आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी,लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S.GANESAN, JUDICIAL MEMBER
AND SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.Nos.1885 to 1888/Mds/2015**

(निर्धारणवर्ष / Assessment Years: 2008-09 to 2010-11)

M/s. John Crane Sealing Systems India Pvt. Ltd., 1, Ground Floor, 'Casa Blanca'. 6, Casa Major Road, Egmore Chennai-600 008.	Vs	The Deputy / Assistant Commissioner of Income Tax, Company Circle-II(3), Chennai-34.
PAN:AAACJ2131J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./**I.T.A.Nos.1912 to 1914/Mds/2015**

(निर्धारणवर्ष / Assessment Years: 2008-09 to 2010-11)

The Deputy Commissioner of Income Tax, Company Circle-II(3), Chennai-34.	Vs	M/s.John Crane Sealing Systems India Pvt. Ltd., 1, Ground Floor, 'Casa Blanca'. 6, Casa Major Road, Egmore Chennai-600 008.
		PAN:AAACJ2131J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	:	Mr.S.Raghunathan, Advocate
Revenue by	:	Mr. A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of hearing	:	30th August, 2016
घोषणाकीतारीख /Date of Pronouncement	:	17th November, 2016

आदेश / O R D E R

Per A. Mohan Alankamony, AM:

In the case of the assessee seven appeals are filed both by the assessee as well as the Revenue aggrieved by the consolidated order of the learned Commissioner of Income Tax (Appeals) dated 16.03.2015 as detailed herein below:-

Appeal by	ITA No.	Assessment Year	Order u/s.	Date of AO's order
Assessee	1886/Mds/2015	2008-09	250 r.w.s. 143(3)	23/12/2011
Assessee	1885/Mds/2015	2008-09	250 rws 143(3)/147	26/03/2014
Revenue	1912/Mds/2015	2008-09	143(3) rws 147	26/03/2014
Assessee	1887/Mds/2015	2009-10	143(3)	20/03/2013
Revenue	1913/Mds/2015	2009-10	143(3)	20/03/2013
Assessee	1888/Mds/2015	2010-11	143(3)	26/03/2014
Revenue	1914/Mds/2015	2010-11	143(3)	26/03/2014

2. The assessee has raised several grounds in its appeals, however, the cruxes of the issues are as follows:-

(Assessee's appeal)ITA No.1886/Mds/2015 (A.Y.2008-09):-

"i) The learned Commissioner of Income Tax (Appeals) has erred in upholding the order of the learned Assessing Officer for reopening the assessment made under section 143(1) of the Act dated 23.12.2011.

ii) The learned Commissioner of Income Tax (Appeals) has erred in upholding the order of the learned Assessing Officer who had disallowed the claim of bad debts with respect to PSUs/Government Departments.

(Assessee's appeal)ITA No.1885/Mds/2015 (A.Y.2008-09):-

"i) The learned Commissioner of Income Tax (Appeals) has erred in upholding the reopening of assessment made by the learned Assessing Officer under section 143(3) once again by invoking the provisions of Section147 r.w.s 148 of the Act dated 26.03.2014.

ii) The learned Commissioner of Income Tax (Appeals) has erred by treating 25% of the royalty as capital expenditure and 75% as revenue expenditure thereby denying the deduction for the entire expenditure towards royalty and only granting depreciation for the 25% of the expenditure capitalized.

iii) The learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the learned Assessing Officer who had included Rs.1,52,24,383/- in arriving at the profit of the assessee being the foreign exchange gain on ECB.

iv) The learned Commissioner of Income Tax (Appeals) has erred in not directing the learned Assessing Officer to grant refund to the assessee.

v) The learned Commissioner of Income Tax (Appeals) has erred in not deleting the levy of interest under section 234B of the Act.

(Assessee's appeal)ITA No.1887/Mds/2015 (A.Y.2009-10):-

i) The learned Commissioner of Income Tax (Appeals) has erred by treating 25% of the royalty as capital expenditure and 75% as revenue expenditure thereby denying the deduction for the entire expenditure towards royalty and only granting depreciation for the 25% of the expenditure capitalized.

ii) The learned Commissioner of Income Tax (Appeals) has erred in sustaining the order of the learned Assessing Officer who had disallowed the deduction under section 36(1)(vii) of the Act

in regard to the debts written off with respect to associate companies for the assessment years 2009-10.

iii) The learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the learned Assessing Officer in regard to disallowance of Rs.22,79,636/- being the provision made for customer obligation by treating it as a contingent liability.

(Assessee's appeal)ITA No.1888/Mds/2015 (A.Y.2010-11):-

i)*) The learned Commissioner of Income Tax (Appeals) has erred by treating 25% of the royalty as capital expenditure and 75% as revenue expenditure thereby denying the deduction for the entire expenditure towards royalty and only granting depreciation for the 25% of the expenditure capitalized.*

ii) The learned Commissioner of Income Tax (Appeals) has erred in sustaining the order of the learned Assessing Officer who had disallowed the deduction under section 36(1)(vii) of the Act in regard to the debts written off with respect to associate companies for the assessment year 2010-11.

(Revenue appeals) ITA Nos.1912 to 1914/Mds/2015 (A.Y.2008-09 to 2010-11):-

"The only common ground raised by the Revenue in these three appeals is that the learned Commissioner of Income Tax (Appeals) has erred in holding the claim of royalty payments made to foreign company partly as

capital expenditure and partly as revenue expenditure."

3. Brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing and trading of mechanical seals and couplings and providing CAD based design and drawing, filed its returns of income for the relevant assessment years. For the assessment year 2008-09 initially the assessment was completed under section 143(3) of the Act. Thereafter the assessment was once again reopened and notice under section 148 of the Act dated 26.02.2013 was issued to the assessee. Subsequently, the assessment was completed under section 143(3) r.w.s. 147 of the Act. While as for the assessment years 2009-10 and 2010-11, assessments were completed under section 143(3) of the Act subsequent to processing of the returns under section 143(1) of the Act on 23.12.2011 & 26.03.2014 respectively. In the scrutiny assessments, the learned Assessing Officer made several additions, aggrieved by which the assessee went before the learned Commissioner of Income Tax (Appeals). Not satisfied with the order of the

learned Commissioner of Income Tax (Appeals) the assessee and the Revenue now are both in appeal before us.

Ground No.1: Validity of reopening of assessment in assessee's appeals- ITA Nos.1886 & 1885/Mds/2015:

4.1 The assessee has challenged the reopening of the assessment for the first time and also reopening of the assessment for the second time vide issue of notice under section 148 of the Act dated 26.02.2013. As regards assessment under section 143(3) of the Act for the first time after processing the return under section 143(1) of the Act, we do not find any infirmity in the action of the learned Assessing Officer because only summary assessment was initially made and thereafter the file was taken up for scrutiny within the stipulated period provided under the Act. Further, as regards reopening of the assessment under section 147 r.w.s 148 of the Act, the learned Commissioner of Income Tax (Appeals) had made the following observations:-

> *"4.1.4 In the present case, though there was an assessment order under section 143(3) made earlier, the issues like the claim of deduction u/s.10B royalty payments, foreign exchange gain etc. were not examined by the AO. Therefore, the present action of the AO cannot be treated as a*

change of opinion. Change of opinion comes into picture only where all the details filed before the Assessing Officer have been examined by him thereafter takes a conscious decision. On the other hand, where the details filed by the assessee are insufficient or the issue was not examined by the Assessing Officer such situations will not amount to change of opinion. Further the assessment is reopened within the period of four years from the ends of the relevant assessment year (2008-09).Hence even the restrictions imposed by the proviso to sec.147 of the Act will not come to the rescue of the assessee."

4.2 Since the assessment is reopened within the period of four years from the end of the relevant assessment year and the learned Assessing Officer had reasons to believe that the income chargeable to tax has escaped assessment because the issues with respect to deduction U/s.10B of the Act, royalty payment, foreign exchange gain etc., were not considered by the learned Assessing Officer on the earlier occasion and failed to pass speaking order under section 143(3) of the Act on those issues, we are of the considered view that reopening of the assessment under section 147 r.w.s. 148 of the Act for the second time is valid in law. While arriving at this conclusion, we rely in the decision of the

Hon'ble Supreme Court in the case ACIT Vs. Rajesh Jhaveri Stock Brokers P.Ltd., reported in 291 ITR 500(SC) wherein the Hon'ble Apex Court held as under:-

> *The expression "reason to believe" in section 147 would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer."*

4.3 For the above discussed reasons, we do not find it necessary to interfere with the order of the learned Commissioner of Income Tax (Appeals) on this issue. Accordingly, the first ground in the assessee's appeals ITA No.1885 & 1885/Mds/2015 is held against the assessee.

Ground No.2 : Bad debts written off with respect to the public sector undertakings for the assessment years 2008-09 in ITA No.1886/Mds/2016:

5.1 In the course of assessment proceedings under section 143(3) of the Act for the first time, it was observed by the

learned Assessing Officer that the assessee had claimed bad debts of Rs.35,50,686/- against the debtors who are reputed public sector undertakings. Since the assessee could not adduce any evidence to show that the debts were bad and the debtors had refused to pay the debt, the learned Assessing Officer opined that the claim of the assessee is not justified; therefore, he disallowed the claim of bad debts.

5.2 On appeal, the learned Commissioner of Income Tax (Appeals) relying in the decision of the Hon'ble jurisdictional Madras High Court in the case Southern India Surgical Co. Ltd. vs. ACIT reported in 287 ITR 62 upheld the order of the learned Assessing Officer.

5.3 After hearing both the sides, we do not find any merit in the orders of the Revenue on this issue. The Hon'ble Apex Court in the case TRF Ltd. Vs. CIT reported in 323 ITR 997 has categorically held that it is not necessary for the assessee to establish the debt to have become bad and irrecoverable, it is enough if the debts are written off as

irrecoverable in the accounts of the assessee. In the case of the assessee, due to various commercial factors and business exigencies it was decided by the assessee that either those debt has become bad or it would be prudent not to recover those debt and accordingly written off the same in its books of accounts. Therefore, following the decision of the Hon'ble Apex Court, we hereby direct the learned Assessing Officer to treat the debt of Rs. 35,50,686/- as bad and accordingly grant deduction. The decision rendered by the Hon'ble jurisdictional High Court in the case of Southern India Surgical Co. Ltd. reported in 287 ITR 63 and the decision of Hon'ble Punjab & Haryana High Court in the case Satish Kumar Vs. CIT of 329 ITR 396 cited by the learned D.R. is of no relevance in view of the decision of the Hon'ble Apex Court. Thus, the second ground raised by the assessee in ITA No.1886/Mds/2015 is allowed in its favour.

Ground : Claim of royalty as revenue expenditure in ITA No.1885, 1887, 1888/Mds/2015 for the assessment years 2008-09, 2009-10 & 2010-11 respectively:

6.1 During the course of assessment for the second time under section 143(3) r.w.s.147 & 148 of the Act, the learned Assessing Officer asked the assessee to file the copy of the agreement entered with M/s. John Crane UK in order to verify the details about the payment of royalty of Rs.1,78,00,292/- made during the relevant assessment year. On scrutinizing the details, it was observed by the learned Assessing Officer that the assessee had made a lump sum payment towards royalty. Hence he was of the view that the payment towards royalty was for acquiring enduring and excessive advantage to the assessee's business and therefore it amounts to acquisition of intangible asset with respect to technical knowhow. Accordingly, the learned Assessing Officer treated the entire payment to be capital in nature, however granted depreciation @ 25% viz Rs.44,50,073/- by virtue of section 32(1) Explanation 4 of the Act and thereby made addition of Rs.1,33,50,219/- (1,78,00,292 – 44,50,073) .

6.2 On appeal, the learned Commissioner of Income Tax (Appeals) was of the view that when annual payments of

royalty is calculated and paid at a fixed percentage of sales made during the year, a portion of the payment amounts to capital expenditure as the benefits are enduring in nature. He further relied in the decision of the Hon'ble jurisdictional Madras High Court in the case M/s. Southern Switchgear Vs. CIT reported in 148 ITR 272, wherein it was held as follows:-

> *Section 37(1) of the I.T.Act, 1961 – Capital or revenue expenditure. Assessee company entered into collaboration agreement for 5 years with a foreign company for manufacture of switchgear etc. exclusive right granted to assessee to manufacture and sell scheduled products in India - even after termination of agreement method of production etc could be used by the assessee – assessee paid lump sum technical collaboration fees and royalty based on net invoiced price – whether part of such payments could be disallowed as being capital in nature – held on facts, yes.*
> *Facts: The assessee-company entered into* a *collaboration agreement with a* foreign *company under which the foreign company agreed* to *provide to the assessee* (i) *technical aid and information on the manufacture of switchgear, etc.,* (ii) *the exclusive right to sell and manufacture such products in India,* (iii)*to keep the assessee informed of the latest developments in the field of manufacture of switchgears, and (iv) to train the assessee's personnel The duration of the agreement was* 5 *years. The assessee agreed to pay* as *consideration* £ *20,000 sterling payable in five annual instalments by way of technical collaboration fees,* as *well* as *an annual royalty determined* as a *percentage of the net* invoiced *price of the sales of these items effected by the assessee. The ITO disallowed the technical collaboration fees in full and one-fourth of the royalty paid on the ground that an enduring benefit* had *accrued to the assessee. On appeal, the AAC restricted the disallowance of technical aid fees* to *one-fourth of the gross payment* in *that regard and confirmed the disallowance* in *respect of*

royalty. The Tribunal confirmed the order of the AAC on the ground that what the assessee had obtained through this agreement was an enduring advantage and benefit insofar as the same was available to the assessee for its manufacturing and industrial processes even after the termination of the agreement.

On reference: High Court Held -

Even without acquisition of an asset, a *right of* a *permanent advantage could be acquired and the cost of acquisition of such* a *right could be taken to be capital expenditure. In the instant case, though the duration of the agreement was five years, assessee even after the expiry of the period; could use the methods of production, procedure, experiments, improvements which had been made available to them in pursuance of the agreement. Thus, the assessee had acquired* knowledge *of enduring nature. In addition* to *the acquisition of the technical knowledge, the assessee-company got an exclusive right to manufacture and sell its articles without any objection from anyone including the foreign company and this was clearly an advantage of enduring nature."*

6.3 The learned Commissioner of Income Tax (Appeals) was of the view that the facts in the decision of the Hon'ble Madras High Court cited supra is identical to the facts of the case of the assessee and accordingly held that 75% of the royalty expenses to be treated as capital in nature and 25% to be revenue in nature. Aggrieved by the order of the learned Commissioner of Income Tax (Appeals), the assessee is now in appeal before us.

6.4 The learned Authorized Representative submitted that the royalty paid to the assessee's parent company was 5.5% of the net sale price of the products manufactured and sold by the assessee and therefore, it should be treated as revenue expenditure, while as, the learned Departmental Representative relied in the order of the learned Commissioner of Income Tax (Appeals).

6.5 We have heard the rival submissions and carefully perused the materials on record. On perusing the agreement between the assessee and its parent company, the following facts emerge:-

i) The assessee is granted license to use the license's IP.

ii) The parent company also **make available** to the assessee knowhow continuously relating to the manufacture of the products.

iii) The parent company also provides product specification, design, development, coding, product information, technical information, product improvement assistance so on and so forth to the assessee company.

6.6 From the above, it is apparent that the assessee company acquires substantial knowledge, technical knowhow etc., for manufacturing the product. This benefit acquired by the assessee is definitely of enduring nature. Therefore, we are also of the considered view that the decision of the Hon'ble jurisdictional Madras High court will be squarely applicable to the facts of the case of the assessee. Hence, we do not find it necessary to interfere with the order of the learned Commissioner of Income Tax (Appeals) on this issue. Thus the second ground in ITA No. 1885/Mds/2016 and first ground in ITA 1887/Mds/2015 and ITA No.1888/Mds/2015 is decided against the assessee.

Ground No(iii): Addition of foreign exchange gain on ECB Rs.1,52,24,383/- (ITA No.1885/Mds/2015):

7.1 During the course of assessment for the second time under section 143(3) r.w.s.147 & 148 of the Act, the learned Assessing Officer noticed that the assessee had credited Rs.1,56,40,720/- in its profit & loss account on account of foreign exchange gain. However, while computing the total income the assessee had deducted a sum of

Rs.1,32,78,383/- and added Rs.19,46,000/- as unrealized exchange gain to the block of asset viz., “plant & machinery” (6,51,84,654/- + 19,46,000/-) and claimed depreciation @ 15% on the same. On query, it was submitted by the assessee that the assessee company had availed foreign currency loan for the purchase of plant & machinery and any gain on exchange fluctuation is to be reduced from the cost of the machinery. Accordingly, the assessee company had reduced the gain from the cost of the machinery and claimed depreciation on the balance. However, since the assessee could not furnish the details of the computation, the learned Assessing Officer added back the entire amount of Rs.1,52,24,383/- to the income of the assessee.

7.2 On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer, however by observing as under:-

> “*4.7.5 Therefore, in the cases of borrowed capital for purchase of business assets (say plant and machinery), any interest payments incurred after the date of putting the assets to use, will become revenue expenditure. Similarly, any unspent/unused funds borrowed for purchase of assets, if deposited in banks etc and*

earned interest such interest will become revenue receipt and becomes taxable in the year of earning. The same logic applies for any gain or loss, like exchange fluctuations, waivers etc, on account of the funds borrowed for purchase of assets. In the present case, it is situation of gain on exchange fluctuation in the foreign currency loan obtained for purchase of plant and machinery. As mentioned above, the entire interest and the loss/gain on exchange fluctuation of the borrowed funds upto the date of putting the assets to use should go into the cost of the assets. In fact this has been followed by the assessee, and the revenue also has allowed this position, and the assessee has also been claiming depreciation on such cost. These assets are put to use in the financial years 2005-06 and 2006-07. Therefore, i.e. after the financial year 2006-07, any expenditure by way of interest on these foreign currency loans is a revenue expenditure, and the assessee is also claiming the same as revenue expenditure, including the current A.Y.2008-09. However, during the current A.Y.2008-09, there was a gain on exchange fluctuation of the foreign currency borrowed. The assessee in its P&L account credited the gain, but in the computation statement reduced the same from the income by claiming that the gain only goes to reduce the cost of the assets.

4.7.6 The above claim of the assessee is not justified. The exchange fluctuation gain floss on the borrowed funds, upto the date of putting the assets is to be adjusted against the cost of the assets. But once the assets are put use, the exchange fluctuation loss/gain 011 the borrowed funds will be revenue expenditure or gain. Therefore, the present exchange fluctuation gain of Rs.l,52,24,383/- in the A.Y.2008-09, is a revenue receipt and liable for tax.

4.7.6 In view of the above discussions, I am of the considered opinion that the Assessing Officer has rightly concluded that the exchange fluctuation gain of Rs.l,52,24,383/- from the foreign currency loan, is an assessable income of the year 2008-09. The action of the Assessing Officer is

justified and confirmed."

7.3 We have heard the rival submissions and carefully perused the materials on record. At the outset, we find that the assessee has not submitted the details of the computation of the foreign exchange gain before the learned Assessing Officer due to which he has added the same to the income of the assessee. Further, we find that the learned Commissioner of Income Tax (Appeals) has overlooked the provisions of section 43A of the Act which is a special provision with respect to change in rate of exchange of foreign currency, which may be applicable to the case of the assessee. Therefore, we remit the entire matter back to the file of the learned Assessing Officer for de novo consideration. The assessee is hereby directed to furnish all the details required by the Revenue for its proceedings failing which the Revenue authorities shall pass appropriate order as per merit & law based on the materials on record. This ground of the assessee is allowed for statistical purposes.

Ground No.(iv) : Grant of refund *(ITA No.1885/Mds/2015)*:

8. The assessee has appealed before us stating that the Revenue has not granted refund which is due to it. On this we have nothing more to say other than direct the learned Assessing Officer to grant refund to the assessee, if the assessee is entitled for the same.

Ground No.(v) : Levy of interst under section 234B of the Act (ITA No.1885/Mds/2015):

9. The assessee is aggrieved by the order of the learned Commissioner of Income Tax (Appeals) in upholding the order of the learned Assessing Officer for levy of interest under section 234B of the Act. Since levy of interest under section 234B of the Act is consequential, this ground raised by the assessee is dismissed as such.

Ground No.2 – Disallowance of Bad Debts with respect to associate companies for the assessment years 2009-10 & 2010-11:

10.1 During the course of scrutiny assessment under section 143(3) of the Act, it was noticed by the learned Assessing Officer that the assessee had debited Rs.10,27,897/- and Rs.6,77,385/- as bad debts in its books of

account with respect to debts related to associate companies. Since the assessee had not furnished proper reason for claiming the bad debt, the learned Assessing Officer disallowed it as allowable deduction.

10.2 On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer because even before him, the assessee has not established as to why the debts were irrecoverable.

10.3 Even before us, at this stage the assessee has not furnished any valid reason for claiming bad debts related to the assessee's associated companies. In these circumstances, we concur with the view of the learned Commissioner of Income Tax (Appeals) who had observed that, since the assessee has better access to the management of the debtor it will fairly have a good chance to recover the debts unless there is valid reason for non-recovering the same. Therefore, in the interest of justice, we remit back the matter to the file of the learned Assessing

Officer for de novo consideration for both the assessment years 2009-10 & 2010-11, thereby providing one more opportunity to the assessee to satisfy the Revenue regarding the irrecoverable nature of the debt.

Ground No.3 : ITA No.1887/Mds/2015 - Disallowance Rs.22,79,636/- being provision made for customer obligation (A.Y. 2009-10):

11.1 During the course of assessment proceedings it was noticed by the learned Assessing Officer that the assessee company has debited Rs.22,79,636/- towards provision for customer obligation in its profit & loss account. On query, the assessee company has stated as follows in its reply:-

> *"Gas seals were supplied to Bharat Heavy Electricals Ltd, Hyderabad (BHEL). These were fitted in their compressors and supplied to Bharat Petroleum Corporation Ltd (BPCL). During the commissioning of these compressors at BPCL site there were pre-mature failure on the performance of these seals. BPCL requested us to attend to these failures as the seals were originally supplied by us. We got order for re-furbishing these seals and in voiced them and got paid accordingly. The cause for failure could not be attributed to performance of our seals. There were repeated failures even after refurbishments. Finally after making some modifications these seals were supplied back and fitted in the original equipment These seals are fitted in the compressors which are engaged in continuous process in refineries. The seals are of special type and have a*

life of 5 years. As these are refurbished and refitted the performance has to be observed. Till such time the possibility of potential claim on warranty the customer cannot ruled out Hence the amount equivalent to the refurbishment charges collected is provided towards warranty claim'.

11.2 The learned Assessing Officer after perusing the reply was of the view that such provision are in the nature of contingent liability and therefore disallowed the same as deduction.

11.3 On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer by observing as under:-

"4.4.2. I have considered the assessee's submissions carefully. The assessee's claim of 'provision for customer obligation' is not similar to the "provisions for warranty". Provisions for warranty, is allowable as a deduction, if it was provided on a scientific basis and based on the past experience. Whereas, the present 'provision for customer obligation' is neither based on the past experience nor made on scientific basis. This provision was made based on an isolated transaction. Hence the present claim of 'provision for customer obligation' cannot be equated with the "provisions for warranty". Therefore, I am of the opinion that the Assessing Officer has rightly come to the conclusion that the 'provision for customer obligation' is only a contingent liability and hence not allowable as deduction. The action of the Assessing Officer is justified and confirmed. The assessee fails in its appeals in this regard."

11.4 We do not subscribe to the view of the Revenue. From the facts of the case, it is evident that the provision made by the assessee is towards the expenses that may have to be incurred for servicing, rectification and refurbishment of the products supplied by the assessee to its clients during the relevant assessment year. Therefore, this provision will be in the nature of provision for warranty. Hence, it should be treated as allowable deduction provided the assessee has followed a scientific method while claiming such deduction. Hence, in the interest of justice, we remit back the matter to the file of the learned Assessing Officer to verify whether the assessee has claimed such deduction according to some genuine scientific basis and if found so, allow the same as deduction. It is ordered accordingly.

Revenue's Appeal in ITA Nos. 1912 to 1914/Mds/2015:

Ground : Royalty payments to foreign companies partly held as capital as well as revenue expenditure:

12. Since we have decided the issue in the assessee's appeal herein above upholding the order of the learned

Commissioner of Income Tax (Appeals), this ground raised by the Revenue will not survive.

13. In the result, appeals of the assessee in ITA No.1886/Mds/2015 is partly allowed, ITA No.1885 , 1887 & 1888/Mds/2015 are partly allowed for statistical purposes as indicated hereinabove and Revenue's appeals Nos. 1912 to 1914/Mds/2015 are dismissed.

Order pronounced in the open court on the 17th November, 2016

Sd/-	Sd/-
(**एन.आर.एस. गणेशन**)	(**ए. मोहन अलंकामणी**)
(N.R.S.Ganesan)	(A.Mohan Alankamony)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 17th November, 2016
Somu

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee 2. Assessing Officer3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.