

Voltas Ltd. Vs. Deputy Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Feb-12-1997

Reported in : (1998)64ITD232(Mum.)

Appellant : Voltas Ltd.

Respondent : Deputy Commissioner of

Judgement :

1. The assessee and the revenue are in cross appeal for the same assessment year and for that reason, these appeals are grouped together and disposed of by this common order.

2. We shall first deal with the grounds raised by the assessee in its appeal. The assessee is a limited company engaged in the manufacturing activity of air-conditioning equipments, air-conditioners, etc., as well as selling them. It has raised as many as fifteen grounds, of which ground No. 4(a) and (b) concerning disallowance made with reference to section 43B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on sales tax, etc., and ground No. 15 concerning disallowance of bad debts/business loss of Rs. 36.30 lakhs were not pressed during the course of the hearing and, accordingly, these two grounds are treated as rejected.

4. The second issue relates to Rs. 3,00,000 received from M/s. Pioma Industries (hereinafter referred to as 'Pioma') on surrender of a trade mark 'Rasna'. The claim of the assessee before the authorities below was that the trade mark was a self-

generated asset for which the assessee had not to incur any expenditure for acquisition and, therefore, when the said self-generated asset was sold or surrendered in favour of Pioma, the Supreme Court decision in CIT v. B. C. Srinivasa Setty [1981] 128 ITR 294 gets attracted. The Assessing Officer rejected the same. The CIT (Appeals) in para 4.1 of his order had noted that the assessee had a marketing arrangement with Pioma, who were manufacturing various soft drink concentrates and essence under the brand name 'Rasna'. The CIT (Appeals) concluded that the amount that was received by the assessee from Pioma was for discontinuation of the marketing arrangement and that such discontinuation was in the nature of revenue only.

The Senior Advocate, Mr. Dinesh Vyas, before us referred to the agreement between the assessee and Pioma dated 2-3-1979 and drawing attention to clause 4 thereof submitted that it clearly states that the 'Rasna' trade mark was jointly owned and registered by the assessee and Pioma. He submitted that because of this, the assessee having surrendered a joint trade mark in favour of Pioma, the realisation was on capital account only. Reliance was placed on CIT v. Finally Mills Ltd [1951] 20 ITR 475 (SC); Anant Ram Khem Chand v. CIT [1937] 5 ITR 511 (Lahore) and B. C. Srinivasa Setty's case (supra). The learned Departmental Representative, however, submitted that the CIT (Appeals) had noted that the cost of registration of the trade mark was Rs. 2,000 and, therefore, even if it was to be treated as a capital receipt, the gain is clearly a capital gain. He submitted that the above argument was provided only as an alternative to what was held by the CIT (Appeals), which view he strongly supported.

On this point, it is necessary to reproduce clauses 4(1), 4(7) and 4(8) of the agreement, which we do : "4.1 Pioma shall sell and Voltas shall buy the products only under the joint trademark, brand name, label and/or pack design 'Rasna' or any other trade mark, brand name, label and/or pack design to be jointly owned and registered by Pioma and Voltas, except insofar as clause.

4.7 or 4.8 below is in operation. All such joint trade marks, brand names, labels and/or pack designs including 'Rasna' are hereinafter individually and collectively referred to as 'the said mark'. The expenses incurred in connection with the

registration of the said mark and for renewal thereof shall be borne equally by Pioma and Voltas.

4.7 In the event of the failure of Pioma to supply the products in accordance with the agreed delivery time as per clause 6.1 hereinbelow, Voltas may at its option, without prejudice to its other rights, if any, under this Agreement, get the products manufactured by another party and market the same and in respect of such products. Voltas shall be entitled at its option, notwithstanding anything to the contrary contained in this Agreement, to use the said mark. Provided that in case Voltas uses the said mark in respect of such products, it shall pay to Pioma a fee calculated at 2.5% of the net sales of such products by Voltas.

4.8 In the event of failure of Voltas to accept the delivery of the products in accordance with the agreed delivery time as per clause 6.1 hereinbelow, Pioma may at its option, without prejudice to its other rights, if any, under this Agreement, market such products and in respect of such products, Pioma shall be entitled, notwithstanding anything to the contrary contained in this Agreement, to use the said mark.

Provided that Pioma shall pay to Voltas a fee calculated at 2.5% of the net sales of such products by Pioma." The reading of the above clauses clearly shows that the trade mark was the joint property of the assessee and Pioma. It were not so, then the assessee would not be in a position to get the products manufactured from another party and market the same in the same name. It also makes it clear that in the event of the assessee failing to lift the products from Pioma, Pioma would be entitled to market the products on its Own.

On 27-1-1983, a settlement was reached between the assessee and Pioma, wherein it has been stated that the agreement stood cancelled with effect from 12-6-1982 and on that basis Pioma was to pay to the assessee Rs. 28.5 lakhs on instalments. Rs. 10 lakhs were to be paid on the execution of the settlement and Rs. 3 lakhs and Rs. 2 lakhs were to be paid by 28th of February and 31st of March 1983; Rs. 6 lakhs were to be paid by December 1983 and the balance of Rs. 6 lakhs were to be paid in four equal instalments of July each year. The deed of settlement provided "For removal of doubts, it is specifically agreed and

understood between the parties that the payment of Rs. 28.5 lakhs as aforesaid by Pioma to Voltas comprises of Rs. 3 lakhs as consideration for transfer of trade mark 'Rasna' and the copyrights as stipulated in clause 3.1 below and an amount of Rs. 25.5 lakhs towards various other claims of Voltas". Clause 3.1 of the settlement reads "Voltas agrees and undertakes to transfer forthwith its entire right, title and interest in the jointly owned trade mark 'Rasna' and the copyrights mentioned in Schedule 'A' hereunder to Pioma for a consideration of Rs. 3 lakhs which is included and deemed to have been included in the sum of Rs. 28.5 lakhs mentioned in clause 1 hereinabove.

A cumulative reading of the above clearly shows that the product 'Rasna' that was registered as a trade mark, was the joint property of the assessee and Pioma. The amount of Rs. 2,000 paid was only for registration of the trade mark and is not the cost of the trade mark.

'Rasna' is, no doubt, a name, but a name that is well-known in the family all over the country and thereby it had acquired a popularity amongst the masses. Though the real value of 'Rasna', the name, may be nil because there is no cost of acquisition, but it is an intangible asset that over the years had become valuable, which value had been determined at Rs. 3 lakhs by the parties. The amount so received by the assessee from Pioma, in these circumstances, would be in the nature of capital as has been held by the Supreme Court in B. C. Srinivasa Setty's case (supra). Applying the said principle, we uphold the claim of the assessee.

5. In ground No. 3, the assessee has raised the issue of claim of technical know-how fees of US \$ 2,00,000 equivalent to Rs. 20,42,784 payable to Carrier International Corporation, U.S.A. and US \$ 1,50,000 equivalent to Rs. 14,70,894 payable to Harnischfeger International Corporation, U.S.A. which were claimed on accrual basis as revenue expenditure, but refused by the lower authorities.

The assessee had claimed a total of Rs. 35,13,678 as revenue expenditure under the head "Technical know-how". The Assessing Officer had noted that there was a collaboration agreement with Carrier International Corporation dated 14-5-1982 requiring the non-resident company to supply technical know-how for manufacture of semi-hermetic compressor and package units/air cooled condensers. Another

collaboration agreement was entered into with Harnischfeger International Corporation, U.S.A. for supply of technical know-how for manufacture of hydraulic rough terrain cranes and hydraulic truck crane, Based on the fact that the technical know-how was received during the year, the amount payable on receipt of the technical know-how was provided in the accounts and claimed as technical know-how fees. The Assessing Officer noted in para 7.1 of his order that in respect of Carrier International Corporation, two instalments only were paid and in respect of the other corporation for rough terrain cranes the second and third instalments were paid during the year. The Assessing Officer further had noted that the first instalment in respect of supply of technical know-how for various cranes was paid in the accounting year relevant to the assessment year 1983-84 soon after the Government of India had accorded its approval. He further noted that the amount so paid was directed to be allowed by the CIT (Appeals) in assessment year 1983-84.

The Assessing Officer in para 7.3 of his order had given his reasons for refusing to allow the technical know-how fees as a revenue expenditure. He noted that the decision of the CIT (Appeals) for assessment year 1983-84 had not been accepted and an appeal had been preferred to the Tribunal. He further observed that the various decisions relied upon by the assessee are based on facts special to those cases only. He observed with reference to the collaboration agreement, especially the contents of Annexures I & II, under which lump sum technical know-how-fees was paid, that the assessee-company in fact, was getting an advantage of enduring nature, i.e., a licence to manufacture similar products without any restriction to any period and that the suppliers would no longer be entitled to recover the technical know-how so supplied to the assessee. He was of the view that because of this feature of there being no restriction whatsoever in the manufacture with the aid of the technical know-how, the assessee should be held to have acquired an advantage of enduring nature. He placed reliance on certain decisions. He further observed that in the event of the claim of the assessee that technical know-how payments were to be treated as revenue, the deduction, according to him, should be limited to the amount that was actually paid, i.e., Rs. 23,57,189 and not Rs. 35,13,678, that was provided in the books by the assessee. He further observed that out of Rs. 35,13,678 provided during the year Rs.

4,72,326, i.e., 1/2 of Rs. 9,44,657 stood allowed to the assessee in assessment year 1983-84 on actual payment basis.

The submissions of the assessee with reference to the agreement have been considered by the CIT (Appeals) in his order in para 5 onwards, In para 5.1, the CIT (Appeals) noted that the technical collaboration agreement with Carrier International Corporation wits for supply of technical know-how for manufacture of semi-hermetic compressors, package units and air cooled condenser for which US \$ 2,00,000 was payable. The payment schedule indicated as 1/3rd on the agreement being taken on record; 1/3rd on delivery of technical documentation and the balance 1/3rd on commencement of commercial production or three years from the date on which the agreement was taken on record whichever ends earlier. It was noted that the technical collaboration with the second concern was for manufacture of hydraulic rough terrain cranes for a consideration of US \$ 1,50,000 and the terms of payment were similar to the other contract. The CIT (Appeals) noted that the amount provided as technical know-how fees was the amount that was payable by the assessee as agreed to between the parties, i.e., on receipt of technical know-how documentation. The CIT (Appeals) noted that the claim of the assessee was based on the fact that (a) the speed with which the scientific developments change, technical know-how and changes. That are to keep with the changes, could not be treated as a capital asset and (b) what was acquired was only use of knowledges. For this proposition, the assessee had relied on certain decision. It had also raised an alternative plea that if the technical know-how fees was to be treated as capital, it should be treated as a plant that is entitled to investment allowance, depreciation, etc. For this alternative proposition too, the assessee had relied on certain decisions. The CIT (Appeals) reproduced the contents from the assessment order in paras 5.2 and 5.3. In paras 5.4, 5.5 and 5.6 the CIT (Appeals) had considered the various submissions of the parties, i.e., the assessee as well as the Assessing Officer and had given his conclusion and these are reproduced below for the sake of facility : "5.4 After considering the observations made by the IAC and the submissions made by the appellant and subject to the finding whether the expenditure is capital or revenue in nature, I agree with the IAC to the extent that expenditure claimed earlier in assessment year 1983-84 cannot be claimed again in the assessment year 1984-85.

Further from the details of agreements given by the appellant above in para 5.1, the expenditure would be payable on accrual basis on the basis of these agreements, and it is clear from the agreements that all the three instalments to the two collaborators certainly would not become due only in one year as there is bound to be a time lag between taking the agreement on record and the commencement of the commercial production. Whether a particular instalment has accrued or paid during the year is a matter of facts and that the facts alone would determine whether the expenditure in question has accrued in the year under consideration or not.

5.5 As regards the collaboration agreements with Carrier International Corporation, U.S.A. it is clear that the agreement is for a supply of technical know-how for manufacture of semi-hermetic compressors, package unit and air cooler condensers and that the agreement is for a period of 13 years from the date the agreement is taken on record by the Government 10 years from the date of commencement of commercial production whichever is earlier and that upon expiration or termination of this agreement, the appellant-company would be free to continue the manufacture of the products after the expiration of the respective terms specified in the agreement subject to the only condition that the appellant-company pays to the Carrier international Corporation-U.S.A. the full technical fees as specified in the contract.

5.6 It is thus clear that the appellant-company has come to possess technical know-how in respect of few products, which are likely to yield an advantage of an enduring nature in future and that the collaboration agreement has fortified and strengthened the profit making machinery of the appellant-company which would eventually swell the profits of the company in the coming years. It is also clear that there are no restrictive clauses and that the technical know-how of the product has been passed on for all times. The observation, thus, made also apply to the collaboration agreement with Harnischfeger International Corporation, USA. The appellant received a technical know-how in respect of different types of cranes and there are no restrictive clauses for the use of the technical know-how after the expiration of the period of agreement.

In view of the High Court's decision relied upon by the IAC, I am of the view that the expenditure in question is definitely of a capital nature and it has given an enduring benefit to the appellant-company. As regards the appellant's contention that in case the expenditure on technical know-how is treated as of capital nature then the same should be treated as 'plant' entitled for investment allowance and depreciation. It is held that such part of the expenditure is specifically attributable to the erection of buildings, plant or machinery should be held as part of the cost of such assets and the benefit of depreciation, etc., would be available to the purchaser. But the capital expenditure which is not so specifically attributable to the acquisition of buildings, plant or machinery will not be entitled to the benefits of depreciation.

In this context, the IAC is directed to refer to Board's letter F. No. 10/69-IT(A-I) dated 4-9-1962, addressed to the Indian Machine Tools Manufacturers Association, Bombay." 6. The Senior Advocate submitted before us that the assessee was already in the business of manufacturing various air-conditioning plants including selling air-conditioners and other items as well.

Because of technological advancement in the field in which the assessee was in, the assessee with a view to modernize its production process had entered into collaboration agreements. It was submitted that the newer process which enables the assessee to manufacture better products, would not make the technical know-how agreement a capital item, but is only to refine the already existing process and manufacture. Reliance was placed on *Alembic Chemical Works Co. Ltd. v. CIT* [1989] 177 ITR 377/43 Taxman 312 (SC); *CIT v. British India Corpn.*

Ltd. [1987] 165 ITR 51/30 Taxman 546P (SC); *CIT v. Tata Engg. & Locomotive Co. Ltd.* [1993] 201 ITR 1036 (Bom.); *CIT v. Kirloskar Pneumatic Co. Ltd.* [1993] 202 ITR 309 (Bom.) and *Addl CIT v. Buckau Wolf New India Engg. Works Ltd.* [1986] 157 ITR 751 (Bom.). Insofar as the accrual of liability is concerned, it was stressed that by virtue of the agreement with the assessee, the non-resident collaborators were to carry out certain obligations based on which the assessee was to make the payment. Since the fastening of the liability was linked to the obligation carried out by the foreign collaborators, the moment the foreign

collaborators complete their part of the contract by supplying the technical know-how to the assessee, the assessee's obligation to pay the foreign collaborators is fastened on it. It is at this point of time that the liability accrues and the assessee is duty bound to compensate the foreign collaborators. This was so submitted to counter the observations of the Assessing Officer that the amount of expenditure should be limited to the actual payment made in the year.

As an alternative, the same arguments as advanced before the authorities below were reiterated before us. The Departmental Representative relied on the order of the lower authorities as also on the decision in *Indian Molasses Co. (P.) Ltd. v. CIT* [1959] 37 ITR 66 (SC) and *CIT v. Rajkumar Milts Ltd.* [1971] 80 ITR 244 (Bom.).

7. The above rival contentions have been very carefully considered. The various submissions in this connection have also been closely scrutinized. The submission of the assessee that the technical know-how has been only obtained for purchase of no new plant and is only to modernize its already existing production process is a reasonable argument. There may not be any necessity of a new plant being purchased along with every technical know-how. The technical know-how may be for refining the already existing one or may be a totally new process in its own right. If the newer process is only to bring about improvement in the products manufactured based on prevailing techniques, it may be a revenue expenditure. If, in addition to improving the existing product, it also manufactures a few more items, in that event too it may be a revenue expenditure. But, the newer process, if brings out totally new products and the existing products continue to be manufactured with the help of prevailing techniques, the technical know-how obtained may not necessarily be a revenue expenditure.

Technical know-how that has refined the existing process is no doubt revenue expenditure.

Because the authorities below had not ventured into the aspect of what was being produced based on methods available and after the technical know-how, the same products were continued with the help of new technique or any new product also was produced, we are remanding the issue to the file of the Assessing Officer for verification by allowing adequate opportunity to the assessee.

8. The next ground is in regard to the claim of deduction of provision of trade guarantee to the tune of Rs. 1,01,95,000. The Assessing Officer in his order had noted that the assessee had determined the amount to be provided in the books at Rs. 182.81 lakhs, but while doing so it took into consideration the amount of provision that was provided in excess in the earlier years which were treated as written back to the tune of Rs. 44.53 lakhs and on that basis, the net amount of Rs. 137.28 lakhs only was provided. He also noted that the amount of provision had opening balance of Rs. 203.10 lakhs and the amount of expenses debited to the said provision amount was Rs. 131.23 lakhs. The Assessing Officer noted that the assessee had been making provision for guarantees over the last 30 years, following the same system of provision. It was submitted before the Assessing Officer that the provision was made on rational and scientific basis that was reviewed from time to time based on past experience, working of plant, equipment, etc. The Assessing Officer, however, in paras 29.1 and 29.2 at pages 28 and 29 observed as under for his refusal to allow the same : "29.1 However, the contention of the assessee cannot be accepted as the decision referred to above does not apply squarely to the facts of this case. It is true that giving guarantee or warranty is a common trade practice, but discharge of this obligation depends on so many factors which cannot be ascertained or predicted. Thus, the obligation to carry out repairs/replacement would arise in case the functioning of the equipment or plant is not proper and it would also depend on the claim being made by the customer within the warranty period and the acceptance of the part of the assessee that the defect pointed out and replacement made, was in accordance with the terms of warranty. None of these factors can be predicated with accuracy whatsoever scientific method may be applied. In fact in the case of the assessee, it is seen that provision has been made by fixing ad hoc amount and multiplying it with number of pieces sold. Provision, thus, made in the accounts can at the best, be described as a contingent expenditure and, accordingly, the provision so made, cannot be allowed as an item of expenditure and repairs/replacement done in pursuance of the warranty obligations would be eligible for deduction as and when the same is carried out. In fact, what would constitute an item of expenditure has been laid down in the case of Indian Molasses Co. Pvt. Ltd., 37 ITR 66, as under : 'Expenditure is what is paid out or away and is something which is gone

irretrievably. Expenditure which is deductible for income-tax purposes, is one which is either actually paid or, if the accounts are on mercantile basis, provided for towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure.' Thus, mere liability to satisfy an obligation is not an expenditure and it is only when the obligation is satisfied by carrying out repairs/replacement, the expenditure would arise and it has been held so by the Supreme Court in 62 ITR 638. As regards assessee's reliance on the decision of I.T.A.T. in the case of Wanson (India) Ltd., it would be seen from that decision that there the provision made in the accounts approximated to the amount of expenditure and there was only a marginal difference in the provision made in the accounts and the actual expenditure incurred in that behalf and this marginal excess was being written back in the accounts of the next year. Thus, on these considerations, the Hon. Tribunal has held that there was no need to make a departure from the accepted practice.

The facts of this case are, therefore, distinguishable, because in the case of the assessee-company, there is a wide gap between the provision made in the accounts and the actual expenditure incurred as a result of warranty. The opening provision in the books was Rs. 203.10 lakhs as against which the expenditure incurred is Rs. 95.90 lakhs and since the warranty is for a period of only one year, there is certainly a considerable gap between the provision and the actual expenditure required to be made. Regarding the contention that provision has been allowed as deduction in earlier years, the same cannot be a bar to consideration of the issue in this year. Besides, reference to records of earlier years would also show that perhaps this issue has been missed and no query, detail or clarification appears to have been sought in this regard.

29.2 An alternative plea has been taken up by assessee's representative that out of expenditure of Rs. 131.23 lakhs incurred during the year (which has been debited to provision for guarantee a/cs), Rs. 95.90 lakhs pertains to sales effected in earlier years for which provision of Rs. 203.10 lakhs was brought forward on 1-9-1982 and the balance amount of Rs. 35.33 lakhs has been incurred against current year's provision and this should be allowed as deduction. This contention

of the assessee appears to be reasonable and, accordingly, against provision of Rs. 137.28 debited in P&L A/c. of this year, which is proposed to be disallowed (as per the discussion in para 29.1), Rs. 35.33 lakhs is being allowed as deduction and only balance amount of Rs. 1,01,95,000 is being disallowed." 9. The CIT (Appeals) in para 25.1 considered the basis of provision and these are - (a) in respect of standard products like air-conditioners, water coolers, etc., provision is made at a fixed rate per unit, and (b) in respect of non-standard products, namely, works contracts for central air-conditioners and electrical contracts, etc., provision is made as percentage of contract value. The CIT (Appeals) noted that the guarantees normally were provided between 1 to 1.5% of the annual turnover in regard to general products. It was submitted before the CIT (Appeals) that the variety of machineries and equipments that were manufactured and sold by the assessee being such that they had to take some kind of a formula based on which they had provided. The CIT (Appeals) noted that the expenses incurred by the assessee were pertained to the sale that were effected in the earlier years and he also noted from the order of the Assessing Officer that there was a gap between the provision and the actual expenditure. He referred to the various decisions as were relied upon by the Assessing Officer. In paras 25.3 to 25.6, the CIT (Appeals) gave his conclusions, which are reproduced below for the sake of facility : "25.3 After going through the observations made by the I.A.C. and the submissions made by the appellant, I am of the view that what is chargeable to tax is the profit and gains of a year, and, in assessing the amount of profits and gains, an account must necessarily be taken of the expenses incurred during the year otherwise, one would not be able to arrive at the true profits and gains of the year in question. Where the assessee is under to legal obligation to spend on certain items he cannot claim a deduction merely because he has set apart some amounts, year after year, in anticipation of being called upon to incur the same. For holding this view, support is claim from the following decision : (3) Chhaganlal Textile Mills (P.) Ltd. v. CIT [1966] 62 ITR 274 (MP).

25.4 I also endorse the view taken by the I.A.C. that provision made by the appellant in respect of guarantee or warranty given at the time of sales cannot be allowed as deduction as the discharge of the obligation depends on the happening of so many events and that at the time when the provision is made the liability is

only a liability de future and not a liability in praesenti, and that the Income-tax law makes a distinction between the two kinds of liabilities and the liability which is for the time being only contingent cannot be allowed as a deduction. The reliance for this is placed on the following case law : 25.5 As pointed out by the I.A.C., there is a wide gap between the provision made and the actual expenditure which the appellant-company is called upon to bear and as the liability of the appellant-company in future is of indefinite and incalculable amount, and as there are no actuarial principles by which the amount can be ascertained or computed, and as it is absolutely uncertain as to what amount the company will have to incur in discharging its liability of repairs, it would be fair if the actual amount on repairs is taken into consideration rather than the provision made by the appellant year after year. The Bombay High Court in CIT v. Rajkumar Mills Ltd. cited above held that the sum set apart against the contingencies of the workmen taking leave in a subsequent year and becoming entitled to leave and holiday wages cannot be deducted in anticipation. Thus, it is clear that where the obligations under a contract remained still to be performed, it is not permissible to claim deduction on the basis of notional expenditure, year after year, to meet the obligation, when in fact, no such expenditure has been incurred.

25.6 In view of the above, the expenditure on repairs actually disbursed in a year should be deducted in that year, instead of the provision made by the appellant. The I.A.C.'s stand of taking cognizance of the current year's sales and the expenditure incurred on repairs arising out of the same, is acceptable as it is based on taking the account year as a complete unit in itself and, on taking cognizance only the liabilities in praesenti. The I.A.C.'s reliance in this respect on the Supreme Court's decision in the case of Indian Molasses Co. Pvt. Ltd. reported in 37 ITR 66 appears to be well-founded as the term 'expenditure' which has not been defined anywhere in the Act has been well defined by the Supreme Court as under :- 'Expenditure is what is paid out or away and is something which is gone irretrievably. Expenditure which is deductible for income-tax purposes, is one which is either actually paid or, if the accounts are on mercantile basis, provided for towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure.' The addition of Rs. 1,01,95,000 is, therefore, confirmed. The IAC however, is

directed to take into the taxability of the gap between the provision made in respect of earlier years and expenditure actually claimed as incurred relating to earlier years." 10. The assessee submitted that the provision was on an average of 2% of the total turnover because during the guarantee period or the warranty period the assessee is required to replaced certain items including replacement of the entire equipment as such. The assessee considering the past experience as the basis had found that 2% adequately covered the expectancy in this regard. This Senior Advocate submitted that because the warranty claim could happen at any time within a period of one year there can be no stead fast rule that a particular claim should fall only in a particular month and there cannot be any regular pattern in regard to the claim that may forthcome. The assessee over the years had been trying to eradicate the various possible defects that it had to face in the past for which it had to replace and satisfy the customers during the warranty period, but certain new types of problem do crop up. It was, accordingly, scientifically designed considering the various items depending upon the volume, nature and complexity involved in the manufacturing process and the need and the use of the machines and the provisions are made in the accounts. He submitted that comparison of actual expenditure to the provision and comparing it on month to month basis with reference to month to month sale is not at all feasible because when the reference may occur is not known to anyone and what is known to the assessee is that if and when the problem arises it had to meet the same.

Recognising this concept, the Tribunal on similar situation, had allowed the provision to be deducted as a revenue expenditure.

Decisions relied for this purpose are - The Departmental Representative, on the other hand, heavily relied on the orders of the lower authorities. He has also relied on ITO v. Emco Transformers Ltd. [1990] 32 ITD 260 and Rajkumar Mills Ltd.'s case (supra).

11. The rival contentions in regard to the above have been very carefully considered. There is considerable force in the arguments advanced by the assessee that the actual expenditure on warranty could at no time be related to the provision that is made in the accounts because the expenditure might be

required to be incurred at any time before the expiry of the warranty period. As had been noted by the Assessing Officer in his order, excess provision to tune of Rs. 45.53 lakhs had been written back and the assessee had made a provision of Rs. 137.28 lakhs only. It also shows that the expenses incurred were to the tune of Rs. 131.23 lakhs. This shows that the expenses and the provision keep on fluctuating and can never be uniform to one year to another. The guarantee that is made part of the sale contract gives rise to a situation whereby the assessee would be called upon to meet the claims of the customers in regard to the sales made to them, which is claimable by them before the expiry of the said contract. The income on account of the sale having been accounted for, leading to a situation of the expenses that might possibly be necessary to be incurred in that connection, the provision that is made in the accounts to meet these expenses which may arise, is clearly to be taken into account in working out the reasonable profits made on sale of the items. This is possibly the only way available in relation to the sale that have an attachment called guarantee or warranty. During the period for which the guarantee is in operation the obligation of the assessee could be even to the extent of replacement of the item itself in total, and at what point of time it might arise could not be predicted. In total commercial concept, all expected losses have to be accounted for and the same concept would also lead to determination of the real income of the assessee because the actual income of the assessee could not be different from the commercial income. The additional concept of income in regard to Income-tax Act is in computing the income with reference to the provisions of the Act. Section 145 of the Act talks of determination of income with reference to the books of account that help in the computation of income. In the instant case, the books of account had shown a reasonable basis for computing the income and it further amplifies the same by the projecting expenses that need to be incurred, the income from which has also been treated as income in the year under appeal.

As pointed out earlier, the expense is closely linked with the sales made by the assessee and the share of such expenses is calculated with reference to the various items that are part of the contract, which would include certain parts and the entire product itself. The scientific analysis carried out indicated the expenditure of possible liability and instead of doing exhaustive calculation with

reference to each of the sale, a convenient method of working out the possible liability has been determined as in the range of up to 2% of the turnover. It is quite likely that at times the provision made may be adequate or just sufficient or the provision may be excessive or the provision may be inadequate. The assessee's accounting process shows that in situations where the provisions are inadequate, the actual expenses got adjusted against the provision and in the year in which the provision was required, the provision was made accordingly. As was noted by the Assessing Officer though the provision required for the assessment year was little over Rs. 182 lakhs, the excess provision for earlier years to the tune of little over Rs. 45 lakhs was adjusted and a net provision of Rs. 137 lakhs only was made. Therefore, the provision that is made in the accounts, the claim for which is made, is more or less had a consistent basis that adjusts excess provision, inadequate provision, etc. For the above reasons, we are of the view that the assessee was justified in making the claim and we, accordingly, uphold the same. The three decisions relied upon by the assessee that had been filed as part of the paperbook, are all on similar lines. In Wanson (India) Ltd.'s case (supra), similar provision was allowed.

12 and 13. [These paras are not reproduce here as they involve minor issues].

14. The next issue is in regard to the additional depreciation in respect of certain equipments installed at the manufacturing plants and service stations. The items on which the assessee is claiming additional depreciation are as under : (a) Nashua paper copier Thane Works (b) Water cooler Calcutta Service station/ godown (c) Pedestal mancooler Calcutta Appl. service station (d) Electrical installation Ahmedabad godown (e) Drafting machine Bangalore For assessment year 1982-83, the Tribunal considered the claim with reference to investment allowance. The investment allowance claimed on typewriters, copier, calculators, cash safe and refrigerators in works canteen was refused. On the same basis, copier, water cooler, electrical installations in canteen, drafting machine, air-conditioning machineries, etc., do not qualify for additional depreciation.

Accordingly, this claim of the assessee is rejected.

16. In ground No. 12, the assessee has claimed depreciation in respect of furniture, vehicles and other assets used in the offices of the assessee at Warora factory, but the claim was disallowed because the factory was not set up. The CIT (Appeals) had considered this issue paras 19.1 and 19.2 of his order. In our view, if the office was in use, the claim of depreciation in respect of the various items of assets used in the office is allowable to the assessee. The fact that the factory had not been set up is not of any consequence insofar as this claim is concerned. We, accordingly, direct the Assessing Officer to allow depreciation on the items of assets used in the factory for office purpose.

17. The next claim is against the non-allowance of bad debts written off of the following items : (a) Rosella Products Rs. 3,00,000 (b) Maccoos General Foods (P.) Ltd. Rs. 3,00,000 (c) United Precision Industries Rs. 64,587 (d) Narendra Motta Rs. 29,680 (e) Andhra Pradesh State Electricity Board Rs. 1,00,000 The CIT (Appeals) had discussed the various items in paras 23.1 to 23.6 of his order. The rival contentions in regard to the above have been very carefully considered. In regard to the first two items of Rs. 3,00,000 each, the facts as noted were that these represented the amounts advanced to parties for supply of certain products on principal to principal basis. The parties did supply to products, which were found defective and, accordingly, the products were returned back. The supplier companies were prepared to rectify the defects, but the assessee refused to compromise the desired quality standard and, accordingly, demanded the advances that were paid earlier. In the case of the second item of Rs. 3,00,000 it remains a principal even now and there has been increase in the turnover of their products and the arrangement continued. With a view not to agitate the issue any further, the amounts were written off. The last item was the amount that was refused to be paid by Andhra Pradesh State Electricity Board.

The rival contentions in regard to the above have been very carefully considered. The various reasons as noted by the CIT (Appeals) and as advanced before us do indicate that there was considerable commercial application based on which these amounts have been treated as written off. The commercial basis is a reasonable one and in the circumstances of the case, we accept the claim of the assessee and allow the same.

18 to 23. [These paras are not reproduce here as they involve minor issues].

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