

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.8677/Del./2019
(ASSESSMENT YEAR : 2015-16)**

**ITA No.8678/Del./2019
(ASSESSMENT YEAR : 2016-17)**

DCIT, Circle 2(1)(2),
International Taxation,
New Delhi.

vs.

KLM Royal Dutch Airlines,
LB-46, Prakash Deep Building,
7, Tolstoy Marg,
New Delhi – 110 001.

(PAN : AABCK3950H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Sr. Advocate
Shri Sahilesh Gupta, Advocate
REVENUE BY : Shri Sanjay Kumar, Senior DR

Date of Hearing : 26.05.2022
Date of Order : 01.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue against the respective orders of the Id. CIT (Appeals) for the Assessment Years 2015-16 & 2016-17.

2. Since issues are common and connected and the appeals were heard together, these are being disposed off by this common order.

3. In these appeals by the Revenue, the challenge is to the order of Id. CIT (A) wherein Id. CIT (A) has deleted the addition made by the AO by treating the entire income of the assessee from technical handling as taxable in India after allowing 5% of ad hoc allowance for expenses.

4. For the sake of reference, we refer to the appeal for AY 2015-16.

5. Brief facts of the case are that the assessee is a Foreign Company incorporated under the Laws of Netherlands and is engaged in the business of "Operations of Aircraft in International Traffic". It operates in India through a branch office by virtue of approval from Reserve Bank of India. For the Assessment Year 2015-16, the assessee filed its original return of income on 26.09.2015 declaring total income of Rs.841,40,89,890/- from the business of "Operations of Aircraft in International Traffic and after claiming the relief u/s 90 of the Income-tax Act, 1961 (for short 'the Act') read with Article 8 of the DTAA between India and Netherlands, there was Nil taxable payable and claimed a refund of Rs.,80,33,660/-. It was claimed that no income is chargeable to tax in India, as the entire income of the assessee is exempt from taxation in India u/s 90 of the Act read with Article 8 of the Double Taxation Avoidance Agreement (DTAA) between the India & Netherlands. Thereafter the assessee was served with a notice u/s 143(2) of the Income Tax Act, 1961. The Assessing Officer through order sheet entries directed

the assessee to file details regarding the Technical Handling Income received by the assessee and show cause as why the Technical Handling Income is not taxable in India. The assessee filed detailed submissions in compliance to the above directions and further submissions giving a break-up of total revenue earned from the technical handling income and the expenses incurred thereon along with supporting agreements (including reciprocal agreements). The assessee claimed that the income from technical handling is exempt from taxation in India as the same is covered under Article 8 of the DTAA between India & Netherlands and hence not liable to tax in India. Further, it was also submitted during the assessment proceedings that the issue is squarely covered by the judgment of the Hon'ble Delhi High Court as well as by the Orders of Hon'ble ITAT, in the assessee's own cases for the earlier assessment years. Notwithstanding the submissions by the assessee, the AO passed the assessment order dated 29.03.2018, wherein the AO has assessed the income of the assessee by treating the entire income from technical handling as taxable in India after allowing 5% adhoc allowance for expenses.

6. Upon assessee's appeal, ld. CIT (A) noted the submission that the issue is squarely covered by the decision of ITAT in a series of orders in earlier years and that Hon'ble the High Court has also affirmed the

decision of ITAT. The ld. CIT (A), further referred to earlier order of ld. CIT (A) in assessee's own case and finding the issue same as assessment year 2014-15 allowed the assessee's appeal.

7. Against the above order, Revenue has filed appeal before the ITAT

8. We have heard both the parties and perused the records. Ld. counsel of the assessee submitted that issue is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court in assessee's own case. He submitted that the assessing officer despite being told that the case is covered by Hon'ble Delhi High Court decision in assessee's own case chose to ignore the Hon'ble High Court decision and decide the issue against the assessee. Ld. DR for the Revenue, on the other hand, could not dispute the submission that identical issue has been decided in favour of the assessee by Hon'ble Delhi High Court.

9. Upon careful consideration, we note that Hon'ble Delhi High Court in the case of the assessee for assessment years 2004-05 to 2008-09 by the order dated 25.01.2017 (392 ITR 218) elaborately dealt with the issue.

The question considered by the Hon'ble High Court was :-

“Whether profits of the assessee from providing technical services to other airlines is covered by Article 8(1) and 8(4) of the Double Taxation Avoidance Agreement between India and Germany and by Article 8(1) and 8(3) of Double Taxation Avoidance Agreement between India and Netherland.

10. After elaborate discussion and analysis, Hon'ble High Court answered the question of law against the Revenue and in favour of the assessee and found no infirmity in the orders of the ITAT.

11. Hon'ble High Court subsequently for assessment years 2009-10, 2010-11, 2011-12 & 2012-13 followed its aforesaid order and decided the issue in favour of assessee

12. Accordingly, respectfully following the precedent, we uphold the order of Id. CIT (A)

13. Our aforesaid order applies *mutatis mutandis* to AY 2016-17 also.

13. In the result, both the appeals filed by the Revenue stand dismissed.

Order pronounced in the open court on this 1st day of June, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 1st day of June, 2022

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

AR, ITAT
NEW DELHI.