

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA NO. 1668/Del/2002		
A.YR. : 1998-1999		
M/s Pawan Hans Helicopters Ltd., Corporate Office, Safdarjung Airport, New Delhi (PAN: AAACP1561A)	VS.	JCIT (OSD) CIT-III, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by : Shri Ved Jain, Adv. &
Shri Ayush Garg, Adv.
Respondent by : Shri Shankar Lal Verma, Sr. DR.

Date of hearing : 16.10.2024
Date of pronouncement : 17.10.2024

ORDER

PER SHAMIM YAHYA, AM :

This appeal filed by the assessee for the assessment year 1998-1999 is directed against the Order of Ld. CIT(A)-XVII, New Delhi dated 28.02.2002. The assessee has raised the following grounds of appeal :-

- “1. That 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 omitting to reduce appreciation on PSU Bonds amounting to Rs. 1,52,42,522/- as reduced by the assessee company in its computation of income, while arriving at the taxable income as per the Income Tax Act, 1961.*
3. *The order of the Revenue is bad in law and on facts.*

2. Briefly stated, facts are that the assessee company is a Government of India Enterprise, and is in the business of providing helicopter services including maintenance of various types of helicopters. The assessee company filed its return of income on 30.11.1998, declaring total income at Rs. 38,17,64,974/- and subsequently filed the revised return on 30.3.2000 declaring total income at Rs. 38,97,33,867/-. The return was duly processed u/s. 143(1)(a) vide intimation dated 24.3.2000 and statutory notices u/s. 143(2)/142(1) were issued and in response thereto the A.R. of the assessee appeared from time to time and submitted necessary details. The AO completed the assessment u/s. 143(3) of the Act vide order dated 31.01.2001 and made the various additions.

3. Aggrieved with the above order of the AO, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions of the assessee, partly allowed the appeal of the assessee.

4. Against the Ld. CIT(A)'s action, assessee is in appeal before us.

5. We have heard the rival contentions and perused the material available on record and also gone through the orders of the authorities below.

5.1 At the outset, Ld. Counsel for the assessee submitted that the issues in dispute in the instant appeal are squarely covered in favour of the assessee by the earlier decisions of the Tribunal in assessee's own case.

5.2 Ld. AR for the assessee further submitted that as regards Ground No. 1 relating to disallowance of deduction of Rs. 23,78,97,940/- for interest payable to Government of India is concerned, the same is squarely covered by the ITAT Delhi

Bench decision passed in assessee's own case in assessment years 1990-91 & 1995-96 passed in common order dated 14.7.2021, a copy thereof has been placed on record at APB-Page Nos. 246-254, wherein, the Tribunal has decided the similar issue in favour of the assessee by holding as under:-

"4. The brief facts of the case are that Pawan Hans Limited (initial named as Helicopter Corporation of India Ltd.) was incorporated in 1985 as a Government Company under the Company Act, 1956 primarily to meet the long term requirements of ONGC to provide the helicopter services in its critical offshore exploration work. The Cabinet Committee on Economic Affairs (CCEA) on 14.03.1986 had approved proposal of Ministry of Civil Aviation (MoCA) for purchase of 42 helicopters, 21 Westland and 27 Dauphin Helicopters.

5. The assessee acquired these helicopters during the years 1986-88 at a cost of Rs.250.90 Crores, funded from the Grant/Aid of Rs. 228.08 Crores from UK Government (Rs. 130.91 Crores) and France Government (Rs.97.17 Crores) to Government of India. The balance of Rs.22.82 crores were towards spares engines and inventory to be procured directly by the assessee. The Ministry of Finance releases payment in Foreign Exchange on behalf of the assessee to the manufacturers viz., M/s Westland Helicopters Limited U.K. and M/s Aerospatiale, France from time to time. The assessee company was required to deposit the rupee equivalent of these Foreign exchange payments so released along with the commission and incidental charges of 1% ad valorem and crown agent charges payable to Ministry of Finance. For any delay in deposit of the amount due, the Ministry of Finance claims interest at the rate of 12% per annum for the first thirty days and 18% per annum for the balance period till the amount due is deposited.

6. Accordingly, in the assessment year 1990-91, the assessee was required to deposit the rupee equivalent computed at basic conversion rates of the foreign exchange payments released upto the period ended 31.3.1990 amounting to Rs.2,48,25,01,590/- into the Government treasury. The assessee could, however, deposit only Rs.1,02,87,44,072/- leaving a shortfall of Rs. 1,45,37,57,518/-. The balance is appearing in the balance sheet. The interest due at the prescribed rates along with commission and incidental charges @ 1% ad valorem and crown agent charges amounting in all to Rs. 26,95,58,643/- for the year and Rs.71,75,42,855/- (Net) till 31st March, 1990 has not been provided in the accounts as the Ministry of Civil Aviation had requested the Ministry of Finance to waive the interest on such belated payments and other related charges. The waiver of interest was claimed on the ground that the government had earlier decided to fund the helicopter acquisition project entirely by way of equity but it funded the assessee to the extent of 45% only and accordingly, the assessee shall not be penalized for the shortfall in deposits of Ministry of Finance. The assessee received funds of Rs.113.76 Crores against the project cost of Rs.250.90 crores, leaving a shortfall of Rs.137.14 crores.

7. Hence, the assessee did not claim the amount of interest in the profit and loss account as the Ministry of Civil Aviation (MCA) had requested the Ministry of Finance for the waiver of interest and shown the same as contingent liability.

8. The Assessing Officer held that the company has claimed Rs. 24,34,72,443/- for the assessment year 1990-91 and Rs. 23,79,41,269/- for the assessment year 1995-96 as a deduction in the computation of total income on account of interest due to Government of India. The Assessing Officer held that it has been mentioned that no entry in this regard has been made in the books of accounts as the company has requested to the Government for waiver of interest claimed on delayed deposits off the counter rupee fund on account of import of Westland Helicopters.

9. Before the AO, the company has submitted that the request has been turned down by the Ministry of Finance, Government of India vide letter dated 27.05.1997 and the company has been advised to deposit the counter rupee fund immediately in view of this claim of deduction should be treated as valid as it is an ascertained liability. The Assessing

Officer held that the actual liability for the year has been verified by statutory and Comptroller and Auditors General of India (CAG) and held that the claim is not admissible for the following reasons:

- a) The amount has not been provided for in the accounts.
- b) The liability has not been ascertained during the year under consideration as the company had applied for the waiver of this interest.
- c) The bifurcation of this sum under interest, inventory and counter rupees has not been provided by the company. Even in the letter of Ministry of Finance dated 27.05.1997, the actual amount to be deposited by the company as counter rupee has not been specified.
- d) In the absence of details furnished by the company it is not possible to identify whether any part of the claim represents capital expenditure.

10. Holding so, the amount of Rs. 23,79,41,269/- was disallowed as a deduction claimed by the assessee company.

11. The Id. CIT (A) confirmed the addition.

12. Before us, the Id. AR submitted the correspondence between the Ministry of Finance and Ministry of Civil Aviation at PB 200 to 211 pertaining to letters dated 22.12.1995, 01.02.1996, 02.02.1996, 13.03.1996, 24.04.1996, 27.05.1997, 24.06.1998, 31.08.2001 and 31.01.2002. He argued that the amount claimed by the assessee is the definite liability but not the contingent liability. The liabilities have already been crystallized. It was also submitted that the assessee had requested for the waiver from the government but no such waiver/ reduction had been allowed. The assessee had brought on record various correspondences which reflect that the government had been continuously insisting for the payment and it is clear that the central government had no Intention of waiver of any portion of the interest due. It was also submitted that the interest had not been provided for in the books of accounts as per the comments of the statutory auditors in order to reflect the correct position of accounts. Thus, these amounts have been claimed in the computation of income.

13. The Id. DR argued that no such provision is allowed in the Income Tax Act 1961. The Id. DR strongly relied on the order of the authorities below.

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."

5.3 Referring to the above decision, Ld. Counsel for the assessee submitted that there is no change in the facts and law, during the year under consideration, hence, the issue is squarely covered in favour of the assessee and accordingly, the ratio of the same may be followed in the present appeal.

5.4 Ld. DR did not controvert the aforesaid proposition of the Ld. AR.

5.5 Respectfully following the aforesaid precedent, we decide the Ground No. 1 in favour of the assessee.

6. Ld. AR for the assessee further submitted that as regards Ground No. 2 relating to addition of Rs. 1,52,42,522/- in respect of appreciation of PSU Bonds is concerned, the same is squarely covered by the ITAT Delhi Bench decision passed in assessee's own case in assessment years 1996-97 & 1997-98 passed in common order dated 02.08.2021, a copy thereof has been placed on record at APB-Page Nos. 255-261, wherein, the Tribunal has decided the similar issue in favour of the assessee by holding as under:-

7. In so far as 2nd ground is concerned, the facts in brief are that the assessee has purchased certain PSU bonds on discounted prices and as per its accounted policy regularly been followed it on books the difference between the cost of acquisition and the funds value of bonds as income by spending it over the number of years over which the maturity has to take place. The details of investment to PSU bonds as well as the amount of appreciation have been duly shown in Schedule 4 in the respective balance-sheet for the Assessment Years 1996-97 and 1997-98. In the computation filed along with income, the assessee has claimed the amount of deduction to the tune of Rs. 2,32,84,915/- for Assessment Year 1996-97 and Rs.2,27,27,451/- for the Assessment Year 1997 -98 on the ground that notional income cannot be taxed and same would be taxable in the year of transfer of asset whereby the cost of acquisition would be computed with respect to actual cost of acquisition and not the face value thereof.

8. Before us, it has been pointed out from the computation of income filed in the paper book for Assessment Year 1997-98 wherein the assessee has transferred the bond and declared long term capital loss of Rs.33,422 on PSU bonds and same was computed by taking into consideration actual index cost of acquisition of the bonds and not the face value of the bonds.

9. Ld. Assessing Officer in the assessment order while computing the taxable income disallowed the claim of deduction.

10. Ld. CIT(A) too has confirmed the said action of the Assessing Officer and held that increase in the value of bond is to be taxed on earlier basis.

*11. Before us, ld. counsel submitted that this issue stands covered by the decision of Hon'ble Delhi High Court in the case of **CIT vs. MGF India Ltd.** reported in*

272ITR 191 (Del) wherein the Hon'ble Jurisdictional High Court has held that since income has not accrued and the bonds are saleable, the tax needs to be paid at the time of maturity only. The relevant observation of the Hon'ble Court is as under:

*viii. At the outset, similar issue came before Hon'ble Delhi High Court in the case of **COMMISSIONER OF INCOME-TAX VERSUS MGF INDIA LTD-** [2005] 272 ITR 191 - **DELHI HIGH COURT** wherein Hon'ble court has held that since income has not accrued and the bonds are saleable, tax need to be paid at the time of maturity only. The relevant finding of the court is as under:*

i. "So far as the interest on zero coupon bonds is concerned, it may be stated that the Tribunal has examined the matter in detail and pointed out on facts that interest has not accrued and, in any event, tax will have to be paid by the assessee on the maturity of the bond. It is also interesting to note that these bonds are saleable in the market. So at any time these bonds can be disposed of. The Tribunal, in para 4.2, has given reasons and it decided on the facts and, therefore, no question of law would arise."

12. In the present case also, there is no accrual of income albeit it is only the appreciation in the market value and these bonds are only taxable at the time of maturity/redemption. Thus, following the principle laid down by the Hon'ble Jurisdictional High Court, we hold that the addition made by the Assessing Officer and Ld. CIT(A) is unwarranted as the same cannot be taxed on yearly basis. Hence, the ground is allowed."

6.1 Referring to the above decision, Ld. Counsel for the assessee submitted that there is no change in the facts and law, during the year under consideration, hence, the issue is squarely covered in favour of the assessee and accordingly, the ratio of the same may be followed in the present appeal.

6.2 Ld. DR did not controvert the aforesaid proposition of the Ld. AR.

6.3 Respectfully following the aforesaid precedent, we decide the Ground No. 2 in favour of the assessee.

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

Order pronounced on 17th October, 2024.

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant.
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar