

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'F', NEW DELHI

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.3516/Del/1998

Assessment Year: 1992-93

Pawan Hans Helicopters Ltd. Safdarjung Airport New Delhi	Vs	DCIT Special Range-27 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1000/Del/2003

Assessment Year: 1999-2000

Pawan Hans Helicopters Ltd. Safdarjung Airport New Delhi	Vs	JCIT (OSD) Range-14 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant	Sh. Ved Jain, Advocate Sh. Amit Kumar, CA Ms. Supriya Mehta, CA
Respondent	Sh. P.N. Barnwal, CIT DR

Date of Hearing	01.11.2023
Date of Pronouncement	3.11.2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.3516/Del/1998 and 1000/Del/2003 are two separate appeals by the assessee preferred against two separate orders of the CIT(A)-17 and CIT(A)-14, New Delhi dated 16.01.2003 and 16.04.1998 pertaining to A.Y. 1999-2000 and 1992-93.

2. Since common grievances are involved in both these appeals they were heard together and are disposed off by this common order for the sake of convenience and brevity.

ITA No.3516/Del/1998

3. The grievance of the assessee read as under :-

1. *The Revenue has erred in law and on facts in not allowing deduction of interest aggregating Rs. 26,03,79,135/- due to the Government of India on payments made by the Government in foreign exchange to manufacturers on behalf of the assessee company as in his opinion the same constitutes a contingent liability.*

2. *The Revenue has erred in law and on facts in not allowing deduction of interest aggregating Rs. 3,50,43,750/- on capital loan taken from Government of India as in his opinion the same constitutes a contingent liability.*

3. *The Revenue has erred in law and on facts in considering the obsolescence Reserve for Repairables and Rotables amounting to Rs. 6,31,17,799/- and debited to Profit & Loss Account, as an unascertained liability and disallowing the claim of the assessee company in this respect.*

4. *The Revenue has erred in law and on facts in treating grant-in-aid paid by the assessee company as having not been incurred for business purposes and disallowing Rs. 110,00,000/- claimed as deduction during the year under consideration in this respect.*

That the assessee craves leave to add/alter/amend the aforesaid grounds of appeal at the time of hearing.

4. Ground No.1 and 2 relates to expenses payable to Government of India amounting to Rs.29,54,22,885/-. The under lying facts in this grievance show that the AO has made the disallowance treating the interest payable to Government of India as a contingent liability.

5. At the very outset the Counsel for the assessee stated that this issue is coming from earlier years where the Tribunal has decided the issue in favour of the assessee and against the revenue.

6. We have carefully perused the orders of the authorities below. We find force in the contention of the Counsel a similar issue was considered by the coordinate Bench in A.Y. 1990-91 and 1995-96 in ITA No.419/Del/1994 and 319/Del/2001. The relevant findings read as under :

“14. Heard the arguments of both the parties and perused the material available on record.

15. In the present case, the assessee has taken the loan in the year 1986-87 and interest during that period was also allowed to the assessee as is evident from the assessment order and no disallowance has been made by the revenue. Further, no disallowances were made in A.Y. 1988-89 and A.Y. 1989-90 as is evident from the assessment orders. It is only then in AY 1990-91, in the impugned assessment year the AO has made the disallowance. It is also pertinent to note that subsequently also in A.Y. 1993-94, A.Y. 1994-95, A.Y. 2000-01 and A.Y. 2001-02 similar expenditure claimed by the assessee have been allowed as is evident from the assessment orders. This issue has been going on with the Ministry of Finance and from the correspondences placed at the PB Pg 200-211 it can be seen that the interest due to the government is payable and request for the waiver have been rejected repeatedly by the Ministry of Finance. Thus, the liability pertains to the current year only and the assessee is following the mercantile system of accounting and thus the interest claimed by the assessee has to be allowed. The assessee has claimed similar expenditure in the following preceding assessment years as well as succeeding assessment years which have been allowed by the department and there being no deviation in the facts of the case in the

present assessment year and the claim of interest expenditure made by the assessee has to be allowed.

16. On going through the entire factum of the case, we hereby hold that no disallowance is called for on account of interest payable to the Ministry of Finance.”

7. On finding parity of facts the AO is directed to delete the impugned disallowance ground No.1 and 2 taken together are allowed.

8. Ground No.3 relates to the addition of Rs.6317799/-. Briefly stated the facts of the case are that the assessee is engaged in operating a fleet of helicopters for the transportation of men, machines and material.

9. Alongwith the purchase of helicopters the assessee also purchases repairables and rotables which are required from time to time for the operational requirement of the helicopters.

10. These repairables and retables are inventorised in the balancesheet and are written off over the anticipated life of the helicopters to which they pertain by charging the same to profit and loss account. Accordingly Rs.63117799/- was debited to the P & L account during the year under consideration which was disallowed by the AO and confirmed by the CIT(A).

11. Before us the Counsel stated that in A.Y. 1991-92 the CIT(A) has deleted the addition but without assigning any cogent reason the CIT(A) has taken a different view. The DR strongly supported the findings of the AO.

12. We have carefully considered the orders of the authorities below. It is true that in A.Y.1991-92 the CIT(A) deleted the impugned disallowance but has confirmed during the year under consideration. It is equally true that considering the nature of business of the assessee the life of repairables and rotables dependent upon the flying hours of the helicopters, therefore, in our considered opinion there is nothing wrong in charging of the original cost to repairables and rotables over the economic life of the helicopters.

13. Considering the nature of business we are of the considered view that such write off deserve to be allowed and the AO is directed to delete the impugned disallowance. The ground No.3 is allowed.

14. Ground No.4 relates to the disallowance of Rs.10 lacs.

15. The under lying facts show that the assessee has paid Rs.50 lacs to Indira Gandhi Rashtriya Uran Academy in A.Y. 1990-91 for the training of its pilots as per the directions of the Ministry of Civil Aviation and Tourism. The assessee has spread over the benefit of such expenditure over a period of 5 years and accordingly debited 10 lacs to its P & L account. The AO followed his findings given in earlier assessment years and disallowed Rs.10 lacs.

16. Assessee carried the matter before the CIT(A) and pointed out that in earlier assessment years the addition was deleted. However, the CIT(A) did not follow the findings given in earlier assessment years and confirmed the addition.

17. Before us the Counsel for the assessee vehemently stated that the assessee has paid grant in aid under the direction of Ministry of

Civil Aviation and Tourism and since the benefit was to accrue in a span of 5 years, the assessee has charged 1/5th i.e. Rs.10 lacs in each year, therefore, the same should be allowed.

18. Per contra the DR supported the findings of the CIT(A).

19. We have given a thoughtful consideration to the orders of the authorities below. It is true that the assessee has been charging Rs.10 lacs since A.Y. 1990-91. It is equally true that in A.Y. 1990-91 and 1991-92 similar disallowances were deleted by the CIT(A). However, assigning no cogent reason the CIT(A) has deviated from his earlier decisions thereby breaching the rule of consistency on similar facts.

20. Considering the past history of the assessee we do not find any merit in the disallowance made by the AO. The AO is directed to delete the impugned addition of Rs. 10 lacs. Ground No.4 is allowed.

21. In the result, the appeal of the assessee is allowed.

ITA No.1000/Del/2003

22. The grievance of the assessee read as under :-

1. That the Revenue has erred in law and on facts in holding that the deduction on account of interest payable to the Government of India amounting to Rs. 23,78,97,940/- claimed by the assessee company as a deduction, is not allowable.

2. That the Revenue has erred in law and on facts in adding Rs. 1.20.54,250/- as undisclosed income of the assessee company.

3. That the order of the learned Joint Commissioner of Income Tax is bad in law and on facts.

The assessee craves leave to add/ alter/ amend the grounds of Appeal at the time of hearing.

23. At the very outset the Counsel stated that he is not pressing ground No.2 and the same is dismissed as not pressed.

24. The grievance raised vide ground No.1 is identical to the grievance considered by us in ITA No.3516/Del/1998 (supra) vide ground No.1 and 2 of that appeal. For our detailed discussion therein the AO is directed to delete the addition of Rs.237897940/-. Ground No.1 is allowed and the appeal is partly allowed.

The order is pronounced in the open court on 3.11.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: November, 2023.
Neha, Sr PS