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R-137

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 223/2003

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Mr. P. Roy Choudhary with Mr.
Ishant Goswami, Advocates.

versus

M/S. AIR FRANCE

..... Respondent

Through: Mr. Manu K. Giri, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

16.11.2015

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1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') by the Revenue against the impugned order dated 9th September 2002 passed by the Income Tax Appellate Tribunal ('ITAT') in TDS No. 2/Del/95 for the financial year 1992-93.

2. By an order dated 12th October 2004 the Court admitted the appeal and framed the following question for consideration:

"Whether the Income-Tax Appellate Tribunal was right in law in holding that free Inter Airline tickets provided to the employees of the Assessee airline by other airlines in view of arrangements between the airlines is not a perquisite and consequently the Assessee is not liable to deduct the tax at source?"

3. The brief facts are that during the course of the assessment proceedings, the Assessing Officer ('AO') observed that the employees of the Assessee have been given free/concessional tickets. The AO treated the free/concessional tickets as perquisite and valued it at Rs. 15,48,300. The corresponding short deduction of tax at source was computed as Rs. 6,93,638. It was pointed out by the Assessee that the tickets were in fact received by its employees from the other airlines and, therefore, could not be considered as a benefit derived by the employee from the Assessee. The AO did not agree and added the above sum of TDS to the Assessee's income.

4. Against the above order, the Assessee went in appeal before the CIT (A). The CIT (A) accepted the Assessee's submission and deleted the additions made by the AO. Aggrieved by the above order, the Revenue filed an appeal before the ITAT.

5. By the impugned order, the ITAT concurred with the finding of the CIT (A) and held that the benefit received by the employees from the Assessee on account of free air tickets could not be termed to be a perquisite.

6. The Revenue has been unable to explain how the free inter-airline tickets provided to the employees of the Assessee by some other airlines can be a perquisite provided by the Assessee. In the circumstances, the

Court finds that no error has been committed by the ITAT in deciding the issue in favour of the Assessee, thereby deleting the addition made by the AO.

7. Accordingly, the question framed is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

8. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

NOVEMBER 16, 2015

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