

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6544/Del./2015
(ASSESSMENT YEAR : 2006-07)**

DCIT, Circle 2 (1), vs. M/s. Airline Allied Services Ltd.,
New Delhi. 1st Floor, Arrival Hall,
Domestic Terminal, IGI Airport,

(PAN : AAACA1517B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri A.K. Srivastava, CA
REVENUE BY : Shri U.C. Dubey, Senior DR

Date of Hearing : 09.11.2017

Date of Order : 07.12.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Deputy Commissioner of Income-tax, Circle 2 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 02.09.2015 passed by the Commissioner of Income-tax (Appeals)-I, New Delhi qua the assessment year 2006-07 on the grounds inter alia that :-

"1. The Ld. CIT (A) has erred in law and on facts in deleting addition of Rs.3,49,38,968/- made by the AO on

account of disallowance of provision for obsolescence of spares.

2. The appellant craves leave for reserving the right to amend, modify, alter, add, or forego any ground (s) of appeal at any time before or during the hearing of this appeal.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : originally, assessment of the assessee company was completed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) at the returned declared loss of (-) Rs.50,33,30,128/-. However, AO after recording reasons initiated the proceedings u/s 147 of the Act after issuance of the notice u/s 148 of the Act. AO on the basis of audit objection proceeded to conclude that provision for obsolescence of spares of Rs.3,49,38,968/- has escaped assessment for AY 2006-07 and thereby issued notice u/s 142 (1). AO, being not satisfied with the reply filed by the assessee company, proceeded to conclude that the provision for obsolescence of spares is not allowable expenditure as the same were provisions and are not actual expenditure during the year under assessment and thereby made an addition thereof to the total income of the assessee company

5. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the addition made by the AO.

Feeling aggrieved, the Revenue has come up before the Tribunal by challenging the impugned order passed by Id. CIT (A).

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, the assessee company is engaged in the business of airline and has got its accounts audited u/s 44AB of the Act, which were produced before AO during original assessment proceedings and were examined on test check basis. It is also not in dispute that disallowance of the provision for obsolescence of spares have been made by the AO merely on the basis of audit objection.

8. In the backdrop of the aforesaid facts and circumstances of the case, the sole question arises for determined in this case is :-

“as to whether addition of Rs.3,49,38,968/- made by the AO on account of disallowance of the provision for obsolescence of spares not being actual expenditure during the year deleted by the CIT (A) is sustainable addition?”

9. Ld. DR for the Revenue relying on the assessment order contended that the Id. CIT (A) has erred in deleting the addition made by the AO on account of the provision for obsolescence of spares.

10. On the other hand, Id. AR for the assessee company to repel the arguments addressed by the Id. DR for the Revenue contended that the issue in controversy has been squarely covered in its favour by the order passed by the coordinate Bench of the Tribunal in case cited as *ACIT vs. M/s. Jet Airways (P) Ltd. in ITA No.4402/Mum./2008 dated 06.10.2010*.

11. AO made disallowance of Rs.3,49,38,968/- for two reasons : one that it was not actual expenditure incurred by the assessee company; and two that this liability was unascertainable in the hands of the assessee company. However, the assessee company had filed detailed reply to the queries raised by the assessee company that this is not an ad hoc provision but is on account of uses of the aircraft on hourly basis for which the maintenance is due after the prescribed hours. Before Id. CIT (A), the assessee company also relied upon the decision rendered by the coordinate Bench of the Tribunal in *M/s. Jet Airways (I) Ltd.* (supra).

12. The coordinate Bench of the Tribunal while dealing with identical issue has held that the provision for obsolescence of spares is not an ad hoc claim for deduction rather it is a claim in respect of normal wear and tear acceptable in the aeronautic industry and as such, claim is based on provision of Schedule XIV of the Companies Act, 1956 which deals with the rate of

depreciation. For ready perusal, operative part of the order rendered by the Tribunal in *M/s. Jet Airways (I) Ltd.* (supra) is reproduced below :-

“33. We have heard both the sides and considered their rival submissions and have also gone through the record. In our view, the contentions of the assessee deserve to be accepted in the light of the International Accounting Standard applicable aeronautic industries. The department authorities should have appreciated the nature of the assessee’s business and the character of its claim based on applicable accounting standard before rejecting the same. It is not an adhoc claim for deduction in respect of a contingent liability. The claim is in respect of the normal wear and tear which is acceptable in the aeronautic industries and such claim is bade on the provisions of Schedule XIV of the Companies Act, 1956 while dealing with the rate of depreciation. The 5.6% is the rate of depreciation prescribed under the Companies Act for providing depreciation for the purposes of section 2-5 and 350 of the same Act. In fact, the rate of depreciation prescribed under the Income-Tax Act is @ 40% which is definitely higher than 5.6%. It is the 5.6% of the actual expenditure incurred by the assessee. The stores and spares which go obsolescence due to usage and normal wear and tear have a useful life over the life of the aircraft beyond a year. If such expenses are claimed on actual basis on the purchase of such inventory, assessee’s claim will have been much larger and the assessee’s claim, in our view, in the light of the table extracted above, is very much reasonable and deserves to be accepted in the light of the method of accounting regularly followed by it. The Assessing Officer may ensure that the assessee does not claim more than the actual cost as deduction in; the form of annual write off to the profit and loss account. In view of the fact that we have accepted the main contention of the assessee, the other alternative prayers are not acceded to.”

13. Facts of the case at hand are identical to the facts of *M/s. Jet Airways (I) Ltd.* (supra) so far as making disallowance on account

of the provision for obsolescence of spares and the Revenue has not brought on record any other case law to controvert the settled principle of law and facts on the point in controversy.

14. Ld. CIT (A) vide impugned order has thrashed the issue at length to reach at the conclusion that the provision for obsolescence of spares is not an ad hoc provision but on the basis of actual uses of aircraft on hourly basis and maintenance is due after the prescribed hours of uses. In other words, it is ascertained liability which is charged as per airline industry practice and standard norms.

15. In view of what has been discussed above, the CIT (A) has rightly deleted an addition of Rs.3,49,38,968/- made by the AO on account of the provision for obsolescence of spares, being genuine expenditure to run the airline business. So, finding no illegality or perversity in the impugned order, present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 7th day of December, 2017.

**Sd/-
(G.D. AGRAWAL)
PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 7th day of December, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.