

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2140/Del/2023
Asstt. Year: 2020-21

DCIT, Central Circle-17, New Delhi.	Vs.	Havells India Limited, 904, 9 th Floor, Surya Kiran Building, K.G. Marg, Connaught Place, New Delhi – 110 001 PAN AAACH0351E
(Appellant)		(Respondent)

Assessee by:	Shri Paritosh Jain, Advocate
Department by :	Shri Sanjay Kumar, Sr. DR
Date of Hearing	28/11/2023
Date of pronouncement	28/11/ 2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order dated 10.05.2023 of the Ld. Commissioner of Income Tax (Appeals)-27, New Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2020-21.

2. The Revenue has taken the following grounds:-

- "1. *The order of the Ld. CIT(Appeal) is erroneous and not tenable in law and on facts.*
2. *The Ld. CIT(A) is erred in deleting disallowance made of Rs. 6,64,64,707/- on account of provision of Shahenshah Scheme, as the expenses claimed by the assessee company are contingent liability, which is not allowable expenditure during the year under consideration.*

3. (a) *The order of the Ld. Commissioner of Income Tax(Appeal) is erroneous and not tenable in eyes of law and on facts.*

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. Briefly stated, the assessee is engaged in the business of manufacturing of switchgears, capacitors, cables and wires, electric motors, CFL and related components, manufacturing and trading of electric fans, electric wire, accessories and luminaries etc. The assessee e-filed its return for AY 2020-21 on 31.10.2020 declaring income of Rs. 737,47,72,440/-. The case was selected for complete scrutiny under CASS. Statutory notices were served upon the assessee. The assessee furnished submissions through e-portal. The Ld. Assessing Officer (**“AO”**) required the assessee to give details of expenses claimed on account of “Shahenshah Scheme” along with ledger account and justification thereof and also to explain as to why the same be not disallowed. The assessee submitted the following explanation:-

“In this regard we would like to submit that during the financial year under consideration, the company has made a provision of Rs. 25,72,12,182/- in respect of "Shahenshah Scheme" towards sales incentives payable to its dealers and distributors. The Company has paid an amount of Rs 18,96,03,358/- in respect of the said scheme and Rs 11.44.117/-has been written back. List of parties on whose account the provision for "Shahenshah Scheme was made during the financial year under consideration along with detail of amount paid and provision written back is enclosed herewith as Annexure-1.

As regards, justification in respect of provisions for Shahenshah Scheme disallowed in previous assessment year, we would like to submit that in previous assessment year Le 2017-18 the then Ld. AO has made the addition on account of provisions for Shahenshah Scheme (Net of payment and written off). It is further submitted that the Shahenshah Scheme is essential sales incentives scheme in the form of reward points. The scheme is binding und is a contractual agreement between the company and the dealers and distributors. The scheme is an essential tool of marketing and promotion of sales of goods of the company. The scheme is a continuing one and is continuing till date. The aforesaid provision towards Shahenshah Scheme is

not a contingent liability but rather a contractual liability and legally enforceable by the dealers and distributors.

The provision towards Shahenshah Scheme is ascertained and admitted liability as at the Balance Sheet date and requires settlement of the same, anytime in future.

"The Experts Accounting Committee" of "The Institute of Chartered Accountants of India" has considered the issue on the accounting treatment of reward of points given to credit card holders under credit card reward point scheme in case of banks in which it has opined that the entities should make a full reliable estimate and provide for such reward points in its financial accounts. Several judicial decisions are cited herein in support of the claim of the assessee".

It is further submitted that the similar addition on account of provision for "Shahenshah Scheme" was also made in assessment year 2006-07 and 2007-08. The CIT(A) has accepted the claim of the company and deleted the addition on account of provision for Shahenshah Scheme. The Hon'ble ITAT vide its order dated 30.09.2019 and 25.08.2020 have also rejected the appeals of revenue on this ground Copy of CITA) and ITAT order passed in the case of assessee for the assessment year 2006-07 and 2007-08 are also submitted.

Further, the Hon'ble ITAT has also deleted the addition on account of provision for "Shahanshah Scheme" for the AY 2008-09 and AY 2009-10 passed in the case of company Copy of appellate order passed by Hon'ble ITAT, D800 Bench in the case of assessee for the assessment years 2008-09 and 2009-10 is enclosed herewith as Annexure-3.

Since the provision of Shahenshah Scheme is essential sales incentives and is being made on logical end scientific basis which is ascertained and admitted liability as at the Balance Sheet date and requires settlement of the same, anytime in future and ratio of judgment rendered by the Hon'ble jurisdiction ITAT, Delhi bench in the case of company, no disallowance should be made on this account.

Hope your good self will find the above details/documents / explanations in order. If your good self require any further details/documents / explanations, we would be pleased to submit the same."

4. The explanation of the assessee was not acceptable to the Ld. AO who assigning various reasons made disallowance of expenses of Rs. 6,64,64,707/- under Shahenshah Scheme and completed the assessment

on total income of Rs. 7,44,12,37,150/- on 31.03.2022 under section 143(3) of the Income Tax Act, 1961 **(the “Act”)**.

5. The assessee appealed. A very detailed submission was made before the Ld. CIT(A) consisting of 7 pages reproduced by the Ld. CIT(A) in the appellate order. The Ld. CIT(A) recorded his observation and findings as under:-

“4.1 I have considered the assessment order and submissions filed by the appellant.

4.2 The relevant part of the decision of Hon’ble ITAT in the case of assessee for AY on the same issue is as under:

“48. In ITA number 466/Del/2011 the revenue has challenged the order of the learned CIT - A raising the solitary ground that he has erred in directing the AO to allow provision made by the appellant of Rs. 175,64,366/- for sales Incentive in respect of Shahenshah Scheme.

49. The learned departmental representative relied upon the order of the learned assessing officer whereas the learned authorised representative submitted that this issue is squarely covered in favour of the assessee by the order of the coordinate bench for assessment year 2006-07 wherein the order of the learned CIT (A), which was relied upon by the learned CIT-A in this year has been upheld.

50. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue of disallowance of sales incentive with respect to the above scheme is decided by the assessment year 2006-07 in ITA no 5530/Del/2010 dated 30/9/2019 as Under:-

“30. Second ground of the appeal of the Revenue relates to the deletion of the addition made on account of the provision for sale incentive “Sahenshah Scheme” Brief facts of this aspect are that the assessee had launched a sales incentive scheme for the authorized dealer under the name Shahenshah Scheme. As per the scheme on every payment of Rs. 300/- made by the customers within 90 days the customers would earn one point and one point was equal to Rs. 1. The customers could request for redemption of these point for their holiday package in India and abroad. The points accumulated ore communicated to the customers from time to time. The same has also been posted on the web portal. The purpose of the scheme was to promote the

sales for the company and therefore, to increase the profit. The scheme was effective from one month, 2001 and is continuing during the year under consideration. As per the offer document it could also be seen that unutilized points can be null and void only six months after the closer of the scheme. It could further be seen that all authorized dealers of the assessee are automatically enrolled as members of the scheme.

31. Ld. AO, however, disallowed the same by holding that the right does not get vested in dealer / distributor at any time before accumulation of minimum 60000 points and any extra points till next slab remain useless, that the accumulation of 6000 points itself is contingent on several events like continuing sales, continuing payments being made; and that the scheme itself is not perpetual, it can end any day and all points have to be encashed within six months or get lapsed.

32. Ld. CIT (A), however, on a reappraisal of entire material before him reached a conclusion that the liability of the assessee on this score is not a contingent liability, but on the other hand, it is a contractual liability which may befall on the assessee during the assessment year to the extent of the rights accrued to the customers by earning the points. Ld. CIT(A) maintained that the distinction between the contingent liability which may or may not arise in future and the present liability which may have to be performed in the future. According to the Ld CIT(A) the liability incurred by the assessee has to be accounted for during the year in which it was crystallised so as to claim benefit in the year of payment and there is a reasonable certainty of discharge and there is logical basis for its quantification.

33. Ld. DR justified the findings of the id. AO and submitted that till the customer earns 6000 points and above no question of crystallization of liability arises. According to her the scheme itself is not perpetual and there is no certainty of the customers availing the benefits of scheme as is evidenced by the outflow of funds against the huge amount of provision that was made.

34. Our attention is drawn to the statement of calculation of sale incentive under the Shan Scheme for the year ended 31st March, 2006 at page no. 46 and 47 of the paper book. The details of the customers clearly established that "none of the customers in respect of whom the provisions have been created earned any points below 6000. This meets the first objection of Ld. AO, though the assessee seriously disputed such observation of the Ld. AO that the customer acquires the right of redemption out of accumulation of 6000 points.

35. *Further about the uncertainty of the scheme, the unutilized points can be null and void only 6 months after the closer of the scheme and till such time there question of lapse of points. Till the scheme wound up, the liability of the assessee exists and the assessee shall discharge their liability as and when the performance was demanded by the customers. The ratio of outflow of funds with the quantum of provision is an irrelevant consideration so long as the expected or anticipated liability of the assessee is made on scientific basis.*

36. *On perusing the details of the sales and the points earned by the customers, we are satisfied that the provision is created on scientific basis. We, therefore, do not find anything illegal or irregular in the findings of the ld. CIT(A) and no interference a warranted. We, therefore, dismiss the second ground of appeal of the Revenue."*

51. *The learned departmental representative did not point out any distinguishing feature during the current year with respect to the facts prevalent in assessment year 2006-07. Therefore, respectfully following the decision of the coordinate bench in assessee's own case in earlier year, we dismiss solitary ground of appeal in the appeal of the assessing officer.*

52. *In the result ITA number 466/del/2011 for assessment year 2007-08 is dismissed."*

4.3 *The learned AO has not pointed out any distinguishing feature during the current year with respect to the facts prevalent in assessment year 2006-07, AY 2007-08, AY 2008-09 (ITA No. 4695/DEL/2012 dated 10.11.2020), AY 2009-10 (ITA No. 6194/DEL/2015 dated 19.01.2021) & AY 2014-15 (TTA No. 6509/DEL/2018 dated 09.05.2022) where on similar issue either appeal of the assessee was allowed by the Hon'ble ITAT or the appeal of the Revenue was dismissed by the Hon'ble ITAT, Delhi"*

4.4 *Respectfully, following the decisions of the co-ordinate Bench of the Hon'ble ITAT, Delhi in the appellant's own case in above mentioned AYs, the addition of Rs. 6,64,64,707/- on account of the provisions made by the assessee for Shahenshah Scheme is hereby deleted and these Grounds of appeal are hereby "allowed".*

6. The Revenue is dissatisfied and is before the Tribunal and all the grounds relate thereto.

7. Ground No. 1 and 3(a) are of general nature. Ground No. 3(b) is about taking additional ground which has not been taken. Ground No. 2 alone survives for adjudication.

8. We have heard the Ld. Representative of the parties and considered carefully their submissions. We have gone through the records.

9. Perusal of the Ld. CIT(A)'s order would show that he has extracted relevant part of ITAT's decision in ITA No. 466/Del/2011 in the case of the assessee for AY 2007-08 wherein the Tribunal referred to its decision in assessee's favour in ITA No. 5530/Del/2010 dated 30.09.2019 for AY 2006-07. He further noted that the Ld. AO has not pointed out any distinguishing feature during AY 2020-21 with respect to facts prevalent in AY 2006-07, 2007-08, 2008-09, 2009-10 and 2014-15 where on similar issue either appeal of the assessee was allowed by the Tribunal or appeal of the Revenue was dismissed by the Tribunal.

10. The facts remain the same in the year presently under consideration.

11. It is noticed that the same issue came up for consideration before the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2011-12 in ITA No. 1258/Del/2017 dated 11.10.2023. While adjudicating the appeal of the assessee filed against the CIT(A)'s order dated 16.09.2016, the Tribunal held that the Revenue was not justified in making the addition and set aside the order of the Ld. AO. For the sake of ready reference we reproduce herein below the decision (supra) of the Tribunal:-

"5. This issue stands covered by the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 6509/Del/2018 for A.Y. 2014-15 vide order dated 09.05.2022. The relevant part of the said order is reproduced as under:-

"9. This issue stands covered in the case of the assessee by the order of the Co-ordinate Bench of the Tribunal in ITA No. 6194/Del/2015 and ITA No. 463/Del/2016 vide order dated 19.01.2021. The relevant part of the said order is reproduced for ready reference:

"15. Ground No.3 is with respect to disallowance of Rs.2,47,68,964/- in respect of provision made for sales incentive under "Shahenshah Scheme".

16. During the course of assessment proceedings, AO noticed that assessee had made provision in respect of "Shahenshah Scheme" and the assessee was asked to furnish the details of the same. Assessee inter alia submitted that it had made provision of Rs.5,67,26,847/- in respect of "Shahenshah Scheme" towards sales incentive payable to dealers and distributors and had paid Rs.2,61,14,170/- in respect to the said scheme Rs.58,43,713/- was written back and credited to Excess Provisions and of bad debts/sales incentive written back. The assessee also pointed to the relevant features to the "Shahenshah Scheme" and it was further submitted that the provision made for the scheme is not a contingent liability but rather a contractual liability which is legally enforceable by the dealers and distributors. The submissions made by the assessee were not found acceptable to AO. AO considering the fact that as against the provision of Rs. 5,67,26,847/-, the actual payment made by the assessee was Rs.2,61,14,170/- and Rs. 58,43,713/- was written back, concluded that the provision made by the assessee was not based on any scientific method but was in the nature of contingent liability. He also noted that CIT(A) while deciding the issue in assessee's own case for A.Y. 2008-09 had analyzed scheme and had confirmed the addition made by the AO. He therefore disallowed Rs.2,47,68,964/-(5,67,26,047-2,61,14,170 - (5843713/-)).

17. Aggrieved by the order of AO, assessee carried the matter before the CIT(A), who following the order of his predecessor in assessee's own case for A.Y. 2008-09, upheld the action of the AO. Aggrieved by the order of CIT(A), assessee is now before us.

18. Before us, Learned AR reiterated the submissions made before the AO and CIT(A) and further submitted that against the order of CIT(A) for A.Y. 2008-09, assessee had carried the matter before the Tribunal. The Tribunal vide order dated 30.09.2019 In ITA No.4695/Del/2012 has decided the Issue in favour of the assessee by holding that the provision made in respect of "Shahenshah Scheme is on a scientific basis. He further submitted that the Co- ordinate Bench of Tribunal had deleted the similar additions made by AO in A.Y. 2007-08 & 2006-07. He pointed to the relevant findings in the synopsis filed by him. He therefore submitted that since the issue in the year under consideration is identical to that of earlier years, therefore following the order of tribunal in earlier years, the additions made by AO be deleted.

19. Learned DR on the other hand supported the order of AO in CIT(A).

20. We have heard the rival submissions and perused all the materials available on record. The issue in the present ground is with respect to the disallowance of provision made with respect to the sales incentive payable under "Shahenshah Scheme". The AO had disallowed the provision by holding that the provision made by the assessee was not based on any scientific

method and there is an element of contingent liability and therefore the sum is not allowable. We find that Identical issue arose in assessee's own case in AY 2006-07, 2007-08 and 2008-09 before the co-ordinate Bench of Tribunal. The Co-ordinate Bench of Tribunal in earlier years has decided the issue in favour of the assessee by holding that the provision made by the assessee in respect "Shahenshah Scheme to be on scientific basis. Before us, no to material has been placed by the Revenue to point out any ITA No.6194/Del/2015 ITA No.463/Del/2016 M/s. Havells India Ltd. vs DCIT A.Y. 2009-10 14 distinguishing feature in the facts of the case in the year under consideration and that of earlier years. Further Revenue has also not placed any material to demonstrate that the decision of the Tribunal in assessee's own case in A.Y. 2006-07, 2007-08, 2008-09 has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the order of the Co-ordinate bench in the assessee's own case and for similar reasons, we hold that the Revenue was not justified in making the addition. We therefore set aside the action of AO. Thus the ground of the assessee is allowed."

12. We respectfully follow the decision(s) (supra) of the Tribunal and reject this ground of the Revenue as devoid of any merit and substance.

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

Order pronounced in the open court on 28th November, 2023.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

Dated: 28/11/2023

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Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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