

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6545/Del/2015, A.Y. 2007-08

Deputy Commissioner of Income Tax, Circle 2(1), New Delhi	Vs.	M/s. Airline Allied Services Ltd. 1 st Floor, Arrival Hall, Domestic Terminal IGI Airport, New Delhi-110037 PAN : AAACA1517B
Appellant		Respondent

Assessee by	Sh. A.K.Srivastava, CA
Revenue by	Sh. Jitender Chand, Sr. DR

Date of hearing:	24.01.2023
Date of Pronouncement:	02.03.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the Revenue against order dated 03.09.2015 in Appeal No. 92/14-15 assessment year 2007-08 passed by Commissioner of Income Tax (appeals)-I, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 30/03/2013 u/s 147/143(3) of the Income

Tax Act, 1961 passed by ACIT, Circle-1(1), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The facts of the case is that the assessee is 100% subsidiary of Air India Ltd., Government of India undertaking, company engaged in business of transport of passengers and cargo by Air in the domestic sector. A return declaring loss of Rs. 83.60 crores was filed in the case was selected for scrutiny. The assessment was completed u/s 143(3) by accepting the taxable income however, subsequent to the audit objection proceeding u/s 147 of the Act were initiated by issuance of notice u/s 148 of the Act and thereupon after taking the reply of the assessee the Ld. Assessing Officer made following additions;

1st Rs. 70,07,775/- on account of prior period expenses ;

2nd Rs. 3,91,000/- on account of loss of license of crew ;

3rd Rs. 2,03,14,678/- on account of provision for maintenance expenses, obsolescence of spares and redelivery.

3. Accordingly the loss of assessee was reduced. In appeal Ld. CIT(A) had deleted the three additions, therefore, the revenue is in appeal raising following grounds :-

“1. The Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 70,07,775/- made by the AO being prior period expenses.

2. The Ld. CIT(A) has erred in law on facts in deleting addition of Rs. 3,91,000/- made by the AO on account of disallowance of staff welfare expenses.

3. The Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 2,03,14,678/- made by the AO being provision for maintenance expenses, obsolescence of spares and redelivery.

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

4. Heard and perused the record & the ground wise findings is as below :

GROUND NO. 1

5. In regard to prior period expenditure it was submitted by Ld. DR that Ld. CIT(A) has wrongly applied the principles and Ld. AO had considered the fact that the expenditures are allowable on accrual basis. In regard to the same it can be appreciated that Ld. AO had failed to take into consideration the fact that the assessee had received prior period income in the form of reimbursement and the discount allowed by the vendors or rectification entries passed in the accounts to the extent of Rs. 70,07,775/- against Rs. 93,95,600/- prior period expenses which had crystallized during the year and the net of the debit of Rs. 23,87,858/- have been voluntary added by the assessee to the computation of income. Therefore, Ld. CIT(A) on facts and law following order of co-ordinate bench in **DCIT-6, Kanpur vs. UP State Handloom Corporation Ltd. ITA No. 190 and 191/LKW/2014** wherein it was held that if any disallowance is required to be made in regard to it, same can only be made with respect to net prior period expenses debited to the profit and loss account of the current year. Reliance in this regard can also be placed on the judgment of Hon'ble Bombay High Court in **ITA No. 737 of 2017 title PCIT-7 vs. M/s. Mazagaon Dock Ltd.** decided on 20.08.2019 wherein Hon'ble High Court sustained the findings of Tribunal for netting of prior period income against prior period expenses. No interference is required. The ground is decided against the Revenue.

GROUND NO. 2

6. In regard to ground no. 2- concerning the deletion of the disallowance of staff welfare expenses of Rs. 3,91,000/- it can be observed that based on the opinion reorted in 3CD report, the disallowance was made as the expense was

not actually incurred. The reserve is meant for meeting the company's contractual obligation with the pilots when the pilots are grounded which results into the loss of license compensation. Ld. AO has observed the same as not welfare expenditure. During the year under consideration, Ld. CIT(A) seems to have been carried with the fact that as expenditure was allowed in previous years, same should be allowed on principal of consistency but as every assessment is independent and if no evidence is on record to show that out of this reserved created to meet an exigency, at any point of time in the past or in the present year an expenditure has been incurred towards payment of compensation to the pilot, then the on principal of consistency alone allowing it is not justified. Thus, Bench is inclined to allow this **ground of appeal in favour of Revenue.**

GROUND NO. 3

7. In regard to this ground towards deletion of the addition made by Ld. AO being provisions for maintenance expenses etc., the matter of fact is that in assessee's own case for A.Y. 2006-07 vide ITA no. 6554/Del/2015 order dated 07.12.2017 the issue has been decided in favour of the assessee by following co-ordinate Bench judgment in **ACIT vs. M/s. ACIT-5(2), Mumbai vs. Jet Airways (I) Ltd. ITA No. 4402/Del/Mum.2008 dated 6.10.2010** which is also being relied by the Ld. CIT(A). Ld. DR could not cite any distinguishing fact or question of law involved, thus, this ground is **decided against the revenue.**

8. Consequently, the appeal of revenue is partly allowed.

Order pronounced in the open court on 2nd March, 2023.

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

Date:-02.03.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI