IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.4812/Del/2010
Assessment Year: 2007-08
With
ITA No.5010/Del/2011
Assessment Year: 2008-09
With
ITA No.275/Del/2016
Assessment Year: 2009-10
With
ITA No.1150/Del/2015
Assessment Year: 2011-12
With
ITA No.276/Del/2016
Assessment Year: 2012-13
With
ITA No.838/Del/2018
Assessment Year: 2013-14
With
ITA No.837/Del/2018
Assessment Year: 2014-15
With
ITA No.4698/Del/2019
Assessment Year: 2015-16

M/s. AIR FRANCE, LB-46, Prakashdeep Building, 7 Tolstoy Marg, New Delhi	**Vs.**	Astt. Director of Income Tax, International Taxation, Circle-1(1), New Delhi
PAN :AAACA5284B		
(Appellant)		**(Respondent)**

With
ITA No.131/Del/2018
Assessment Year: 2013-14

ACIT, Circle-1(1)(1), International Taxation New Delhi	**Vs.**	M/s. AIR FRANCE, LB-46, Prakashdeep Building, 7, Tolstoy Marg, New Delhi
		PAN :AAACA5284B
(Appellant)		**(Respondent)**

Assessee by	Sh. Salil Aggarwal, Sr. Advocate Sh. Anil Makhija, Advocate
Department by	Sh. Sanjay Kumar, Sr. DR

Date of hearing	28.11.2022
Date of pronouncement	24.02.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned are bunch of nine appeals relating to the same assessee. Eight of these appeals are by the assessee, whereas, Revenue has filed a single appeal. All these appeals arise either out of orders passed by learned Commissioner of Income Tax (Appeals) or the final assessment orders passed in pursuance to the directions of learned Dispute Resolution Panel (DRP). The appeals relate to assessment years 2007-08, 2008-09, 2009-10, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

2. Since, the issues raised in all these appeal are more or less common, appeals have been clubbed together and disposed of in a common order, for the sake of convenience.

3. Basically, the dispute in these appeals relate to taxability of following items of income:

i. Technical handling income received from IATP Members.
ii. Technical handling income received from non-IATP Members.
iii. Interest income
iv. Collection charges
v. Commission income

(i) Technical Handling Income Received from IATP Members.

ITA No.4812/Del/2010	***AY: 2007-08***	***Ground nos. 3 to 19, 21 and 22***
ITA No.5010/Del/2011	***AY: 2008-09***	***Ground nos. 3 to 15, 17 and 18***
ITA No.1150/Del/2015	***AY: 2011-12***	***Ground nos. 2 to 16 and 19***
ITA No. 276/Del/2016	***AY: 2012-13***	***Ground nos. 2 to 20***
ITA No. 838/Del/2018	***AY: 2013-14***	***Ground nos. 3 to 20***
ITA No. 837/Del/2018	***AY: 2014-15***	***Ground nos. 3 to 20***
ITA No. 4698/Del/2019	***AY: 2015-16***	***Ground nos. 2 to 15***

4. Briefly the facts relating to this issue are, the assessee, a branch office of a non-resident corporate entity is incorporated in France and a tax resident of France. Its head office is situated in Paris, France. The assessee is engaged in the business of operation of aircrafts in international traffic and it operates from and into various international airports in India. The income earned by the assessee from operation of aircrafts and other

services were not offered to tax in India on the plea that they are exempt under Article 8 of India – France Double Taxation Avoidance Agreement (DTAA). In course of assessment proceeding, the Assessing Officer noticed that the assessee had received income in all these assessment years from technical handling services provided to other airlines. Noticing the above, the Assessing Officer called upon the assessee to furnish the details of such services and explain the reason why receipts from such service are not taxable in India. In reply to the query raised, the assessee submitted that technical handling is nothing but verifying the technical parameters of the aircraft after it has taken a journey to ensure that the aircraft is in air worthy condition to fly again. It was submitted, after verifying air worthiness the assessee issues certificate to the concerned airlines based on which flying is allowed. It was submitted by the assessee that since it is a member of International Airlines Technical Pool (IATP), technical handling services provided to other airlines, who are members of IATP is exempt under Article 8(2) of the Indian – France DTAA. After examining the agreements with other airlines and invoices raised the Assessing Officer, however, was of the view that the income derived from technical handling services

provided to other airlines is not exempt from taxation under Article 8 of the tax treaty. Having held so, the Assessing Officer held that the services rendered are in the nature of technical services, hence, the income derived from such services has to be treated as Fees for Technical Services (FTS). Proceeding further, he observed that the assessee provides technical handling services to Austrian Airlines on daily basis for which the assessee not only having a branch office but also has facilities at airports. Therefore, he held that the assessee is having a Permanent Establishment (PE) in India and the FTS is effectively connected to such PE. Accordingly, he brought to tax a part of the income derived from technical handling services applying the rate of 40% after allowing expenses on estimate basis. Against the aforesaid decision of the Assessing Officer in the assessment years under dispute, the assessee either approached learned DRP or learned Commissioner (Appeals). However, the authority concerned agreed with the view of the Assessing Officer in all these assessment years.

5. Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment years 2004-05,

2005-06 and 2006-07. He submitted, facts being identical in these assessment years, the decision of the Tribunal would squarely apply. Further, he placed strong reliance on a decision of the Hon'ble Jurisdiction High Court in case of Director of Income Tax Vs. KLM Royal Dutch Airlines (2017) 78 taxmann.com 1 (Del.).

6. Proceeding further, he submitted, the miscellaneous applications filed by the Revenue against the appellate order passed by the Tribunal in assessment years 2004-05 and 2005-06 has been dismissed by the Tribunal. Thus, he submitted, the issue stands squarely covered in favour of the assessee.

7. Learned Departmental Representative submitted, Article 8(2) of the treaty will not cover income from technical handling services as it has to be read in conjunction with Article 8(1) and 8(4). He submitted, as per Article 8(1) profits derived from operation of aircraft in international traffic is exempt in case of a resident of France. He submitted, the expression operation of aircraft has been defined in Article 8(4) of the treaty and means business of transportation by air of passengers, mail, livestocks or goods and other activities as mentioned therein. Thus, he submitted, the scope of operation of aircraft in international

traffic as defined in Article 8 of India – France DTAA is restricted in its meaning and akin to India – UK DTAA. Whereas, the expression operation of aircraft in international traffic has not been defined either in India – Germany DTAA or India – Netherlands DTAA. Therefore, he submitted, the decision of the jurisdictional High Court in case of KLM Dutch Airlines (supra) would not apply. Proceeding further, he submitted, as per the definition of operation of aircraft under Article 8(4) of the Treaty, only such other activity which is directly connected with the business of transportation by air of passengers, mail, livestocks, goods carried out by the owners or lessee or charterers of aircrafts, including the sale of tickets for such transportation on behalf of other enterprise, the incidental lease of aircraft can be covered under Article 8(2). Thus, he submitted, since the rendering of technical handling services to other airlines is not directly connected with the business of transportation by air of passengers, mail, livestocks or goods by assessee, it will not be covered under Article 8(2), hence, would not be exempt. Further, he submitted that the nature of services provided by the assessee to other airlines are not mandated by the IATP. Therefore, the assessee cannot get benefit of Article 8(2) of the Treaty. In support

of his submission, learned Departmental Representative relied upon a case of the Delhi High Court in case of British Airways.

8. We have considered rival submissions in the light of the decisions relied upon and perused the materials on record. It is evident, the assessee has derived income from providing technical handling services to other airlines in India. The technical handling services, as discussed earlier, involve verification of air worthiness of the aircrafts flying into Indian airports to take the next journey. Undisputedly, assessee has claimed exemption of the income derived from technical handling services taking recourse to Article 8(2) of the India – France DTAA. It is the case of the assessee that since as a member of IATP the assessee has provided such services to other pool members, it is covered under Article 8(2). Notably, identical nature of dispute arising in assessee's own case in assessment years 2004-05, 2005-06 and 2006-07 came up for consideration before the Tribunal earlier. While deciding the issue in ITA No.5008/Del/2011 and others dated 22.05.2020, the Tribunal has held as under:

> "*8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee company is claimed benefit under the DTAA under Article 8 of the Treaty, since the entire revenue receipts are from operation of aircraft in international traffic as per the assessee before the Assessing Officer. The assessee also submitted during the*

assessment proceedings that the Indian Branch office is merely a branch office of the foreign company, which is engaged in the operation of aircraft in international traffic. There are no specific services referred between the head office and the branch office as per the submissions of the assessee. The entire receipts collected by the branch office are remitted to the head office, after meeting the local expenditure and the said receipt of the branch office are from the public at large and not from rendering of services to the head office as per the assessee. The Assessing Officer asked the assessee to submit sources of income including from ground handling, flight maintenance etc. and asked to explain the taxability of the same vis-à-vis judgments of the authorities in the cases of British Airways and Luftansa Airlines of the Tribunal. The assessee submitted that during the year under consideration Air France has provided technical handling services to other IATP pool members aggregating to Rs. 1,81,79,476/-. The same is covered under Article 8 of the provisions of Double Taxation Avoidance Agreement between India and France (DTAA). The assessee further submitted that it is part and parcel of the Income covered under operation of aircraft of international traffic. The technical handling services are provided by Air France to only ITAP pool members. The Assessing Officer further asked the following queries:

(i) The nature of technical handling services and the steps involved in the same?

(ii) Basis of figure of Rs. 1,81,79,476/-

(iii) Taxability of the same vis-à-vis decisions of the ITAT in the case of British Airways and Lufthansa Airlines and also to show cause, why the receipts should not be taxed in India?

(iv) The extent of technical services provided to its own aircrafts and the aircrafts of the other airlines.

The assessee provided the copies of invoices, contracts for technical handling to the Assessing Officer. The Assessing Officer after going through the contracts and invoices observed that the services are not mentioned in Annexure – B of the agreement. The Assessee explained technical handling services as nothing, but verifying the technical parameters of the aircraft, after it has taken a journey to verify that the same is in an airworthy and safe conditions to fly again. Such examination airworthiness certificate is provided to the airlines by AF basis which flying is allowed. The assessee is member of "International Airlines Technical Pool" (IATP). As an IATP member the assessee extends technical facilities (line maintenance facilities) to other IATP Members only during the year under consideration. No such facility or service has been provided by assessee to any non IATP Member during the year under consideration. The services as per the Standard Ground Handling Agreement 1998 Main Agreement along with Annexure A and Annexure B is as under:

" IATP FORM-55 LINE MAINTENANCE POOLING

ANNEXURE B.12/OS-DEL
LOCATION, AGREED SERVICES AND CHARGES
To the Standard Ground Handling Agreement of April 1998

Between

AIR FRANCE	*AUSTRIAN AIRLINES*
having its principal office at And	*having its principal office at*
45 Rue de PARIS	*Fortanastrasse : P.O. Boax 50*
95747 ROISSY CDG CEDEX	*A-1107, Vienna*
FRANCE	*Austria*
And hereinafter referred to as	*and hereinafter referred to as*
"the Handling Company"	*"the Carrier"*
Holding EASA PART 145 approval	
Certificate Nbr : FR.145 010	

Effective from:	*October 25,1998*
This Annex B for the location:	*Delhi (DEL)*
Is valid from:	*April 1* 2006*
And replaces:	*Annex B 1 1 valid from April 01,2005*

PREAMBLE:
This Annex B is prepared in accordance with the simplified procedure whereby the Parties agree that the terms of the Main Agreement and Annex A of the SGHA of April 1998 as published by the International Air Transport Association shall apply as if such terms were repeated here in full.

By signing this Annex B, the parties confirm that they are familiar with the aforementioned Main Agreement, Annex A and International Airline Technical Pool Rules.
PARAGRAPH 1 – SERVICES CONTRACTED

1.1 For a single ground handling consisting of the arrival and the subsequent departure at agreed timings of the same aircraft, the Handling Company shall provide the following services of Annex A at the following rates.

1.1.1 Section 2	*2.2.1, 2.2.2.*
Section 6	*6.3.1, 6.3.2.(a), (b), 6.6.1(c)*
Section 7	*7.1.3*
Section 8	*8.1.1., 8.1.2(b), 8.1.4, 8.1.5, 8.1.6, 8.1.9, 8.1.10, 8.1.11, 8.1.12, 8.2.1, 8.2.2, 8.2.3*

Section 9 9.1.1, 9.1.2, 9.1.3, 9.1.4 (a), 9b), 9.2.1 (see 1.2), 9.2.2, 9.2.3, 9.2.4, 9.2.5, 9.3.1(b), 9.3.2, 9.3.3 (to a limited extent).

Section 14 14.4.2(b5) (if required)

Aircraft Type / Engine Type	*Turnaround Inspection Line Transit (Grd. Time < 5hrs.)*

A-330/PW 4168	*Euros 340*
A-340/CFM56	*Euros 340*

1.2 Service 9.2.1 is limited to a maximum of 2 man-hour – Additional work beyond the provision included in the flat rate will be charged at Euros 84 per man-hour."

Now we are quoting the relevant Article 8 of DTAA between India and France as follows:

" Article 8 AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
3. For the purpose of this article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest.
4. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation."

The Revenue contended that the assessee provides its services both to airlines who are members of IATA/IATP as well as members who are not members of IATP. The Ld. DR pointed out that the assessee does not receive any reciprocal services in India and considering the scale of activities both inside India as well as outside and the collaborations with KLM & Air France Ground Handling Pvt. Ltd. to provide the services and facilities, it can be safely concluded that it is an independent commercial and business activity which is in no way ancillary or connected to the business in the operation of aircraft as defined by Article 8(4) of the DTAA between India & France. Therefore, the Ld. DR submitted that the Assessing Officer was right in rejecting the claim of the Assessee under Article 8 of the DTAA between India and France.

While going through the submissions of both the parties, it is pertinent to note the relevant points of the decision in case of the Hon'ble High Court in case of DIT vs. KLM Royal Dutch Airlines & Lufthansa German Airlines (2017) 392 ITR 218 (Del.) wherein while dismissing the appeals, the Hon'ble High Court held that the assessee participated in the international Airlines Technical Pool and earned certain revenues from such activities and also incurred

expenditure. There was clear reciprocity as to the extension of services; membership was premised upon each participating member being able to provide facilities for which it was formed. As there was reciprocity in the rendering and availing of services, there was clearly participation in the Pool; in terms of two Double Taxation Avoidance Agreements (between India and Germany and between India and the Netherlands) the profits from such participation were not taxable in India. While distinguishing the British Airways (supra) the Hon'ble High Court in case of KLM Royal Dutch Airlines & Lufthansa German Airlines (supra) extracted the Tribunal's decision as follows in para 31:

".....:

(i) British Airways provided engineering and ground handling services at IGI Airport, New Delhi to 11 other airlines, at Chennai to 5 other airlines and certain other airlines at Mumbai. It has not availed any services/facilities from any airlines in India. Thus, there was no reciprocity in the agreement entered into between British Airways and other airlines ;

(ii) British Airways had a separate establishment and separate office set up to monitor ground handling services and different establishment at International Airports New Delhi did not form part and parcel of the operation of British Airways pertaining to the operation of aircrafts in international traffic. There is no such finding in the present appeals.

(iii) British Airways' services and facilities in India to the other airlines was a commercial activity. The excess/idle capacity was provided to various airlines at a price. The services provided in terms of the IATP manual are not based on any consideration paid or received ; a system of credits has been created for IATP members.

(iv) British Airways has a branch office in India, which constituted a permanent establishment ("PE") in India, and, therefore, the income derived from permanent establishment in India was taxable as the same was not covered under the double taxation avoidance agreement.

(v) Article 8(2) of the Double Taxation Avoidance Agreement between India and UK provided that paragraph 1 of article 8 shall likewise apply in respect of participation in pools of any kind. The words "pools of any kind" was interpreted by the Income-tax Appellate Tribunal by taking the dictionary meaning of the word "pool". These are missing in the two the double taxation avoidance agreements in question.

(vi) Article 8(3) of the Double Taxation Avoidance Agreement between India and UK provided that the terms "operation of aircraft" shall include "...3. For the purposes of this article the

term "operation of aircraft" shall include transportation by air of persons, live-stock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other activity directly connected with such transportation". These terms are not present in the two double taxation avoidance agreements in the present set of appeals.

(vii) After meeting the requirement of its own flights, the services of employees were required for handling other airlines' operation for generating income.

Having regard to these facts, this court is of opinion that the amplification of the term "operation of aircraft" in article 8(1) through article 8(3), i.e.," .. 3. For the purposes of this article the term "operation of aircraft" shall include transportation by air of persons, live-stock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprise, the incidental lease or aircraft on a charter basis and any other activity directly connected with such transportation …" had the effect of limiting the nature of activities that could be comprehended in the pool envisioned in article 8(2); in other words, the expanded meaning of operation of aircraft included those activities in article 8(3) through the extended definition and no more. On the other hand, there is no such limitation in the double taxation avoidance agreements in question, in these cases. This constituted the most significant difference between the two sets of cases on the one hand, and British Airways (supra) on the other. For these reasons, this court rejects the Revenue's contentions."

In the present case from the records, it can be seen that the Indian Branch office is merely a branch office of the foreign/assessee company, which is engaged in the operation of aircraft in international traffic. There are no specific services referred between the head office and the branch office as per the submissions of the assessee which appears to be correct and no distinguishing facts were brought on record by the Revenue before us. The entire receipts collected by the branch office are remitted to the head office, after meeting the local expenditure and the said receipt of the branch office are from the public at large and not from rendering of services to the head office. Thus, the assessee company is not having any permanent establishment in India. Therefore, the observation of the Assessing Officer that the assessee company is having permanent establishment in India and hence income arrived in India is taxable, is not correct finding according to the facts on record. Further, from the perusal of the submissions of both the parties and after going through the "International Airlines Technical Pool" (IATP) Agreement along with the Standard Handling Agreement in consonance with the DTAA between

India and France, it can be seen that the assessee company is a member of IATP and the services provided by the assessee company to the relevant air companies were also the member of the IATP. There is no dispute on this aspect by the Assessing Officer in the assessment order though the Ld. DR is contending contrary that some of the airlines whom the services provided were not members of IATP. But that is not the case in the present Assessment Year. In fact as per Annexure "A" of IATP manual, it is evidently clear that there is no bar on member airline to provide service to non IATP Pool member and in fact, even non IATP Pool members if takes such service from a pool would be considered as a pool service to them. Thus the submission of the Ld. DR is factually incorrect. Now coming to the DTAA between India and France, it can be seen that Article 8(2) specifically mentions that the DTAA will apply to the profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic from the participation in a pool, a joint business or an international operating agency and shall be taxable only in that Contracting States. In the present case, the contracting state is France and though under domestic law the assessee has to pay tax in India while deriving income from Indian territory, yet because of Article 8(2) of the DTAA agreement, Air France is exempted to pay any tax in India as its services/activities and profit thereof derives from pool participation. The Hon'ble High Court in case of KLM Royal Dutch Airlines & Lufthansa German Airlines (supra) clearly set out how the facts of the British Airways are distinguishable. In the present case, as well the ratio laid down in British Airways will not be applicable, as the assessee company is a member of IATP and the DTAA between India & France clearly set out that those who are members of pool are exempt from tax in India. Thus, the Assessing Officer was not right in rejecting the claim of the assessee that profit from technical handling services is covered by Article 8 and in treating the Technical Income as "fee for technical services" at Rs. 1,81,79,476/- covered u/s 115A read with Section 44D and taxed the same at 20% of the gross receipts. The CIT(A) rightly held that the assessee's income from ground handling and technical handling services is covered by Article 8 of the Indo-French DTAA. But the CIT(A) further held that income earned from rendering service to Iberworld a non IATP member amounting to Rs. 3,70,098 would be taxed under Article 7, that is what challenged before us by the assessee. The IATP manual clearly set out that there is no bar on member airline to provide service to non IATP Pool member and in fact, even non IATP Pool members if takes such service from a pool would be considered as a pool service to them. Thus, the assessee being a pool member and providing service in that capacity to the guest members comes under the purview of Article 8(2) of the DTAA between India and France. Therefore, the CIT(A) was not right in sustaining the taxability to the extent of Rs. 3,70,098 under Article 7 of the DTAA. Thus, appeal of the assessee is allowed."

9. No material difference in factual position has been brought to our notice by learned Departmental Representative between assessment years 2004-05, 2005-06 and 2006-07 and the present assessment years. Therefore, respectfully following the decision of the Coordinate Bench in assessee's own case, as discussed above, we hold that the income from technical handling services is not taxable in India as it is covered under Article 8(2) read with Article 8(1) of India – France DTAA. Accordingly, the additions made in all theses assessment years are directed to be deleted.

(ii) Income from Technical Handling Services to Non-IATP Members.

ITA No.275/Del/2016	***AY: 2009-10***	***Ground nos. 2 to 4***

10. The crux of the dispute is whether income derived from technical handling services provided to non-IATP member airlines in India will be covered under Article 8(2). Though, learned Commissioner (Appeals) allowed assessee's claim of benefit under Article 8(2) of India – France DTAA in respect of services provided to other airlines in India who are members of IATP, however, he did not allow the benefit in case of income derived from services rendered to non-IATP member airlines.

11. We have heard the parties and perused the materials on record. On carefully going through IATP pool manual as placed in the paper-book, it is observed that there is no restriction or bar imposed therein to the extent that services cannot be provided to non-IATP pool members. In this regard, the following observations of the Coordinate Bench in assessee's own case (supra) hold much relevance:

> *".....The IATP manual clearly set out that there is no bar on member airline to provide service to non IATP Pool member and in fact, even non IATP Pool members if takes such service from a pool would be considered as a pool service to them. Thus, the assessee being a pool member and providing service in that capacity to the guest members comes under the purview of Article 8(2) of the DTAA between India and France. Therefore, the CIT(A) was not right in sustaining the taxability to the extent of Rs. 3,70,098 under Article 7 of the DTAA. Thus, appeal of the assessee is allowed."*

12. Thus, respectfully following the decision of the Coordinate Bench, we direct the Assessing Officer to delete the addition.

(iii) <u>Taxability of Interest Income</u>

ITA No.4812/Del/2010	***AY: 2007-08***	***Ground no. 20***
ITA No.5010/Del/2011	***AY: 2008-09***	***Ground no. 16***
ITA No.1150/Del/2015	***AY: 2011-12***	***Ground nos. 17, 18, 20 & 21***
ITA No.276/Del/2016	***AY: 2012-13***	***Ground nos. 21 to 24***
ITA No.4698/Del/2019	***AY: 2015-16***	***Ground no.16***

13. Briefly the facts common in all assessment years are, the Assessing Officer noticed that the assessee, though, had earned interest on fixed deposits, however, they were not offered to tax.

Being of the view that the interest earned on fixed deposits is not connected with assessee's business of operation of aircrafts in international traffic, the Assessing Officer rejected assessee's claim and brought the income to tax by treating it as income from other sources. The decision of the Assessing Officer was upheld by learned DRP and learned Commissioner (Appeals) in the respective assessment years.

14. Before us, learned counsel appearing for the assessee submitted that under Article 8(3) of India – France DTAA interest earned on funds connected with the operation of aircrafts in international traffic is to be treated as profits derived from the operation of aircrafts and the provisions of Article 12 shall not apply. Proceeding further, he submitted, the assessee has earned interest on surplus funds out of its business of operating aircrafts in international traffic kept as fixed deposits or security deposits with Airport Authority of India Ltd. He submitted, since, the FDs are made out of funds connected with the operation of aircraft in India, the interest income is exempt from tax under Article 8(3) of the treaty.

15. Learned Departmental Representative relied upon the observations of departmental authorities.

16. We have considered rival submissions and perused the materials on record. It is evident, in course of proceedings before the departmental authorities, the assessee had emphasized that the interest income earned is on fixed deposits, either made out of surplus funds generated from its business of operating airlines in international traffic or from fixed deposits kept as security deposit with Airport Authority of India Ltd. The departmental authorities have not doubted or disputed this factual position. Assessee's claim has been rejected only on the ground that the interest income is not connected with the operation of aircraft in international traffic. Article 8(3) of Indian – France DTAA reads as under"

> *"For the purpose of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest."*

17. Undisputedly, it is a fact on record that the fixed deposits made by the assessee are out of funds connected with the operation of aircraft in international traffic, hence, covered under Article 8(1) as the assessee has no other business. Therefore, in our view, the interest earned on such fixed deposits will be covered under Article 8(3), hence, not taxable. Therefore, the

Assessing Officer is directed to delete these additions in all the assessment years. These grounds are allowed.

(iv) Income from Collection Charges

ITA No.1150/Del/2015	***AY: 2011-12***	***Ground Nos. 22 to 24***

18. Briefly the facts are, in course of assessment proceeding the Assessing Officer noticed that the assessee has received certain amount from various airports for collection of User Development Fee (UDF) and Passenger Service Fee (PSF) from the passengers. He observed that the assessee collects such UDF or PSF on behalf of the airports and for providing such services certain payments were made to the assessee by the airports in the form of collection charges, which are fixed at a certain percentage. The assessee claimed that the collection charges are in the nature of discount provided by the airport for timely payment of PSF or UDF. The assessee submitted that the collection charges are not earned on account of any service provided to the airports but specified amount of discount is allowed to be deducted by the assessee while making timely payment of PSF/UDF to the airports. It was submitted, if payments are not made within the time limit, the assessee will not be eligible for such discount. Thus, the assessee submitted, the amount received is not in the nature of income.

Without prejudice, it was submitted that even if the amount received assumes the character of income it will be covered under Article 8 of the Tax Treaty. The Assessing Officer, however, did not accept the claim of the assessee and brought it to tax by linking it to the PE in India. The addition made was upheld by the first appellate authority.

19. We have considered rival submissions and perused the materials on record. Some airports in India levy UDF/PSF on embarking passengers to modernize the airport and augment the facilities provided to passengers in airport. The fee to be charged from the passengers is determined by a Regulatory Authority. The airlines operating to and from the airports are entrusted the task of collecting UDF/PSF travelling in their airlines. In case, the UDF/PSF collected is remitted to the airport authority within the specified time limit, the airline gets certain percentage out of the amount collected as PSF/UDF on behalf of the airport. The amount retained by the airlines from UDF/PSF is known as discount or commission. It is the claim of the assessee that even assuming that it is in the nature of income, however, it will be covered under Article 8 of the tax treaty. It is observed, assessee's claim has been accepted by learned DRP in assessment year

2012-13 and by learned Commissioner (Appeals) in assessment year 2013-14. However, on examining the nature of receipts, we are of the view that it has no connection with assessee's business of operation of aircrafts in international traffic.

20. Rather, the assessee gets some incentive for making timely payment of UDF/PSF to the airports. Therefore, the collection charges are not directly connected to assessee's business of operating aircraft in international traffic, as per Article 8(1) read with Article 8(4) of India – France DTAA. Therefore, we uphold the addition. Ground raised is dismissed.

(v) Income from Commission

ITA No.276/Del/2016	***AY: 2012-13***	***Ground No. 25***
ITA No.131/Del/2018	***AY: 2013-14***	***Appeal by the Revenue***

21. Briefly the facts are, in some cases a passenger travelling in aircraft operated by the assessee, for instance, from Paris to New Delhi and then to Chennai completes his/her domestic leg of travel through some domestic airlines. For the domestic leg of travel the assessee receives some commission from the domestic carrier. It is the claim of the assessee that since the commission received from domestic carrier is part and parcel of the international travel, when a passenger begins his travel on

assessee's aircraft, say, from Paris to New Delhi, the journey from New Delhi to Chennai is directly connected to the sale and travel of the passenger between Paris to New Delhi, hence, connected to operation of aircraft in international traffic. Thus, the assessee claimed that the income is exempt under Article 8. The Assessing Officer, however, did not accept the claim of the assessee. While in assessment year 2013-14, learned Commissioner (Appeals) allowed the claim, in assessment year 2012-13 he upheld the addition.

22. We have considered rival submissions and perused the material on record. The facts on record reveal that when a passenger travels in assessee's airlines, for instance, from Paris to New Delhi and then to Chennai the assessee books ticket for the entire travel including the domestic leg, though, the domestic leg travel is taken up by the domestic airlines. A part of the cost of tickets of the domestic travel payable to the domestic airlines is retained by the assessee as commission. Thus, in our view, the entire journey of the passenger from the starting point to the destination is arranged by the assessee, though, the domestic leg of travel is completed by a domestic carrier. Thus, in our view, the commission income earned by the assessee is directly connected

to operation of aircraft in international traffic, hence, covered under Article 8(1) read with Article 8(4), therefore, is exempt from taxation in India. Accordingly, ground raised by the assessee is allowed, whereas, the Revenue's ground is dismissed.

23. The other grounds, being either general in nature or consequential, are not pressed, accordingly, dismissed as such. Further, grounds raised in some appeals challenging the validity of the assessment order passed to be beyond the period of limitation are not pressed, hence, dismissed.

24. In the result, all the appeals filed by the assessee are partly allowed, whereas, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 24th February, 2023

Sd/-	***Sd/-***
(G.S. PANNU)	**(SAKTIJIT DEY)**
PRESIDENT	**JUDICIAL MEMBER**

Dated: 24th February, 2023.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi