the assessing officer is deleted. Thus, this ground of appeal is allowed.

5.1.4 I find that it is not in dispute that the vast array of products manufactured by the appellant are sophisticated consumer appliances. The appellant has also been in the business for long enough to have known the trend of defects. It is also a known fact that consumers of expensive appliances give preference to goods with warranty and hence, the warranty becomes an integral part of the sale price for the manufacturer because of the brand image and, therefore, the sales turnover depends on such warranties. Therefore, I find that the principles laid down in the judgement of Hon'ble Supreme Court in Rotork Controls India (P) Ltd. V. CIT 314 ITR 62 (SC) are applicable in the instant case.

5.1.5 I also find that the assessing officer has not given due consideration to the principles laid down by Hon'ble Supreme Court and other judicial authorities. He has dismissed the contentions of the appellant in a summary manner. The assessing officer has not required the appellant to give any statistical analysis or basis of calculating provisions for warranty. He has not given any reasons to refute the para 13 of Notes to Accounts of the appellant's duly audited accounts. Nothing has been brought forth by the assessing officer to disprove these observations made by an auditor. Therefore, I find no reason to differ from the decision of my Id. Predecessor in appellant's appeal for AY 2010-11 on the same issue with similar facts and I.T.A. No.3518/Mum/2017 circumstances and decided in Appeal no. CIT(A)-7/DCIT 3(1)/IT- 33/12-13 order dated 03.05.2013. Accordingly, these grounds are allowed."

7. Aggrieved by the deletion of additions by learned CIT(A) vide appellate order dated 27.01.2017, Revenue has come in an appeal before the tribunal . The Ld. DR relied upon the assessment order passed by AO and submitted that the AO made the additions as the assessee did not adopted scientific method for computing provision for warranties and maintenance expenses. It was submitted by learned DR that an amount over and above expenses incurred toward warranty & maintenance are required to be added back to the income of the assessee both under the normal provisions as well as under the provision of section 115JB of the 1961 Act while computing book profits for paying minimum alternate tax. The Ld. Counsel for the assessee on the other hand submitted that provision for warranty and maintenance expenses were computed on scientific basis

based on past experience as to claims received from customers towards warranties and maintenance. It was submitted that the assessee is in the business of manufacturing & trading of electrical and electronic appliances and once goods are sold then the assessee has to offer warranties against defects etc which may arise during the period of warranties offered as per contract at the time of sales which leads to warranties and maintenance liabilities arising in next 2 to 3 years as per contracted period at the time of sale of equipments and appliances for which necessary provisions are to be provided in the books of accounts by estimating warranties liability which may arise with respect to equipment sold by the assessee which is computed on the basis of past experience of the claims received against warranties and maintenance . Our attention was drawn to the details of warranties and maintenance expenses provision for 3 years i.e. AY 2010-11, 2011-12 and 2012-13 and its utilization(pb/page1) , detailed as under:-

I.T.A. No.3518/Mum/2017 "Details of utilization of provision for warranty and maintenance expenses during A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13.

Particulars	Assessment Year		
	2010-11	2011-12	2012-13
Opening Balance	53,87,289	74,13,640	84,57,758
Add:- Provisions made during the year	73,18,868	82,51,140	60,77,432
Less:- Payment made for against Provisions	52,92,517	72,07,022	83,39,112
Closing Balance	74,13,640	84,57,758	61,96,078
 % of payment vis a vis provision made during the last year	 98.24%	 97.21%	 98.60%

The assessee also drew our attention to the audited financial statements of the assessee for financial year 2010-11 ,2011-12 and 2012-13 which are placed in paper book/page 2-46. Our attention was also drawn to page no. 31/paper book wherein in schedule-8(current liabilities and provisions) to audited financial statements for the year ended 31.03.2011 , provisions for warranties and maintenance expenses as at 31-03-2011 is stated to be Rs. 84,57,758/- and for the preceding year ended 31.03.2010 is stated to be Rs. 74,13,640/- . Our attention was also drawn to page 32/paper book wherein under schedule-13/Manufacturing & other expenses , the warranties and maintenance expenses are stated to be Rs. 2,22,51,139/- for the year ended 31.03.2011 while the said expenses were to the tune of Rs. 73,18,868/- for the

year ended 31.03.2010. The assessee relied upon decision of Hon'ble Supreme Court in the case of Rotork Controls India P. Ltd. v. CIT reported in (2009) 180 I.T.A. No.3518/Mum/2017 taxman 422(SC). The assessee also relied upon the decision of Mumbai Tribunal in the case of DCIT vs. Techno Electronics Ltd. in ITA no. 2338/Mum/2016 dated 18.12.2017 and decision of Hon'ble Delhi High Court in the case of CIT v. Becton Dickinson India P. Ltd., {2013} 29 Taxmann.com 80 (Delhi).

8. We have considered rival contentions and perused the material on record including case laws relied upon and orders of authorities below. We have observed that the assessee is in the business of manufacturing & trading of electrical and electronic appliances. The assessee turnover during the year under consideration was to the tune of Rs. 196.15 crores as against turnover of Rs. 168.09 lac in the immediately proceedings year i.e. financial year 2009-10 as per audited financial statements produced before us. As part of the sale transaction of electrical and electronic appliances/equipments, the assessee is required to provide for warranties and maintenance against any defects etc., which may arise during the contracted period for which warranties and maintenance are offered by the assessee as part of package of sale of such equipment/appliances. The assessee has placed on record financial statements for the financial years 2009-10, 2010-11 and 2011-12 (page 2-46/pb). The assessee is incurring warranty & maintenance expenses every year which are debited to Profit and Loss Account, while provisions for liability which may arise in future years towards warranties and maintenance of the equipment/appliance already sold per contractual term is also provided which stood credited to the Provisions account under the head current liabilities and provisions. Thus, the assessee is also making provision for warranties and maintenance expenses every year which may arise in future out of present obligations arising from sales concluded with warranties and maintenance obligations contracted by the assessee along with sale transaction. The obligation on account of warranties and maintenance which arose during the current year out of contractual obligations towards warranties and I.T.A. No.3518/Mum/2017 maintenance attached to sales made in preceding years are debited to Provisions for Warranties and Maintenance account. The assessee has placed on record, the provision made for assessment year 2010-11, 2011-12 and 2012-13 (pb/page 1) and utilization of the warranty and maintenance provision as under:-

"Details of utilization of provision for warranty and maintenance expenses during A.Y. 2010-11, A.Y. 2011-12 and A.Y. 2012-13.

Particulars	Assessment Year		
	2010-11	2011-12	2012-13
Opening Balance	53,87,289	74,13,640	84,57,758
Add:- Provisions made during the year	73,18,868	82,51,140	60,77,432
Less:- Payment made for against Provisions	52,92,517	72,07,022	83,39,112
Closing Balance	74,13,640	84,57,758	61,96,078

% of payment vis a vis	98.24%	97.21%	98.60%
provision made during the last year			

We have observed assessee has made regular provisions towards

warranties and maintenance expenses which may arise in future on account of sale already made as contracted while making sales of equipment/appliances, which is in consonance with Accounting Standard 29 issued by ICAI and the said provision cannot be termed as unascertained liability. The assessee has computed its provision for warranties and maintenance based on past experience which cannot be simply brushed aside as the onus which stood on the assessee stood discharged and it was for the Revenue to have brought incriminating material/evidences to demolish the basis of computing I.T.A. No.3518/Mum/2017 such provision. The detailed elaboration were made by the assessee to that effect to substantiate its contentions vide written submissions filed before the learned CIT(A) which we have extracted above in preceding para's of this order and the same is not repeated again. The assessee also rightly relied upon the decision of Hon'ble Supreme Court decision in the case of Rotork Controls India P. Ltd. v. CIT (supra) and also decision of Hon'ble Delhi High Court decision in the case of CIT v. Becton Dickinson India Private Limited(supra) . We have observed that Ld. CIT(A) has passed a well reasoned order deleting additions both under normal provisions as also under provisions of Section 115JB while computing book profits , and we have no reason to interfere with the well reasoned order passed by Ld. CIT(A) which is supported by catena of judgement relied upon by the assessee and under these circumstances we are confirming the appellate order passed by Ld. CIT(A) and we found no merit in the appeal filed by the Revenue which stands dismissed. The findings of learned CIT(A) are reproduced in preceding para's which stood confirmed. The Revenue fails in this appeal. We order accordingly.

9. In the result appeal filed by the Revenue in ITA no.3518/Mum/2017 for AY 2011-12 stand dismissed.

Order pronounced in the open court on 22.10.2018.

22.10.2018 i

Sd/-

Sd/-

(JOGINDER SINGH)

(RAMIT KOCHAR)

VICE PRESIDENT

ACCOUNTANT MEMBER

Mumbai, dated: 22.10.2018

Nishant Verma
Sr. Private Secretary

I.T.A. No.3518/Mum/2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) - Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI