

IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH (A)

BEFORE SHRI G. S. PANNU, ACCOUNTANT MEMBER
AND SHRI JOGINDER SINGH, JUDICIAL MEMBER

ITA Nos. 949, 950 & 951/Chandi/2007
Assessment Years: 1999-2000, 2002-03 & 2003-04

M/s Haryana Power Generation V ACIT,
Corporation Limited, Circle,
Panchkula. Panchkula.

PAN: AABCH4536J

(Appellant) (Respondent)

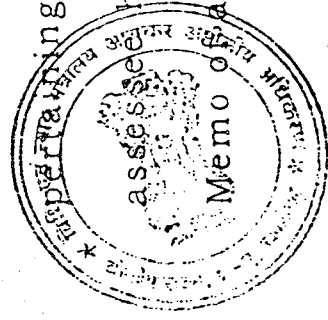
Appellant by : Shri Ved Jain
Respondent by : Shri Jitinder Kumar

ORDER

Per G. S. Pannu, AM

The captioned appeals of the assessee arise out of the respective orders of the CIT(A) dated 13.08.2007 pertaining to the assessment years 1999-2000, 2002-03 & 2003-04. We find it expedient to pass a common order since the appeals relate to the same assessee and involve certain common issues. First, we take up the appeal of the assessee in ITA No.949/Chandi/2007. The assessee, while filing its appeal, has raised multiple Grounds of appeal in the Memo of Appeal with which we shall deal in seriatim.

2. Before we proceed to consider and adjudicate the individual Grounds of appeal, we find it appropriate to



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take note of the manner in which the business of the assessee-company has been set up. The appellant is a Company under the Companies Act, 1956 set up by the Government of Haryana. In terms of the Haryana Electricity Reforms Act, 1997 power sector reforms were carried out in the State of Haryana. The erstwhile Haryana State Electricity Board (HSEB) was unbundled into two Corporations. The undertakings, assets, properties, liabilities etc of the erstwhile HSEB were transferred to the assessee on 14.08.1998 to under take the activities pertaining to generation of electricity as an independent entity. All the assets and liabilities as on 14.08.1998 were taken over by the State Government and then transferred to the newly formed Companies. Accordingly, the return of income filed by the assessee for the assessment year 1999-2000 incorporates the Profit & Loss account for the period from 15.08.1998 to 31.03.1999. The assessee filed a return of income for the assessment year 1999-2000 declaring a loss of Rs.68,04,01,246/- on 31.12.1999. The return of income so filed was accompanied by the Audited Balance Sheet and Profit & Loss Account. In response to the notice issued under section 148 on 31.07.2003 the assessee filed a return on 11.09.2003 declaring a loss of Rs.81,38,76,122/-.

The impugned assessment has been framed by the Assessing Officer by making additions out of provident fund/pension fund, fuel related expenses and penal

interest amounting to Rs 12,05,53,911/-, Rs. 6,51,31,000/- & Rs. 22,354/- respectively. The loss determined by the Assessing Officer is at Rs. 62,81,68,857/-. The additions were challenged in appeal unsuccessfully before the CIT(A). Not being satisfied with the order of the CIT(A), the assessee is in appeal before us.

3. In the Memo of appeal Ground No. 1 is general in nature and does not require any adjudication.

4. Ground Nos. 2 & 3 in the Memo of appeal relate to the grievance of the assessee against initiation of proceedings under section 147/148 of the Income Tax Act, 1961 (in short 'the Act') by the Assessing Officer. These Grounds have not been pressed at the time of the hearing and therefore the same are dismissed as not pressed.

5. In Ground No. 4 the issue is with regard to an addition of Rs.12,05,53,911/- made by the Assessing

Officer on account of provident fund and pension fund.

In this connection brief facts are that the Assessing

Officer noted from the Balance Sheet that 'a sum of

Rs. 59,02,15,231/- on account of General Provident Fund

and Rs.65,36,38,660/- on account of Staff Pension fund

is shown on the liability side of the balance sheet in

schedule V'. The Assessing Officer has added the

following amounts to the income of the assessee on the

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ground that the same relates to the period prior to the incorporation of the assessee:-

Provident Fund	Rs. 32,15,231/-
Pension Fund	Rs. 11,77,38,680/-

6 The CIT(A) sustained the action of the Assessing Officer and also observed that the funds have not been recognized and therefore "the deduction claimed by the appellant cannot be allowed".

7. Against the aforesaid decision of the CIT(A), the plea of the appellant before us was that the lower authorities have failed to appreciate the facts in its proper perspective. In so far as the issue relating to the recognition of the Funds trust is concerned, it was pointed out that the same had been approved by the Commissioner of Income Tax, Panchkula vide orders dated 15,27 September, 1999 w.e.f. 01.04.1999. The Copies of the respective orders have been placed in the Paper-Book at pages 20 & 21. It was therefore submitted that said objection was not justified. Regarding the objection that the contribution was for the prior period, the Ld. Counsel pointed out that the assessee had not claimed any expenditure on provident fund/pension fund contribution during the year while computing its business income. In this connection our attention has been drawn to the Profit & Loss Account and the relevant schedules thereof, which have been placed in the Paper-Book. On this aspect the Ld. D. R. pointed out that this aspect of the dispute is not

emerging from either of the orders of the lower authorities.

8. In our view the plea brought out by the appellant is potent because the addition can be made only in case the assessee has claimed the impugned expenditure as a deduction while computing its total income. This being a factual matter, it requires verification. Evidently, on this aspect there is no finding in the orders of the lower authorities though it has been pleaded by the assessee. Infact, it has been articulated by the assessee in its written submissions dated 11.12.2004 addressed to the Assessing Officer, placed at page 6 to 10 of the Paper Book. The relevant portion reads as under:-

"Since these liabilities were transferred from erstwhile Haryana State Electricity Board and have not been created by charging the same as an expenditure in the Profit and Loss account and therefore the addition on this ground is not called for."

9. Since however as this aspect goes to the root of the matter, we find it expedient to direct the Assessing Officer to ascertain the complete factual picture in this regard. If it is found that the amount added by the Assessing Officer has not been claimed as a deduction while computing the total income for the year under consideration, no addition is called for. If the finding of the Assessing Officer is to the contrary, then the Assessing Officer shall be at liberty to take action in accordance with law. Needless to say

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Assessing Officer shall allow the assessee a reasonable opportunity of being heard. Thus on Ground No. 4 the assessee succeeds for statistical purposes.

10. In Ground No. 5 the issue relates to an addition of Rs.6,51,31,000/- made on account of 'fuel related expenses'. The Assessing Officer made the disallowance on the ground that the impugned sum represented fuel related expenses relating to period prior to the incorporation of the assessee. In this connection, the assessee made the following submissions before the Assessing Officer:-

"As regard, fuel related expenditure amounting to Rs.651310000.00, it is stated that this amount is payable to Indian Railway on account of liability on account freight incurred on purchase of the coal. Brief history in this regard is as under:

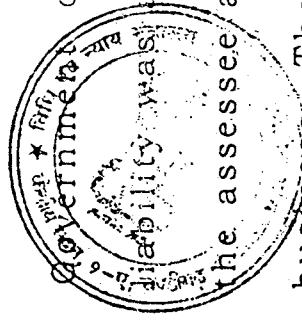
At the time of acquiring the business relating to generation of power, the corporation acquired entire value of the stock from the Haryana Government. The value of the stock at the time of acquisition was Rs.16800000.00, whereas actual value of stock, which was transferred was Rs.1753131,000.00. Thus, there was difference of Rs.65131000.00 in the value of stock. This difference on account of freight on coal amounting to Rs.65131000.00 payable to Railway. Since the coal was purchased prior to the incorporation and, therefore, the same has been treated as cost under the head "Fuel related expenses" prior to the incorporation. Since the amount is part of the value of stock held as on 14.08.1998, i.e. at the time of incorporation, the same is eligible for allowance as expenditure and should be allowed as expenditure. It may not be out of place to mention here that this coal has been used for generating the electricity which is the main source of income of the Corporation and, therefore, the same should be allowed as an expenditure."

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11. In this manner the assessee explained that this liability related to freight incurred on purchase of coal which was taken over by the assessee at the time of transfer from the erstwhile HSEB. The stock of coal in question was purchased by erstwhile HSEB and it has been used by the assessee in the generation of the electricity. The Assessing Officer disallowed the claim on the ground that the expenditure related to period prior to the incorporation of the business of the assessee. The assessee carried the matter in appeal before the CIT(A). The CIT(A) has sustained the addition on the reasoning adopted by the Assessing Officer.

12. Before us the Ld. Counsel for the appellant has submitted that the amount in question undoubtedly relates to the stock of coal taken over by the assessee and such stocks have been used by the assessee in its business. The liability of freight payable on such stock was also taken over by the assessee in terms of the scheme under which the business of the erstwhile

HSEB was transferred to the assessee by the Government of Haryana. It was submitted that the liability was an allowable expenditure in the hands of the assessee as it was incurred towards running of its business. The stock of coal is an item used in the generation of electricity as raw material. The cost of procurement of raw material goes to increase the cost of raw material and in this manner the impugned



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expenditure is allowable as a revenue expenditure. It was explained that though the coal was transported by the Railways prior to the takeover of business by the assessee yet this expenditure was allowable in the hands of the assessee since the assessee had also taken over liabilities of the erstwhile business alongwith the assets.

13. On the other hand the Ld. D. R. has relied upon the orders of the lower authorities in support of the case of the Revenue.

14. We have considered the rival submissions carefully. In this case, as noted by us earlier the undertakings, assets, properties and liabilities etc. of the erstwhile HSEB were transferred to the assessee on

14.08.1998 to undertake the activities pertaining to

generation of power in the State of Haryana as an independent entity. In terms of the scheme, the Government of Haryana transferred the assets and liabilities pertaining to the business of power

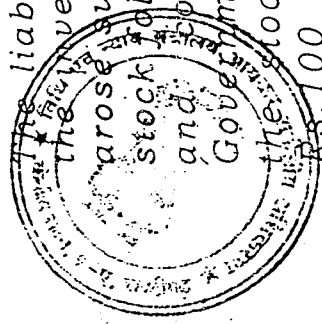
generation of the erstwhile HSEB to the assessee. In terms thereof, the stock of coal in question was also transferred to the assessee. Coal is a item of fuel used by the assessee in generation of power. It was stated before the Assessing Officer that the value of coal transferred from erstwhile HSEB was Rs.16,88,00,000/- and alongwith it there was a liability of a sum of Rs.6,51,31,000/- payable on

account of freight to the Indian Railways. The said sum was includible in the cost of raw material taken over, which was used in the generation and sale of electricity. Infact in the written submissions dated 11.12.2004 addressed to the Assessing Officer the assessee explained that this liability was to be borne by the assessee in terms of the scheme under which the business was transferred to the assessee. The relevant portion of the submissions is as under:-

"We would also like to draw your kind attention toward the Point 1 of Haryana Electricity Reforms (Transfer of undertaking asset, liabilities and personnel) Scheme, 1998, issued by Governor of Haryana, in which it is clearly stated that "in addition to above any contingent liabilities other than those specified in Scheme 'A' and to the extent they are related to above liabilities or otherwise to generation undertaking and function will be borne by the corporation".

As per accounting standard 2 on the "valuation of inventories" issued by the Institute of Chartered Accountants of India. The value of stock in the hand in the books of account is reflected at cost or market price whichever is lower. The cost of inventories will comprise all cost of purchase, cost of conversion and other costs incurred in bringing the inventories to their present location and condition.

The liability on account of freight for bringing the inventories to the present location which arose subsequently was added in the value of stock following the principle laid down by AS-2 and condition laid down by the State Government at the time of transferring/selling stock. For example, if an asset costing Rs.100 is booked and transferred at Rs.100 and a sum of Rs.10 on account of freight, which was not booked earlier for bringing the inventories into present location will be recorded as an expenditure and will be accounted for arriving the value of stock is Rs.110.



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As a matter of accounting principle also the stock transferred to the assessee was not represented by the amount recorded in the books of account at the time of purchase of stock from the Haryana Government and therefore a sum of Rs.65131000.00 incurred on account of freight was booked as expenditure to show correct state of affairs in the books of account."

15. From the aforesaid it clearly emerges that the liability in question was of the assessee. Secondly it pertained to the stock of coal purchased by erstwhile HSEB, which was transferred to the assessee in terms of the scheme. Therefore, when the erstwhile purchased stock has been taken over alongwith the attendant liability, such liability has to be accounted for by the assessee in its books of account. Hence, the discharge of such liability by the assessee is in terms of the scheme of the Government and relates to the stock of coal used by the assessee for its business. As a consequence the expenditure cannot be disallowed on the basis that it pertained to a prior period. We therefore set-aside the order of the CIT(A) and direct the Assessing Officer to allow the said claim. As a result, on this Ground the assessee succeeds.

16. In Ground No. 6 the issue relates to an addition of Rs.22,354/- on account of penal interest. The Counsel for the assessee submitted that this issue has been subsequently decided by the CIT(A) in favour of the assessee in an order passed under section 154 of the Act dated 19.11.2007. Therefore the said Ground is not

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pressed. In view of the aforesaid the Ground No.6. is dismissed as not pressed.

17. In the result the appeal for the assessment year 1999-2000 is partly allowed.

18. In the assessment 2002-03 the assessee raised the following Grounds:

1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law & on facts.*

2. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the action of A. O. in making an addition of Rs.127,90,022/- on account of previous year expenditure.*

(ii) That the addition has been made despite the assessee bringing all material evidence on record.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in ignoring the contention of the assessee that the A. O. has erred in taking net loss Rs.294,50,62,725/- in computation of income.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in not deleting the addition of Rs.134,37,878/- made on account penal interest on capital liabilities.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in not deleting the disallowance on account of payment of interest to LIC and sales tax amounting to Rs.45,74,76,536/-.*

No.1 is general in nature and does not any

20. With regard to Ground Nos. 3 & 4 it was stated by the Ld. Counsel that these issues have been decided by



the CIT(A) in favour of the assessee in an order passed under section 154 of the Act and therefore the same are not pressed. Accordingly Ground No. 3 & 4 are dismissed as not pressed.

21. In relation to Ground No. 5 it is submitted that the issue was set-aside by the CIT(A) to the file of the Assessing Officer who has allowed the claim after verification in terms of section 43B of the Act. Therefore no grievance survives for the consideration of the Bench on this Ground. Accordingly, Ground No. 5 of the assessee is dismissed as infructuous.

22. The only Ground remaining for consideration is Ground No. 2 in relation to an addition of a sum of Rs.1,27,90,022/- on account of previous year expenditure. The Assessing Officer disallowed the expenditure by making a brief discussion on the following lines:-

"Previous Year Expenditure"

The assessee has claimed previous year expenditure at Rs.1,27,90,022/-. Since, the assessee is following mercantile system of accountancy, such an expenditure is not allowable in this year and as such it is added."

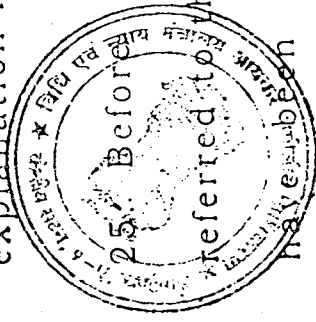
23. In appeal before the CIT(A), the assessee contended that the Assessing Officer did not examine the expenditure itemwise and the basis of claiming expenditure. The details were filed before the CIT(A) who has noted the same in para 6 of his order. The details have been examined by the CIT(A) and his

observations are in para 6.1 of the order which read as under:-

"6.1 As regards Rs.13,65,841/- it is submitted that the amount represents arrear of interest on PFC loan of 9/99. In this regard, it has not been explained as to how this amount has been claimed in the year under consideration. No explanation has been offered. Similarly, in respect of Rs.17,56,445/- on account of arrear of pay and allowances, no details have been submitted regarding division of pay and allowances and as to how the amount has become liability during the year under consideration. Similarly, in respect of various other expenses though the copy of journal voucher has been filed showing that the amount has been accounted for in the year under consideration but no explanation has been offered as to how the amount has become the liability of the year under consideration. For instances, a sum of Rs.18,29,282/- relates to payment made to Central Electricity Authority, New Delhi in respect of bills pertaining to the period September,1994 to March,1999. But no further details are available. It is for the assessee to explain the nature of these transactions. After filing of the submission and the relevant documents by the appellant by 20.04.2007, opportunity was given to the appellant for explaining its case on 18.07.2007 and 13.08.2007. None attended on these dates nor any request for adjournment was received. In the light of these facts and in the absence of proper explanation, the A. O. is justified in making the disallowances."

24. From the aforesaid is it evident that the CIT(A) has rejected the claim in the absence of a proper explanation from the assessee.

25. Before us, the counsel for the assessee has referred to the Paper-Book wherein the relevant details have been placed. The counsel for the appellant submitted that the assessee, being a state Government Corporation was maintaining detailed records and



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complete explanation was available on each and every item of expenditure to support the plea that the liability for the impugned expenditure has crystallised during the year under consideration.

26. In our opinion, an expenditure cannot be disallowed merely because the same pertains to an earlier period. What is relevant is to ascertain whether the liability for the same has devolved or crystallised during the relevant period or not. The said finding does not emerge in either of the orders of the lower authorities. This being a factual matter, the same in our view deserves to be examined by the Assessing Officer. The Ld. D. R. had no objection to the matter being re-examined by the Assessing Officer on the basis of the details/explanations to be furnished by the assessee. Therefore, on this Ground, we set-aside the order of the CIT(A) and restore the issue to the file of the Assessing Officer to adjudicate it afresh after allowing the assessee a reasonable opportunity of being heard. Thus on this Ground the assessee succeeds for statistical purposes.
27. Thus the appeal of the assessee for assessment year 2002-03 is partly allowed.
28. In the assessment 2003-04 the assessee has raised the following Grounds:-

1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law & on facts.*

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the action of the A. O. in disallowing an amount of Rs.207,31,929/- on account of guarantee charges.

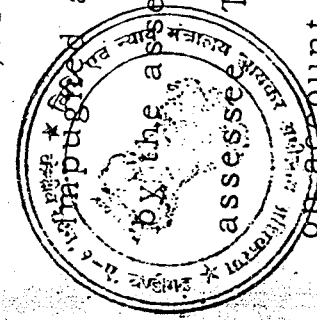
(ii) That the above said disallowance was made despite the assessee bringing all materials & evidences on record.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in not deleting an addition of Rs.340,40,857/- made on account of bonus paid.

29. Ground No.1 is general in nature and does not require any adjudication.

30. With regard to Ground No.3, it was stated by the ld. counsel for the assessee that the issue has been decided by the CIT(A) in favour of the assessee in a subsequent order passed u/s 154 of the Act. Accordingly, the said Ground is dismissed as not pressed.

31. The only Ground surviving for our consideration is Ground No.2 relating to an addition of Rs.2,07,31,929/- made by the Assessing Officer. The



amount represented guarantee charges paid by the assessee with respect to the loans raised by the Assessing Officer disallowed the expense on account of guarantee charges on the ground that the same related to capital items. The CIT(A) has also sustained the disallowance made by the Assessing Officer.

32. Before us, the Id. counsel for the assessee has drawn our attention to the submissions made before the Assessing Officer and which have been reproduced at page 2 of the assessment order. It is explained that the Assessing Officer was wrong in observing that guarantee charges in question related to capital items alone. The assessee had reduced the guarantee charges relating to the capital items out of the guarantee charges claimed as revenue expenditure and, therefore, the claim of the assessee did not include any deduction in relation to the guarantee charges payable on capital account.

33. The Id. D.R. has reiterated the orders of the lower authorities in support of the case of the Revenue.

34. We have examined the rival claims carefully. A perusal of the orders of the lower authorities does not reveal any finding with regard to the position canvassed by the assessee. The plea of the assessee is that the guarantee charges paid for loans utilized for acquisition of capital items has not been claimed as a revenue expenditure. In principle, we find no quarrel with the stand of the assessee. So however, the same is required to be examined in the context of the factual position. Therefore, we set aside the order of the CIT(A) and direct the Assessing Officer to examine as to whether the guarantee charges which have been claimed as revenue expenditure, are relatable to the ~~the~~ revenue items or not. If it is found that the

expenditure claimed relates to the revenue account, no disallowance is called for. If the finding of the Assessing Officer is to the contrary, then the Assessing Officer shall be at liberty to pass such order as is in accordance with law. Needless to say the Assessing Officer shall allow the assessee a reasonable opportunity of being heard before passing an order in accordance with law.

35. Resultantly, the appeals filed by the assessee are partly allowed.

Order pronounced on 31/10/08

MOHANDAS SINGH)
JUDICIAL MEMBER

Dated 31st October, 2008.

Poonam

(G.S.PANNU)
ACCOUNTANT MEMBER

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

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Assistant Registrar
I.T.A.T.
Kerala State

