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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.1350/Del./2025, A.Y. 2022-23

Vertical Aviation No. 1 Ltd., Dolmen House, 3rd Floor, 4 Earlsfort Terrace, Dublin 2, Ireland DO2E024 PAN: AAFCV8726N	Vs.	Assistant Commissioner of Income Tax, Circle Int. Tax. - 3(1)(1), Civic Centre, Minto Road, New Delhi-110002
(Appellant)		**(Respondent)**

ITA No.1351/Del./2025, A.Y. 2022-23

The Milestone Aviation Asset Holding Group No. 25 Ltd., Dolmen House, 3rd Floor, 4 Earlsfort Terrace, Dublin 2, Ireland D02E024 PAN: AAHCT8009N	Vs.	Assistant Commissioner of Income Tax, Circle Int. Tax. - 3(1)(1), Civic Centre, Minto Road, New Delhi-10002
(Appellant)		**(Respondent)**

Both Appellant by	Sh. Sachit Jolly, Sr. Advocate Ms. Rashi Khanna, Advocate Ms. Viyushti Rawat, Advocate (VC) Sh. Devansh Jain, Advocate Ms. Disha Jham, Advocate Sh. Soham Dua, Advocate, Sh. Hardeep Singh, Advocate & Sh. A. S. Bajpai, Advocate
Both Respondent by	Shri Indruj S. Rai, Spl. Counsel, Sh. Sanjeev Menon, Jr. SC, Sh. Rahul Singh, Jr. SC, Sh. Gaurav Kumar, Adv. Ms. Rini Handa, JCIT (Intl. Tax)

Date of Hearing	12/09/2025
Date of Pronouncement	31/10/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

These appeals by different assesses are taken up together for adjudication as the facts germane to the issues raised in these appeals are common and identical.

2. Both appeals of the assessee for Assessment Year ('AY') 2022-23 are filed against separate order dated 30.01.2025 passed under section 143(3)/144C(13) of the of the Income Tax Act, 1961 ('Act') by the Assistant Commissioner of Income Tax, Circle International Tax-3(1)(1), Delhi ['Assessing Officer'/'AO'].

3. The common core issues emerged in these appeals filed by different assessees are as under:

(i) Validity of assessment order on the ground of limitation w.r.t. section 153 of the Act;

(ii) Lease entered into by the appellant assessees as Lessors with the Lessees for leasing of aircrafts (helicopters) - Whether Operating or Financial Lease ?;

(iii) Whether the appellant assessees are eligible for benefit of Article 8 of India-Ireland DTAA ?;

(iv) Taxability of lease rent/receipts as royalty under section 9(1)(vii) of the Act and also interest as per India-Ireland DTAA;

(v) Interest income taxable @ 5% under section 194LC of the Act;

4. Facts in these two appeals are similar. The assessee companies were incorporated in Ireland in the year 2012 and is a tax resident of Ireland. The assessee company have leased helicopters. The case of the assessee is that the agreement between the assessee as lessor and the lessee is that of an operating lease; hence, lease rentals received by the assessee are not taxable in India as they are covered under Article 8 of India-Ireland DTAA. Where as the Ld. AO held the said lease as finance lease and further held that the interest accruing on financing of Aircrafts and paid as part of lease rentals by the Indian lessee to the assessee (as lessor) were taxable in India under Article 11 of India-Ireland DTAA. Dissatisfied with final assessment orders, these appeals are here.

5. Sh. Sachit Jolly, Sr. Advocate representing both assessees at the outset made a statement at Bar that the assessees had inter-alia assailed validity of assessment order on the ground of limitation w.r.t. section 153 of the Act; however, the said ground was not being pressed. Therefore, keeping in view the statement made by the Ld. Senior Counsel, the ground of appeal challenging validity of assessment order on limitation in these appeals are dismissed as not pressed.

6. The Ld. Senior Counsel drew our attention to the factual mistakes in the impugned orders. He submitted that these assessees had leased out helicopters and not airbus/aeroplanes. Further, he submitted that the

helicopters were not leased out to Inter Globe Aviation Ltd. (Indigo) an Indian company for leasing of aircraft AIRBUS. It was further submitted that the final assessment orders were passed along with other cases who had leased aircrafts to Inter Globe Aviation Ltd. (Indigo) and facts mentioned in those cases had been reiterated here though the facts of these cases were different. The Ld. Senior Counsel submitted that this clearly showed non-application of mind at the part of the Ld. AO and the Ld. Dispute Resolution Panel ('DRP') as both Authorities had mentioned incorrect facts in their orders. The Ld. Senior Counsel argued that the Ld. Special Counsel could not improve the cases of Authorities below at this stage of proceedings. Reliance was placed on Para No. 19.6 of the Special Bench decision of the Tribunal in the case of Mahindra & Mahindra Ltd. (ITA No. 2606, 2607, 2613 & 2614/Mum/2000), which was also affirmed by the Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd. [[2014] 48 taxmann.com 150 (Bombay)].

7. The factual mistakes pointed out by the Ld. Sr. Counsel were not controverted by the Ld. Special Counsel.

Operating Lease vs. Financial Lease:

8. On merit, Shri Sachit Jolly, Senior Advocate representing the appellant assessees, submitted that the issue whether the lease agreement entered into between the lessees of the helicopters and the lessors was in the nature of Operating Lease or Financial Lease had already been decided

by the Coordinate Bench of the Tribunal in the case of Celestial Aviation Trading 15 Ltd. [176 taxmann.com 902] (Delhi Trib.). The undisputed fact admitted by both parties were that the lessors were incorporated in Ireland and were holding valid TRC of the Ireland. Referring to the aforesaid decision the Ld. Sr. Counsel submitted that the Coordinate Bench after examining the Terms and Conditions of Aircraft Specific Lease Agreement, Aircraft Lease Common Term Agreement, the RBI Circular No. 24 dated 01.02.2022 and the decision of Special Bench of the Tribunal in the case of InterGlobe Aviation Ltd. (IndiGo) vs. ACIT, 131 taxmann.com 98 held that the lease agreement is in the nature of operating lease and not financial lease. The lease agreements of the present cases were quite similar to those of Indigo. The Ld. Sr. Counsel submitted that the key feature of a Financial Lease was the transfer of ownership of leased asset to the lessee at the end of the lease period. In the present cases, there were no such condition in the lease agreements. The helicopters at the end of lease period is returned to the lessor who was thereafter at liberty to re-lease the aircraft either to the same lessee or to any other entity. The Ld. Sr. Counsel further asserted that the DRP had erred in coming to the conclusion that the aircraft is transferred back to the assessee only after exhausting economic life of the asset. The DRP in an arbitrary manner and without any basis had determined economic life of the Aircraft as 8 years. The said findings of the DRP were contrary to the facts and documents available on the records. As

per DGCA Circular of 1993, the economic life of aircraft is 20 years or 60,000 landing/pressurization cycle.

9. On the other hand, Shri Indruj Singh Rai, Special Counsel for the Revenue relied on the DRP directions and the impugned assessment orders. The Ld. Special Counsel had not been able to distinguish either facts or findings of the Coordinate Bench in the case of Celestial Aviation Trading 15 Ltd. (supra).

10. We have heard both parties and have perused the material available on the record. We find merit in arguments/contentions/submissions of the Ld. Sr. Counsel. We have gone through the order of the Coordinate Bench of the Tribunal in the case of Celestial Aviation Trading 15 Ltd. (supra). We find that the issue, whether the lease agreement between the Lessee and the Lessor is financial lease or operating lease has been examined by the Coordinate Bench of the Tribunal in the case of Celestial Aviation Trading 15 Ltd. (supra). We are of the considered view that this issue is squarely covered by the decision of this bench in the case of Kosi Aviation Leasing Ltd. and others in ITA No. 994/DEL/2025 (order dated 30.09.2025). We are therefore, following the reasoning given by this bench in the case of Kosi Aviation Leasing Ltd. and others (supra), hold that the said lease agreement to lease helicopters is in the nature of operating lease and not financial lease. This issue therefore, is decided in favour of the assessees and against the Revenue. The Ld. AO is directed to give effect of the same.

Application of Article-8 of India-Ireland DTAA:

11. Shri Sachit Jolly submitted that this issue was squarely covered by the decision of the coordinate bench in the cases of Sky-High Appeal XLIII Leasing Company Ltd. 177 taxmann.com 579 (Mum Trib.) and Sunflower Aircraft Leasing Limited in ITA no 1107/Mum/2025. The Tribunal in the case of Sky-High Appeal XLIII Leasing Company Ltd. (supra) had already considered the issue of applicability of Article 8 and had decided the issue in favour of assessee. He submitted that Article 8, apart from profits from operation of ships and aircrafts refers to rental of ships or aircrafts in international traffic. Profits from 'rentals' was peculiar to India-Ireland treaty. This issue had been elaborately discussed in the case of Sunflower Aircraft Leasing Limited (supra). The Ld. Counsel drew our attention to para 38 to 44 of the Tribunal's order in the case of Sky-High Appeal XLIII Leasing Company Ltd. (supra) where decision in the case of Sunflower Aircraft Leasing Limited (supra) has been quoted and followed.

12. On the other hand, Shri Indruj Singh Rai, Ld. Special Counsel agreed that the issue had been considered by Mumbai Bench of the Tribunal; however, he sought liberty to make three folds submissions with respect to applicability of Article-8 on dry lease receipts for use of aircraft (including helicopter). He asserted that Article-8(1) of India-Ireland DTAA was not applicable to dry leases. In fact, the provisions were not workable in respect of dry leases. Article-8(1) allocated taxing rights with respect to profits

derived from the operation or rental of ships or aircraft in international traffic. 'International Traffic' is defined in Article 3(1)(f) of the Tax Treaty. The definition of "international traffic," allocated taxing rights between the resident state and the source state, with the source state having exclusive rights to tax where operations/transport were carried out solely within the source state. Such exclusion provided in the definition of "international traffic" made the definition an integral and inseparable part of Article-8(1). It was submitted that the definition of "international traffic" was workable only in the case of wet leases, i.e., where Irish entity was operating the aircraft itself. In such cases, the income of the Irish entity would be exempt under Article-8(1), unless the income arose solely from operations carried out within India.

13. It was further contended by the Ld. Special Counsel that the applicability of definition of "international traffic" to the facts of the given cases, it led to an absurdity, as the exception for domestic operations would apply only to operations carried out solely within Ireland. Referring to OECD commentary on Article-8, he contended that OECD never envisaged dry lease. He further submitted that, since the definition of "international traffic" was not workable for a dry lease, the corresponding exemption Article-8(1) could not be allowed without adequate definition. He further submitted that the treaty was to be interpreted strictly on the basis of its language. The second limb of his argument, without prejudice to his

primary submission above, was that Article 8(1) sought to exempt profit from operations that were to be computed with reference to each flight and not in relation to each helicopter. Thus, what had to be examined for the purpose of determining 'international traffic' was each journey, and not the helicopter/aircraft. Accordingly, profits from operations of flights solely within India would not fall within the meaning of "international traffic" and hence, would not be exempt under Article 8(1).

14. The Ld. Special Counsel further submitted that the profits were to be treated qua helicopter/aircraft, what to be seen was whether the helicopter had ever flown outside India. He submitted that the Ld. AO/Ld. DRP had sought information/data from the assessees with respect to profits derived from international usage of helicopters, but the same was never provided by the assessee during assessment proceedings. The onus was on the assessee to show usage of helicopters outside India i.e. in international traffic, the assesses failed to discharge said onus. He submitted that even if Article-8(1) was to be interpreted in accordance with the findings of the Tribunal in the case of Sky-High Appeal XLIII Leasing Company Ltd. (supra).

15. In the rejoinder, Shri Sachit Jolly reiterated that the issue had already been decided by the Tribunal Mumbai Bench. He pointed that the Ld. Special Counsel representing the Revenue had referred to the definition of "international traffic" as per OECD. The definition of international traffic as per OECD and India-Ireland DTAA were at variance. Therefore, to say

the definition of “international traffic” was not workable in the facts of instant case was an incorrect statement. Dehors, the fact of operation of the helicopter by the lessee in international traffic, such usage had nothing to do with the rentals. The rentals had been received by the assessee for leasing the helicopter. Mr. Jolly, the Ld. Sr. Counsel further submitted that in the case of Sunflower Aircraft Leasing Ltd. (supra) in para 38 and 39 of the order had examined the distinction in the language of Article-8 in India-Ireland DTAA vis-à-vis the OECD Convention and the definition of “international traffic" in India Ireland DTAA. He submitted that the definition of "international traffic", if read in the context of Article-8, did not lead to any absurd result but led to a clear understanding that if aircraft was not used solely within India/Ireland, it constituted “international traffic”. The Ld. AO had not brought the fact that the helicopter was solely used in India.

16. Mr. Jolly, the Ld. Sr. Counsel submitted that the Revenue could not build a case at this stage. The definition of Article-8 under the India-Ireland DTAA differed materially from the OECD Convention. Therefore, reliance placed by the Revenue on the OECD commentary dealing with taxation on the basis of voyages undertaken, was wholly erroneous. In fact, this interpretation made the use of word 'rental' otiose since in a case of rental, the helicopter would never be operated by the lessor and the exemption under Article-8 of the India-Ireland DTAA for rental of aircraft would be left

meaningless. There was not even a whisper or allegation in the Final Assessment Order that there was a prohibition on lessor to use the helicopter for international operations or the helicopter was not used for international traffic. In the absence of any substantive evidence to the effect that the aircraft were never used for "international traffic", this argument had no force in itself.

17. We have heard both parties and have perused the material available on the record. We find merit in arguments/contentions/submissions of the Ld. Sr. Counsel. We have gone through the order of the Coordinate Bench of the Tribunal in the cases cited above. We find that this issue, the applicability of Article 8 of India-Ireland DTAA has been examined by this bench in the case of Kosi Aviation Leasing Ltd. and others in ITA No. 994/DEL/2025 (order dated 30.09.2025). We are of the considered view that this issue is squarely covered by the decision of this bench in the case of Kosi Aviation Leasing Ltd. and others (supra). We are therefore, following the reasoning given by this bench in the case of Kosi Aviation Leasing Ltd. and others (supra), hold that the lease rental received by the appellant assessees are covered by Article-8 of India-Ireland Treaty. Hence, the assessee would get the benefit of Article-8. In the result, this issue is decided in favour of the appellant assessees and against the Revenue. The Ld. AO is directed to give effect of the same.

18. In respect of other issues mentioned above in para-3, the Ld. Sr. Counsel prayed that the assessees be given liberty to make submissions on the above grounds, if need so would arise at later stage. Since, no submissions had been made on the above grounds; therefore, these issues are left open to be dealt with at the appropriate stage.

19. The appellants have assailed charging of interest under section 234B of the Act. Charging of interest under is mandatory and consequential; hence, the said ground of appeal is dismissed.

20. The appellants have assailed initiation of penalty proceedings under section 270A of the Act. This ground being premature is dismissed.

21. In the result, both appeals of the appellant assessees stand allowed as above.

Order pronounced in open Court on 31st October, 2025

Sd/-	Sd/-
(VIKAS AWASTHY)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 31/10/2025
Binita, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. PCIT/CIT
4. DRP

ASSISTANT REGISTRAR
ITAT, NEW DELHI