

**IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
MS PADMAVATHY S, AM**

I.T.A. No. 2200/Mum/2022
(Assessment Year: 2014-15)

I.T.A. No. 2201/Mum/2022
(Assessment Year: 2012-13)

I.T.A. No. 2202/Mum/2022
(Assessment Year: 2013-14)

I.T.A. No. 2203/Mum/2022
(Assessment Year: 2015-16)

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|---|-----|--|
| M/s Jet Airways (India) Ltd. Authorized Representative of Monitoring Committee of Jet Airways (India) Ltd., Global one, 3 rd Floor, 252, LBS Marg, Kurla West, Mumbai-400070. PAN : AAACJ0920H | Vs. | Dy. CIT, CC-5(2), Room No. 1908, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021. |
| Appellant) | : | Respondent) |

Appellant/Assessee by : Shri Anuj Kisnadwala, AR
Revenue/Respondent by : Shri Vachashpati Tripathi, CIT-DR.

Date of Hearing : 14.12.2023
Date of Pronouncement : 14.12.2023

ORDER**Per Padmavathy S, AM:**

These appeals are against the final orders of assessment all dated 04.07.2022 passed by the Dy. Commissioner of Income Tax, CC-5(2), Mumbai under section 144 r.w.s. 147, 92CA and 144C(13) of the Income tax Act, 1961 (for short 'the Act') for the AYs 2012-13, 2013-14, 2014-15 & 2015-16. The issues contended in all these appeals are identical. Therefore, these appeals were heard together and disposed of through this common order.

2. The assessee is a Public Limited company engaged in the business as schedule Airline carrying out transportation of passengers and cargoes and was incorporated on 01.04.1992. The details of the return filed by the assessee and the assessment under section 143(3) for the years under consideration are tabulated below:

| Particulars | AY 2012-13 – Rs. | AY 2013-14 – Rs. | AY 2014-15 – Rs. | AY 2015-16 – Rs. |
|---|-------------------------|-------------------------|-------------------------|-------------------------|
| Original return filed on | 29.09.2012 | 30.11.2013 | 30.11.2014 | 30.11.2015 |
| Income declared under normal provisions of the Act | Nil | Nil | Nil | Nil |
| Income declared under 115JB of the Act – Loss | (-) 12,07,59,96,829 | (-) 396,95,41,910 | (-) 2752, 89,86,725 | (-) 461,15,06,787 |
| Assessment u/s 143(3) completed on | 30.03.2015 | 31.03.2016 | 29.12.2016 | 30.12.2017 |
| Income assessed under section 143(3)- normal provisions | (-) 14,70,85,26,945 | Nil | (-) 2559,74,37,988 | Nil |
| Income assessed under section 143(3) - 115JB of the Act | (-) 11,13,45,14,895 | (-) 3,18,76,08,164 | (-) 2488,70,61,395 | (-) 378,83,07,422 |

3. A survey under section 133A of the Act was conducted in the case of the assessee on 19.09.2018 by Investigation Wing, Mumbai. Based on the survey report the Assessing Officer (AO) reopened the assessment by issue of notice under section 148 of the Act. In response the assessee filed the return of income declaring the same income as per the original return of income filed. The AO issued and served the statutory notices under section 143(2) of the Act. In response to notice issued under section 142(1) calling for various details, the assessee did not file any response except to the notice dated 13.02.2021. The assessee vide letter dated 18.02.2021 which was received from Mr. Ashish Chhawchharia , resolution professional for Jet Airways India Ltd. stating that the assessee-company is undergoing corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code as directed by Hon'ble National Company Law Tribunal (NCLT) vide order dated 20.06.2019 and therefore, it was pleaded that the assessment order be kept in abeyance. The AO subsequently issued one more notice dated 04.03.2021 calling for details, documents, explanations. The assessee in response did not file any details but vide letter dated 06.03.2021 reiterated the earlier submissions. The AO proceeded with the assessment proceedings after seeking legal opinion from Sr. Standing Council of the Department Shri Akhileshwar Sharma. Since the assessee had International transactions a reference was made to the Transfer Pricing Officer (TPO) in order to compute the Arm's Length price of the International transaction, the assessee had with its Associated Enterprises (AE). The details of the TP Adjustment and the assessed income after making various additions/disallowances are tabulated below:

| Particulars | AY 2012-13 – Rs. | AY 2013-14 – Rs. | AY 2014-15 – Rs. | AY 2015-16 – Rs. |
|--|------------------|-------------------|--------------------|-------------------|
| TP Adjustment | 145,40,92,131 | 84,92,12,673 | 180,25,04,721 | 442,32,25,640 |
| Assessed Income (Including TP Adjustment) under normal provisions of the Act | 1046,87,21,310 | 2310,30,82,673 | 930,74,79,733 | 2995,16,89,640 |
| Assessed Book profit under section 115JB-Loss | 11,13,45,14,895 | (-) 318,76,08,164 | (-) 2488,70,61,395 | (-) 378,83,07,422 |

4. Aggrieved, the assessee filed objections before the DRP who confirmed the TP Adjustment and the other additions made by the AO. The assessee is in appeal before the Tribunal against the final orders of the assessment passed by the AO pursuant to the directions of the DRP.

5. The Id. AR submitted that the assessee is going through the Insolvency process before the Hon'ble NCLT and therefore, could not file any details, documentary evidences with regard to the various additions made by the AO. The Id. AR therefore, submitted that one more opportunity be given to the assessee to file the required details before the AO. The Id. AR also submitted that a similar issue has been considered by the Co-ordinate Bench in assessee's own case for AY 2017-18 and 2016-17 (ITA Nos. 2379 and 2380/Mum/2022 dated 24.02.2023) wherein the Tribunal has remitted the issue back to the AO giving one last opportunity to present its case. The Id. AR prayed for a similar direction for the years under consideration also.

6. The Id. DR on the other hand, vehemently opposed to remanding the issue back to the AO stating that the assessee was given ample opportunity before the lower authorities to present the case and that the assessee failed to

comply/respond to the various notices issued. Therefore, the ld. DR prayed that the final order of the AO be upheld.

7. We have heard the parties and perused the material on record. We noticed that the Co-ordinate Bench in assessee's own case on the similar issue has held that

“10. Having heard the rival submissions and perused the materials on record, it is observed that the assessee company is going through the resolution process before the Hon’ble NCLT for which the Resolution Personnel (RP) was appointed in order to manage the FS of the company. The ld. AR submitted that a resolution plan dated 21.09.20220 was submitted by the ‘Jalan Fritsch’ consortium which was amended on several occasion and was passed by a majority votes and was approved by Hon’ble NCLT. It is observed that the assessee has failed to make compliance with the notices issued by the lower authorities inspite of several opportunities.

11. Considering the nature of the addition, we are of the considered view that the assessee may be given one last opportunity to present its case before the A.O. It is also evident that the considerable amount of time and revenue has been spent by Exchequer in carrying out the assessment proceedings followed the appellate proceedings. The assessee is directed to pay a cost of Rs.25,000/- each in both these appeals for being delinquent before the lower authorities and the same is to be paid towards Prime Minister’s Relief Fund within 30 days from the date of this order. The assessee is also directed to appeal and fully co-operate with the A.O. to present its case without any further delay.”

8. The facts and circumstances for the years under consideration i.e. AY 2012-13 to 2015-16 are identical and therefore, respectfully following the above decision of the Co-ordinate Bench, we remit the issue back to the AO for a *denovo* consideration of the various issues. Further, we also levy a cost of Rs. 25,000/- in each of the appeals since considerable time and efforts have been spent by the Exchequer and for the reason that the assessee being delinquent before the lower authorities. The assessee is directed to pay the said amount to Prime Minister

Relief Fund within 30 days from the date of this order. The assessee is also directed to appear before the AO without seeking any adjournments, file the necessary details as may be called for and co-operate with the assessment proceedings. It is ordered accordingly.

9. In the result, the appeals for AY 2012-13 to AY 2015-16 are allowed for statistical purposes.

Order pronounced in the open court on 14-12-2023.

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(MS. PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai