

**आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.786/PN/2014**  
**निर्धारण वर्ष / Assessment Year : 2008-09**

Tetra Pak India Pvt. Ltd.,  
B-53, MIDC Phase II,  
Chakan Industrial Area,  
Village Vasuli, Taluka – Khed,  
Pune – 410501

.... अपीलार्थी/Appellant

PAN: AA ACT3467B

Vs.

The Asst. Commissioner of Income Tax,  
Circle – 7, Pune

.... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.1545/PN/2014**  
**निर्धारण वर्ष / Assessment Year : 2003-04**

Tetra Pak India Pvt. Ltd.,  
B-53, MIDC Phase II,  
Chakan Industrial Area,  
Village Vasuli, Taluka – Khed,  
Pune – 410501

.... अपीलार्थी/Appellant

PAN: AA ACT3467B

Vs.

The Asst. Commissioner of Income Tax,  
Circle – 1(2), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : S/Shri Sunil Pathak and  
Nikhil Pathak  
प्रत्यर्थी की ओर से / Respondent by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / <b>Date of Hearing : 17.11.2016</b>	घोषणा की तारीख / <b>Date of Pronouncement: 23.12.2016</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Both the appeals filed by the assessee are against separate orders of CIT(A)-III, Pune, dated 27.01.2014 and 13.06.2014 relating to assessment years 2008-09 and 2003-04 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals relating to two different assessment years on identical issues were heard together and are being disposed of by this consolidated order for the sake of convenience. However, reference is being made to the facts and issues in ITA No.786/PN/2014 to adjudicate the issue.

3. The assessee in ITA No.786/PN/2014 has raised the following grounds of appeal:-

- 1.1 *On the facts of the case and in law, the learned CIT(A) erred in confirming disallowance of the incremental provision for warranty of Rs.1,67,12,826/-*
- 1.2 *The learned CIT(A) Pune erred in not appreciating that the provision for warranty was properly ascertained and was not in the nature of Contingent Liability.*
- 1.3 *The learned CIT(A), Pune erred in not following ratio of following decisions:*
  - i) *Rotork Controls India P. Ltd. CIT (2009) 314 ITR 62 (SC)*
  - ii) *CIT V Ericsson Communications P. Ltd. (2009) 318 ITR 340 (Delhi)*

4. First, we shall take up the issue in assessment year 2008-09. The assessee for the year under consideration was engaged in the business of manufacturing and sale of aseptic packaging material, aseptic processing and filling equipments. The assessee was leading supplier of liquid food packaging material and packaging systems, wherein it was manufacturing special packaging for storing liquid foods like juices, beverages and milk over a long period of time

without the use of preservatives or refrigeration. The assessee had two divisions i.e. Carton Division and Processing Division. During the year under appeal, the assessee had shown manufacturing sales of Rs.398 crores out of which packaging material accounted for Rs.363 crores and processing equipments at Rs.36 crores. The assessee had also shown trading sales of packaging material of Rs.2.66 crores and other machinery and equipments & spare parts of Rs.91.16 crores. The total sales and services amounted to Rs.502 crores against which the assessee had shown other income of Rs.11 crores. The net profit before tax was Rs.70.34 crores. The Assessing Officer noted that the assessee had made net provision for warranty of Rs.1,67,12,826/- in the current year. The Assessing Officer noted that there was incremental provision for warranty, which was disallowed in the previous years. It was confirmed by the Disputes Resolution Panel (in short 'the DRP') and in view thereof, he added back sum of Rs.1,67,12,826/- to the income of assessee.

5. Before the CIT(A), the assessee pointed out that the provision for warranty was not contingent liability but was properly ascertained and measured by using substantial degree of estimation based on past experience worldwide and in India in particular. It was further claimed that that accounting was in compliance of Accounting Standard 4 'Contingencies and Events occurring after the balance sheet date' and has been claimed as revenue expenditure. The assessee also prepared statement showing year-wise provision of warranty including the utilization amount and reversal made every year for the year ending from 31.03.2005 to 31.03.2013, which is reproduced under para 3.1 at page 4 of the appellate order. The CIT(A) sought additional information from the assessee to adjudicate the issue and based on test laid down by the Hon'ble Supreme Court in Rotork Controls India P. Ltd. Vs. CIT (2009) 314 ITR 62 (SC), it was held that the machines sold by the assessee were heavy duty machines in the range of

Rs.4-6 crores each and were utilized by limited clientele. He further observed that where number of equipments sold each year was limited, the same did not necessitate creation of provision for future liability. The CIT(A) observed that on the face of it, the claim of assessee was not tenable as there seems to be no business exigency in creating huge provision of Rs.32.74 crores for the year under consideration. He admitted that that the assessee had signed warranty clause which was incremental part of sale / purchase agreement with its clients but *per se* did not justify creation of huge provision for warranty claims. The CIT(A) held that the assessee had not justified the fulfillment of test laid down by the Hon'ble Supreme Court in Rotork Controls India P. Ltd. Vs. CIT (supra) and held that the provision for warranty was only contingent liability which was neither historically nor scientifically measurable and therefore, the same was not to be allowed under section 37(1) of the Act.

6. The assessee is in appeal against the order of CIT(A).

7. The learned Authorized Representative for the assessee at the outset pointed out that scientific method was followed by the assessee in making provision on account of warranty, wherein 2% of sale value was taken and warranty was over a period of 18 months from the date of supply of machinery or 12 months from the date of commissioning, whichever is earlier. He stressed that heavy packing machineries were manufactured and sold by the assessee for which, it entered into agreement for supply of machinery. As part of the said agreement, there was warranty clause and the assessee was following systematic method of provision and write back and utilization of amount. The Assessing Officer had disallowed the claim of assessee since there was no utilization during the year. He further pointed out that inadvertently, the assessee had made provision of warranty for Rs.32.74 crores during the year. However,

Rs.31.07 crores was written back and only provision of Rs.1.67 crores was made.

8. The learned Departmental Representative for the Revenue placing reliance on the order in assessment year 2003-04, wherein he said that it is not ascertained liability and hence, not allowable. The said appeal is also listed for hearing.

9. We have heard the rival contentions and perused the record. The issue arising in the present appeal is against the claim of deduction on account of provision made for warranty. The assessee was engaged in the manufacture and sale of processing equipments and filling machines for both dairy and bread processing industries. The machineries which were being manufactured by the assessee were heavy packaging machineries and for the supply of same, the assessee was entering into agreement with the prospective buyers. The copy of one such agreement is placed on record by the assessee at pages 70 to 79 of the Paper Book. As per warranty clause 7 of the agreement, it is provided that the equipment is sold subject to express warranty, wherein the seller warrants that the equipments shall be free from material defects in workmanship, materials and design for period of 12 months from the date of commencement of use or period or 18 months from the delivery, whichever is shorter. It was undertaken by the assessee to repair or replace free of charge to the purchaser any part of equipment which contains a defect or actual refund to the purchaser the portion of price attributable to the defective part. The replacement or repair price were also subject to some warranty for the remainder of original warranty period or six months from the date of repair or installation of replacement part, whichever is shorter. It was agreed that the purchaser had to bear the cost and risk of transport of defective part to the seller, who in turn, had to repair or replace the same on the same terms as the equipment was supplied. As per clause 7.4, the

seller i.e. the assessee had no liability for any defect in the equipment because of ordinary wear and tear, misuse or abuse and other conditions. In view of undertaking given by the assessee by way of warranty on the equipment sold by it to the prospective purchasers, the assessee was maintaining a systematic method, wherein the provision was made on account of warranty. In case any part of the warranty was utilized, then the same was so debited or / and the balance on expiry of period of warranty was written back. This method was regularly and systematically followed by the assessee. The CIT(A) has referred to the factual aspects of the case and pointed out that the machinery sold by the assessee was in the range of Rs.4-6 crores and there were limited buyers of said machinery. In view of said facts and circumstances, where the assessee was engaged in the manufacture of specialized machinery for packaging and the assessee had warranty clause against supply of the said machinery, then the recognition of application of warranty by way of making the provision in the books of account is accepted accounting practice and such a liability recognized by the assessee is Contingent Liability. Following the ratio laid down by the Hon'ble Supreme Court in Rotork Controls India P. Ltd. Vs. CIT (supra), we hold that the value of Contingent Liability by way of recognizing the warranty liabilities, by making a provision and also following systematic method of its write back and / or utilization is an accepted accounting method adopted by the assessee and the provision made by the assessee is to be allowed as deduction in the hands of assessee. It may be clarified herein that the CIT(A) had rejected the claim of assessee in assessment year 2008-09 observing that the assessee had made provision to the extent of Rs.32.74 crores, whereas none of the provisions made in the earlier years were much utilized. The learned Authorized Representative for the assessee in this regard has clarified that inadvertently, the same was created at Rs.32.74 crores but Rs.31.07 crores was written back and the deduction by way of provision of warranty was claimed only at Rs.1.67 crores.

The Assessing Officer had also disallowed sum of Rs.1.67 crores only. In view thereof, we find no merit in the observations of CIT(A) in denying the claim of assessee. Applying the ratio laid down by the Hon'ble Supreme Court in Rotork Controls India P. Ltd. Vs. CIT (supra), the assessee having fulfilled the conditions laid down by the Apex Court, we find merit in the claim of assessee and accordingly, we direct the Assessing Officer to allow the deduction on account of provision for warranty made at Rs.1.67 crores. The grounds of appeal raised by the assessee are thus, allowed.

10. The issue raised in assessment year 2003-04 is identical to the issue in assessment year 2008-09 and following the same parity of reasoning, we allow the claim of assessee in assessment year 2003-04 also.

11. In the result, both the appeals of assessee are allowed.

Order pronounced on this 23<sup>rd</sup> day of December, 2016.

<b>Sd/-</b> <b>(ANIL CHATURVEDI)</b>	<b>Sd/-</b> <b>(SUSHMA CHOWLA)</b>
<b>लेखा सदस्य / ACCOUNTANT MEMBER</b>	<b>न्यायिक सदस्य / JUDICIAL MEMBER</b>

पुणे / Pune; दिनांक Dated : 23<sup>rd</sup> December, 2016.

GCVSR

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-III, Pune;
4. आयकर आयुक्त / The CIT-IV, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune