IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.620/Bang/2017 : Asst.Year 2010-2011
ITA No.633/Bang/2017 : Asst.Year 2011-2012
ITA No.603/Bang/2017 : Asst.Year 2012-2013
ITA No.604/Bang/2017 : Asst.Year 2013-2014

M/s.GMR Hyderabad International Airport Limited No.25/1 Skip House, Museum Road Bangalore – 560 025. **PAN : AABCH3448M.**	v.	The Deputy Commissioner of Income-tax, Central Circle 2(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Sunil Kumar Jain, CA
Respondent by : Sri.Muzaffar Hussain, CIT-DR

Date of Hearing : 10.02.2022		**Date of Pronouncement : 11.02.2022**

O R D E R

Per George George K, JM :

These appeals at the instance of the assessee are directed against four orders of the CIT(A), all dated 29.12.2016. The relevant assessment years are 2010-2011 to 2013-2014.

2. Common issues are raised in these appeals, hence, these appeals were heard together and are being disposed of by this consolidated order.

3. In these appeals, in total, six issues are raised. The details of the issues raised in each of the appeal and the grounds pertaining to the same are summarized below:-

Sl. No.	Ground	A.Y.	ITA No.	Ground No.	Amount of addition / disallowance
1.	Inclusion of profit / loss of passenger service fee (security component) managed in Fiduciary Capacity.	2010-2011 2011-2012 2012-2013 2013-2014	620/B/2017 633/B/2017 603/B/2017 604/B/2017	General 1 1 1	(8,91,85,072) 1,68,27,618 6,03,86,989 86,19,312
2.	Disallowance u/s 40(a)(ia) towards amount retained by airlines while remitting the amount of Passenger Service Fees (PSF) and User Development Fees (UDF)	2010-2011 2011-2012 2012-2013 2013-2014	620/B/2017 633/B/2017 603/B/2017 604/B/2017	2 2 2 2	2,47,49,095 2,86,47,227 2,02,73,034 2,33,86,903
3.	Disallowance under section 14A	2010-2011 2011-2012 2012-2013 2013-2014	620/B/2017 633/B/2017 603/B/2017 604/B/2017	4 & 5 4 4 & 5 3 & 4	12,43,695 43,12,242 89,01,493 1,21,37,900
4.	Addition / deduction by treating the duty credit entitlement under SFIS accrued as grant related to revenue.	2010-2011 2011-2012 2012-2013	620/B/2017 633/B/2017 603/B/2017	3 3 3	9,98,09,744 5,70,98,820 2,79,56,389
5.	Addition by including the revenue from NACIL on accrual basis.	2012-2013	603/B/2017	7	33,88,84,480
6.	Disallowance of Community Development expenditure.	2010-2011 2011-2012 2012-2013 2013-2014	620/B/2017 633/B/2017 603/B/2017 604/B/2017	6 5 6 5	1,25,05,983 1,12,92,120 1,46,62,162 1,35,08,087

We shall adjudicate the above issues as under:

INCLUSION OF PROFIT / LOSS OF PASSENGER SERVICE FEE (SECURITY COMPONENT) AMNAAGED IN FIDUCIARY CAPACITY : (ASST.YEAR 2010-2011 TO 2013-2014)

4. The Assessing Officer had included surplus in Passenger Service Fee (Security Component) [PSF(SC)] as income

assessable in the hands of the assessee. The details of PSF(SC) included in the total income as well as the book profit for assessment years 2010-2011 to 2013-2014 on completion of assessment by the A.O. are as under:-

Sl. No.	Assessment Year	Amount of PSF (SC) included in total income	Amount of PSF (SC) included in book profit
1.	2010-2011	8,91,85,072	4,98,35,247
2.	2011-2012	1,68,27,818	--
3.	2012-2013	6,03,86,989	--
4.	2013-2014	86,19,312	--

4.1 The relevant facts and the finding of the A.O. in respect of PSF(SC) for assessment year 2013-2014, reads as follows:-

> *"Passenger Service Fee (PSF) : As per the clause 10.2 of the concession Agreement signed between the Ministry of Civil Aviation and the assessee, the assessee company is empowered to collect PSF at the airport from embarking passengers. The rate in respect of passenger service fees per embarking passenger is INR 200 in respect of ticket issued against INR tariff and US$ 5 per passenger in respect of tickets issued against dollar tariffs.*
>
> *The PSF is chargeable at the Airport and shall be inclusive of cost of security expenditure on the designated security agency (currently being sixty five percent (65%) of the Passenger Service Fee) per embarking passenger which is the "Security Component" and the "facilitation component" payable to the assessee company, (currently being thirty five (35) per cent of the passenger Service Fee) charged per embarking passenger at the airport.*
>
> *From the notes forming part of return of income it is seen that the assessee is not offering to tax the income from PSF-SC component of Rs.86,19,312. The assessee was required to furnish the details of PSF-SC income received and why the same was not be offered for taxation.*
>
> *The assessee made detailed submission on 08/02/2016 and salient points from the assessee's submissions are reproduced below:*

"Ministry of Civil Aviation (MOCA) has issued an order dated January 19th, 2009 laying down there the standard accounting / audit procedure in respect of PSF. Clause 2.1 & 2.2 of the said order provides that the PSF (SC) is held by the assessee company in fiduciary capacity only and the assessee company has to maintain its accounts separately subject to the audit of Comptroller & Auditor General of India (CAG).

2.4 Accordingly, the assessee company is maintaining the PSF (SC) accounts separately in accordance with the procedure laid down in Standard Operating Procedure (SOP) dated January 19th 2009, and accordingly the financial statement of the assessee company does not include the balances of PSF(SC). The copy of audited accounts of PSF (SC) is placed in the Paper Book.

2.5 However, the proceeds of PSF(FC) is included in the books of account of the company and the same is considered as the revenue of the company.

2.2. Tax Treatment of PSF-(SC) in the return of Income.

i. The assessee company has offered the proceeds of PSF(FC) in its total income while filing the Income Tax return for the said assessment year. However, the assessee company has not offered the income (loss) of PSF(SC) as its own income as the assessee company held the proceeds of PSF(SC) in fiduciary capacity and considered it as a receipt which is diverted by overriding title in favour of the Government. Further as per Article 289(1) of the constitution, the income of Government of India is not liable for tax.

3.1.12. The assessee company is permitted to use the amount from the Escrow account only from specified security purposes as laid out by the SOP. In view of the revised SOP, the income does not belong to Airport Authority of India (AAI) but belongs to the Government and therefore, the assessee company would be collecting the Security Component of the PSF and using it in fiduciary capacity as a representative or a trustee of the Government.

3.1.13. Having regard to the above orders, agreements, policies and rules, the amount of security component of PSF, though collected by the assessee company, was held by it only in its fiduciary capacity under Rule 88

> of the Aircraft Rules, 1937, and considered by the assessee company as a receipt which is diverted by overriding title in favour of the Government and accordingly, not offered by the assessee company as its own income.
>
> 3.1.14. The assessee company having regard to Article 285 and 289 of the Constitution of India which provide that the income of the Government of India is exempt from income tax, also did not offer the surplus / deficit from the escrow account as chargeable to tax under the Act even in its capacity as a Trustee of the said Fund held on behalf of the Government of India."

The assessees submissions are perused. It is pertinent to mention here that the CBDT had already issued a detailed OM on the issue on 30/0612008. Para7 and 8 on the OM is reproduced here –

> "7. The aforesaid view is further reinforced with the introduction of section 438 of the Income tax. act in 198]-84. Clause (a) of section 43B provides that "any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called under any law for the time being in force" shall be allowed as a deduction in a financial year only if It has been actually paid during the said year. This being so, under the scheme of the Income tax Act, as a first step, the whole of the amount collected as "tee' constitutes income and thereafter deduction is permissible only in respect of amounts actually paid. Since PSF is o fee, the same would constitute income.
>
> 8. In view of the above, the entire amount of passenger service Fee (PSF) including the facilitation and security component is income within the meaning of the Income tax Act and accordingly liable to tax in the hands of the airport operator"

The Ministry of Civil Aviation on 19/0112009 has issued a standard operating procedure for account/audit of passenger service fee (security component) by jvc / private airports As Per para 4.8. of the SOP.

> `In terms of clarification dated 30. 6.2008 issued by the Central Hoard of Direct Taxes (CBDT), the receipts on account of PSF (SC) are taxable as income in the hands of the airport operator. As such a consolidated return would have to be filled before the tax authorities.'

Therefore the SOP issued by Ministry of Civil Aviation itself has decreed that the revenue received in form of PSF-SC is chargeable in the hands of the assessee company based on OM issued by the CBDT on 30/06/2008.

Further, the assessee company had vide letter dated 30.10.2010 forwarded a joint representation to the Ministry of Civil Aviation for review of OM dated 30.06.2008 of the Board of Direct Taxes (CBD T) on taxability of security component (SC) of Passenger Service Fee (PSF) collected at airports. The extracts of the letter F No. AV20036/02/2010-AD dated 15 11.2010 of the Ministry of Civil Aviation, Govt, of India, intimating CBDTs view in this regard to the assessee company are reproduced as below:

> "The matter has been examined in consultation with the Ministry of finance It is clarified that the whole of PSF is revenue receipts which is taxable under the IT Act However, the Airport Operator would be entitled to claim deduction in respect of expenditure incurred on providing facilitation and security services."

In view of CBDT OM doted :50/06/2008 on the issue That the PSF-5C received by the assessee IS to be treated as revenue and the SOP issued by the Ministry of Civil Aviation on the issue, the PSF-SC received by the assessee is to be treated as income of the assessee and brought to tax. Further, the actual expenses incurred from PSF-SC is to be debited to P/L account as per' the provisions of section 43B. During the A.Y there was profit of Rs. 86,19,312/- as per normal provision and book profit of Rs. 3,07,54,394/- as per MAT provision in PSF(SC). Accordingly Rs.86,19,312 is added as PSF9SC) income of the assessee."

4.2 Aggrieved, the assessee raised this issue before the first appellate authority. The CIT(A) rejected the plea of the assessee. The relevant finding of the CIT(A) for A.Y. 2013-14 reads as follows:-

"6.1.2 It is seen this issue has been examined in the case of one of the group entity namely, Delhi International Airport Private Limited by the CIT(Appeals) wherein after examining the Office memorandum of CBDT as well as SOP issued by MoCA it has been held that the PSF(SC) is to be included in the hands of the appellant. Accordingly, the action of the AO for including the amount of PSF(SC) in the hands of

appellant is upheld and this ground of the appellant is DISMISSED."

4.3 Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR, apart from reiterating the submissions made before the Income Tax Authorities, had relied on the following judicial pronouncements:-

(i) ITAT Mumbai in the case of Addl.CIT v. Mumbai International Airport P. Ltd. in ITA No.3232/Mum/2012 for assessment year 2008-2009.
(ii) ITAT Delhi in the case of Delhi International Airport Pvt. Ltd. v. Addl.CIT in ITA Nos.2636, 4213/Del/ 3012 & 3707/Del/2013 for A.Y. 2008-09 to 2010-2011.
(iii) ITAT Delhi in the case of Delhi International Airport Pvt. Ltd. v. CIT in ITA No.137/Del/2012 for A.Y. 2007-2008.
(iv) Bangalore ITAT in assessee's own case in ITA No.2189/Bang/2016 for A.Y. 2009-2010.

4.4 It was submitted that in light of the Bangalore Bench decision in the case of assessee's own case for assessment year 2009-2010 (supra), the above said issue may be restored to the files of the A.O. for *de novo* consideration.

4.5 The learned Departmental Representative supported the orders of the Income Tax Authorities.

4.6 We have heard rival submissions and perused the material on record. The Tribunal in assessee's own case for assessment year 2009-2010 (supra) had restored an identical issue to the files of the A.O. The relevant finding of the

Bangalore Bench of the Tribunal in assessee's own case for assessment year 2009-2010 (supra) reads as follows:-

> "9……..Before us, *the ld AR furnished a copy of Order passed by Mumbai Bench of Tribunal in e case of Addl. CIT(A) Vs. Mumbai International Airport Ltd., in ITA No..3232/Mumb/ 2012, wherein it was held that the surplus arising in passenger service fee is not liable to be taxed. The Id AR submitted that, by applying the same a analogy, the assessee may not be entitled for deduction of loss suffered under this head, but sought an opportunity to explain its stand before AO. Since this issue as not been examined by the AO, we deem it proper to restore it to the file of the AO for examining it afresh. Accordingly, we set aside the order passed by Id CIT(A) on this issue and restore the same to the file of the AO."*

4.7 In view of the Bangalore Bench order in assessee's own case, we direct the A.O. to consider the issue afresh. The A.O. is directed to examine the judicial pronouncements relied on by the assessee and take a decision in accordance with law after affording a reasonable opportunity of being heard to the assessee. It is ordered accordingly.

DISALLOWANCE U/S 40(a)(ia) OF THE I.T.ACT IN RESPECT OF PSF AND USER DEVELOPMETN FEES (UDF) : (ASST.YEAR 2010-2011 TO 2013-2014)

5. The Assessing Officer while completing the assessments for assessment years 2010-2011 to 2013-2014, had disallowed the amount retained by the Airlines while remitting the amount of PSF and UDF by invoking the provisions of section 40(a)(ia) of the Act. According to the A.O., the assessee ought to have deducted TDS u/s 194H of the Act and having failed to deduct tax at source, the expenses has to be disallowed. The details of the disallowance made for each of the assessment year are as follows:-

Sl No.	Assessment Year	Passenger Service Fees		UDF	Total
		Security Component	Facilitation component		
1.	2010-11	82,65,926	44,84,901	1,19,99,078	2,47,49,905
2.	2011-12	99,68,761	53,58,659	1,33,19,808	2,86,47,228
3.	2012-13	72,97,077	38,92,163	90,83,794	2,02,73,034
4.	2013-14	61,02,462	50,52,139	1,22,32,302	2,33,86,903
	Total	3,16,34,226	1,87,87,862	4,66,34,882	9,70,57,070

5.1 The view taken by the A.O. was affirmed by the CIT(A). Hence, the assessee has raised this issue before the Tribunal for all the assessment years, namely, A.Ys 2010-2011 to 2013-2014. The submission of the assessee before the ITAT are summarized as follows:-

- *Airline acts as an agent when they provide the services to the passengers who fly with such airline by booking the ticket directly through airlines, online or through travel agent by cash or through use of Credit/Debit card, or any other mode of payment, etc.*

- *Airlines acts as Principal and the assessee acts as an agent in providing Aeronautical and non-aeronautical services to them pursuant to the Concession Agreement which were hitherto provided by AAI to the airlines.*

- *Thus the Airlines is not the agent of the assessee but act as a Principal in availing the services at the airport and sells its tickets directly, through online, travel agent, etc for whom it acts as an agent.*

- *The airlines act only as a facilitator for collection of payments to be received in respect of PSF and UDF on tickets booked through airlines by above means for and on behalf of airport operator as per the directive of MoCA/AERA.*

- *The facilitation provided by the airlines cannot be termed as service provided by the airlines to the airport operator (i.e. assessee) in the course of purchase or sale of air tickets and any payment received or receivable directly or indirectly by airlines cannot be termed as of the nature of commission as per the directives of MoCA/ AERA and the*

company policy since according to such directives/policy the amount of collection charges depends upon fulfilment of twin conditions, namely (1) the early payment within 15 days and (2) further subject to the condition that there are no overdue on any other account to the GHIAL regardless of the fact whether the airlines have received the amount of PSF and UDF or not on the tickets sold online through Credit/Debit card or through travel agents whom credit period is extended by them, etc.

- *The collection charges retained by the airlines were meant to be paid as per the directive of Ministry of Civil Aviation (MoCA)/Airport Economic Regulatory Authority (AERA) and policy of the company on fulfilment of two conditions, namely (1) when airlines makes payment within 15 days; and (2) subject to the further condition that there are no overdue on any other account with DIAL.*

- *The amount of collection charges retained by the airlines in the facts and circumstances of the present case cannot be termed as a normal commission for services but the same was in the nature of cash discount/incentive in terms of directive of MoCA/AERA and the company policy for making early payment within 15 days and subject to the further condition that there are no overdue on any other account the GHIAL.*

- *The provisions of section 194-H are not attracted in this type of transaction in as much as the airline cannot be considered as an agent of the airport operator (i.e. assessee) when they are acting as Principal. Further, the amount of Collection charges, retained in the present case being not commission but was in the nature of cash discount / incentive for making early payment and not having any overdue on any account with GHIAL*

- *The transactions in the present case were Principal to Principal basis and not on Principal to Agent basis as would be evident from the above.*

- *TDS under section 194-H will be attracted only in the case of payment of any income by way of "Commission or Brokerage" and further the provisions of section 194-H will be attracted when a Principal agent relationship between the payer and payee exists.*

- *Therefore, in terms of the statutory provisions, the responsibility for paying PSF and UDF is on the passenger and not the airline as the airline is only collecting the PSF and UDF from the passenger(s) and remitting the same to*

the airport developer in accordance with the directions of the Government of India (i.e. MoCA/AERA).

- *Hence, the provisions of section 194-H would not be applicable to collection charges retained by the airlines on PSF and UDF amount as per the directive of MoCA/ AERA and company policy in as much as they are in the nature of cash discount/incentives and not for rendering any services.*

WITHOUT PREJUDICE TO THE ABOVE

- *No disallowance with respect to collection charges pertaining to PSF(SC) can be made since it is not includible/taxable in the hands of the assessee.*

- *The assessee has not been treated as an assessee in default u/s. 201(1) and the recipient have filed their respective returns and hence in view of Proviso 1 and 2 of section 40(a)(ia) added by the Finance Act 2010 and 2012 which are curative in nature, no disallowance can be made u/s. 40(a)(ia).*

In this context of alternative plea, the learned AR relied on the order of the ITAT Bangalore Bench in group company case, namely, Delhi International Airport (P.)Limited v. DCIT reported in 93 taxmann.com 228 (Bangalore Tribunal). Further, it is submitted that on further appeal by the Revenue, u/s 260A of the I.T.Act, the Hon'ble High Court had affirmed the order of the ITAT (The High Court judgment dated 14th December, 2021in ITA No.513/2008 & Ors.).

5.2 The learned DR supported the orders of the Income Tax Authorities.

5.3 We have heard rival submissions and perused the material on record. The assessee has raised an alternate plea that in view of the second proviso to section 40(a)(ia) of the Act, the A.O. may be directed to verify whether recipient has

offered to tax income and discharged the tax liability. It was submitted that in such an event the assessee may not be treated as, "as a assessee in default". This plea of the assessee was accepted by the Bangalore Bench of ITAT in group cases of the assessee, namely, M/s.Delhi International Airport (P) Ltd. in ITA No.636, 622/Bang/2017 for assessment years 2011-2012, 2012-2013 and 2013-2014. The relevant finding of the Tribunal reads as follows:-

> *"16. But this aspect was not examined by the CIT(A). Since it requires verification of facts, we feel it proper to set aside the order of the CIT(A) and restore the matter to the file of the AO with the direction to readjudicate the issue in the light of proviso to section 40(a)(ia) of the Act, after affording opportunity of being heard to the assessee and if it is established that the respondent has paid the tax and filed the return in time, the assessee should not be held in default for the purpose of making disallowance under section 40(a)(ia) of the Act."*

5.4 The above view of the ITAT was affirmed by the Hon'ble High Court (supra). The relevant finding of the Hon'ble High Court reads as follows:-

> *"20. As aforesaid, the dispute herein is in a narrow compass with reference to 2.5% of PSF withheld by the Airlines Operators in terms of clause 1.4 of SOP. It is trite that no denial of allowance claimed under Section 40(a)(ia) of the Act could be made by the department, in the event, the Airlines Operators have offered the said 2.5% of commission, which is nothing but income to tax. In order to verify this factual aspect, the matter has been restored to the file of the assessing officer, which cannot be faulted with."*

5.5 Respectfully following the Hon'ble High Court judgment in the case of Delhi International Airport (P) Ltd. (supra), we restore this issue to the files of the A.O.

The A.O. is directed to re-adjudicate the issue in light of proviso to section 40(a)(ia) of the Act. The A.O. shall afford a reasonable opportunity of hearing to the assessee. If it is established that the Airline Operators have offered receipt of commission as income in the respective assessment years in their returns of income and paid tax on the same, then the assessee shall not be held "as an assessee in default". In such a scenario, the provisions of section 40(a)(ia) does not have any application. It is ordered accordingly.

DISALLOWANCE U/S 14A OF THE ACT : (ASST.YEAR 2010-2011 TO 2013-2014)

6. For the assessment years 2010-2011 to 2013-2014, the assessee had earned exempt income on investment made with its subsidiaries. The assessee while filing the returns of income for assessment years 2010-2011 to 2013-2014, had made suo moto disallowance u/s 14A of the Act. However, the A.O. made further disallowance u/s 14A of the Act. On further appeal, the CIT(A) granted substantial relief to the assessee. The details of the suo moto disallowance u/s 14A of the Act made by the assessee in the returns of income, the additions made by the A.O. and the additions sustained by the CIT(A) for the respective assessment years are detailed below:-

Sl No.	Particulars	Rule 8D(2)(i)	Rule 8D(2)(ii)	Rule 8D(2)(iii)	Total
	A.Y. 2010-11				
1.	Appellant	Nil	3,65,011	Nil	3,65,011
2.	Assessing Officer	Nil	1,50,29,526	10,07,784	1,60,37,310
3.	CIT(Appeals)	Nil	3,60,911	8,82,784	12,43,695
	A.Y.2011-12				
1.	Appellant	Nil	1,00,82,344	5,22,767	1,06,05,111
2.	Assessing Officer	Nil	6,31,56,402	44,14,341	6,75,70,743
3.	CIT(Appeals)	Nil	13,901	42,89,341	43,12,242
	A.Y.2012-13				
1.	Appellant	Nil	80,38,267	5,57,968	85,96,235
2.	Assessing Officer	Nil	13,94,18,657	93,50,226	14,97,68,883
3.	CIT(Appeals)	Nil	31,516	88,69,977	89,01,493
	A.Y.2013-14				
1.	Appellant	Nil	61,30,739	5,20,580	66,51,319
2.	Assessing Officer	Nil	16,34,51,291	1,20,92,393	17,55,43,684
3.	CIT(Appeals)	Nil	45,507	1,20,92,393	1,21,37,900

6.1 Aggrieved, the assessee has raised this issue before the ITAT. The learned AR did not press the disallowance confirmed by the CIT(A) u/s 14A r.w.Rule 8D(2)(ii). As regards disallowance u/s 14A r.w. Rule 8D(2)(iii) is concerned, the learned AR submitted that it is settled law that disallowance u/s 14A of the Act is to be restricted to the investments on which exempt income is earned. In this context, the learned AR relied on the order of the Special Bench of the Tribunal in the case of ACIT v. Veerat Investments reported in (2017) 165 ITD 27 (SB) (Del.Trib.),

6.2 The learned DR was duly heard.

6.3 We have heard rival submissions and perused the material on record. As per the order of Special Bench of the Tribunal in the case of Veerat Investments reported in (2017)

165 ITD 27 (SB) (Del.Trib.), only those investments, which have yielded exempt income has to be considered for the purpose of computing average value of investments for computing disallowance under Rule 8D(2)(iii). Hence, the issue of disallowance u/s 14A r.w.r.8D(2)(iii) is restored to the files of the A.O. The A.O. is directed to follow the dictum laid down by the Special Bench order of the Tribunal in the case of Veerat Investments (supra) and compute the disallowance accordingly.

ADDITION / DEDUCTION BY TREATING DUTY CREDIT ENTITLEMENT UNDER SFIS ACCRUED AS GRANT RELATED TO REVENUE : (ASST.YEAR 2010-2011 TO 2012-2013)

7. The assessee is a company engaged in the business of development, operation and management of Airport at Hyderabad. It is entitled to custom duty credit scrip under `Served From India Scheme' (SFIS) of Foreign Trade Policy issued by the Government of India. In terms of SFIS, service providers are entitled to custom duty credit scrip as a percentage of foreign exchange earned which can be utilized against the payment of import duty on capital goods imported from outside India. The Assessing Officer treated the duty the duty credit entitlement under SFIS accrued as grant related to revenue receipt and thus liable for tax. (whereas the assessee treated the grant by reducing the same from capital cost and claimed depreciation on the reduced amount). The view taken by the A.O. was affirmed by the CIT(A).

7.1 Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR submitted that on identical facts in the case of group company, namely, M/s.Delhi International Airport (P) Ltd. (supra), the Bangalore Bench of the Tribunal had restored this issue to the files of the CIT(A) for *de novo* consideration. It was further submitted that the CIT(A) pursuant to the order of the ITAT, had allowed the claim of the assessee. It was submitted that the matter may be restored to the files of the A.O. as done by the ITAT in the case of group company.

7.2 The learned DR relied on the orders of the Income Tax Authorities.

7.3 We have heard rival submissions and perused the material on record. On identical facts, in the case of group company, namely, M/s.Delhi International Airport (Pvt.) Ltd. (supra), the issue was restored to the files of the CIT(A). The relevant finding of the Tribunal reads as follows:-

> *"21. Having carefully examined the orders of the authorities below in the light of rival submissions, we find that undisputedly under the SFIS, the assessee company became entitled to duty credit entitlements certificate from the Director General of Foreign Trade, Government of India, for custom duty credit scrips which are to be used for import of any capital goods including spares, office equipment and provisional equipment, etc. These certificates are valid for 2 years from the date of issue. From the details furnished it is evident that the assessee utilised the duty credit scrips in different assessment years but the complete SFIS scrips were not utilised. According to the assessee, SFIS schemes amounting to Rs.5,31,85,162/- remains unutilized due to expiry of said SF IS scrips. In the light of these facts, it is not proper to tax the accrual of duty credit scrips on mercantile basis as the life of the certificate is only for 2 years. Moreover, the nature of receipt or the duty credit entitlements is to be*

examined in the light of judgment of Apex Court in the case of CIT Vs. Ponni Sugars Ltd., (supra). Though CIT(A) has recorded the detailed submissions in 4 pages in its order but in one para in few lines, he rejected the claim of the assessee after placing heavy reliance upon the Expert Advisory Committee report whereas the issue should have been examined in the light of the judgment of the Apex Court in the case of Ponni Sugars Ltd., (supra). Therefore, we are of the view that CIT(A) has not properly adjudicated the character of receipts and the year of taxability. If it is held to be the capital receipt, it may reduce the value of the capital assets but it cannot be taxed as a revenue receipt. In any case, this issue was not properly examined by the CIT(A). We therefore set aside his order and restore the matter to his file with a direction to readjudicate this issue afresh in the light of assessee's contentions and also in the light of the judgment of the Apex Court in the case of Ponni Sugars Ltd., (supra)."

7.4 In the light of the aforesaid order of the Tribunal in assessee's own group case, we restore this issue to the files of the A.O. The A.O. is directed to follow the directions of the Tribunal given in the case of group company, namely, M/s.Delhi International Airport (P) Ltd. (supra) for assessment years 2007-2008, 2011-2012 to 2013-2014, while deciding the issue. It is ordered accordingly.

ADDITION BY INCLUDING REVENUE FROM NAICL ON ACRUAL BASIS : (ASST.YEAR 2012-2013)

8. The assessee had recognized certain revenue from NAICL and its affiliates (Air India) on receipt / cash basis instead of accrual basis. The A.O. taxed the income on accrual basis. The view taken by the A.O. was affirmed by the CIT(A).

8.1 Aggrieved, the assessee has raised this issue before the ITAT for assessment year 2012-2013. The learned AR fairly submitted that the issue in question is covered against the assessee by the judgment of the Hon'ble jurisdictional High

Court in the case of group company, namely, M/s.Delhi International Airport (Pvt.) Ltd. (judgment dated 14.12.2021 in ITA No.513/18 & Ors.).

8.2 The learned DR was duly heard.

8.3 We have heard rival submissions and perused the material on record. On identical facts, the Hon'ble jurisdictional High Court in the case of M/s.Delhi International Airport (Pvt.) Ltd. (supra) had decided the issue against the assessee. The relevant finding of the Hon'ble jurisdictional High Court reads as follows:-

> *"31. Thus, it is clear that the assessee being a company has adopted the mercantile system of accounting only for the expenses relating to M/s.NACIL without offering the corresponding income to tax in one year, the hybrid method of accounting in one Assessment Year is not permissible. Hence, we answer this question i.e., substantial question of law No.2 in favour of the Revenue and against the assessee. However, we confirm the order of the assessing officer inasmuch as the tax offered on receipt basis for the assessment year 2013-14 would be excluded and the same shall be given effect to in the proceedings for the assessment year 2013-2014."*

8.4 In the light of the above judgment of the Hon'ble jurisdictional High Court in the case of M/s.Delhi International Airport (Pvt.) Ltd. (supra), we hold that the revenue from NACIL are to be recognized on accrual basis. Further, in tune with the finding of the Hon'ble High Court, we direct the A.O. to exclude the income offered by the assessee on receipt basis. It is ordered accordingly.

DISALLOWANCE OF COMMUNITY EXPENSES (ASST.YEAR 2010-2011 TO 2013-2014)

9. The assessee had incurred certain expenditure on community development. This expenditure was incurred by the assessee directly as well as donation given by the assessee towards a trust. The assessee in its returns of income for assessment years 2011-2012 to 2013-2014, had suo moto disallowed donation. The details of the amount incurred directly by the assessee, the donation given, the nature of community services are given in the chart below:-

Sl. No.	Asst. Year	Amount incurred directly	Donation	Community services			Development
				Education	Health	Empowerment	
1.	2010-11	1,11,03,544	--	9,86,475	5,41,228	86,86,721	8,89,120
2.	2011-12	1,12,22,971	12,82,500	18,75,629	17,56,802	62,30,218	77,822
3.	2012-13	1,46,62,162	3,55,116	21,07,541	18,58,251	96,58,058	6,83,196
4.	2013-14	1,35,08,087	30,000	26,95,078	21,16,648	86,15,905	50,456

9.1 According to the assessee, it had incurred the aforesaid expenditure on community development in and around the Airport. It was submitted that the said expenses were incurred wholly and exclusively in order to facilitate the business of the assessee to run in a smooth manner and to assist the employees of the assessee and hence the same is allowable as deduction u/s 37(1) of the Act. The learned AR relied on the following case laws to contend that the community expenses are allowable deduction u/s 37 of the I.T.Act.

(i) Karnataka High Court in the case of Infosys Technologies Ltd. (43 taxmann.com 251),
(ii) Karnataka High Court in the case of Karnataka Financial Corporation (33 DTR 145)
(iii) Mumbai ITAT in the case of Reliance Infrastructure Ltd. v. Addl.CIT (9 taxmann.com 186)
(iv) Decision of the ITAT Mumbai in the case of Addl.CIT v. Nicholas Piramal India Ltd. (40 taxmann.com 538)
(v) Bangalore ITAT in assessee's own case in ITA No.2189/Bang/2016 for A.Y. 2009-10.

9.2 It was further contended that the amendment in section 37 of the Act by Finance Act, 2015 with effect from 01.04.2015 to disallow the CSR expenses is not retrospective in nature but only prospective. In this context, the learned AR relied on the following case laws :-

(i) Raipur ITAT in ACIT v. Jindal Power Limited (70 taxmann.com 389)
(ii) Delhi ITAT in National Seeds Corporation Ltd. v. Addl.CIT in ITA No.6794/Del/2014 for A.Y. 2011-12.
(iii) Hyderabad ITAT in DCIT v. National Mineral Development Corporation Ltd. in ITA No.1593/Hyd/2014.

9.3 The learned DR supported the orders of the Income Tax Authorities.

9.4 We have heard rival submissions and perused the material on record. The Bangalore Bench of the Tribunal had examined the deductibility of community development expenses in assessee's own case for assessment year 2009-2010 in ITA No.2189/Bang/2016 (order dated 09.07.2019). The relevant finding of the Tribunal reads as follows:-

"14. We heard the Id DR and perused the record. From the details furnished by the assessee at page 448 and 449 of the paper book, we noticed that the assessee has incurred various expenses for police station located in near the airport, development of electrical lines, installation of road traffic signals, construction of pedestal and column for statue, construction of urinals at bus stand etc. These expenses have been incurred directly. The nature of expenditure incurred on Statue is not furnished. Further, a sum of Rs.220.00 lakhs has been given to GMR Varalaskhmi Foundation.

We have noticed that the AO has mentioned the amount paid to above said organization as Rs.221.36 lakhs. Hence, there appears to be some obscurity with regard to the payment made to GMR Varalakshmi Foundation and this difference needs to be reconciled. However, the details of expenditure incurred by the above said charitable organization were not furnished. We have noticed that the tax authorities have taken the view that the amount paid to this organization is in the nature of donation, while the assessee claims the same to be reimbursement. Before us, the Ld A.R placed reliance on the resolution passed by Board of directors. However, in our view, the financial statements of MIs GMR Varalakshmi Foundation may be helpful to determine the character of amount paid to it by the assessee. Hence the financial statements of GMR Varalakshmi Foundation also require examination. There is no dispute that this expenditure has been incurred under the head 'corporate social responsibility'. However, we noticed from the decisions relied on by the assessee to support its claim that the Hon'ble High Court has appreciated the connection between the expenditure and the business use, i.e., those assessees were able to demonstrate the connection between the expenditure incurred and its use for the business of the assessee. In the instant case, though the assessee has furnished details of expenditure, it has not demonstrated the connection between the expenditure and the business advantage to the assessee. Further, as stated earlier, the nature of payment as well as the nature of expenditure incurred by GMR Varalaskhmi Foundation require examination. Under these set of facts, we are of the view that, in the interest of natural justice, the assessee may be provided with one more opportunity to explain its case before the AO. Accordingly, we set aside the order passed by the ld CIT(A) on this issue and restore the same to the file of the AO for examining this issue afresh in the light of the decision rendered by Hon'ble Karnataka High Court referred (Supra)."

9.5 In the light of the order of the Tribunal, which has restored an identical issue to the files of the A.O., we restore the issue raised as regards the allowability of expenditure incurred on community development expenses to the files of the A.O. for *de novo* consideration. For these assessment years the only difference is that most of the CSR expenditure were incurred directly by the assessee as per the details given (supra). The A.O. shall take into consideration the judicial pronouncements cited supra and take a decision in the matter after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

10. In the result –

(i) ITA No.620/Bang/2017 for A.Y. 2010-2011 is allowed for statistical purposes.

(ii) ITA No.633/Bang/2017 for A.Y. 2011-2012 is allowed for statistical purposes.

(iii) ITA No.603/Bang/2017 for A.Y. 2012-2013 is partly allowed for statistical purposes.

(iv) ITA No.604/Bang/2017 for A.Y. 2013-2014 is allowed for statistical purposes.

Order pronounced on this 11th day of February, 2022.

Sd/-	**Sd/-**
(Padmavathy S)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 11th February, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bangalore.
4. The Pr.CIT (Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore