THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH " F: NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2254/Del/2010
(Assessment Year: 2002-03)

Pawan Hans Helicopters Ltd, Corporate Office, Safdurjung Airport, New Delhi PAN: AAACP1561A	Vs.	DCIT, Circle-14(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Mrs. Jyoti Narula, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	09/10/2018
Date of pronouncement	10/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT (A)-XVII, New Delhi dated 19.03.2010 for the Assessment Year 2002-03.

2. The assessee has raised the following grounds of appeal:-

"*1. That the revenue has erred in law and on facts in disallowing the prior period expense of Rs. 1,29,05,278/-.*

2. That the order of the revenue is bad in law and on facts."

3. The brief facts of the case show that assessee is a company engaged in the business of aviation. Original assessment under section 143 (3) of the income tax act was passed on 29/12/2004 at INR 954797190. The above return was further revised at a total income of Rs. 881160873 on 14/3/2005. Subsequently, reassessment under section 147 read with section 143 (3) of the act was also made on 31st 12 2007 determining the total income at Rs. 993360873. The order was again revised under section 250 of the income tax act on 17/2/2009 determining total income of the assessee at Rs. 881160873. Consequently the original return assessed on 4/3/2005 was reinstated.

4. Subsequently, It was noted that the assessee has made a provision of INR 7 945552/- under the head maintenance cost. AO was of the view This being a contingent liability should have been added back to the total income of the assesse. Further the assessee has credited INR 5 3291914/– In its profit and loss account under the head prior period investment and actual receipt in this regard was INR 66200192/– which was netted of by prior period expenditure of INR 12905278/- . According to the AO this expenditure was not allowable expenditure. The whole of the receipt of Rs 66200192/– should have been included in the total income instead of INR 5 3294941/–. Therefore, the AO took action under section 147 of the act stating that Rs. 7945552 and INR 12905278/- has escaped assessment . Therefore notice u/s 148 was issued on 27/3/2009. Assessee filed a letter in response to the notice that notice on 7/4/2009 submitting that original return may be treated as return in response to the above notice.

5. The only ground of the appeal is disallowance is contested is that assessment was reopened on account of allowability of prior period expenditure. The assessee submitted that the prior period expenditure relates to the customers billing of earlier years rectified during the year, arrears of rent, depreciation and other items. It was stated that there were certain errors found in customers billing pertaining to earlier years on account of excess billing to them and this was rectified during this year. It was stated that the assessee has already paid taxes on excess billing as income in earlier years. It was further stated that the arrears of lease rent paid to Airport authority of India which was already earlier provided at a reduced rate i.e. old rates which is now revised and therefore according to the arbitration award the earlier years lease rent has accrued during the year and same has been provided as an expenditure as prior period expenditure. The learned assessing officer rejected the explanation of the assessee and held that the sum of INR 1 2905278/– is a prior period expenditure and is not allowable. Therefore, same was disallowed. The assessee preferred an appeal before the learned Commissioner of income tax appeals who confirmed the

disallowance and therefore the assessee is in appeal before us on this issue.

6. Though the ld Authorised representative has applied for adjournment of hearing stating that appeal may be adjourned for a month as certain details were required, we found that appeal is filed on 13/5/2010 and many adjournments have been sought by the assessee under this pretext or any other pretext on 10 times. This dates is also fixed at the time of last hearing on 3/10/2018 at the request of the counsel. In view of these facts , we reject the adjournment application and proceed to hear the issue on merit.

7. The learned authorised representative submitted that mainly the excess billing was done in earlier years, which was offered to income tax in earlier years. Therefore, such excess billing has been written off during the year and therefore same is allowable as the expenditure of this year as the error is an excess billing was crystallized during the year. He further stated that the lease rent was also in dispute and there was an arbitration matter in arbitration award was received during the year and therefore in this year, the differential lease rent has been paid though it is classified as prior period expenditure but the expenditure have been incurred during the year as they have been admitted as the liability during this year. He further referred to the order of the learned Commissioner of income tax appeals and submitted that claim of the assessee has been correctly allowed.

8. The learned departmental representative submitted that assessee has submitted the above expenditure pertaining to the previous year, which is not allowable in this year and therefore the learned assessing officer has correctly disallowed the above sum. He stated that the excess billing of the customers is pertaining to the earlier years bill is raised by the assessee and therefore adjustment to that bill is allowable only in that year and not in the subsequent year. He further stated that areas in the rent are pertaining to the earlier years and, therefore, same should also be disallowed during the year.

9. We have carefully considered the rival contention and perused the orders of the lower authorities. Claim of the assessee stated to have been though related to the earlier years but crystallized and determined during the year and therefore same is allowable as expenditure for this year.

10. With respect to the lease rent of Rs.9408095/- assessee submitted a copy of the letter dated 5/5/2003, issued by the under Sec to the government of India, Ministry of civil aviation regarding the award of arbitrator dated 2/5/2003, in which the appellant was directed to pay the lease rents at the increased rates. According to that the assessee has provided the enhanced claim of lease rent. As the award of arbitrator was received on 2/5/2003 same has not accrued during the year but in FY 2003-04 related to AY 2004-05. Such increased rent was INR 9508095/– for earlier years. Therefore, same does not pertain to assessment year 2002 – 03. Even otherwise, it Is not coming out of the record that when the arbitration award was received on 2/5/2003, how assessee could have made provision for the year ended on 31/03/2002 of above sum. In view of this we do not find any infirmity in the order of the learned CIT – A, in confirming the above disallowance as it did not crystallized during the year.

11. Further, INR 915543/– is a sum on account of debit to customers billing of earlier years rectified during the year. Undisputedly the income from the original bill has already been offered to the income tax in earlier years. Therefore the above sum becomes a writing of the debts which was offered as income in earlier years. Therefore, this Claim cannot be disallowed as prior period expenditure. To this extent, we reverse the order of the learned CIT – A in Confirming the disallowance of the above sum.

12. The further sum of INR 16403/– was claimed as an depreciation of the earlier years, which is as such not allowable, Therefore, the order of the learned CIT – A does not have any infirmity in confirming the above disallowance.

13. With respect to the disallowance of INR 2465237/– pertaining to the earlier years, The assessee could submit before us that the above sum

includes a sum of INR 794439/– with respect to the items like travelling allowance or daily allowance claim of the employees of the Indian oil Corp such as fuel bills of earlier years at the attachment/bases like Northeast Lakshadweep island, Andaman and Nicobar Islands and Port Blair etc. which crystallized during the year. The assessee has shown the copy of the email and submitted that that these are the claims of the employees which was received during the year, though pertaining to the earlier year but admitted and provided in the books of account in this year. We are of the view that the above expenditure cannot be classified as prior period expenditure and should be allowed as and when admitted and approved by the authority.

14. With respect to the other expenditure out of the total expenditure of INR 2 465237, appellant could not produce any details and evidence regarding the nature and the precise period to which the same pertains, before the lower authorities and therefore the disallowance was confirmed. Even before us no details have been furnished with respect to the above sum. Therefore, we direct the learned assessing officer to allow the sum of INR 7 94439/- as expenditure incurred during the year out of total sum of INR 2 465237/–. The balance sum has been correctly disallowed by the lower authorities. Accordingly, we allow the claim of assessee of INR 7 94439/– and confirm the disallowance of INR 1670798/- .In view of this we do not find any infirmity in the order of the learned CIT – A to the extent mentioned above, in confirming the above disallowance.

15. Accordingly, appeal of the assessee is partly allowed.

Order pronounced in the open court on 10/12/2018.

-Sd/-	-Sd/-
(AMIT SHUKLA) JUDICIAL MEMBER	(PRASHANT MAHARISHI) ACCOUNTANT MEMBER

Dated:10/12/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi