(2013) 02 KAR CK 0113

In the Karnataka High Court

Case No : IT Appeal No. 195 of 2009

Commissioner of Income Tax — APPELLANT

Vs

Denso Kirloskar — RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:
Income Tax Act, 1961 — Section 260-A

Citation : (2013) 217 TAXMAN 86

Hon'ble Judges : D.V. Shylendra Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant; A. Shankar and M. Lava, for the Respondent

Judgement

1. This appeal by the Revenue u/s 260-A of the income tax Act, 1961 [for short ''the Act''] posing the following two substantial questions of law for answer reading as under:

1. Whether the Tribunal was correct in holding that the assessee is entitled for deduction of a provision made towards warranty which is not made on any scientific basis and past experience and made merely on estimate basis?

2. Whether the Tribunal committed an error in not considering the actual expenditure on account of warranty charges was Rs. 39,788/- as against the provision made at Rs. 1,60,62,016/- by not examining the reasons for such wide variance in the provision made?

The assessee is a company and the assessment year is 2004-05. The questions relate to one of making a provision by the assessee towards warranty claims put forth by its customers in respect of its products sold by the assessee. For the accounting period relevant for the assessment year, the assessee claimed it had made a provision towards warranty claim in a sum of Rs. 1,60,62,016/- and out of this amount, had reversed the provision made for meeting warranty claims for earlier financial year, namely, 2001 -02 in a sum of Rs. 85,65,546/- and the

Assessing Officer noticed that even after reversing that amount provision of Rs. 74,56,682/- was an amount without any actual claim or expenditure.

2. The stand of the assessee was that the provision for warranty was made on the basis of estimating the same at 1.5% of the sales turnover of the year. From the amount of warranty provision made, the assessee would wait for two years against possible claims, meet the same if there are any and if there are none, balance amount will be taken as profit of the third year as warranty claim can arise only up to a period of two years from the date of sale.

3. The Assessing Officer had disallowed this amount of Rs. 74,56,682/- being of the opinion that it does not represent any expenditure incurred by the assessee. The Appellate Commissioner affirmed this view in the appeal of the assessee and in the further appeal of the assessee, the Tribunal reversed this finding and opined that the provision of this nature should be allowed as a revenue expenditure incurred during the financial year relevant for the assessment year.

4. It is against this order and on this aspect, the present appeal with the questions as indicated above.

5. Sri K.V. Aravind, learned standing counsel appearing for the appellants-revenue submits that these questions are now covered by the Judgment of the Supreme Court in the case of Rotork Controls India (P) Ltd. Vs. Commissioner of Income Tax, Chennai, that the Tribunal did not have the benefit of this ruling as the Tribunal had passed orders on 21.11.2008 and therefore submits that the matter can be sent back to the Assessing Officer to determine afresh applying the tests and guidelines laid down by the Supreme Court in this case to the claim put forth by the assessee towards provision of warranty claims and then proceed accordingly to finalize the same.

6. Sri A. Shankar, learned counsel for the respondent-assessee while does not dispute the legal position as per the Judgment of the Supreme Court in Rotork Controls'' case (supra), points out that the second question as framed by the revenue in the memorandum of appeal, the figure of Rs. 1,60,62,016/- is not correct, but it should be only a sum of Rs. 74,56,682/-.

7. Sri K.V. Aravind, learned standing counsel appearing for the appellants-revenue has pointed out that the provision made for the year in question was, in fact, a sum of Rs. 1,60,62,016/- as is revealed in the assessment year, but the assessee itself having reversed from out of this up to the extent of Rs. 85,65,546/- and having included that in the total income of the year in question, the authorities were required to consider the claim for provision of only a sum of Rs. 74,56,682/-, but in fact the provision made was for Rs. 1,60,62,016/- and therefore the question is properly framed.

8. As the amount is actually claimed as a deduction and as the amount set apart for meeting possible warranty claims, this is an aspect which has to be looked into by the Assessing Officer and we do not want to preempt that examination in

this order, but the facts are as noticed above.

9. In this view of the matter, while this appeal is allowed to the extent of setting aside the order of the Tribunal insofar as it related to allowing of the appeal of the assessee towards warranty provision, the matter is sent to the Assessing Officer for redetermination of the quantum that can be allowed as a provision towards warranty claims in the light of the Judgment of the Supreme Court in Rotork Controls'' case (supra) and the guidelines contained in this Judgment. With regard to the quantification and other aspects, it is open to the assessee to put forth its stand before the Assessing Officer. The matter being remanded, the questions are not answered in the way they are framed, but the Tribunal order is set aside by applying the ratio of the Judgment of the Supreme Court in Rotork Controls'' case (supra).

