



§ 6 &amp; 7

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1273/2011, ITA 1274/2011

CIT

..... Appellant

Through: Mr. Anupam Tripathi, Sr. Standing  
Counsel

versus

PAWAN HANS HELICOPTERS LTD

..... Respondent

Through: Mr. Husnal Syali, Adv.

**CORAM:****HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER**

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**02.02.2012**

The present appeals by the Revenue under Section 260A of the Income Tax Act relate to assessment years 2003-04 and 2005-06. The only contention and issue raised is whether the provision for maintenance costs can be claimed as an expense under Section 37 of the Income Tax Act, 1961('Act' for short).

The reasoning given by the Tribunal reads as under:

“On due consideration of the facts and circumstances, we do not find any merit in the grounds raised by the revenue. The assessee has been following same principle of accountancy in all the asstt. Years. AO himself accepted it in a number of years prior to these asstt. years and subsequent to these asstt. years. It is not advisable to



disturb the principle of accountancy followed by the assessee for one or two years unless it is established that true income of the assessee cannot be worked out on that principle. The details of maintenance cost reserved from asstt. year 2002-03 up to 2005-06 has been placed by the assessee in a tabular form. Similarly, assessee has placed on record the opening balance of maintenance cost, provision created during the year, the amount utilized and the closing balance for asstt. Year starting from 2002-03 upto 2007-08 in a tabular form at page 3 of the paper book. We find that there is decreasing trend in the closing balance on this provision. The accounting treatment as well as allowability of such maintenance expense on accrual basis was accepted in the past by the Auditor including CAG as well as by the income Tax Department. There is no sound reasoning assigned by the AO in the asstt. Orders for disturbing this method of accountancy. Thus following the principle of consistency, we uphold the order of Ld. CIT (A).”

On the last date of hearing learned counsel for the Revenue was asked to obtain instructions whether the provision for maintenance costs was allowed in the earlier assessment years and whether Revenue had preferred any appeal against adverse orders passed by the appellate forum. Learned counsel for the Revenue accepts that the Revenue did not prefer appeals and have accepted order passed by the CIT (Appeals) in the earlier assessment years. We may note that similar additions were made in the financial year 1994-95, 1995-96 and 1996-97 by the Assessing Officer but were deleted by the CIT (Appeals).

Learned counsel for the Revenue submits that with effect from

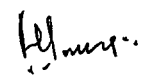


assessment year 2007-08 the respondent-assessee has changed the method of accounting and is no longer making any provision for maintenance cost. Learned counsel for the respondent-assessee states that change was made to avoid further confusion or litigation and it was not making any difference in the taxable income. It is therefore clear that this issue does not have any recurring effect in view of the change made by the respondent-assessee.

After examining the reasoning given by the Tribunal we are not inclined to admit the present appeal. The provision for maintenance was made on the basis of flying hours undertaken in the year in question. The aircrafts require periodical maintenance after prescribed flying hours. Income is earned on basis of flying hours undertaken. Moreover, interfering with the accounting practice followed throughout on piece meal basis, in some years, will create its own difficulties and problems.

The appeal is dismissed.

  
SANJIV KHANNA, J

  
R.V.EASWAR, J

**FEBRUARY 02, 2012**

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