

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.6590/Del/1995
[Assessment Year: 1991-92]**

Pawan Hans Limited, Safdarjung Airport New Delhi	Vs	Dy Commissioner of Income Tax, Spl. Range-27, New Delhi
Assessee		Revenue

Assessee by	Sh. Ved Jain, Adv. & Sh. Ayush Jain, CA
Revenue by	Sh. Ramdhan Meena, DR

Date of Hearing	10.10.2024
Date of Pronouncement	18.10.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 21.08.1995 of the Ld. Commissioner of Income Tax (Appeals)-VII, New Delhi, pertaining to Assessment Year 1991-92.

2. The grounds of appeal raised by the assessee are as under:-

1. *That the learned Commissioner of Income Tax (Appeals) has erred in law and on fact in upholding disallowance of interest aggregating Rs.30,28,71,617/- due and payable to the Government of India and in directing that the deduction be allowed not on accrual but on actual payment of the interest.*

2. *That the order of the learned Commissioner of Income Tax (Appeals) is bad in law and on facts.*

3. Brief facts of the case: The assessee company (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. During the year, the AO disallowed a sum towards interest aggregating Rs.30,28,71,617/- payable to the Government of India on the ground that the said deduction cannot be allowed on accrual but on actual payment of the said interest. The AO following the order for AY 1990-91 disallowed the above sum by observing as under:-

Contingents Liabilities.

While scrutiny of the details I find that the assessee is shown the Contingents liabilities which is claimed to be deductible from the total income. These area Interest due to Government of India for payment of release in foreign exchange to the customers on behalf of the corporation is not provided for in the account of Rs.26,38,90,367/-.

Interest on capital loan on Rs.23,62,50,000/ taken from Government of India at Rs.3,89,81,250/-.

On enquiry from the assessee's representative, it is found that the both these amounts are not provided in the accounts during the year under consideration rather these are shown as contingents liabilities as done in the earlier year. Whether these contingent liabilities are allowable or not has been discussed in detail with the assessee's representative at length and after discussion I find that these liabilities cannot be allowed as deductible expenditure during the year under consideration.

I find from the records that these liabilities have also been added back in the asstt. year 1990-91 after giving detailed reasons in the asstt. order. I further find from the records that the Department's appeal on this issue is pending before the Tribunal Accordingly these two items are disallowed and added back to the assessee's income.

3.1. Against the said order, the assessee filed an appeal before ld. CIT(A). The Ld. CIT(A) confirmed the above order of the AO. The relevant extract of the ld. CIT(A) is reproduced as under:-

"The basic issue arising in this case is whether mercantile or cash system of accounting has to be followed and whether, on the given facts, this is an ascertained or contingent liability.

The whole thrust of the arguments of the A.R. is that even though they are reflecting it as contingent liability it is still on ascertained

liability. That the Auditor General of India also says so. That the D.C. has treated it so for A.Y. 1988-89. Hence it should be treated as ascertained liability. And since assessee is following mercantile system of accounting it has to be allowed in the year in which it accrued.

I only partly agree. The assessee is free to follow any system of accounting. But the freedom is not unlimited. A particular system cannot be allowed to be imposed on the department. The freedom of the assessee is within the parameters of Law. And I.T. Law enjoining upon the assessee to follow a system which gives a true and fair picture of the profits.

Mixed system of accounting is available under the I.T. Law in this year. If a particular system does not reflect the true & correct state of affairs of the business the department can decide as to which system will be followed for a particular controversial item..

From the facts as stated above it is clear that the amounts are disputed. Further that these have not been paid till date. The period under consideration is April 90 to March 91 i.e. four years have passed. The entire matter is within the Govt. In spite of categorical rejection of the request of the assessee by the Govt. inspite of Auditor General calling it an ascertained liability it has not been paid nor does the assessee intend to pay.

The assessee has neither paid it nor does it intend paying. Further it will not hurt the interests of the assessee if it be directed that the cash system of accounting be followed for this item. As and when the payment is actually made it will be allowed. But at present it is only a disputed amount. I see no reason to force mercantile system of accounting on the department for this particular item. This will be allowed when actually paid No interference for the time being.

This ground of the assessee is rejected.”

4. Against the order of the ld. CIT(A), the assessee is in appeal before us.

5. The Ld. Counsel for the assessee submitted that this issue is covered in favour of the assessee by assessee's own case in preceding assessment year being AY 1990-91, AY 1995-96, AY 1996-97 and AY 1997-98, wherein, the claim for interest expenditure payable to Government of India has been allowed by the Hon'ble Tribunal. In this regard, the ld. AR filed a written submission, which is reproduced as under:-

1. This is an appeal filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals) dated 01.08.1995 where the CIT(A) has confirmed the addition made by the Ld. AO on account of interest payable to Govt. of India amounting to Rs.30,28,71,6171-.

2. This issue is covered in favour of the assessee by assessee's own case in preceding assessment years being AY 1990-91, AY 1995-96, AY 1996-97, AY 1997-98 wherein the claim for interest expenditure payable to Govt. of India has been allowed by the Hon'ble Tribunal. A copy of the order of the Hon'ble Tribunal is placed at PB Pg. 233-248 Findings of the Hon'ble Tribunal in the assessee's own case for AY 1990-91 & AY 1995-96 is also reproduced below:

* "PAWAN HANS HELICOPTERS LTD. VERSUS THE D.C.IT NEW DELHI, ITA No.419/DEL/1994 & ITA No. 319/DEL/2001- ITAT DELHI - Dated.- JULY 14, 2021

"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 AY 1988-89 and AY 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 AY 1993-94, AY 1994-95, AY 2000-01 and AY 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 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."

3. Similar finding was also given by the Co-ordinate Bench of the Hon'ble Tribunal in the assessee's own case for AY 1996-97 & AY 1997-98 wherein it was held as under:

"5. On the perusal of the impugned order as well as the order of the Tribunal in assessee's own case in the earlier year, we find that the Tribunal has deleted the disallowance after observing as under:

"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 AY 1988-89 and AY 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 AY 1993-94, AY 1994-95, AY 2000-01 and AY 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 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."

6. Thus, respectfully following the aforesaid precedent, we delete the disallowance on account of interest payable to Government of India."

4. It may be relevant to point out that the CIT(A) has confirmed the addition made by Ld. AO amounting to Rs. 30,28,71,617/- on account of interest due and payable to the Government of India.

5. However, considering the facts prevailing in assessee's case, the addition made by the AO and confirmed by CIT(A) on account of interest payable to Govt. of India amounting to Rs.30,28,71,617/- is liable to be deleted."

6. The ld. DR relied upon the orders of the authorities below.

7. We have heard both the parties and perused the material available on record. On perusal of the assessment order, it is seen that the AO disallowed the amount of Rs.30,28,71,617/- which represented a sum of Rs.26,38,90,367/- towards interest due to govt. of India for payment of release in foreign exchange to the customers on behalf of the corporation and further a sum of Rs.3,89,81,250/- being interest on capital loan on Rs.23,62,50,000/- taken from Govt. of India. Further, he also noted that these liabilities have also been added back in AY 1990-91

after giving detailed reasons in the assessment order. On similar facts, the Co-ordinate Bench of the Tribunal by a common order dated 14.07.2021 for AY 1990-91 in ITA No.419/Del/1994 and for AY 1995-96 in ITA NO. 319/Del/2001 allowed the appeal of the assessee as under:-

The present appeals have been filed by the assessee against the order of ld. CIT (A)-VII, New Delhi dated 18.11.1993 and the order of ld. CIT (A)-XIV, New Delhi dated 30.11.2000.

2. In ITA No . 419/Del/1994, following grounds have been raised by the assessee:

“1. That the ld. CIT (A) has erred in law and on facts in upholding disallowance of interest aggregating Rs.24,34,72,443/- due and payable to the Government of India and in directing that the deduction be allowed not on accrual but on actual payment of the interest.”

3. In ITA No . 319/Del/2001, following grounds have been raised by the assessee:

“1. That the ld. CIT (A) has erred in law and on facts in confirming disallowance of interest payable to the Government of India amounting to Rs.23,79,41,269/-

2. That the ld. CIT (A) has erred in law and on facts in upholding disallowance of depreciation on Westland Helicopters amounting to Rs.57 ,60,034/-.”

Interest due to Government of India:

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% advalorem 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 ld. CIT (A) confirmed the addition.*

12. *Before us, the ld. 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 ld. DR argued that no such provision is allowed in the Income Tax Act 1961. The ld. 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 .”

8. The facts in this year are also identical to the facts in the case of the assessee for AY 1990-91 and 1995-96 on this issue. The Ld. DR could not bring any facts contrary to the above cited decision. Therefore, respectfully following the above decision of the Coordinate Bench of the Tribunal, the disallowance of Rs.30,28,71,617/- made by the AO and confirmed by the Ld. CIT(A) is not sustainable and the same is deleted.

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

Order pronounced in the open court on 18th October, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 18.10.2024.

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,