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
Corporation Limited,
Panchkula.

PAN: AABCH4536J

(Appellant)

ACIT,
Circle,
Panchkula.

(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
pertaining to the assessment year 1999-2000. The
assessee 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
The impugned assessment has been framed by the Assessing Officer by making additions out of provisions on 11.09.2003 declaring a loss of Rs. 81,387,687.24/g on 31.07.2003. The assessment was issued under section 148 on 1.2.1999. The return of income so filed was 31.12.1999. The return of income for the assessment year 1999-2000 declaring a loss of Rs. 68,040,946/- on 14.08.1998 to 31.03.1999. The assessment period from 15.08.1998 to 31.03.1999, the return was filed by the assessee for the assessment year 1999-2000. Incorporates the profit & loss account for the formed companies. Accordingly, the return of income filed Government and then transferred to the newly formed Government as on 14.08.1998 were taken over by the electricity as an independent entity. All the assets and liabilities of the activities pertaining to generation of electricity as an independent entity. All the assets and liabilities of the activities pertaining to generation of electricity were transfer into two corporations, The undertakings, assets, liabilities, etc. of the erstwhile HSEB were carved out in the share of Haryana. The erstwhile Haryana State Electricity Board (HSEB) was unbundled and assets were taken over by the Government of Haryana, in terms of the Electricity Reforms Act, 1997 power sector reforms. The Government of Haryana, in terms of the Electricity Reforms Act, 1997, set up the Haryana State Electricity Board (HSEB) on 14.08.1997. The appellant is a Haryana State Electricity Board (HSEB) employee. The assessee-company has been set up. The appellant is a employee of the
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 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.52,02,15,231/- 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
pointed out that this aspect of the dispute is not
mentioned in the paper book. On this aspect the ld. D.R. and the relevant schedules referred which have been
attained has been drawn to the profit & loss account
computed this business income. In this connection our
fund/pension fund contribution during the year while
assesssee had not claimed any expenditure on providen
the prior period. The ld. Counsel pointed out that the
regarding the objection that the contribution was for
submitted that said objection was not justified.

Paper Book at pages 20 & 21. It was therefore
copies of the respective orders have been placed in the
dated 15.2.77 September, 1999 we are in receipt the
Commissioner of Income Tax, Panchkula vide orders
pointed out that the same has been approved by the
the recognition of the funds trust is concerned. It was
proper perspective. In so far as the issue relating to
authorities have failed to appreciate the facts in the
plea of the applicant before us was that the lower
7. Against the aforesaid decision of the CIT(2), the

Appellate cannot be allowed.
recognized and incorporate the deduction claimed by the
Office and also observed that the funds have not been
Rs. 31,77,38,680/-
Pension Fund
Rs. 32,15,321/-
Provident Fund
Incorporation of the assessment.
Ground that the same relates to the period prior to the
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 take action in accordance with law. Needless to say the
Assessing Officer made the following submissions before the
Incorporation of the Assessee in this connection, the
Related expenses relating to period prior to the
on the ground that the impugned sum represented
expenses, the Assessing Officer made the disallowance
Rs. 65,513.00/- on account of fuel, related
10. In Ground No. 5 the issue relates to an addition of
Assessee succeeded for salutary purposes.
Assessing Officer will allow the Assessee a reasonable

In the time of acquiring the business relating
in the capital account of Rs. 65,513,000.00. This
difference on account of

Whereas actual value of stock, which
The value of stock on the

While the Head Fuel related expenses, prior
to the incorporation, some amount has been
related as expenses and

the event of incorporation, the same
is to be_roll over, the same

value of stock held as on 1.4.98, of
the capital amount of

Therefore, the same has been transferred as
to the incorporation and,

final amount on cost amounting to Rs. 65,513,000.00
difference of stock. This difference on account of

Thus, the transfer was Rs. 17,513,000.00. This,

At the time of acquisition, was Rs. 16,80,000.00.
The actual value of stock, which

Assessing Officer will allow the Assessee

As regards, fuel related expenses amounting

Allowed as an expenditure, therefore, the same should be
Expenses and, therefore, the profit
which is the main source of income of the
has been used for generating the electricity
be roll over, the same is to be

In the time of incorporation, the same

Value of the capital amount of

Therefore, the same has been transferred as
related as expenses and

eligible for roll over, the same is

At the time of incorporation, some amount has been
related as expenses and

since the amount is part

of the capital amount of

Therefore, the same has been transferred as
related as expenses and

 eligible for roll over, the same is

of the capital amount of

Since the amount is part

of the capital amount of

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
Inability of a sum of Rs. 6,51,31,000/- and altogether Rs. 16,88,00,000/- was transferred from erstwhile HSEB before the Assessing Officer had the value of coal by the Assessee in generation of power. It was stated transferred to the Assessee. Coal is a resource of heat used term therein, the stock of coal in question was also generation of the erstwhile HSEB to the Assessee. In liabilities pertaining to the business of power Government of Haryana transferred the assets and independent entity, in terms of the scheme, the generation of power in the State of Haryana as an undertaking the liabilities pertaining to the case of the Revenue.

I 4. We have considered the rival submissions of the orders of the lower authorities in support of the alnongwith the assets, taken over liabilities of the erstwhile business handed over the Assets Since the Assessee had also Assessee yet this expenditure was allowable in the the Railways prior to the takeover of business by the Railways expenditure is allowable as revenue expenditure. It
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. In fact, 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 which ever 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 the 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."
Act dated 19.11.2007. Therefore the said ground is not
assessed in an order passed under section 154 of the
cumulatively decided by the CIT(A) in favour of the
assessee submitted that the issue has been
referred to the Assessing Officer on account of penal interest. The Counsel

16. In Ground No. 5 the issue relates to an addition of
resultantly the Assessing Officer has allowed the said claim. As a
interpretation of the order of the CIT(A) and direct
basis thereof. In terms of the abovementioned, the expenditure cannot be disallowon
coal used by the Assessee for his business. As a
effect of the Government and relates to the stock of
such liability by the Assessee is in terms of the
assesses in the books of account. Hence, the discharge
liability, such liability has to be accounted for by the
stock has been taken over along with the attendant
of the scheme. Therefore, when the erstwhile purchased
HEDC, which was transferred to the Assessee in terms
pertaining to the stock of coal purchased by erstwhile
liability in question was of the Assessee. Therefore it

is a matter of accounting principle also the
accountant.

To show correct state of affairs in the books of
account of the firm, it was booked as expenditure on
the following on the Haryana Government and
stock from the Haryana Government and
books of account at the time of purchase of
stock from the Government recorded in the
representative by the account receivable on
stock transferred to the Assessee was not

15. From the aforesaid it clearly emerges that the
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 of 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/-.

19. Ground No.1 is general in nature and does not amount to any specific issue.

20. With regard to Ground Nos. 3 & 4 it was stated by the Ld. Counsel that these issues have been decided by
the details have been examined by the CIT(A) and his
doings have been noted the same in para 6 of this order. The
circular, the details were filed before the CIT(A)
by the Assessing Officer and the basis of claiming
contended that the Assessing Officer did not examine
22. In appeal before the CIT(A), the Assessee

...In this year and as such it is added...
accounting such as expenditure is not allowable
following manner. The Assessing Officer claimed
Rs. 1,27,90,022/- for the year
previous year

Previous Year Expenditure

following lines-

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

of the Assessee is dismissed as infirme.
the bench on this Ground. Accordingly, Ground No. 5
Therefore no grievance survives for the consideration of
verification in terms of section 43B of the Act.
Assessing Officer who has allowed the claim:
the issue was set aside by the CIT(A) to the like of the
22. In relation to Ground No. 2 it is submitted that

dismissed as not pressed.
are not pressed. Accordingly Ground No. 3 & 4 are
under section 154 of the Act and therefore the same
the CIT(A) in favour of the Assessee in an order passed
observations are in para 6.1 of the order which read as

"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 arrears 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 instance, 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 16.07.2007 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 it is 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
the following grounds:

26. In the assessment year 2003-04 the assessment has raised.

27. Thus the appeal of the assessee for assessment year 2002-03 is partly allowed.

Therefore, on this ground the appeal of the assessee for assessment year 2002-03 is partly allowed.

Allowing the appeal of the assessee for assessment year 2002-03, the matter is heard. This being a factual matter, the same in our view deserves to be examined by the Assessing Officer on the basis of the facts and circumstances to be furnished by the assessee. The Assessing Officer is to adjudge whether the order of the CIT(A) and restore the issue of the law of the matter.

In our opinion, an expression of the nature of the case cannot be deferred during the relevant period or not. The said finding does not entitle in either of the orders of the lower

the liability for the same has developed or crystallized during the relevant period, what is relevant is to ascertain whether the liability was caused because the same pertains to an item of expenditure. It is not possible to support the plea that the complete expenditure was available on each and every
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 assessee. The Assessing Officer disallowed the expenses 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.
Revenue items or not. If it is found that the
claimed as revenue expenditure, are relatable to the
whether the guarantee charges which have been
(CII4) and direct the Assessing Officer to examine as to
position. Therefore, we set aside the order of the
is required to be examined in the context of the Financial
with the stand of the Assessee. So however, the same
Revenue expenditure. In principle, we find no quarrel
acquisition of capital items has not been claimed as a
that the guarantee charges paid for loans utilised for
revenue expenditure. The claim of the Assessee, the plea of the Assessee is
considered any finding with regard to the position
pertaining to the orders of the lower authorities does not
C4. We have examined the rival claims carefully. A
authorities in support of the case of the Revenue.
33. The ld. DR has referred the orders of the lower
account.

In relation to the guarantee charges payable on capital
the claim of the Assessee did not include any deduction
charge claimed as Revenue expenditure and, therefore,
reducible to the capital items out of the guarantee
alone. The Assessee had reduced the guarantee charges

Guarantee charges in question related to capital items
the Assessing Officer was wrong in obiter dictum that
at page 2 of the assessment order. It is explained that
the Assessing Officer and which have been reproduced
drawn our attention to the submissions made before
32. Before us, the ld. Counsel for the Assessee has

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

(G.S. PANNU)
ACCOUNTANT MEMBER

Dated 31st October, 2008.

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