

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "D" NEW DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT
A N D
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
(Through Video Conferencing)

आ.अ.सं./I.T.A No.6012/Del/2017
निर्धारणवर्ष/Assessment Year: 2014-15

M/s. Lufthansa German Airlines, 2 nd Floor, Asset Area No. 2, Hospitality District, Hotel Pullman Novotel Commercial Tower, Indira Gandhi International Airport, New Delhi - 110 037.	बनाम Vs.	DCIT (International Taxation) Circle, Gurgaon.
PAN : AAACL5792P		
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	Shri Rajiv Puri, C. A.;
राजस्वकीओरसे /Revenue by :	Shri Sukesh Kumar Jain, [CIT] - D.R.;

सुनवाईकीतारीख/ Date of hearing :	27/12/2021
उद्घोषणाकीतारीख/Pronouncement on :	24/03/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the assessment order passed under Section 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (the Act) for assessment year 2014-15.

2. The grounds of appeal raised by the assessee are as under:-

“The appellant seeks to take the following grounds, which are without prejudice to one another:

- 1) That the Ld. AO/ Hon’ble DRP erred in facts and in law in not accepting the contentions of the Appellant that collection charges allowed to the Appellant by Airport Authority of India on payments made within a stipulated given period is a discount in nature and not in the nature of commission income taxable in the hands of the Appellant in India.

That the Ld. AO/ Hon’ble DRP erred in facts and in law in rejecting the contentions of the Appellant that the collection charges allowed by Airport Authority of India to the Appellant on account of making payments within a stipulated given period is income from “operation of aircrafts” under the provisions of Article 8 of the DTAA between India and Germany.

- 2) That the Ld. AO/ Hon’ble DRP erred in facts and in law in rejecting the contentions of the Appellant that the collection of User Development Fee (UDF) charges from passengers on behalf of Airport Authority of India is an activity incidental/ ancillary to the ‘operation of aircrafts’ and therefore, discount granted by Airport Authority of India to the Appellant on account of making payments within a stipulated given period is exempt under Article 8 of the DTAA between India and Germany.
- 3) That the Ld. AO/ Hon’ble DRP erred in facts and in law in not appreciating that more than 60-65% of the passengers are returning passengers from whom User Development Fee (UDF) is not collected by the Indian branch office of the Appellant but is still payable by the Appellant.
- 4) That the Ld. AO/ Hon’ble DRP erred in facts and in law in holding that non-granting of discount by Airport Authority of India due to non-payment of User Development Fee (UDF) within the stipulated credit period is in the nature of penalty.
- 5) That, on facts and circumstances of the case and in law, the Ld. AO erred in levying interest under sections 234B and 234C of the Act.

- 6) That, on facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 271(1)(c) of the Act against the appellant.
- 7) That the order of Ld. AO/ Hon'ble DRP is contrary to the facts, law and the principles of natural justice and is, therefore, void and vitiated.
- 8) The appellant craves leave to add, modify or withdraw any or all of the above grounds before or during the course of hearing in the interest of natural justice. “

3. As could be seen from the above ground Nos. 1 to 4, the primary issue to be adjudicated in assessee's appeal is as to whether the charges paid by Airport Authority of India (for short AAI) to the assessee, for assessee collecting the User Development Fee (for short UDF) from the passengers and passing it on to AAI, is not commission and even if it is so, the same is income from operation of aircraft and not liable for tax as per Article 8 of DTAA between India and Germany.

4. Briefly, the facts are the assessee is an international air transport operator having its head office at Germany. For its Indian operations assessee has an office at Gurgaon. Assessee primarily deriving income from operation of aircrafts for the international traffic, transportation of passengers and cargo The assessee in its return of income filed on 16.09.2014 claimed its entire income as exempt from tax under Article 8 of DTAA with Germany. In the course of assessment proceedings the assessing officer after examining the revenues reported by the assessee with reference to taxability as per Article 8 of DTAA with Germany he found that income is covered under Article 8 and not taxable. However, in respect of collection charges received by the assessee from AAI for assessee collecting UDF charges from passengers and passing it on to AAI within the stipulated time, the assessing officer was of the view that these collection charges paid by AAI to the assessee are nothing but

commission since UDF is collected as part of sale of tickets and remitted to the AAI for airport operations and for this effort AAI paid commission to the assessee. Further the assessing officer was of the view that the collection charges received by the assessee from AAI for the assessee collecting the UDF and passing it on to AAI, are not from the business of operation of aircrafts and these are commercial activities which are independent from the business operations of aircrafts in India. The assessing officer was of the view that the opportunity to earn this income may have arisen due to some connection but these activities are not incidental to the operation of aircraft. Thus the Assessing officer in the draft assessment order passed u/s 143(3) r.w.s 144C(1) of the Act on 22.11.2016, proposed to assess the collection charges received by the assessee from AAI as business income chargeable to tax under Article 7 of the Treaty.

5. The assessee filed its objection before the Ld.DRP and the Ld. DRP approved the draft order passed by the assessing officer. Further the Ld.DRP also observed that for the assessment year 2013-14 the draft order of the assessing officer was also approved on similar facts.

6. Before us the Ld. Counsel for the assessee submits that the assessee has not preferred appeal in the assessment year 2013-14 in view of the smallness of revenue effect. The Ld. Counsel for the assessee reiterating the submissions made before the authorities below, submits that AAI has allowed discount to the assessee for collecting the UDF and passing it on to AAI within the stipulated time. He submits that if the UDF collected is not remitted to AAI within the stipulated time no discount is allowed to the assessee. Further the Ld. Counsel for the assessee submits that it has been wrongly worded as “collection charges” though it is nothing but discount allowed to the assessee. The Ld. Counsel submits that the discount allowed to the assessee by AAI is not taxable under Article 8 of DTAA as this income is derived from operation of aircraft.

7. On the other hand the Ld. DR submits that discounts are not covered under Article 8 of DTAA. The Ld. DR submits that only the income derived from operation of aircraft is covered under Article 8 of DTAA and the collection charges received by the assessee from AAI is not derived from operation of aircraft. The Ld. DR submits that the collection charges are paid to the assessee for the services rendered by the assessee to AAI in collecting and passing on the UDF to AAI within stipulated time. The Ld. DR submits that the Assessing officer has rightly considered these receipts as business income of the assessee.

8. We have heard rival submissions, perused the order of the Ld. DRP and the Assessment order. It is not in dispute that the assessee's income derived from operation of aircraft is not taxable under Article 8 of DTAA between India and Germany. However, the assessee received collection charges from AAI as the assessee collected UDF from the passengers and the same was passed on to AAI. A duty was cast on the assessee to collect UDF from the passengers and pass it on to the AAI. Assessee was paid collection charges wherever the UDF is remitted to AAI within the stipulated time. The taxability of income in the hands of the is governed by Article 8 of the treaty and it reads as under:

“ARTICLE 8

SHIPPLING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there no such home harbour, in the contracting State of which the operator of the ship is a resident.

3. For the purpose of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation so such interest.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.”

9. The question is whether the collection charges paid by AAI to the assessee is income derived from operation of aircraft not liable to tax in India as per Article 8 of DTAA between India and Germany. As the effective management of the assessee company is situated in Germany the profits from operation of aircraft in international traffic is taxable only in Germany. The UDF is levied at the Indian airports as a measure to increase revenues of the airport operator. The UDF is levied to bridge any revenue shortfall so that the airport operator is able to get a fair rate of return on investment. The quantum of UDF varies from airport to airport and the rate of UDF at airports is determined by the Airports Economic Regulatory Authority of India (AERA) for major airports and ministry of civil aviation for not major airports. Presently UDF collection charge at a flat rate of Rs.5/- per passenger (all inclusive) is allowed to airlines subject to payment of UDF collection to AAI within 15 days of receipt of bill. Airlines will make full payment of UDF to AAI and raise a separate invoice for the collection charges on UDF to AAI. The collection charges paid by AAI to the assessee in whatever name called i.e., either discount or commission is nothing but service charges paid, for assessee collecting UDF and passing it on to AAI. The collection charges paid by AAI to assessee cannot be said to be the income derived from operation of aircraft. Further in assessee's case on identical facts for the assessment year 2013-14 the Ld. DRP approved the order of the assessing officer in holding that the collection charges received by the assessee from AAI on remitting the UDF within the stipulated time as income from business

taxable in India and such income is not derived from operation of aircraft falling under Article 8 of DTAA between India and Germany.

10. In these circumstances and for the above reasons, we hold that the collection charges received by the assessee from AAI are not income derived from operation of aircraft falling under Article 8 of DTAA between India and Germany. Thus ground Nos. 1 to 4 raised by the assessee are dismissed.

11. Ground No. 5 is in respect of levy of interest u/s 234B and 234C which is consequential and hence the same is dismissed.

12. Ground No.6 is in respect of levy of interest u/s 271(1)(c) of the Act which is premature at this stage and hence the same is dismissed.

13. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on : 24/03/2022.

Sd/-
(G. S. PANNU)
PRESIDENT

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 24/03/2022.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	22.03.2022
Date on which the typed draft is placed before the dictating member	22.03.2022
Date on which the typed draft is placed before the other member	24.03.2022
Date on which the approved draft comes to the Sr. PS/ PS	24.03.2022
Date on which the fair order is placed before the dictating member for pronouncement	24.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	24.03.2022
Date on which the final order is uploaded on the website of ITA	24.03.2022
Date on which the file goes to the Bench Clerk	24.03.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	