

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री रमित कोचर, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

ITA No.1692/Chny/2019

निर्धारण वर्ष /Assessment Year: 2013-14

M/s.SL Lumax Ltd.,
G-14, 15 & 25, SIPCOT Industrial
Park, Irrungattukottai,
Sriperumbudur-602 117.
Kancheepuram District.

v. The Principal Commissioner
of Income Tax, Room No.602,
VI Floor, Aayakar Bhawan,
New Block, Mahatama Gandhi
Road, Nungambakkam,
Chennai-600034.

[PAN: AAACL 1857 B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. Vikram Vijayaraghavan,
Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr. A.Sundararajan, CIT

सुनवाई की तारीख/Date of Hearing

: 28.11.2019

घोषणा की तारीख /Date of Pronouncement

: 10.02.2020

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against Revisionary Order dated 30.03.2019 passed by learned Principal Commissioner of Income Tax-6, Chennai (hereinafter called "the PCIT") u/s 263 of the Income-tax Act, 1961(hereinafter called "the Act"), in C.No.6119(27)/PCIT-6 /2018-19 for assessment Year (ay) 2014-15 , wherein learned PCIT held assessment order dated 27.02.2017 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) read with Section 92CA(4) read with Section

144C(3) of the 1961 Act to be erroneous so far as prejudicial to the interest of Revenue by invoking provisions of Section 263 of the 1961 Act.

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

"The grounds of appeal listed below are without prejudice to each other.

1. The order of the learned Principal Commissioner of Income-tax - 6, Chennai ['PCIT'] is erroneous, bad in law, prejudicial to the Appellant and contrary to the facts and circumstances of the case.

Issue 1: On jurisdiction to set aside the assessment order under section 263 of the Income-tax Act, 1961 ('the Act')

2. The learned PCIT has erred in exercising powers under section 263 of the Act and has failed to appreciate that the order under section 143(3) of the Act passed by the Assessing Officer ('AO') did not pass the twin conditions of being 'erroneous' and 'prejudicial to interest of the revenue',

3. The learned PCIT has erred in holding that the AO has not applied his mind on the subject issue merely because the AO has not discussed the same in the Assessment order.

4. The learned PCIT has failed to appreciate that AO has adopted one of the possible views of the matter and the jurisdiction under section 263 of the Act cannot be exercised merely to substitute the view taken by the AO.

5. The order passed by the learned PCIT under section 263 of the Act is bad in law since the proceedings under section 263 were initiated based on the audit objections.

6. The learned PCIT has failed to dispose the objection raised by the Appellant and passed the order on the merits of the issue.

Issue 2: On merits - Provision for warranty of INR 1,40,45,352

7. The Learned PCIT has failed to appreciate the fact that the provision for warranty has been made on a scientific basis being the historical experience of the warranty expenses incurred by the Appellant.

8. The learned AO has failed to appreciate the ruling of the Hon'ble Supreme Court of India in the case of Rotork Controls India P Ltd v CIT (314 ITR 62) and Jurisdictional High Court decision in the case of the Commissioner of Income-tax Vs Luk India (P.) Ltd [347 ITR 674 (Mad)] which has allowed deduction of provision for warranty created based on historical experiences.

The Appellant craves leave to add, supplement, amend, delete or otherwise modify any of the grounds stated hereinabove at the time of hearing."

3. This appeal filed by the assessee has challenged revisionary order passed by learned PCIT u/s.263 of the Act dated 30.03.2019 holding that

assessment order dated 27.02.2017 passed by AO u/s.143(3) read with Section 92CA(4) read with Section 144C(3) of the 1961 Act to be erroneous so far as prejudicial to the interest of Revenue by invoking provisions of Section 263 of the 1961 Act. Brief facts of the case are that the assessee is engaged in business of manufacturing auto parts. The assessee had declared an income of Rs. 74.30 Crs. in return of income filed with Revenue, which was assessed by Revenue in scrutiny assessment framed by AO u/s.143(3) read with Section 92CA(4) read with Section 144C(3) of the 1961 Act by the AO , vide assessment order dated 27.02.2017 assessing the income of the assessee at Rs. 76.04 Crs. The learned PCIT after examining records was of the view that provision for warranty claimed by assessee to the tune of Rs. 1,40,45,352/- for financial year 2012-13 in its Profit and Loss Account in Schedule 22 and Schedule 8 to the audited financial statements, is sought to be justified by assessee on the basis of subsequent year figures , while the same is to be allowed based on past figures of claims against provisions made and hence said claim of provision towards warranty was wrongly allowed by the AO . Thus, the learned PCIT had aforesaid reasons to believe that assessment order passed by the AO was erroneous so far as prejudicial to the interest of the Revenue warranting interference u/s 263 of the 1961 Act, by observing as under in SCN dated 14.03.2019 issued by learned PCIT:

"On examination of the assessment record for AY 2013-14, it has been observed by me as under:-

(i) It is seen from the P & L A/c Sch-22 other expenses, you have claimed Rs.1,40,45,352/- towards provision for warranty, it is seen from the Sch-8, under movement of warranty provision, it is shown as follows:

Op. Bal	- Rs.2,43,88,044/-
Add: Provision created	- Rs.1,40,45,352/-
Less: Utilised / reversed	- Rs.99,37,415/-
Closing balance	- Rs.2,84,95,981/-

It is noticed from the details furnished that you have sought to justify the claim of provision based on the subsequent figures. Since, warranty provision are to allowed only on the past figures of claim against provision made, the provision towards warranty created of Rs. 1,40,45,352/- as expenditure for FY 2012-13 is based on the figures subsequent FY 2013-14. Hence the claim of provision towards warranty was wrongly allowed in the assessment order.

In these circumstances, I have reason to believe that the order of the Assessing Officer passed u/s 143(3) of the Act for AY 2013-14 on 27.02.2017, is erroneous in so far as it is prejudicial to the interests of the Revenue. It is, therefore, proposed to exercise revisionary powers conferred u/s 263 of the Act..."

3.2 The assessee on its part challenged the said show cause notice issued by learned PCIT on several grounds and also relied upon judicial precedents as detailed in the revisionary order dated 30.03.2019 passed by learned PCIT u/s.263 of the Act, wherein, learned PCIT invoked provisions of Sec.263 of the Act and held that assessment order passed by AO to be erroneous in so far as prejudicial to the interest of the Revenue, by holding as under:

"3. Decision - I have considered the facts and circumstances of the case and submissions made by the assessee in this regard and find that the claim of the assessee is not acceptable, according to the case law relied by the assessee in the case of Rotork Controls India P Ltd, the following 3 conditions have to be satisfied to recognize a provision and allow the same as expenditure. The provision is a liability which can be measured only by using 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.

3.1 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 enterprises embodying economic benefits. A past event that leads to a present obligation is called an obligating event which is an event that creates an 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 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.

3.2 This contention is corroborated from the fact that the assessee company has made reversal entry also from the provision and the utilization is not made to the full extent of provision, but there is a big gap between the provision made and the utilization. This shows that the obligation and outflow of the source was not correctly estimated and this should be allowed on actual basis only.

3.3 Further, as explained above 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. The above mentioned facts were not considered and discussed while allowing the provision for warranty by the Assessing Officer.

3.4 Hence, it would appear that the assessee had made an incorrect claim and the same has been debited in the P&L Account. In the circumstances, the AO should have disallowed the claim. However, the AO has failed to do so in the assessment order. Therefore, in conclusion, the assessing officer has not made complete verification with respect to these aspects and has passed the assessment order without proper and diligent application of mind and hence in my considered opinion the assessment order so passed is erroneous, to the extent it is prejudicial to the interests of the Revenue. Accordingly, the assessment order is hereby set aside u/s.263 of the Act, with the direction to the assessing officer to examine the aspects discussed above and pass a fresh order after granting opportunity to the assessee. The assessee can furnish documents which were not available at the time of assessment, to the Assessing Officer for fresh examination. It is ordered accordingly."

4. Aggrieved by revisionary order dated 30.03.2019 passed by learned PCIT u/s 263 of the 1961 Act, the assessee filed first appeal with tribunal and elaborate contentions are made by learned counsel for the assessee before the tribunal. The assessee has also filed written submissions before tribunal which are placed in file. The assessee has also filed paper book before the tribunal, which are placed in filed. The learned counsel for the assessee submitted that assessment order was passed by the AO after making enquiries about provision for warranty made by the assessee in its books of accounts and the said assessment order could not be called as erroneous in so far as prejudicial to the interest of Revenue warranting interference by learned PCIT u/s 263 of the 1961 Act. The Ld.AR drew our attention to Page No. 30 to 34 of the Paper Book, wherein, notice issued by AO dated 20.04.2015 u/s 142(1) during the course of assessment

proceedings are placed as well as submissions made by the assessee in response thereto before the AO are placed. It was submitted that vide point number 10 enquiries were made by the AO to justify provisions made and the tax treatment of the same. Our attention was also drawn to Page Nos.13 of the paper book wherein there is a notes to audited financial statements/accounts on Provision for warranty made, which read as under:

" Provision for warranty:

Provision for product related warranty costs is based on the claims received upto the year end as well as management estimates of further liability to be incurred in this regard during the warranty period, computed on the basis of technical evaluation and past trend of such claims."

Our attentions was also drawn to page 17 of the Paper Book, wherein, provisions were made as per Schedule 8 of the audited financial statements of the assessee company. Our attention was also drawn by learned counsel for the assessee to notice dated 17.10.2016 issued by AO during the course of assessment proceedings u/s 142(1) by the AO which is separately filed before the Bench by learned counsel for the assessee and attention is drawn to point number 5 wherein there is specific query made by the AO as to justify provision for warranty of Rs. 1,40,45,352/- claimed as an expenditure by the assessee. Statement is made before the Bench by learned counsel for the assessee that reply was filed by assessee on 24.10.2016 before AO during assessment proceedings conducted by AO, along with explanation for provision for warranty as to how it was computed and the aforesaid reply dated 24.10.2016 claimed to be filed

before AO along with computation of warranty provision is placed in file. The said contention of having filed details of provision for warranty is also reiterated by assessee in written submissions filed by learned counsel for the assessee and the aforesaid reply dated 24.10.2016 is also filed along with written submissions filed by assessee before the tribunal. The learned counsel for assessee submitted that proper enquiries were made by AO during assessment proceedings as well replies were filed during assessment proceedings , and hence assessment order passed by AO cannot be termed as erroneous in so far as prejudicial to the interest of Revenue. Reliance is placed by learned counsel for the assessee on the decision of the Hon'ble Bombay High Court in the case of CIT v. Gabriel India Ltd., reported in [1993] 71 Taxman 585 (Bombay) . The learned counsel for the assessee has also relied upon following decisions in the written submissions filed before the tribunal:

- a) Hon'ble Delhi High Court decision in the case of CIT v. Vikas Polymers reported in (2010) 194 Taxman 57(Del. HC)
- b) Hon'ble Allahabad High Court decision in the case of Meerut Roller Flour Mills Private Limited v. CIT reported in (2019) 110 taxmann.com 170(All. HC)
- c) ITAT, Mumbai decision in the case of Narayan Tatu Rane v. ITO reported in (2016) 70 taxmann.com 227(Mum-trib)

d) Hon'ble Delhi High Court in the case of CIT v. Sunbeam Auto Limited reported in (2010) 189 Taxman 436(Del HC)

It is the contentions of learned counsel for the assessee before the Bench that AO made enquiries and verifications while framing assessment and has taken a view that the provisions for warranty was correctly made by assessee , and hence no additions were made by AO while passing assessment order u/s.143(3) read with Section 92CA(4) read with Section 144C(3) of the 1961 Act. The learned counsel for assessee also relied upon decision of Hon'ble Rajasthan High Court in the case of CIT v. Jain Construction Company reported in (2012) 83 CCH 0234(Raj.HC). The Ld.CIT-DR, on the other hand, supported the revisionary order passed by learned PCIT and submitted that Explanation-2 to Sec.263 of the Act is brought into statute by Finance Act, 2015 which is applicable in the instant case as orders of the authorities below was made post insertion of Explanation 2 to Section 263 of the 1961 Act. It was submitted by learned CIT-DR that the AO did not made proper enquiries while passing assessment order as to claim of provision for warranty made by assessee. It was submitted by learned CIT-DR that there was no scientific basis for making provisions for warranty and it was submitted that the AO has not made proper enquiries and verification before passing assessment order and learned PCIT was justified in invoking revisionary provisions under Sec.263 of the Act. It was submitted by Ld. CIT-DR that decision in the case of Malabar Industrial Company Limited v. CIT reported in (2000) 109

Taxman 66(SC) was rendered by Hon'ble Supreme Court prior to amendment in Section 263 of the 1961 Act, wherein now Explanation-2 is inserted in Section 263 of the 1961 Act by Finance Act, 2015 w.e.f. 01.06.2015 and deeming fiction is created by Explanation 2 to Section 263 which is inserted by Finance Act, 2015. The learned CIT-DR relied upon decision in the case of Toyoto Motor Corporation v.CIT reported in (2008)173 taxman 458(SC) and decision of Hon'ble High Court of Gauhati in CIT v. Jawahar Bhattacharjee reported in (2012) 24 taxmann.com 215(Gau. HC) and it was submitted that there was no application of mind by the AO while passing assessment order and hence the same is erroneous in so far as prejudicial to the interest of Revenue. The Ld.AR submitted in rejoinder that learned PCIT cannot substitute its opinion with the opinion formed by the AO while passing assessment order, unless it is shown that assessment order is erroneous in so far as is prejudicial to the interest of Revenue to invoke revisionary powers u/s 263 of the 1961 Act.

5. We have considered rival contentions and carefully perused the material on record including cited case law. We have observed that assessee is in the business of manufacturing of auto parts. The assessee filed its return of income for impugned ay: 2013-14 on 29.11.2013 declaring total income of Rs.74.30 Crs. The case of the assessee was selected by Revenue for framing scrutiny assessment, and assessment order dated 27.02.2017 was passed by AO u/s.143(3) r.w.s.92CA(4) r.w.s.144C(3) of the 1961 Act

assessing income of the assessee at Rs. 76.04 crores as against returned income of Rs. 74.30 crores , after making additions to the income of the assessee to the tune of Rs. 1.74 crores to the returned income in the hands of the assessee while framing scrutiny assessment by the AO. However, the AO did not made any additions to the income of the assessee towards provision for warranty to the tune of Rs. 1,40,45,352/- made by assessee in its audited financial statements which was claimed by assessee as deduction while computing income chargeable to tax while filing its return of income. We have observed that during the course of assessment proceedings, the AO had specifically asked assessee to explain and justify as to allowability provisions for expenses made in its P& L Account as deduction , while computing income chargeable to tax, including provision for warranties to the tune of Rs. 1,40,45,352/- made by assessee in its audited financial statements. It is observed that the AO had issued notices dated 20.04.2015 and 17.10.2016 , both u/s 142(1) of the 1961 Act to the assessee asking assessee to explain and justify as to allowability of the claim of provision for expenses made in the audited financial statements and claimed as deduction while computing income chargeable to tax in return of income filed with Revenue. The said notices are placed in file. The assessee has duly replied , inter-alia, by giving details of provisions made for warranties to the tune of Rs. 1.40 crores in its books of accounts which was claimed as deduction while computing income chargeable to tax, vide reply dated 24.10.2016 along with computational aspect of making provision for warranties , and said reply

of the assessee was accepted by the AO while framing scrutiny assessment for the impugned ay, vide assessment order dated 27.02.2017 passed by AO and no additions were made by the AO to the income of the assessee while framing aforesaid scrutiny assessment. The learned PCIT has held assessment order dated 27.02.2017 passed by the AO to be erroneous in so far as prejudicial to the interest of Revenue , vide revisionary order dated 30.03.2019 passed by learned PCIT u/s 263 of the 1961 Act, by holding that there is a big gap between the provision made for warranties and its utilization thereof , and secondly that the assessee has itself reversed the excess provision made towards warranties as the utilization was not made to the full extent of provisions and further holding that the AO has not made proper enquiries and verification before allowing claim for provisions for warranty. Before proceeding further, it will be profitable at this stage to analyze the background and financials of the assessee for the current financial year as well for preceding financial years. The audited financials statements from financial year 2007-08 to 2012-13 are placed by assessee in paper book filed with tribunal . The assessee is engaged in business of manufacturing of auto parts and has to offer warranties against the sale of products manufactured /services rendered by the assessee. The assessee is making claim for provisions for warranties in preceding years also , as is emerging from records before the Bench. On perusal of the audited financial statement for financial year 2012-13 relevant to impugned ay: 2013-14, we have observed that

assessee has Gross Revenue from operations to the tune of Rs.782.04 Crs.(Rs. 675.79 crores for financial year 2011-12) . We have observed that during the year under consideration viz. ay: 2013-14, the assessee has made provision for warranties to the tune of Rs. 1.40 Crs. which is 0.18% of the Gross Revenues from operations reported by assessee. The assessee has declared income of Rs. 74.30 crores chargeable to tax in the return of income filed for ay: 2013-14. The total actual claims against warranties received by assessee during the year under consideration viz. ay: 2013-14 were to the tune of Rs. 99.37 lacs. In the immediately preceding financial year 2011-12, the provision for warranties made by assessee were to the tune of Rs. 2.40 Crs. as against Gross Revenue from operations to the tune of Rs. 675.79 crores reported by assessee for, which translates it into 0.36% of the Gross Revenue from operations. The actual claim for warranties received by assessee for financial year 2011-12 were to the tune of Rs. 1.87 crores. Thus, it could be seen that although, the gross turnover of the assessee increased from Rs. 675.79 Crs. to Rs. 782.04 Crs. , the provision for warranties have been scaled down to Rs.1.40 Crs. in ay : 2013-14, from Rs. 2.40 Crs. in ay: 2012-13 viz. from 0.36% in ay: 2012-13 to 0.18% in ay: 2012-13 , as the assessee has during the financial year 2012-13 which is under consideration before us, received claims for warranties to the tune of Rs. 99.37 lacs as against claims for warranties to the tune of Rs. 1.87 crores received in financial

year 2011-12 . It is pertinent to mention that the AO framed scrutiny assessment for ay: 2012-13 also , vide assessment order dated 26.03.2016 passed u/s 143(3) read with Section 92CA of the 1961 Act , wherein the AO accepted claim for provision for warranty made by the assessee while computing income chargeable to tax and no additions were made by the AO while framing scrutiny assessment for ay: 2012-13. The said assessment order for ay: 2012-13 is placed in paper book at page number 49 to 53 and on perusal of said assessment order, it is observed that no addition has been made by AO towards claim for provision for warranties made by the assessee for ay: 2012-13. Similarly, scrutiny assessment for ay: 2011-12 was also framed by the AO under provisions of Section 143(3) vide assessment order dated 16.02.2015 passed by AO and no additions to the income of the assessee was made by the AO towards claim for provision for warranties while framing scrutiny assessment for ay: 2011-12. As per details placed on record, the assessee made provision for warranties to the tune of Rs. 85.28 lacs for ay: 2011-12 on Gross Turnover of Rs. 558.40 crores, which translates it to 0.15% of gross turnover. Thus, as could be seen the AO allowed claim for provisions for warranties for ay: 2011-12 and 2012-13 in scrutiny assessment framed under provisions of the 1961 Act and no additions to income was made by the AO towards claim for provisions for warranties claimed as deduction while computing income chargeable to tax for ay: 2011-12 and 2012-13 also. It is not shown by Revenue before the Bench that assessment orders passed by the AO for ay: 2011-12 and 2012-13 were

interfered by Revenue either u/s 147 or 263 of the 1961 Act or any other provisions of the 1961 Act so far as claim for provisions for warranties so allowed by the AO for ay: 2011-12 and 2012-13 is concerned. It is also not shown by Revenue before the Bench that the claim for provision for warranties made by the assessee was unconscionably higher for relevant previous year 2012-13 relevant to impugned ay: 2013-14 vis-à-vis earlier years , rather the assessee has claimed provision for warranties to the tune of 0.18% of Gross Turnover for ay: 2013-14 as against 0.36% of Gross Turnover for ay: 2012-13 and 0.15% of Gross Turnover for ay: 2011-12, and as could be seen the AO allowed claim for provision for warranties for ay: 2011-12 and 2012-13 in scrutiny assessment and no additions were made to the income of the assessee by AO while framing scrutiny assessment. It is also not brought on record by learned CIT-DR that assessment orders for ay: 2011-12 and 2012-13 were interfered by Revenue by invoking provisions of Section 147 or Section 263 or any other provisions of the 1961 Act. It is also observed that similar position prevailed even in ay: 2010-11 wherein in the scrutiny assessment, there were no additions made by the AO towards provisions for warranties claimed by assessee as deduction while computing income chargeable to tax. Thus, it could not be said that the AO was not aware of the claim for provisions for warranties made by the assessee over several preceding years , rather the said claims were allowed by the AO as deduction while computing income of the assessee chargeable to tax, while framing scrutiny assessment orders. Those assessment orders were accepted by

the Revenue as it could not be shown by learned CIT-DR before us that Revenue interfered with the said assessment orders for ay: 2010-11 to 2012-13 by invoking provisions of Section 147 or 263 or any other provisions of the 1961 Act. It is also observed that the assessee has duly given a note in its financial audited statements as to the basis on which provision for warranties were made by it in its books of accounts which was claimed by it as deduction while computing income chargeable to tax under provisions of the 1961 Act, which is reproduced hereunder:

"Provision for warranty:

Provision for product related warranty costs is based on the claims received upto the year end as well as management estimates of further liability to be incurred in this regard during the warranty period, computed on the basis of technical evaluation and past trend of such claims."

On careful perusal of the aforesaid note, it is observed that the assessee is following a method for computing provision for warranties based on the claims received upto year end as well management estimate of further liability to be incurred in this regard during the warranty period , computed on the basis of technical evaluation and past trends of such claim. In our considered view, it could not be said that such method for making provision for warranties is in the realm of perversity and rather in our considered view the method adopted is fair and reasonable method to compute provision for warranties , as it considered actual claims received upto year end as also management estimate based on technical evaluation and past trends. While making provisions for warranties , the tax-payer has to make present estimate of likely obligation which may arise in

future arising out of existing contracts of sale and services made by assessee entailing outgo in future on account of commitments made by tax-payers to its customers while executing sales/services contracts already made before the end of year. It is also well settled that an estimates would always entail some guess work but the said estimate has to be an honest and fair guess work . Reference is drawn to decision of Hon'ble Supreme Court in the case of Kachwala Gems v. JCIT reported in (2007) 288 ITR 10(SC) , although it was rendered in the context of best judgment assessment. Merely because, the provision for warranties made during the year under consideration is in excess of claims received during the year under consideration, could not be a reason for disallowing said claim unless it is shown that provision for warranties made during the year is unconscionably high which was made with an intent to artificially reduce tax-liability with an intent to defraud revenue. Incidentally , in the preceding year viz. ay: 2012-13 , the assessee received actual claims for warranties to the tune of Rs. 1.87 crores while in the year under consideration viz. ay: 2013-13, it made provision for warranties to the tune of Rs. 1.40 crores in its books of accounts . Thus, in the preceding year, the assessee received claims towards warranties upto year end to the tune of Rs.1.86 crores and it made provisions for warranties to the tune of Rs. 2.40 crores which was 0.36% of the Gross Turnover, while during the year under consideration it received claims towards warranties to the tune of Rs. 99.37 lacs and accordingly the assessee voluntarily scaled down the provision for warranties to the tune of Rs. 1.40 crores

which is 0.18% of the Gross Turnover. It is clearly brought on record that the AO did made enquiries as to claim made by assessee towards provisions for warranties and the assessee did reply as to how it made provisions for warranties, which reply stood accepted by the AO during the course of assessment proceedings. The assessee has also placed in paper book, the method followed by it for making provisions for warranties in its books of accounts, which is reproduced hereunder:

"Table A: Workings computing provision for warranty created in FY 2012-13

S.No.	Description	Turnover (₹)
1.	Turnover for 5 consecutive years: (A)	
	2008-09	4,24,19,80,814
	2009-10	4,84,88,60,032
	2010-11	5,03,95,36,000
	2011-12	6,11,23,89,566
	2012-13	5,53,40,64,705
	Total	25,77,68,31,117
2	Closing balance of provision for warranty to be retained, based on past experience of actual warranty expense (B) (Working provided below in Table B)	0.1%
3	Closing balance of provision for warranty for FY 2012-13 -(C=A*B)	2,84,95,981
4	Opening balance of provision for warranty for FY 2012-13	2,43,88,044
5	Actual warranty expense incurred during FY 2012-13	99,37,415
6	Provision for warranty to be created during the FY 2012-13	1,40,45,352

Table B: Workings for computing percentage of warranty expense in proportion to the turnover.

Year	Turnover (₹)	Warranty Claims (₹)	Claim % on Sales considered for warranty purposes
2007-08	2,98,75,94,875	-	0.0%
2008-09	4,24,19,80,814	-	0.0%
2009-10	4,84,88,60,032	19,15,893	0.0%
2010-11	5,03,95,36,000	85,28,070	0.2%
2011-12	6,11,23,89,566	1,86,54,652	0.3%
Total	23,23,03,61,287	2,90,98,615	0.1%

Copy of financial statement for the FY referred above is enclosed.

The issue of claim of provisions for warranties was a recurring issue which is arising every year and it is brought on record by assessee that the AO did framed scrutiny assessment even for ay: 2010-11, 2011-12 and 2012-13 , apart from making scrutiny assessment for impugned ay: 2013-14 and for all these years the assessee's claim for provision for warranties was accepted by the AO while framing scrutiny assessment. The Revenue did not interfered with the assessment framed by the AO for ay: 2010-11, 2011-12 and 2012-13 and hence the issue of allowability of claim of provision for warranty by the AO for ay: 2010-11, 2011-12 and 2012-13 attained finality at the level of the AO itself for ay: 2011-12 and 2012-13. Thus, it could not be said that the AO did not made any opinion while framing scrutiny assessment for ay: 2013-14 before allowing deduction for claim of provision for warranties for ay: 2013-14 and the said opinion in our considered view was formed after due enquiries and verifications . In our considered view, in the present case Explanation 2 to Section 263 of the 1961 Act cannot be invoked by Revenue as firstly, the AO did made proper enquiries and verifications as to claim of provisions for warranty made by the assessee, secondly, the assessee duly replied to said query raised by the AO during assessment proceedings, thirdly, this is a recurring issue arising from preceding years and the AO was allowing the said claim in earlier years also, fourthly the AO made conscious decision while allowing claim of the assessee for deduction on account of provision

for warranties. The learned PCIT cannot substitute its opinion with that of the AO formed during the course of assessment proceedings, unless it is shown that either the AO did not make any opinion while allowing the claim of deduction which was allowed by AO without making any enquiry or verification or after making inadequate or improper enquiries instead of making proper enquiries or verification which the AO ought to have made, or the view taken by the AO was a perverse view while allowing the claim of deduction so much so that the order passed by the AO was erroneous so far as prejudicial to the interest of Revenue. On perusal of quantum of claim for provision for warranties made by the assessee during impugned ay: 2013-14 which is to the tune of 0.18% of Gross Turnover as against 0.36% of Gross turnover in immediately preceding year which was also allowed by the AO, it could not be said that the assessee is making an attempt to claim higher provisions towards warranties in the year under consideration to reduce its tax liability or to defraud Revenue or the claim so made was unconscionably higher. Under these circumstances, we are of the considered view, the AO has formed an conscious opinion while allowing deduction towards claim of provision for warranties while framing scrutiny assessment for impugned ay and it could not be said that the AO formed an opinion which could be termed as perverse to the extent that the assessment order passed by the AO could be termed as erroneous in so far as prejudicial to the interest of the Revenue warranting interference u/s 263 of the 1961 Act. The powers u/s 263 are extra-ordinary revisionary powers vested with learned PCIT who is

required to pass an revisionary order after examining the 'record' as stipulated in sub-section 1 to Section 263 of the 1961 Act read with Explanation 1 clause (b), which explanation provide that the 'record' shall include and shall be deemed always to have included all records relating to any proceedings under the 1961 Act available at the time of examination by learned PCIT or CIT. The word 'record' is defined under Explanation 1(b) to Section 263 in an most exhaustive manner and shall also include records available for scrutiny assessment proceedings conducted by AO not only for relevant ay but also even for preceding ay's. It was incumbent on learned PCIT to have looked into assessment records of even preceding years available with Revenue as the issue regarding claim of provisions for warranties is a recurring issue arising every year on year, before prejudicing assessee with an revisionary order passed u/s 263 of the 1961 Act declaring assessment order passed by the AO to be erroneous in so far as prejudicial to the interest of Revenue. As a serious prejudice is likely to be caused to the tax-payer by invocation of extraordinary revisionary powers vested with learned PCIT or CIT by invoking provisions of Section 263 of the 1961 Act , such powers are to be used by learned PCIT or CIT not in an technical , routine or casual manner but only after examining of the 'record' which , inert-alia , also includes assessment records of preceding ay's apart from that of current ay under consideration before us. Show Cause Notice dated 14.03.2019 was issued by learned PCIT to the assessee ,and the assessee made detailed reply before learned PCIT on 26.03.2019 challenging invocation of revisionary

powers of learned PCIT both on legal grounds as well on merits . In the reply submitted by assessee before learned PCIT during revisionary proceedings conducted by learned PCIT u/s 263 of the 1961 Act , the assessee in nut-shell submitted before learned PCIT that provision for warranty was made based on historical experience of three years based on statistical data's and thus, it was an ascertained liability. It was submitted before learned PCIT by assessee that the AO did made enquiries with the assessee w.r.t. claim for deduction of provision for warranties during the course of assessment proceedings for impugned ay and it was claimed that the assessee did replied before the AO during the course of assessment proceedings explaining claim for deduction of provisions for warranties. It was incumbent on learned PCIT to have viewed the entire submissions made by assessee as also assessment records of current year as well that of preceding years as it was an recurring issue every year , also keeping in view that the Revenue has finally accepted the claim for deduction towards provisions made towards warranties in the preceding years under scrutiny assessments for ay: 2010-11 to 2012-13 and provision for warranties made during the year under consideration is not unconscionably higher than that of preceding years warranting interference u/s 263 of the 1961 Act rather it has fallen to 0.18% of Gross Turnover during the year under consideration from 0.36% of Gross Turnover during immediately preceding year. It is now well settled by catena of judgments that in tax proceedings , principles of res-judicata is not applicable but principles of consistency has to be maintained to instill

certainty in tax matters in the minds of tax-payer so that they can plan their affairs , unless perversity is shown in the action of tax-payer in claiming deduction while computing income chargeable to tax or it is shown that an attempt is made by tax-payer to defraud revenue or an unconscionably high claim of deduction is made by the tax-payer which breaches all cannon of equity, justice and law. We donot find any such attempt made by assessee in the instant case to defraud Revenue while making claim for provisions for warranties in the year under consideration rather we find the method adopted for making claim for provision for warranties as fair and reasonable and in our considered view the AO did formed an proper opinion after making due enquiries and verification while allowing claim of deduction of provisions for warranties for the impugned ay while framing scrutiny assessment , as also it is observed that it was a recurring issue for AO which is arising every year after year as it framed scrutiny assessment against assessee for preceding ay's also for ay: 2010-11 to 2012-13 and in those years also the assessee made claim for deduction towards provision for warranties which was allowed by the AO in scrutiny assessment and Revenue finally accepted those orders so far as claim for deduction towards provision for warranties is concerned and it could not be shown that these orders for ay: 2010-11 to 2012-13 were interfered by Revenue by invoking provisions of Section 147 or Section 263 or any other provisions of the 1961 Act. It is settled proposition now that claim for deduction towards provisions for warranties made on the basis of past experience based on statistical data by adopting scientific

method to fulfill contractual obligation arising out of concluded contracts of sale/services is an ascertained liability . Reference is drawn to decision of Hon'ble Supreme Court in the case of Rotork Controls India Private Limited v. CIT reported in (2009) 314 ITR 62(SC). Under these circumstances based on totality of facts and circumstances of the instant case before us, we are inclined to quash the revisionary order dated 30.03.2019 passed by learned PCIT u/s.263 of the Act and hold that the assessment order dated 27.02.2017 passed by AO was not erroneous in so far as prejudicial to the interest of Revenue. We order accordingly.

6. In the result, the appeal filed by assessee in ITA No.1692/Chny/2019 for ay: 2013-14 is allowed.

Order pronounced on the 10th day of February, 2020 in Chennai.

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L.REDDY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य /**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10th February, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

- | | |
|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 4. आयकर आयुक्त/CIT |
| 2. प्रत्यर्थी/Respondent | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF |