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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NO. 13/2013**

Date of decision: 8th August, 2013

COMMISSIONER OF INCOME TAX-I

..... Appellant

Through Mr. Sanjeev Rajpal, Sr. Standing
Counsel.

versus

AIRLINE ALLIED SERVICES LTD.

..... Respondent

Through Mr. P.K. Sahu & Mr. Prashant
Shukla, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

This appeal by the Revenue pertains to Assessment Year 2003-04 and arises out of order passed by the Income Tax Appellate Tribunal dated 15th June, 2012.

2. Revenue in this appeal has only raised two issues. First issue relates to deletion of addition of Rs.27,71,00,000/- made by the Assessing Officer, by Commissioner of Income Tax (Appeals), which have been affirmed by the tribunal. The Assessing Officer had noticed that grant of Rs.35 crores was sanctioned by the Government in the said year to improve air connectivity in North-Eastern Region. The respondent-assessee had taken on lease four ATR-42-320 aircrafts for

five years from Ms/ Aviande Transport Regional (ATR).

3. The respondent-assessee had authorised and had spread this grant over a period of five years as the lease period of the aircrafts was sixty months. The Assessing Officer disagreed and held that once the respondent-assessee had received the grant of Rs.35 crores from the Ministry of Finance and Company Affairs, the same could not have been spread over five years, i.e., the lease period, and the entire amount should be brought to tax in one year, i.e., year of receipt itself. The assessee was following mercantile system of accounting and the grant had accrued to the respondent-assessee in the period relevant to the present assessment year. Thus, addition of Rs.27.71 crores was made.

4. CIT(Appeals) and the tribunal have observed that the Assessing Officer had committed a mistake and his reasoning was erroneous. The grant was in terms of the Memorandum of Understanding and as per the terms of the grant the respondent-assessee was to provide 4177 seats per week. This payment of Rs.35 crores was made for operational expenses of four leased aircrafts for 60 months. It was held that the respondent had obtained concessions under the scheme and the progress of the scheme had to be intimated to North-Eastern Council. As the respondent was utilising the said grant over a period of five years, they had followed AS-12 accounting standards. CIT(Appeals) and the tribunal have held that the said standard recognises that while

computing profit and gains, the account should be prepared on systematic and rational basis so as to match the receipt or the grant, with the related cost. AS-12 was in accordance with Section 145 of the Income Tax Act, 1961 and Section 211 of the Companies Act, 1956. CIT (Appeals) and the tribunal have referred to the aforesaid admitted factual matrix and the applicable and relied upon accounting standard, which were prescribed by the Institute of Chartered Accountants. It was held that the accounts of the respondent should give true and fair view of the profit and loss account. Reference has been made to judgments of the Supreme Court in *CIT versus Woodward Governor India Private Limited*, (2009) 312 ITR 254 (SC), *CIT versus Bilahari Investments (P) Limited*, (2008) 299 ITR 1 (SC) and *J.K. Industries Limited & Another versus Union of India & Others*, (2007) 312 CTR (SC) 301.

5. The findings recorded by the two appellate authorities is that the standard followed by the respondent was as per accounting standard AS-12 prescribed by the Institute of Chartered Accountants. The said method of accounting cannot be faulted or ignored. It is further recorded that there was no dispute that the grant given to the respondent was based upon operations from which net profit/income had to be arrived at after deducting the expenditure. The grant had to be utilised over five years. They accordingly

accepted that amount of Rs.7.29 crores declared by the respondent, out of grant of Rs.35 crores should be treated as income of the year in question. Before us, the counsel for the Revenue has not been able to point out and state, how and why the reasoning can be faulted as the assessee had followed AS-12. Revenue has not disputed before us that the accounting standard, as prescribed by the institute, has been followed. On the first question, therefore, no substantial question of law arises.

6. The second question relates to addition of Rs.534.79 lacs, which was made by the Assessing Officer but again deleted by the first appellate authority and upheld by the tribunal in the impugned order. The Assessing Officer has recorded that in the notes of the Auditor, they had qualified the accounts stating that details of inventories of Rs.534.79 lacs could not be ascertained. The assessee in the reply had stated that the basic records were maintained by the Indian Airlines as per procedure and the reconciliation of the same was done at much later date. On the question of reconciliation, we may state that the tribunal has sustained addition of Rs.34.31 lacs. On the question of inventories of Rs.534.79 lacs, the CIT (Appeals) has recorded that this amount was duly reflected in the Annual Report. He has made reference to Schedule IV of the Annual Report where under the head 'inventories' full details had been given. It is pointed out that the

inventories were maintained by Indian Airlines and the figures given by them have been taken in the books. The Auditor had hedged his report and had stated that they could not ascertain inventories of Rs.534.79 lacs in view of the said factual position, i.e., they had taken the figures given by Indian Airlines and had not examined the accounts/books of Indian Airlines.

7. During the course of the first appellate proceedings, in view of the response/contention of the appellant, a remand report from the Assessing Officer was called for. The Assessing Officer did not submit the remand report to contest the contention of the respondent-assessee. CIT (Appeals) accordingly recorded that amount of Rs.534.79 lacs was not in dispute. The respondent-assessee succeeded. Before tribunal also, the Revenue could not contest the said position as has been recorded in paragraph 10 of the impugned order passed by the tribunal. Therefore, even on the second issue, we do not find any substantial question of law arises for consideration.

The appeal is dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 08, 2013
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