

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.719/Bang/2020
Assessment year : 2015-16

The Dy. Commissioner of Income-tax, Circle-3(1)(1), Bengaluru.	Vs.	M/s Hindustan Aeronautics Ltd., No.15/1, Cubbon Road, GPO Bengaluru-560 001. PAN – AAACH 3641 R
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddhesh Chaugule, C.A
Revenue by	:	Shri Gopinath C.H , CIT(DRP-2)

Date of hearing	:	21.02.2022
Date of Pronouncement	:	.03.2022

ORDER

Per Padmavathy S, Accountant Member

This cross appeal of the Revenue is against the appeal of the assessee in ITA No.2942/Bang/2018 which was directed against the order of the CIT(A)-3, Bengaluru dated 30/8/2018 for the asst. year 2015-16.

2. The ground raised by the Revenue in this cross appeal are as given below

“1(i) In the P & L A/c, under the head 'Inland Sales', there is a Credit Entry of Rs. 61340.06 Lakhs as Development'. However, in the Computation Statement, this item of Rs. 61340.06 Lakhs described as Grants received from Government for R & D has been excluded from the Income head. As per Accounting Standards, this method of Crediting a receipt in the P & L A/c and subsequently excluding the same from the Computation of Income should be justified by the assessee. However, the assessee has not justified the exclusion of this amount of Rs. 61340.06 Lakhs from the Income Head through any claim of deduction, but has directly excluded such receipt. But, it is observed from the Computation Statement that the assessee company has separately claimed deductions u/s 35 & 35(2AB). Further, presuming the assessee wants to make a claim u/s 35(1)(iv), it should quantify the corresponding Capital expenditure against this Grant received of Rs. 61340.06 Lakhs. Then, only such corresponding expenditure (expended towards scientific research) is eligible for a deduction u/s 35(1)(iv).

(ii)The assessee has not justified the removal of this item of Rs. 61340.06 Lakhs from the Income head.

(iii)The assessee has not made a claim of any deduction against this 'Grants received from Government for R & D' of Rs. 61340.06 Lakhs.

(iv)The assessee does not qualify for deduction u/s 35(1)(iv) by not quantifying the corresponding Capital expenditure incurred against this receipt of Rs. 61340.06 Lakhs.

(v)By not quantifying such Capital Expenditure (if any) incurred against this Receipt of Rs. 61340.06 Lakhs, as per Accounting Standards, the assessee has merely removed the credit entry of Rs. 61340.06 Lakhs from the Receipt side of the P & L A/c without justification.

(vi)The excluded credit entry of Rs. 61340.06 Lakhs gets exposed to taxation, as per Accounting Standards.

(vii). The assessee company ought to have included this amount of Rs.61340.06 lakhs in the computation statement.”

3. Brief facts of the case:

The assessee is a Public Sector Undertaking of Government of India. It is engaged in the business of design, development, manufacture and maintenance of advanced fighters. It mainly caters to Indian Defense needs. For the purpose of manufacturing Aircrafts and Aviation System, it undertakes various research and development activities in its research and development centers. During the relevant assessment year, the assessee received grants from Central Government to the tune of INR 613,40,06,000. These grants were given to enable the assessee to conduct research and development activities in Defense Aviation Technology. In the income tax return of the assessment year 2015-16, the company had treated grant received from the Government as being capital in nature and had reduced the same while computing the taxable income. For the relevant assessment year, the corresponding expenditure incurred towards research and development (R&D) activities was debited in the profit and loss account and was claimed in the return of income as an admissible revenue expenditure u/s 37 of the Income Tax Act (the Act). The assessing Officer (AO) in the final assessment order dated 18/12/2017, inter alia held that since the R&D expenditure had been incurred out of the grants received from the Government which has been treated as capital receipt, the corresponding expenditure incurred towards R&D activities would also have to be treated as being capital in nature. The

AO therefore disallowed the R&D expenditure of INR 613,40,06,000 which the company has claimed as deduction u/s.37 of the Act.

4. Aggrieved by the order of the AO the assessee filed an appeal before the CIT(A) where an alternate claim was made on a without prejudice basis that if R&D expenditure is considered as capital in nature then the same should be allowed u/s.35(1)(iv) of the Act. The CIT(A) upheld the disallowance u/s.37 and dismissed the alternate claim of the assessee

5. The assessee and the revenue filed appeals before the Tribunal. The Ld AR submitted that the assessee's appeal (ITA No.2942/Bang/2018) has been held in assessee's favour by order dated 24/08/2021 and hence the cross appeal file by the department has become infructuous. The Ld DR did not have any counter submission.

6. We have heard the rival submission and perused the materials on record. We notice that the coordinate bench of the Tribunal in the order passed in assessee's own case (Supra) has made reference to the earlier decision of the coordinate bench for assessment year 1995-1996 (ITA No.763/Bang/2019), with regard to the treatment of Grants received from Government as capital receipts. The relevant paras from the order of the Tribunal is reproduced below

3.5.3 The CIT(A) in taking the above view, has referred to the order of the ITAT in assessee's own case for assessment year 1995-1996 (ITA No.763/Bang/2019), wherein it was held by the ITAT that the grants received by the assessee is not taxable being a capital receipt, as the same is bringing into existence a capital asset being technology for manufacturing Aircrafts. The observation of the ITAT for assessment year 1995-1996 are three folds which are scattered over different parts of the order and it is convenient to refer them categorywise. The relevant observation reads as follow:-

(a) Grant is capital receipt as the same is for creation of a capital asset being technology:

Sr. No.	Quote	Para. Reference of ITAT order in ITA No.763/Bang/2019
1.	Technology acquired being capital asset, grant to carry out research should also be treated as capital receipt.	7
2.	The receipt is to acquire capital asset in the form of technology and know-how, the receipt are capital in nature and not includible in income.	9
3.	Capital cost of the project would be met and provided by the Government but	11

	with a clear condition that all capital asset acquired with the funds provided by Government shall be the property of Government of India.	
4.	... they were receipts for bringing into existence capital of lasting value. Facts of this case being identical to assessee's case before us is also relevant and applicable.	

(b) Grant is not revenue as it is not in relation to trading activities because the Appellant is not in the business of selling technology:

Sr. No.	Quote	Para. Reference
1.	Grant is given relating to defence related research and is in public interest through which technology is developed. Since selling technology is not part of assessee's business, same cannot be related to trade.	15(c)
2.	The assessee is not in the business of selling technologies.	23
3.	The assessee is not in the business of technology development but has necessary infrastructure for the same.	13(iv)
4.	[Distinguishing a case cited by DR] – The facts are distinguishable as the subsidy is not in the course of trading operations but for developing a capital asset.	17(a)

7. We also notice that with regard to the allowability of the expenditure u/s.35(1)(iv) the coordinate bench of the Tribunal has passed the order in assessee own case (supra) stating that the expenditure incurred towards research and development activities u/s.35(1)(iv) of the Act is to be allowed provided other conditions are satisfied.

8. Considering the binding effect of the decision of the co-ordinate bench, and that this cross appeal is filed essentially supporting the orders of the CIT(A), we dismiss the appeal filed by the revenue as infructuous

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in court on 14th March, 2022

Sd/-

(GEORGE GEORGE K)

Judicial Member

Bangalore,

Dated, 14th March, 2022

/ vms /

Sd/-

(PADMAVATHY S)

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

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