

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'F', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 6441/Del/2017: Asstt. Year: 2013-14

Addl. CIT, Special Range-7, New Delhi (APPELLANT)	Vs.	Pawan Hans Ltd., Corporate Office, Safdarjung Airport, New Delhi-110003 (RESPONDENT)
PAN No.AAACP1561A		

ITA No. 7417/Del/2019: Asstt. Year: 2016-17

DCIT, Circle-19(2), New Delhi (APPELLANT)	Vs.	Pawan Hans Ltd., C-14, Sector-1, Noida, Uttar Pradesh 201301 (RESPONDENT)
PAN No.AAACP1561A		

**Assessee by : Sh. Ved Jain, Adv. &
Sh. Aman Garg, CA**

Revenue by : Sh. K. K. Mishra, Sr. DR

Date of Hearing: 08.12.2022

Date of Pronouncement: 03.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

These are the appeals filed by the revenue against the order of the Id CIT(A)-38, New Delhi dated 18.07.2017 for AY 2013-14 and dated 27.06.2019 for AY 2016-17.

2. The revenue has raised the following grounds of appeal for Assessment Year 2013-14:

"1. On the facts and in the circumstances of the case the Id CIT(A) has erred in deleting the disallowance of claim of intangible assets amounting to Rs. 1,26,64,778/-.

2. *On the facts and in the circumstances of the case, the Id CIT(A) has erred in deleting addition on account of provision for rotables written office amounting to Rs. 1,51,02,524/-."*

3. The revenue has raised the following grounds of appeal for Assessment Year 2016-17:-

"1. *Whether the Ld. CIT(A) has erred in law and on facts and in circumstances of the case in deleting the addition of Rs 1.56 23.750-made by the Assessing Officer on account of interest income claimed as had debts on loan given to Ms Hindustan Photo films Mfg. Co. Ltd.?"*

2. *Whether the Ld. CIT(A) has erred in law and on facts and in circumstances of the case, in deleting the addition of Rs. 87.97.438- made by the Assessing Officer to Book Profit us 115JB of the Act on account of provision for fixed assets written off?"*

ITA No. 6441/Del/2017 : A.Y. 2013-14

Intangibles – Training Expenditure:

4. The revenue is aggrieved by the action of the Id. CIT(A) in deleting the amount of Rs. 1,26,64,778/- made by the AO on account of expenditure incurred by the assessee during the year on training of air and ground crew while computing income under the normal provision of the Act.

5. During the year under consideration the assessee has incurred Rs. 1,57,05,972/- for the training of air and ground crew and treated it as intangible asset in the return filed under section 139(1). The AO treated this expenditure as creation of intangible asset and allowed 1/5th of the expenditure.

6. The Id. CIT(A) held that the expenditure was incurred by the appellant for the purpose of training of air and ground crew engaged in the operation of two new helicopters acquired by the appellant during the year under consideration. This expenditure is of operative nature and no lasting asset is formed out of the same. Since, the training expenditure of the "crew" do not yield to any intangible asset, the expenditure is allowable u/s 37(1) of the Income Tax Act, 1961. The decision of the Id. CIT(A) on this issue is affirmed.

Provision of Rotable Written off – u/s 115JB:

7. It is an undisputed fact that rotables and stores of value of Rs.1.51 Cr. has been actually written off by the assessee during the year. These stores are declared unusable and can't be put to use in commercial flying keeping in view of the strict compliance of the safety norms issued by the Director General of Civil Aviation (DGCA). The write off has been wrongly considered as provisions. The actual provisions made by the assessee was Rs.2.31 Cr. and written off of rotables was Rs.1.51 Cr. There crept an error of judgment by the AO which has been rectified by the Id. CIT(A). Further, this matter has been held in favour of the assessee by the Hon'ble High Court of Delhi. Hence, we decline to interfere with the order of the Id. CIT(A).

ITA No. 7417/Del/2019 : A.Y. 2016-17**Unexplained Notional Interest:**

8. We have gone through the Assessment Order, order of the Id. CIT(A) and the grounds raised by the Revenue. The AO observed that the assessee has claimed deduction on account of notional interest of Rs.1.56 Cr. on sick PSU namely, Hindustan Photo Films Ltd.

9. The facts relevant to this issue are as under:

"The Company had made unsecured inter-corporate loans in the earlier years 1991-1992 Hindustan Photo Films Mfg. Co. Ltd.(HPF), a Central PSU, with interest rate of 20% p.a. compounded/ payable quarterly. The principal amount is due since 1992 aggregates to Rs. 7.25 crores. However, HPF was unable to meet its contractual obligation to repay the loans with interest in view of adverse financial conditions; HPF was declared sick and registered with BIFR. The Company had filed its claim with B1FR for protection of its dues. In January, 2003 B1FR issued recommendations for winding-up, against which HPF and its Administrative Ministry had preferred an appeal before AA1FR. Pending one time settlement and the negative net worth of HPF, the Company has not accounted for interest income from such loan for the financial year under review and the same will be accounted for as and when settled/realized. Accordingly, the profit for the year is lower by an amount of Rs. 1.56 Crores (P.Y. Rs. 1.56 Crores).

In view of negative net worth of HPF they had in 2008 requested that they would be seeking Government approval for 30% of Principal Amount (Rs. 2.18 crores) in OTS with waiver of interest. The same was agreed by Pawan Hans. HPF has on 02.04.2012 informed that

they are working effort for approval of OTS from CCEA. In this regard the Company had sent the acceptance on March 6, 2012 of the aforesaid proposed OTS offer from HPF and request that the proposal of OTS get expeditious approval as PHL is in urgent need of funds and also sent letter to HPF for refund of our deposit on July, 2013 and Nov. 13,2017 (copies are attached). As a matter of abundant caution, the Company has already made provision of Rs. 7.25 crores against the aggregate principal amount in earlier years, which is being carried forward.

Further, it is also placed on record that :- On 26th April, 2018 a advertisement was published in the Times of India - 'that the Hindustan Photo Films Manufacturing Company Ltd (HPF) a PSU unit in Ooty, Wound up on Wednesday, with 167 employees; the last batch of employees stand relieved on June 30,2016 and VRS benefits will be given accordingly (Administrative Ministry Communication No. 19(2)72013 dated March 21,2018). No salary will be paid for the period thereafter' (copy attached).

Hence, it is clear from the above facts that no interest income is accrued and will be realized on the inter-corporate deposit due to bad financial position leading to closer of M/s Hindustan Instrumentation Ltd. even the whole of principal amount was doubtful of recovery and which was earlier provided as doubtful advance."

10. The Id. CIT(A) held that the similar issue was involved in the A.Y. 1995-96, A.Y. 1996-97, A.Y. 1997-98 and A.Y. 2007-08. The order of the Id. CIT(A) is as under:

"The appellant in its written submissions has referred to the reply submitted before the Assessing Officer, that no interest income has accrued to it in the year under consideration since, the principle

amount in itself is outstanding since last 24 years. Further, the borrower company is a sick unit having negative net-worth and was already recommended for winding up by BIFR in the year 2003. The appellant submitted that all these facts and circumstances in the year under consideration suggested that there was no reasonable certainty of realization of interest income and accordingly, no interest income was booked in the Profit & Loss A/c. The appellant further submitted that the amount of Rs. 1,56,23,750/- disclosed in the computation of income is mere a hypothetical income which cannot be treated as accrued income. The appellant submitted that the amount was disclosed in the computation of income merely for the purpose of giving true and fair disclosure. However, the said disclosure nowhere leads to the conclusion that the amount of Rs.1,56,23,750/- was its real income.

Further, in this regard, the appellant has submitted that the same issue was raised by the Assessing Officer's in the AY 1995-96, 1996-97, 1997-98 & 2007-08 which was contested by it before the CIT(A) wherein the issue has already been decided in its favour.

The CIT(A) in his order dated 30.11.2000 for the AY 1995-96, 1996-97 and 1997-98 has held as under:

"Addition of Rs.2.53 crore on account of interest receivable:

35. The appellant had advanced an unsecured inter corporate loan of Rs.5 Crore to Instrumentation Limited and of Rs. 7.25 Crore to Hindustan Foto Films Mfrg. Co. Limited, both in the public sector. Both these companies have become sick and are registered with BIFR. It is submitted that the appellant is not hopeful of recovering even the principal amounts. It did not provide for receipt of interest on these amounts on due basis. However, the AO did not accept this plea and held that the interest has to be based on due basis.

Therefore, the AO added Rs.1.08 Crore and Rs.1.45 crore respectively as interest not accounted for all the three AYS. 1995-96, 96-97 and 97-98.

36. The Ld. AR has reiterated the arguments that the appellant has no hope of recovering the principal amounts or the interest and, therefore, it cannot be taxed. He has relied on CIT vs. Method Trading & Investment Limited (2000) 109 taxmann.com 414 (Cal). In this case, the assessee advanced certain sums to another company against hundies which were co-accepted by a bank. The drawer company went into liquidation and the bank also disowned the hundies as void and fraudulent. It was resolved by the appellant that no interest should be charged or accounted for on the said amount. No interest was debited to debtors. However, the AO included the accrued interest as the assessee followed mercantile system of accounting. The Hon'ble Court inter-alia held that mere fact that the assessee followed the mercantile system of accounting would not lead to taxation of income on accrual basis. It distinguished the case of State Bank of Travancore vs. CIT (1986) 158 ITR 102 (SC) as in that case the bank debited the amount of interest to the account of the debtor but instead of crediting the P & L Account as interest income, too the same into the balance sheet in suspense account. This conduct of the bank in the said case clearly showed that it had treated the interest income as having accrued to it. In the case before the Court the assessee had not debited to the debtor any interest. No entry in the books of accounts were at all made. Its Board of Directors resolved not to do so. Hence, the evidence clearly established that the income did not accrue in the real sense. The facts of the appellant's case make the judgment applicable to it. Since, no such interest has been accounted for in the books of accounts and since in the case of Instrumentation Limited, as per clause 4.6 of the draft rehabilitation Scheme the unpaid interest was

to be written off, the question of accrual of the income does not arise. The Ld. AR further argued that Government of India should also be allowed on accrual basis. In fact, he submitted that the appellant may be happy to offer the interest income if the interest payable to Government of India is allowed. He further submitted that no interest has been paid by the appellant on any borrowing.

37. On a careful consideration of all the facts and the circumstances of the case and the judgment cited above I am of the view that the interest income of Rs.2.53 crore is not taxable and the addition of this sum for all the three years is accordingly deleted.

38. For the AY 97-98 the AO also added a sum of Rs.1.41 Cr. on account of interests receivable but not accounted for on unsecured loans made by the appellant to Andrew Yule & Co. and Hindustan Antibiotics Ltd. The later company has been registered with BIFR and declared sick. It is again submitted that like in the previous case the recoverability of the loans become doubtful and so it was not shown as income."

The above order was later followed by the CIT(A) in his order for the A.Y. 2007-08 wherein same issue was raised. In the year under consideration, the Assessing Officer in the assessment order has pointed out any change in facts and circumstances of the case. Further, there is no change in method of accounting as well. Accordingly, following the decision of the CIT(A) in the earlier years, I am of view that the observation of the Assessing Officer in the assessment order has no legs to stand upon since, as held above, nothing has accrued to the appellant company in the form of interest income, accordingly, there is no question of debiting of interest income in the Profit & Loss A/c and making deduction out of debtor's account for claiming bad debts with respect to the said income.

In view of the above, the Assessing Officer is directed to delete the addition of Rs.1,56,23,750/-."

11. After going through the entire factum as mentioned above, we decline to interfere with the order of the Id. CIT(A).

Rotable Written off – u/s 115JB:

12. As discussed in ITA No. 6441/Del/2017 : A.Y. 2013-14. The order of the Id. CIT(A) is affirmed.

13. In the result, both the appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 03/03/2023.

SD/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/03/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR