

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA Nos.3427 & 3428/Del/2018  
Assessment Years : 2013-14 & 2014-15**

Addl. CIT, Special Range-4, New Delhi.	vs	Interglobe Aviation Ltd., 124, Thapar House, 2 <sup>nd</sup> Floor, Janpath, New Delhi-110001. PAN-AABC12726B
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh.Vinay Kumar Karan, CIT DR & Sh. Kumar Padmapani Bora, Sr.DR	
<b>Respondent by</b>	Sh. Tarandeep Singh, Adv. & Sh. Pulkit Verma, Adv.	
<b>Date of Hearing</b>	25.11.2021	
<b>Date of Pronouncement</b>	04.02.2022	

**ORDER**

**PER KUL BHARAT, JM :**

Both appeals filed by the Revenue for the assessment years 2013-14 & 2014-15 are directed against the order of Ld. CIT(A)-35, New Delhi, both dated 09.02.2018 rectifying its earlier order, both dated 10.10.2017. For brevity, both these appeals are taken up together and are being disposed off by way of the consolidated order.

2. First, we take up Revenue's appeal in **ITA No.3427/Del/2018** pertaining to **Assessment Year 2013-14**. The Revenue has raised following grounds of appeal:-

1. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in modifying the amount of disallowance u/s*

*40(a)(i) of the I.T.Act, 1961, from Rs.535,16,67,041/- to Rs.507,89,21,321/- (without even mentioning how this figure has been arrived at) u/s 154 of the I.T.Act, 1961, even though there is no mistake apparent in the original CIT(Appeal)'s order dated 10.10.2017.*

*2. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

3. Facts giving rise to the present appeal are that in this case, the original assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was framed vide order dated 06.12.2016. Thereby, the Assessing Officer (“AO”) made various additions including the addition made on account of disallowance made u/s 40(a)(i) of the Act of Rs.5,35,16,67,041/- in respect of supplementary rent. The AO in respect of disallowance u/s 40(a)(i) of the Act noted that payment of Rs.5,35,16,67,041/- i.e. supplementary rent was undisputedly, towards use of aircraft body, usage of life limited parts of auxiliary power unit and parts of engine. Therefore, in the opinion of the AO, the assessee was required to deduct tax on this amount as the payments were not clearly covered by the approval of CBDT u/s 10(15A) of the Act. Hence, for non-deduction of tax, the Assessing Officer made addition of Rs.5,35,16,67,041/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who vide order dated 10.10.2017, affirmed the view of the AO in the operating part of the order related to this issue and sustained addition of Rs.5,35,16,67,041/-. However, Ld.CIT(A) vide impugned order dated

09.02.2018 passed u/s 154 of the Act, reduced the figure at Rs.5,07,89,21,321/-. The Revenue is aggrieved by this action of Ld.CIT(A).

5. Ld.CIT DR supported the order of assessing authority and submitted that there was no mistake apparent from the record.

6. On the contrary, Ld. Counsel for the assessee submitted that Ld.CIT(A) had granted part relief. He submitted that in respect of agreements executed prior to 01.04.2007 on account of supplement rent of Rs.27,27,45,720/- was deleted. Ld. Counsel for the assessee drew our attention to the order of Ld.CIT(A) and enclosed with Paper Book. He drew our attention to Page no.45 of the Paper Book. To buttress the contention that there is no mistake apparent from the record and Ld.CIT(A) had granted the relief.

7. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) in the order dated 10.10.2017 has categorically held that

*“Following the aforesaid order, the Tribunal vide order dated 18.11.2016 in ITA Nos.749 & 750/Del/2016 for A.Ys. 2008-09 and 2009-10, held that payment of supplementary lease rental was exempt u/s 10(15A) of the Act and the appellant was not required to deduct TDS thereon.*

*In A.Y. 2012-13, too, the A.O. also held that the appellant is not entitled for exemption and therefore, it was required to deduct tax before making the payment of supplementary lease rental and therefore, the amount of supplementary lease rent is disallowed u/s 40(a)(i) of the Act. On further appeal, the CIT(A) vide order dated 22.03.2017 In appeal No.119/15-16 for A.Y. 2012-13, following the order of the Tribunal in appellant's own case for A.Y. 2007-08 deleted the addition u/s 40(a)(i) of*

*the Act. At the same time, CIT(A) made disallowance u/s 37(1) of the Act considering the supplementary lease rent was essentially a security to ensure maintenance of the aircraft which included cost of spare parts, maintenance service and maintenance facility.*

*Subsequent to passing of the order by my Ld Predecessor for A.Y. 2012-13 dated 22-03-2017, the Hon'ble High Court of Delhi vide order dated 07.07.2017 in ITA No. 119/2017 has dismissed the Revenue's appeal against the order of the Tribunal for A.Y. 2007-08 in appellant's own case on the aforesaid issue of disallowance of deduction under section 40(a)(i) of the Act on account of non-deduction of tax at source on payment of supplemental lease rental. The order of the Tribunal has been approved by the Hon'ble Delhi High Court, which is binding on the undersigned.*

*My Ld. Predecessor in A.Y. 2012-13 did not have the benefit of the decision of the Hon'ble High Court while holding that supplemental lease rent is not allowable as business deduction. Once the payment of supplemental lease rent has been held by the Tribunal and the Courts to be not towards providing spares, etc., the character of such rent is nothing but for use of the aircraft and hence payment is, in my view, allowable as business deduction and therefore, the only dispute raised by the AO has been with regard to the applicability of provisions of section 40(a)(i) of the I.T. Act.*

*The AO, in the year under consideration, following the orders for the earlier assessment years, held that the payment of Supplementary lease rental is towards usage of aircraft body, usage of life limited parts of auxiliary power unit and parts of engine. He further held that the approval of CBDT u/s 10(15A) has been given for payments other than those for spares, facilities or services in connection with the operation of the lease aircraft and therefore, payments are clearly not covered by the approval of CBDT u/s 10(15A) of the Act. In the assessment order, the AO has observed that in AY 2007-08, the Hon'ble ITAT in assessee's own case, followed its decision in the case of Sahara Airlines Limited and has held*

*that supplementary lease rentals are covered u/s. 10(15A) of the I.T. Act. However, Hon'ble ITAT has not given any findings as regards to applicability of India - Ireland DTAA to the facts of the present case. So far as the application of the Article - 12 of the DTAA with Ireland is concerned, it only provides that if any royalty or fees for technical services is paid for use of the aircraft, the provision of TDS is not attracted but a plain reading of Article - 12 shows clearly that supplementary lease rental has no place under the definition of term royalty or fee, however, it is not mentioned that the same has to be included in the regular lease rent being paid. He also mentioned that the ITAT in appellant's own case has followed the decision of Sahara Airlines limited and held that supplementary lease rentals are covered u/s 10(15A) of the Act. He further mentioned that the appellant has obtained exemption u/s 10(15A) for few aircrafts and the decision of the ITAT is not fully applicable.*

*In the aforesaid background, the issue that arises for consideration is whether the payment of supplementary lease rent is exempt under section 10(15A) of the Act and the DTAA with Ireland. The issue as to whether the payment of supplementary lease rental is exempt under section 10(15A) of the Act is covered in favour of the appellant by the order of the Tribunal for AY 2007-08. The relevant findings of the Tribunal have already been reproduced in earlier part of this order. The said order of the Tribunal for A.Y. 2007-08 has been followed by the Tribunal in appellant's own case for A.Ys. 2008-09 and 2009-10. Further, to that extent the order of the Tribunal has also been followed by my predecessor in AY 2012-13, wherein he deleted the addition u/s 40(a)(i) of the Act.*

*Being so, respectfully following the binding precedent of the Jurisdictional High Court in the appellant's own case for earlier assessment years, it is held that the payment of supplementary lease rent under lease agreements entered into before 31.03.2007 is exempt under section 10(15A) of the Act and no disallowance under section 40(a)(i) of the Act is warranted.”*

8. Ld.CIT DR has not rebutted this finding of Ld.CIT(A). Hence, there was mistake apparent from records which the Ld.CIT(A) has rightly rectified u/s 154 of the Act. Therefore, we do not see any merit in the grounds raised by the Revenue, the same is hereby dismissed.

9. In the result, the appeal of the Revenue in ITA No.3427/Del/2018 pertaining to Assessment Year 2013-14 is dismissed.

10. Now, we take up Revenue's appeal in **ITA No.3428/Del/2018** pertaining to **Assessment Year 2014-15**. The Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in modifying the amount of disallowance u/s 40(a)(i) of the I.T.Act, 1961, from Rs.638,89,59,731/- to Rs.638,06,22,760/- (without even mentioning how this figure has been arrived at) u/s 154 of the I.T.Act, 1961, even though there is no mistake apparent in the original CIT(Appeal)'s order dated 10.10.2017.*
2. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

11. The facts are identical as were in ITA No.3427/Del/2018 pertaining to Assessment Year 2013-14. The Authorized representatives of the parties have adopted the same arguments as in ITA No.3427/Del/2018 pertaining to Assessment Year 2013-14.

12. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find no

merit in the grounds raised by the Revenue. Our reasoning for Assessment Year 2013-14 in ITA No.3427/Del/2018 would apply *mutatis mutandi* in this year as well. The grounds raised by the Revenue are thus, dismissed.

13. In the result, the appeal of the Revenue is dismissed.

14. In the final result, both appeals of the Revenue in **ITA Nos.3427 & 3428/Del/2018 [Assessment Years 2013-14 & 2014-15]** are dismissed.

Order pronounced in the open Court on 04<sup>th</sup> February, 2022.

**Sd/-**

**(G.S.PANNU)  
PRESIDENT**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI