IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A No.5352/Mum/2025
(Assessment Year: 2007-08)

Haffkine Bio Pharmaceutical Corporation Acharya Dhondle Marg, Parel, Mumbai-400012 **PAN : AAACH0965N**	**vs**	**ACIT, 7(1)(2), Mumbai** Aykar Bhavan, BKC, Maharastra
APPELLANT		**RESPONDENT**

Assessee by : Shri Mayur Makadia
Respondent by : Shri Hemanshu Joshi (SR DR)

Date of hearing : 07/01/2026
Date of pronouncement : 13/01/2026

O R D E R

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC Delhi [for brevity, 'Ld.CIT(A)'] order passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act) for the Assessment Year 2007-08, date of order 27/06/2025. The impugned order emanated from the order of the Learned Assessment Commissioner of Income-tax -7(1)(1), Mumbai (for brevity, 'the Ld.AO') order passed u/s 143(3) r.w.s. 254 of the Act, date of order 10/10/2016.

2. The brief facts of the case are that the assessee filed its return of income declaring a total income of Rs.1,61,05,768/-. The case was selected for scrutiny, and an assessment order under section 143(3) of the Act was passed, wherein an addition of Rs.2,00,00,000/- was made by disallowing the provision created towards salary on account of the expected increase in annual personnel cost arising from the implementation of the Sixth Pay Commission. Aggrieved by the said addition, the assessee preferred an appeal before the Ld. CIT(A). However, the Ld. CIT(A) rejected the assessee's appeal.

3. Thereafter, the assessee filed an appeal before the ITAT, Mumbai Bench, and the Tribunal, vide its order dated 06.04.2015, restored the matter to the file of the Ld. AO for verification of the said expenditure. During the reassessment proceedings, the assessee reiterated the same submissions and contended that the provision of Rs.2,00,00,000/- was made on the basis of the expected increase in annual personnel cost consequent to the implementation of the Sixth Pay Commission. It was submitted that the assessee had computed the said provision by relying on the pattern and calculations of earlier years. The provision was created to account for an ascertained liability towards the anticipated increase in salaries pursuant to the recommendations of the Sixth Pay Commission. However, the Ld. CIT(A) once again rejected the assessee's appeal. Being aggrieved, the assessee has filed the present appeal before us.

4. The Ld. AR argued the matter and filed a paper book comprising **pages 1 to 67**, which has been placed on record. The Ld. AR submitted that the assessee has consistently followed the same method of creating provision for salary since

financial year 1976–77. It was further submitted that the assessee is a Government of Maharashtra undertaking, and the recommendations and orders of the Pay Commission are binding upon it. The details relating to the implementation of the Pay Commission's directions have been furnished in a tabulated form, which is reproduced below:

Pay Commission Period

Pay Fixation Date	Pay Commission	Pay Commission date for Central PSU	Pay Commission date for State PSU
w.e.f. 1.4.1955 To 31.12.1965	1 st pay comm	Not Available	Not Available
w.e.f. 1.4.1966 To 31.12.1975	2 nd Pay comm.	Not Available	Not Available
w.e.f. 1.4.1976 To 31.12.1985	3 rd Pay comm.	23.04.1970	17.04.1978
w.e.f. 1.4.1986 To 31.12.1995	4 th Pay Comm.	29.07.1983	01.10.1988
w.e.f. 1.4.1996 To 31.12.2005	5th Pay comm.	09.04.1994	10.12.1998
w.e.f. 1.4.2006 To 31.12.2015	6th Pay Comm.	05.10.2006	22.04.2009
w.e.f. 1.4.2016 To 31.12.2025	7th pay comm.	28.02.2014	30.01.2019

5. The Ld. AR further contended that the said liability has been consistently and systematically computed by the assessee since the year 1976. Based on such historical calculations, an ad hoc provision of Rs.2,00,00,000/- was made in the impugned assessment year. It was submitted that the provision for salary arising out of the implementation of the Sixth Pay Commission was duly calculated and the relevant workings were placed before the Bench. The same are reproduced below:

Particulars	Amount (Rs.)
Sixth Pay Arrears for April 07-March 08	
Parel	1,23,16,691
Pimpri	52,08,614
Sub-Total (A)	**1,75,25,305**
Sixth Pay Arrears for January 06-March 07	
Parel	1,83,46,423
Pimpri	71,17,134
Sub-Total (B)	**2,54,63,557**
Total Liability as per VI Pay Commission (A+B)	4,29,88,862
Less: Adhoc Provision made in FY 2006-2007	2,00,00,000
Balance Provision made in 2007-2008	**2,29,88,862**

6. The Ld. AR further argued that the as per the order of the Government of Maharashtra dated 27.06.2000, the assessee is binding to implement the Sixth Pay Commission and accordingly revise the pay scale which will be applicable for the assessee. The assessee has submitted the list of employees and calculation the revised salary is duly enclosed in **APB page 43 to 63**.

7. The Ld. AR respectfully relied on the order of Hon'ble Delhi High Court which is squarely applicable in the assessee's case, **CIT vs. Bharat Heavy Electricals Ltd.** reported in **352 ITR 88 (Del.)** the relevant paragraph 7 to 9 is reproduced as below:

"7. In Bharat Earth Movers (supra) (decided by the Supreme Court), the question which the court had to consider was whether the provision for meeting earned-leave-encashment by the employee was an admissible deduction in the hands of the employer. The court reiterated and applied its previous decision in Metal Box case (supra) and held as follows (page 431 of 245 ITR):

"If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantify and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being esti-mated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liabuity is not a contingent one. The liability is in praesenti though it will be dis-charged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."

8. In this case, the Tribunal had noticed that there was no dispute as regards the terms of employment of the workers and officers. The only question was the exact quantification of the compensation or wage revision. The Tribunal also held that the provision for wage revision was based on the past experience, interim Pay Commission of Government employees, pre-vious Pay Commission's reports of public sector employees, union demands and other relevant factors. The Tribunal also held that with the expiry of one wage settlement or agreement, invariably, there is a time lag when another fresh wage revision agreement is negotiated and entered: The deduction claimed for that period cannot be termed as corttingent because the wage and the probable revision or rates of revision would be within the fair estimation of the employer. In this case, BHEL had the benefit of past expe-rience of such pay revisions. Its liability could not be characterized as contingent but was in fact ascertained; the quantification, however, had not happened.

9. In view of these facts, this court holds that there is no infirmity with the reasoning of the Tribunal about the deduction claimed on account of wage revision being permissible."

8. He further respectfully relied on the order of Coordinate Bench of ITAT Mumbai in the case of **Tata Communication Ltd. vs. JCIT** reported in **151 TTJ 273 (Mum)** the relevant paragraph 6 is reproduced as below:

"6. We have considered the rival submissions and perused the orders of the lower authorities and also gone through the judicial decisions cited by the counsel for the assessee. It is not in dispute that salary and wages accrue daily, weekly, fortnightly or monthly as per the contract of the employment. This is so as services are rendered in present, the liability of the employer to compensate the employees for the services rendered also accrues in present. A perusal of the orders of the lower authorities shows that what is actually in dispute is the quantification of compensation. As the assessee is a PSU, the pay revision depends upon the decision of the Government. As the personnel department of the assessee had knowledge of

dealing with such pay hikes in the past, the assessee can estimate the quantum of such enhanced liability. The liability was certain and it was just a matter of time when it would arise. What was not certain is the quantum of pay hike. Assessee took the most prudent decision of making provision of salaries at Rs. 40.71 lakhs. It is also seen that what was provided by the assessee is only 40 per cent of the actual pay hike proposed by the DPE. It is also to be seen that the contract with the employees expired on 31st Dec., 1996 and the assessee has made a provision only for the period of January to March, 1998. The Revenue authorities have disallowed the claim only on the basis that the commission submitted its report in June, 1999. In our considerate view.what is important is not the date of signing the agreement nor the date of approval granted by the DPE, what is important is the effective date of commencement and on that note we find that the liability is accrued during the year under consideration. It is also to be noted that the provision for salary was not a contingent liability. It was in respect of the outcome of the decision of the DPE. For this proposition, we draw the support from the decision of the Hon'ble Supreme Court in the case of ***Bharat Earth Movers us. CIT (2000) 162 CTR (SC) 325: (2000) 245 ITR 428 (SC)*** *wherein the Hon'ble Supreme Court has held that:*

"If a business liability has definite origin in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is in present though it will be discharged at a future date, It does not make any difference if the future date on which the liability shall have to be discharged is not certain."

As facts and circumstances of the present case are identical with the ratio laid down by the Hon'ble Supreme Court, respectfully following the findings of the Hon'ble Supreme Court and also the decisions relied upon by the assessee, we direct the AO to allow the claim of deduction of provision for salary of Rs. 40.71 lakhs as the services rendered are in present. Ground No. 3 is accordingly allowed."

[**Emphasis supplied**]

9. The Ld. DR argued the matter and supported the orders of the revenue authorities. The Ld. DR further submitted that the Sixth Pay Commission was implemented with effect from March 2008, and therefore, the consequential impact on salary would arise in financial year 2008–09. Accordingly, it was contended that the computation of salary and the creation of a provision

amounting to Rs.2,00,00,000/- in the impugned year is contrary to the provisions of law. The Ld. DR drew our attention to paragraph 5.2 of the impugned appellate order, which is reproduced below:

"*5.2 From the assessment order, it is noticed that the assessment 143(3) r.w.s. 254 of the Act was made in compliance of the order dated 06.04.2015 of the Hon'ble ITAT. The appellant made provisions amounting to Rs.2,00,00,000/- based on the expected increase in the annual personal cost as a result of implementation of 6th pay commission. The AO has disallowed the said provisions. The relevant extract of the assessment order is hereunder*

"3.5 Further, the 6th pay commission was constituted on 24.03.2008 and revision in pay scale was effective from 1 January 2006 and the relevant financial year under consideration for which provision was made pertains to 01.04.2006 to 31.03.2007. The 6th pay commission was made effective from 01.01.2006 the relevant previous year under consideration falls within the dates when 6th CPC. But here the assessee is not a central government body it is a state government holding company and its pay scale is governed by the State of Maharastra which generally follows the revision in pay scale of the CPC. But till the time the revised pay of CPC is not sanctioned through notification, the revised pay do not come into existence for the assessee company. Here in this case the 6th CPC was effective from 01.01.2006 and was constituted on 24.03.2008,but the recommendation of the 6 CPC was sanctioned by the State of Maharashtra on 31.01.2011 vide Government of Maharashtra Resolution No HFN 2009/CR 169/09/Pharma-01 dated 31.01.2011 and 31.01.2011 pertains to previous year 2010-11. The same has been followed in the 5th CPC, which was sanctioned to the company vide Government notification No 182/99/Undertaking dated 27.06.2000.

3.6 In view of the above, and also expenses were not crystallized during the previous year under consideration, the provision for expenses of Rs.2,00,00,000/- is disallowed and added to the total income of the assessee."

10. We have carefully considered the rival submissions, perused the material available on record, and examined the judicial precedents relied upon by both the parties. It is an undisputed fact that the assessee is a Government of Maharashtra undertaking and is bound to implement the recommendations of the Pay Commission as and when sanctioned by the State Government. It is also evident

from the record that the assessee has consistently followed the same method of creating provisions towards salary revision since financial year 1976–77, based on past experience and a reasonable estimation of the enhanced liability. The provision in question was created in respect of services already rendered by the employees during the relevant previous year, and only the quantification of the enhanced salary was deferred to a future date, subject to formal approval. The liability, therefore, had accrued during the year under consideration and cannot be characterised as contingent in nature. This position is squarely supported by the ratio laid down by the Hon'ble Supreme Court in **Bharat Earth Movers** (supra) and followed by the Hon'ble Delhi High Court in **Bharat Heavy Electricals Ltd**. (supra) as well as by the Coordinate Bench of the ITAT, Mumbai, in **Tata Communications Ltd.** (supra). The contention of the revenue that the liability crystallised only upon formal sanction by the Government of Maharashtra does not detract from the fact that the obligation to revise salaries had its origin in the relevant accounting year and was capable of being estimated with reasonable certainty, based on historical data and established practice. The mere deferment of approval or payment does not render the liability contingent.

In view of the consistent accounting practice followed by the assessee, the binding nature of the Pay Commission recommendations, and the settled legal position that a provision for an accrued but unquantified liability is allowable as a deduction, we find no justification for the disallowance of the provision of Rs.2,00,00,000/-. Accordingly, we set aside the order of the Ld. CIT(A) and direct the Ld. AO to allow the assessee's claim.

Hence, the appeal filed by the assessee is allowed.

11. In the result, the appeal of the assesse bearing **ITA No.5352/Mum/2025** is allowed.

Order pronounced in the open court on 13th day of January, 2026.

Sd/-	Sd/-
(PRABHASH SHANKAR)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai,दिनांक/Dated: 13/01/2026
Saumya

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, MUMBAI**