

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.969/Del/2017
(ASSESSMENT YEAR-2012-13)**

India Flysafe Aviation Limited, 306, 3 rd Floor, G+5 Building IGI Airport (Domestics) Palam, New Delhi-110037 PAN:AAHCS 8618Q	Vs.	Dy. CIT, Circle-12(1), New Delhi
(Appellant)		(Respondent)

Appellant By	S/Sh. Salil Kapoor & Sumit Lalchandani, Adv.
Respondent by	Sh. Saras Kumar, Sr.DR
Date of Hearing	07.07.2020
Date of Pronouncement	30.09.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal has been preferred by the assessee against order dated 29.11.2016 passed by the Learned Commissioner of Income Tax (Appeals)-35, New Delhi {CIT (A)} for Assessment Year 2012-13.

2.0 The brief facts of the case are that the assessee is a company engaged in the business of providing aircrafts on charter basis to VVIPs, State Governments, Corporate Houses, Travel Agents, Tour Operators etc. The return of income was filed declaring a total loss of Rs.13,84,52,185/-. The return was subsequently revised declaring total loss of Rs.14,77,18,185/-. The assessee's case was selected for scrutiny and the assessment was completed at a loss of Rs.13,69,68,735/- after making the following disallowances:

- (i) Disallowance of Deferred Revenue Expenditure Written off - Rs.92,63,156/-.
- (ii) Disallowance on account of repairs treated as capital expenses - Rs.11,45,026/-.
- (iii) Addition on account of interest on income tax refund - Rs.3,41,268/-.

2.1 Aggrieved, the assessee carried the matter to the Ld. First Appellate Authority. The Ld. CIT (A) upheld the disallowance on account of Deferred Revenue Expenditure. The Ld. CIT (A) also upheld the disallowance of repairs. With respect to interest on

Income Tax Refund, the Assessing Officer (AO) was directed to verify the contention of the assessee and compute the correct interest for the purposes of taxation.

2.2 Now, the assessee is before this Tribunal and has challenged the findings of the Ld. CIT (A) by raising the following grounds of appeal:

“1. That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making a disallowance of Rs.92,63,156 on account of deduction for deferred revenue expenditure incurred in respect of maintenance and overall check-up (in compliance with DGCA guidelines) of helicopter EC145 taken on lease.

1.1 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance without appreciating that maintenance and overall check-up expenses under consideration were incurred in a preceding assessment year and suo motu amortized by the appellant over the lease period of the helicopter.

1.2 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance on the basis that copy of lease agreement and invoices were not furnished by the appellant without appreciating that the fact of taking helicopter on lease and payment of lease rentals by the appellant were undisputed and agreed facts.

1.3 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance on the basis that copy of lease agreement and invoices were not furnished by the appellant without considering that the said documents were never asked from the appellant during the appellate proceedings.

1.4 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance on the basis that appellant took the helicopter on lease in a preceding assessment year.

1.5 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance without putting any cogent reasons on record in respect of the same.

1.6 Without prejudice, the CIT (A) erred on facts and in law in not directing the assessing officer to allow deduction of the aforesaid expenditure under consideration in the year in which the same was incurred.

2. That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making a disallowance of Rs.11,45,026 on account of deduction for regular repairs and maintenance of aircraft, after capitalizing the same and allowing depreciation thereon at applicable rates.

2.1 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance without appreciating that on account of repairs and maintenance under consideration no new asset came in existence rather some old parts (due to wear and tear) of aircraft were replaced.

2.2 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance without putting any cogent reasons on record in respect of the same.

2.3 That the CIT (A) erred on facts and in law in confirming the order of the assessing officer in making the aforesaid disallowance without appreciating that the issue under consideration pertained to mere timing difference of deduction, which should not be pressed much by the Department.

3. That the CIT (A) erred on facts and in law in not directing the assessing officer to delete the addition of Rs.3,41,268 made on account of interest on income tax refund, since, the said interest was never received by the appellant.

3.1 That the CIT (A) erred on facts and in law in not appreciating that the Income-tax Department had not provided any details of tax refund provided to the appellant and therefore, the same could not be bifurcated into principle and interest separately.

The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”

3.0 The Ld. Authorized Representative (AR) submitted that Ground No.1 challenges the disallowance of Rs.92,63,156/- made on account of deduction for deferred revenue expenditure in respect of maintenance and overall check-up of helicopter EC145 taken on lease. It was submitted that this helicopter had been taken on lease

and the assessee had incurred an amount of approximately 2.6 Crores on account of maintenance and repairs carried out in compliance with the DGCA guidelines. It was submitted that during the Assessment Year 2010-11 both the engines of the helicopter had got damaged and, therefore, the engines were repaired and a major change was done on the recommendation of the manufacturer of the Aircraft. It was submitted that in view of the quantum of expenditure, it was felt necessary to amortize the expenditure over the unexplained lease period. It was submitted that the accounting treatment adopted for booking the expenditure by spreading the expenses over the remaining period of lease was justified not only because of the huge amount involved, but also because of the benefit accruing for the remaining period of lease. Reliance was placed on the judgment of Hon'ble Kolkata High Court in the case of *Hindustan Aluminum Corporation Ltd. vs. CIT reported in [1983] 144 ITR 474 (Kol.)* and also on the judgment of the Hon'ble Apex Court in the case of *Madras Industrial Investment Corporation Ltd. vs. CIT reported in [1997] 225 ITR 802 (SC)* to supplement the assessee's argument that where the revenue

expenditure incurred is of a considerable magnitude and its benefit can be spread over a number of years, the same has to be allowed on a deferred basis over the period of benefit thereof. It was also brought to the notice of the Bench that the said expenditure was incurred in Assessment Year 2010-11 and the same had been allowed as deferred revenue expenditure in Assessment Years 2010-11 and 2011-12 by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter called the 'Act'). The Ld. Authorized Representative also submitted that the Ld. CIT (A) had erred in confirming the disallowance by making the observation that the lease agreement and invoices had not been furnished by the assessee without appreciating that the said documents had not been requisitioned by the Ld. CIT (A) during the course of appellate proceedings.

3.1 With respect to Ground No.2, it was submitted by the Ld. Authorized Representative that this ground challenges the action of the Ld. CIT (A) in upholding disallowance of Rs.11,45,026/- made on account of regular repairs and maintenance of Aircraft after capitalizing the same and allowing depreciating thereon. The Ld.

Authorized Representative submitted that an amount of Rs.19,08,376/- had been incurred on repairs and maintenance of Aircrafts which had been disallowed by the Assessing Officer by treating the same as being capital in nature and capitalizing the same under the head on 'Aircrafts' and, thereafter, allowing depreciation @ 40% thereon. The Ld. Authorized Representative submitted that the repairs had been in the nature of repairing the 'Primary Adaptive Display', and 'Tail Rotor Blade Assembly'. The Ld. Authorized Representative submitted that the repairs of these two components parts do not increase the useful life of the Aircraft and that their replacement is in the nature of revenue expenditure. It was submitted that both these units were found faulty and were not required to be replaced as per the DCGA guidelines and therefore the same was not a capital expenditure. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of *New Shorrock Spinning and Manufacturing Co. Ltd. vs. CIT* [1956] 30 ITR 338 (SC) and also in the case of *Mr. Ballimal Naval Kishore vs. CIT* reported in [1997] 224 ITR 414 (SC). Reliance was also placed on the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Jagatjit*

Industries Ltd. reported in [2000] 241 ITR 566 for the proposition that the replacement of parts of existing machinery will be revenue expenditure.

3.2 With respect to Ground No.3 challenging the addition of Rs.3,41,268/- made on account of interest on Income Tax Refund, the Ld. Authorized Representative submitted that the assessee had never received the said interest. The Ld. Authorized Representative submitted that the Assessing Officer may be directed to verify the fact and allow relief to the assessee after such verification.

4.0 In response, the Ld. Sr. Departmental Representative (DR) submitted that the documents and vouchers relevant to the lease agreement and the vouchers for the repairs claimed to have been deferred revenue expenditure were not furnished before the Ld. CIT(A) and therefore, he was not in a possession to given relief to the assessee.

4.1 With respect to the disallowance of repairs and maintenance of Aircrafts, the Ld. Sr. DR placed reliance on the concurrent finding of both the Lower Authorities and argued that the disallowance had been rightly made.

4.2 With respect to the issue of interest of Income Tax Refund, the Ld. Sr. DR agreed to the prayer of the Ld. Authorized Representative that the issue to be verified by the Assessing Officer.

5.0 We have heard the rival submissions and have also perused the material on record. As far as Ground No.1, the assessee's appeal is concerned, it is seen that the Assessing Officer has made a disallowance of Rs.92,63,156/- on the premise that these expenses were prior period expenses not relating to the year under consideration i.e., Assessment Year 2012-13. The Ld. CIT (A), while upholding the disallowance, has noted that the assessee has not furnished copy of the lease agreement and, therefore, the exact period of lease could not be verified. It has also been noted by the Ld. CIT (A) that the assessee has not furnished any bills or vouchers for repairs of the helicopter and that it could not be ascertained that the repairs were the responsibility of the assessee. It is submission of the assessee that these documents were not directed to be filed by the Ld. CIT (A) at the time of First Appellate Proceedings. The Ld. Authorized Representative has placed a copy

of the lease agreement as well as the relevant bills and vouchers in the Paper Book filed before us. It has also been submitted by the Ld. Authorized Representative that the impugned expenditure had been allowed by the Assessing Officer in the earlier two Assessment Years i.e., 2010-11 and 2011-12 in 143(3) proceedings. However, the copy of those two Assessment Orders have not been filed before us so as to enable us to ascertain as to whether the same was examined by the Assessing Officer in those two assessment years. In the year under consideration, the issue does not seem to have been examined by the Assessing Officer in the proper perspective i.e. with reference to the lease agreement. We also note that even the Ld. CIT (A) did not examine the relevant documents. Therefore, it is our considered opinion that the issue be restored to the file of the Assessing Officer for duly considering the claim of the assessee after going through contents of the lease deed as well as the relevant bills and vouchers. It is so directed accordingly. While the Assessing Officer is re-examining the issue, he should also consider the factum of similar expenditure having been allowed in 143(3) proceedings in Assessment Years 2010-11 and 2011-12. The

Assessing Officer is also directed to give proper opportunity to the assessee to present its case before passing the order in accordance with law.

5.1 So far as the Ground No.2 of the assessee's appeal is concerned, it is seen that the assessee had debited an amount of Rs.5,34,10,000/- on account of repairs and maintenance and out of this expenditure, replacement of Primary Adaptive Display amounting to Rs.9,51,000/- and replacement of Tail Rotor Blade Assembly amounting to Rs.9,57,376/- was disallowed on the ground that the same was capital in nature. As per the Assessing Officer, this replacement was in the nature of major repairs which added to the life of the asset. The Ld. CIT (A), while dismissing the assessee's appeal, also held that these were repairs of a nature which enhanced the efficiency of the Aircraft and were not part of the regular maintenance expenses. It is the assessee's contention, on the other hand, that these replacements were necessarily in the nature of current repairs which were required to maintain/preserve an already existing asset. We agree with the contention of the Ld. Authorized Representative that the quantum of expenditure cannot

determine whether a particular expenditure is capital or revenue in nature. In our opinion, replacement of Primary Adaptive Display and Tail Rotor Blade are essential to keep the aircraft in a running usable condition and the replacements do not enhance the useful life of the aircraft. Thus, the impugned repairs would fall under 'current repairs' which were essential to keep the aircraft in a running condition. Therefore, we set aside the order of the Ld. CIT (A) on the issue and direct the Assessing Officer to delete the disallowance.

5.2 In Ground No.3 challenging the addition on account of interest of Income Tax Refund, it is the assessee's contention that the assessee has not received any such interest. The Ld. Authorized Representative has submitted that the issue may be restored to the file of the Assessing Officer for passing appropriate order after due verification in this regard and the Ld. SR. DR also does not have any objection to the same. Therefore, in view of the agreement of both the parties, this issue is also restored to the file of the Assessing officer for the purpose of being adjudicated afresh after

due verification of the assessee's claim and after giving a proper opportunity to the assessee in this regard

6.0 In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 30/09/2020.

Sd/-
(G.S.PANNU)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 30/09/2020

PK/Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI