

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

I.T.A.No.513/2018 c/w I.T.A.No.514/2018,
I.T.A.No.515/2018, I.T.A.No.701/2018,
I.T.A.No.702/2018 & I.T.A.No.703/2018

IN I.T.A.No.513/2018:

BETWEEN :

M/s DELHI INTERNATIONAL AIRPORT LTD.,
(FORMERLY KNOWN AS DELHI
INTERNATIONAL AIRPORT PVT. LTD.)
HAVINAG ITS REGD. OFFICE AT
NEW UDAAN BHAVAN, OPP. TERMINAL-3,
INDIRA GANDHI INTERNATIONAL AIRPORT,
NEW DELHI-110037
COMMUNICATION ADDRESS:
NO.25/1, SKIP HOUSE,
MUSEUM ROAD, BANGALORE-560025.
REF BY ITS DIRECTOR,
SRI NARAYANA RAO KADA,
AGED ABOUT 63 YEARS

...APPELLANT

(BY SRI BALRAM R. RAO, ADV.)

AND :

1 . THE PRINCIPAL COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE,
C.R.BUILDING, QUEENS ROAD,
BANGALORE-560001

2 . THE DEPUTY COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-2(2),
C.R.BUILDING, QUEENS ROAD,
BANGALORE-560001 ...RESPONDENTS

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 19.04.2018 PASSED IN ITA NO.596/BANG/2017, FOR THE ASSESSMENT YEAR 2013-2014. PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 19.04.2018 BEARING IN ITA NO.596/BANG/2017 FOR ASSESSMENT YEAR 2013-2014 MARKED AS ANNEXURE-A.

IN I.T.A.No.514/2018:

BETWEEN :

M/s DELHI INTERNATIONAL AIRPORT LTD.,
(FORMERLY KNOWN AS DELHI
INTERNATIONAL AIRPORT PVT. LTD.)
HAVINAG ITS REGD. OFFICE AT
NEW UDAAN BHAVAN, OPP. TERMINAL-3,
INDIRA GANDHI INTERNATIONAL AIRPORT,
NEW DELHI-110037
COMMUNICATION ADDRESS:
NO.25/1, SKIP HOUSE,
MUSEUM ROAD, BANGALORE-560025.
REP BY ITS DIRECTOR,
SRI NARAYANA RAO KADA,
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BANGALORE-560001 ...RESPONDENTS

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 19.04.2018 PASSED IN ITA NO.622/BANG/2017, FOR THE ASSESSMENT YEAR 2012-2013. PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 19.04.2018 BEARING IN ITA NO.622/BANG/2017 FOR ASSESSMENT YEAR 2012-2013 MARKED AS ANNEXURE-A.

IN I.T.A.No.515/2018:

BETWEEN :

M/s DELHI INTERNATIONAL AIRPORT LTD.,
(FORMERLY KNOWN AS DELHI
INTERNATIONAL AIRPORT PVT. LTD.)
HAVINAG ITS REGD. OFFICE AT
NEW UDAAN BHAVAN, OPP. TERMINAL-3,
INDIRA GANDHI INTERNATIONAL AIRPORT,
NEW DELHI-110037
COMMUNICATION ADDRESS:
NO.25/1, SKIP HOUSE,
MUSEUM ROAD, BANGALORE-560025.
REP BY ITS DIRECTOR,
SRI NARAYANA RAO KADA,
AGED ABOUT 63 YEARS ...APPELLANT

(BY SRI BALRAM R. RAO, ADV.)

AND :

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BANGALORE-560001 ...RESPONDENTS

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 19.04.2018 PASSED IN ITA NO.636/BANG/2017, FOR THE ASSESSMENT YEAR 2011-2012 PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 19.04.2018 BEARING IN ITA NO.636/BANG/2017 FOR ASSESSMENT YEAR 2011-2012 MARKED AS ANNEXURE-A.

IN I.T.A.No.701/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, C.R.BUILDING,
QUEENS ROAD, BENGALURU-560001
- 2 . THE DEPUTY COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-2(2),
C.R.BUILDING, QUEENS ROAD,
BENGALURU-560001 ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

M/s DELHI INTERNATIONAL AIRPORT PVT. LTD.,
NO.25/1, SKIP HOUSE,
MUSEUM ROAD,
BENGALURU-560025.
PAN: AACCD 3570F. ...RESPONDENT

(BY SRI BALRAM R. RAO, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 19.04.2018 PASSED IN ITA NO.596/BANG/2017, FOR THE ASSESSMENT YEAR 2011-2012 PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 19.04.2018 BEARING IN ITA NO.596/BANG/2017 FOR ASSESSMENT YEAR 2011-2012 MARKED AS ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(2). BENGALURU.

IN I.T.A.No.702/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, C.R.BUILDING,
QUEENS ROAD, BENGALURU-560001
 - 2 . THE DEPUTY COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-2(2),
C.R.BUILDING, QUEENS ROAD,
BENGALURU-560001
- ...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

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M/s DELHI INTERNATIONAL AIRPORT PVT. LTD.,
NO.25/1, SKIP HOUSE,
MUSEUM ROAD,
BENGALURU-560025.
PAN: AACCD 3570F.

...RESPONDENT

(BY SRI BALRAM R. RAO, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER

DATED 19.04.2018 PASSED IN ITA NO.622/BANG/2017, FOR THE ASSESSMENT YEAR 2012-2013 PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 19.04.2018 BEARING IN ITA NO.622/BANG/2017 FOR ASSESSMENT YEAR 2012-2013 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(2), BENGALURU.

IN I.T.A.No.703/2018:

BETWEEN :

- 1 . THE PR. COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, C.R.BUILDING,
QUEENS ROAD, BENGALURU-560001
 - 2 . THE DEPUTY COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-2(2),
C.R.BUILDING, QUEENS ROAD,
BENGALURU-560001
- ...APPELLANTS
- (BY SRI K.V.ARAVIND, ADV.)

AND :

M/s DELHI INTERNATIONAL AIRPORT PVT. LTD.,
NO.25/1, SKIP HOUSE,
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(BY SRI BALRAM R. RAO, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 19.04.2018 PASSED IN ITA NO.636/BANG/2017, FOR THE ASSESSMENT YEAR 2013-2014 PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF

THE INCOME TAX APPELLATE TRIBUNAL DATED 19.04.2018 BEARING IN ITA NO.636/BANG/2017 FOR ASSESSMENT YEAR 2013-2014 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(2), BENGALURU.

THESE APPEALS COMING ON FOR HEARING, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The appeals in ITA Nos.513 to 515/2018 are filed by the assessee under Section 260A of the Income Tax Act, 1961 ('Act' for short) challenging the common order dated 19.04.2018 passed by the Income Tax Appellate Tribunal, Bangalore Bench "C", Bengaluru ('Tribunal' for short) in ITA NOs.596, 622 and 636/Bang/2017 relating to the Assessment Years 2013-2014, 2012-13 and 2011-12, respectively.

2. The appellant - assessee is a company registered under the Companies Act, 1956. The appellant is engaged in the business of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing the

airport and related infrastructure. The appellant has entered into an agreement titled “Operation Management and Development Agreement” (OMDA) with Airport Authority of India on 4.4.2006, under which exclusive rights and authority is said to have been given to the appellant with respect to operation, maintenance, development, construction, modernization etc., of the Indira Gandhi International Airport, New Delhi (IGIA for short) and to perform certain aeronautical and non-aeronautical services at the IGIA.

3. The appellant filed its return of income for the assessment year under consideration which was taken up for scrutiny assessment. The assessing officer passed assessment order under Section 143(3) r/w 153A of the Act for the assessment year under consideration disallowing the claim of the assessee under Section 40(a)(ia) of the Act being the amount of collection charges retained by the airlines on collection

of passenger service fees amongst other disallowance. Being aggrieved, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-11, Bengaluru, wherein the order of the assessing officer came to be confirmed. On further appeal before the Tribunal on the issue of disallowance of collection charges under Section 40(a)(ia) of the Act, the Tribunal restored the matter to the assessing officer to readjudicate the issue in the light of the proviso to Section 40(a)(iv) of the Act and if it is established that the recipient has paid the tax and filed the return thereon, the assessee should not be held in default. Being aggrieved, the assessee has preferred this appeal.

4. These appeals have been admitted to consider the following substantial common questions of law;

Common substantial questions of law in all the appeals;

“[i] Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in restoring the issue of addition on account of disallowance of collection charges retained by the airlines under Section 40(a)(ia) with respect to PSF(SC) when the said amount was not claimed by the appellant and when all the facts were already on record?”

[ii] Whether on the facts and in the circumstance of the case and in law the Tribunal was justified in confirming the order of Commission of Income Tax (Appeals) in not allowing the deduction for 1/30th of upfront fee and repairs and maintenance of Assessment Year 2007-08?”

Additional substantial question of law in ITA

No.513/2018;

(iii) Whether on the facts and in the circumstance of the case and in law the Tribunal was justified in confirming the order of Commissioner of Income Tax (Appeals) in not allowing depreciation under section 32 on repairs and maintenance for AY 2008-09, AY 2009-10 and AY 2010-11?”

5. Learned counsel appearing for the appellant – assessee submitted that the Tribunal erred in setting aside and restoring the issue of disallowance of collection charges under Section 40(a)(ia) of the Act pertaining to Passenger Service Fee (Security Component) which was held by the appellant in fiduciary capacity and no deduction was claimed by the assessee in the return of income on the security component. On the other hand, it was established that the appellant has paid the tax and filed the return in time as far as the Passenger Service Fees (Facility Component). As such, the assessee should not be held in default for the purpose of disallowing the claim under section 40(a)(ia) of the Act.

6. Learned counsel appearing for the Revenue, justifying the impugned order of the Tribunal submitted that, the Airlines Operators while paying Passenger Service Fees [PSF (SC & FC) were retaining the amount

of 2.5% of the invoice value on account of prompt payment by them to the assessee before due date which would part take the characteristic of commission, thereby attracting the provisions of Section 194H of the Act. The appellant – assessee was required to deduct TDS on the amount retained by the Airlines while making payment to the assessee, for not complying with the mandate of Section 194H, no claim made by the assessee under Section 40(a)(ia) of the Act is allowable.

7. Learned counsel appearing for both the parties have referred to host of judgments which are discussed infra.

8. We have bestowed our anxious consideration to the arguments advanced by the learned counsel appearing for the parties and perused the material on record.

9. Passenger Service Fee (PSF) chargeable at the Airport is inclusive of the cost of the security expenditure on the designated security agency (65%) of the PSF per embarking passenger (Security Component) (PSF-(SC)) and the facilitation component payable to the assessee company being 35% of the PSF per embarking passenger (Facilitation Component)(PSF-(FC)). The assessee is maintaining the PSF-(FC) account separately in accordance with the procedure prescribed in SOP issued by the Ministry of Civil Aviation (MoCA), dated 19.1.2009. In terms of the said SOP, clause 1.4 would stipulate that PSF is subject to applicable Service Tax and airlines have been authorized, presently, to deduct collection charges at 2.5% from PSF.

10. As per clause 2, nature of security component of PSF, is described as under;

“2. Nature of security component of PSF:

2.1. Aviation security is an activity reserved for the Government of India. Force

deployment at the airports, security requirements including the requirement of capital items and specifications thereof are laid down by the Government/Bureau of Civil Aviation Security (BCAS). As stated above, PSF is levied under Rule 88 of the Aircraft Rules, 1937 and covers security component as well as facilitation. While the fee is collected by the licensee of the airports, i.e., the airport operator, through the airlines, the security component thereof, which constitutes 65% of the total amount, can be used only in terms of directions issued by the Government/BCAS, from time to time. The amount collected by the airport operator, which is kept separately in an escrow account, is thus held in fiduciary capacity.

2.2. Since the amount is held by the airport operator in fiduciary for the Government, the accounts thereof would have to be maintained separately in accordance with the procedure laid down by the Government and have to be offered for audit by the Comptroller & Auditor General of India (CAG).”

11. The appellant has received Rs.2,01,27,480/- as PSF-(SC) and Rs.3,20,77,196/- as PSF-(FC) through Airline Operators, for which invoices were raised by the

assessee and Airlines Operators were paying the PSF- (FC) after retaining 2.5% of the invoices value as per clause 1.4 of the SPO.

12. The controversy boils down to the nature of deduction at the rate of 2.5% of the invoices value by the Airlines Operators.

13. Section 194H of the Act reads thus;

“194H. *Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent :*

x x x x x

Explanation.—For the purposes of this section,—

(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

x x x x

Section 40(a)(ia) of the Act during the relevant period reads thus;

"any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work)."

The second proviso to Section 40(a)(ia) of the Act reads thus;

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B

on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

14. Considering these provisions in the light of the judgment of the Hon'ble Delhi High Court in the case of ***CIT v. Ansal Landmark Township (P) Ltd. Reported in (2015) (61 taxmann.com 45) (Del)***, the Tribunal has set aside the order of the Commissioner of Income Tax (Appeals) and restored the matter on the file of the assessing officer to re-adjudicate the issue in the light of Section 40(a)(ia) of the Act, after providing an opportunity of hearing to the assessee and if it is established that the recipient has paid the tax and filed the return in time, the assessee should not be held in default for the purpose of making disallowance under Section 40(a)(ia) of the Act.

15. The arguments advanced by the learned counsel for the appellant that this order of the Tribunal suffers from infirmity, for the reason, that the net proceeds of PSF-(SC) was held by it in fiduciary capacity and collected the same on behalf of Government of India which is not exigible to levy of tax under Article 289(1) of the Constitution of India, as such, no tax liability could be fixed on the appellant – assessee since the tax to the extent of PSF-(FC) was discharged, cannot be countenanced for the reason that the collection of PSF charges withheld by the Airlines Operators to the extent of 2.5% amounts to commission as held by the Hon'ble Apex Court in the case of ***Director, Prasar Bharati v. Commissioner of Income Tax, Thiruvananthapuram, reported in (2018) 92 taxmann.com 11 (SC).***

16. The factual aspects of the said case are identical to the case on hand. The appellant therein

functioning under the Ministry of Information and Broadcasting, Government of India, was running the TV channel called "Doordarshan Kendra" was regularly broadcasting advertisements of several consumer companies. In that context, it had entered into an agreement with several advertising agencies. In terms of the agreement, advertising agency was required to make an application to the appellant therein to get the "accredited status". In that scenario, the appellant therein and Prasar Bharati - Doordarshan Kendra would get 15% by way of commission from the Agency. The argument advanced therein was that the relationship between Prasar Bharati - Doordarshan Kendra and the Accredited Agencies was not that of Principal and Agent, but was in the nature of Principal to Principal. Secondly, the amount withheld by the advertising agency is not commission or brokerage to attract the provisions of Section 194H of the Act. Adverting to the said arguments, the Hon'ble Apex

Court held that the said transaction in question was in the nature of commission which would attract Section 194H of the Act. The relevant paragraphs are extracted hereunder for ready reference;

“26. The aforementioned Section was inserted in the Act with effect from 01.06.2001 by replacing the earlier Section 194H. This Section deals with the payment of "commission or brokerage".

27. It provides that any person other than individual or HUF, responsible for paying any income by way of "commission" (not being insurance commission as specified in Section 194D) or "brokerage" to any person shall at the time of credit of such income to the account of payee or at the time of payment of such income in cash or by cheque or draft or any other mode will deduct income tax thereon at the rate of five percent. The first proviso specifies the limit. The second proviso makes the individual or HUF liable to deduct the income tax, if they exceed the limit specified therein. The third proviso exempts payment of commission or brokerage when made to BSNL and MTNL to their public call office franchisees.”

17. The explanation appended to Section 194H of the Act which defines the expression 'commission or brokerage', was declared to be an inclusive definition in view of the payment receivable, directly or indirectly by a person acting on behalf of another person for services rendered not being professional services or for any services in the course of buying or selling of goods or in relation to any transaction relating to assets, valuable article or thing not being securities, the said amount of 2.5% was in the nature of payment made by way of commission, the appellant was under a statutory obligation to deduct the income tax notwithstanding that there was no agreement between the appellant and the Airlines Operators.

18. The judgment relied upon by the learned counsel for the appellant in the case of **Commissioner of Income Tax, Mumbai v. Jet Airways (India) Ltd., reported in (2017) 88 taxmann.com 493(Bombay),**

deals with Passenger Service Fee handed over to Airport Operators, whether was rent falling within the scope of Section 194-I of the Act and the assessee was liable to deduct any amount of tax at source (TDS). In that context, the Hon'ble Court of Bombay held that as the substance of the PSF is not for use of land or building, but for providing security services and facilities to the embarking passengers, the decision of the Madras High Court in ***CIT v. Singapore Airlines Ltd., reported in (2012) 24 taxmann.com 200*** would cover the issue in favour of the assessee. This judgment would be of little assistance to the appellant in the present set of facts as the issue herein deals with the commission and not rent.

19. In the case of ***Additional Commissioner of Income Tax, Mumbai v. Mumbai International Airport (P) Ltd., reported in (2017) 88 taxmann.com 663 (Mumbai)***, on which heavy reliance was placed by

the learned counsel appearing for the appellant, the question that fell for consideration was with regard to PSF-(SC) which could not be characterized as income under Section 2(24) of the Act as the assessee merely acted in a fiduciary capacity for collection and disposal of the amount of PSF-(SC).

20. As aforesaid, the dispute herein is in a narrow compass with reference to 2.5% of PSF withheld by the Airlines Operators in terms of clause 1.4 of SOP. It is trite that no denial of allowance claimed under Section 40(a)(ia) of the Act could be made by the department, in the event, the Airlines Operators have offered the said 2.5% of commission, which is nothing but income to tax. In order to verify this factual aspect, the matter has been restored to the file of the assessing officer, which cannot be faulted with. Hence, the common substantial question of law No.1 is answered in favour of the Revenue and against the assessee.

21. Common substantial question of law No.2 and additional substantial question of law in ITA No.513/2018 are not pressed.

22. Resultantly, the appeals filed by the assessee stand disposed of.

23. The appeals in ITA Nos.701 to 703/2018 are filed by the Revenue under Section 260A of the Act challenging the common order dated 19.04.2018 passed by the Tribunal, in ITA NOs.596, 622 and 636/Bang/2017 relating to the Assessment Years 2013-2014, 2012-13 and 2011-12, respectively.

24. These appeals have been admitted to consider the following substantial questions of law;

Common substantial question of law in all the appeals filed by the Revenue;

“1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in law in remanding back the issue to assessing authority with a direction to

allow the relief as the assessee do not have exempt income and as such no disallowance can be made under section 14A read with rule 8D of the Act contrary to provisions of section 14A and Rule 8D and Circular No.5 of 2014 dated 11.02.2014 which has clarified that Rule 8D read with section 14A provides for disallowance of the expenditure even when the taxpayer in a particular year has not earned any exempt income?.

Common substantial question of law in
ITA.Nos.702/2018 and 701/2018;

“ Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in law in setting aside the issue pertaining to disallowance made by assessing authority under section 40(a)(ia) by relying on Delhi High Court decision in case of Ansal Landmark Township Pvt. Ltd which has been challenged by Revenue before Hon’ble Supreme Court in SLP No.1248 of 2016 and even when the assessing authority has rightly made disallowance under said section has conditions set out in said provisions are fully satisfied to make such disallowance?”

Additional substantial question of law in ITA
No.702/2018;

“Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in law in deleting addition of income of Rs.69,04,00,000/- by directing the assessing authority to allow it on cash basis which was made by assessing authority on accrual basis thereby recognizing mixed system of accounting for assessee-company which is not permissible as per the provisions of section 145 of the Act?.

25. Re: common substantial question of law
No.1:

The issue involved herein is squarely covered by the decision of the Coordinate Bench of this Court in the case of **Commissioner of Income Tax v. M/s Quest Global Engineering Services Pvt. Ltd., (ITA No.133/2015, D.D. 15.2.2021)**. Concurring with the same, we answer the said substantial question of law in favour of the assessee and against the Revenue.

26. Re: Additional substantial question of law in
ITA.No.702/2018; [substantial question of law No.2]

In the case of **Commissioner of Income Tax v. Excel Industries Ltd., reported in (2013) 38 taxmann.com 100 (SC)** it has been held that if the rate of tax remained the same for the assessment year under consideration as well as in the subsequent year, the dispute raised by the Revenue would entirely be academic or at best would have a minor tax effect. This judgment was rendered in the background that the Tribunal applying the three tests laid down by various decisions, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realization of the benefits by the assessee considered from a realistic and practical point of view, coupled with the consistent view taken in favour of the assessee and the questions raised for several years, held that there was no reason to take a different

view suddenly by the Revenue without there being any convincing reasons. This judgment relied upon by the learned counsel for the assessee would be of little assistance in the facts and circumstances of the case.

27. The assessee has recognized only the expenditure on mercantile method. The assessing officer has held that the assessee has to follow consistent method of accounting as per the accounting standards and the expenditure has to be brought to tax. As per the Accounting Standard of Accountancy, expenditure has to be matched with the income offered. The assessee has claimed the expenditure for offering services to M/s National Aviation Company of India Limited (NACIL) but failed to offer the corresponding income for the period from October 2011 to March 2012 amounting to Rs.69.04 crores and accordingly, the said amount has been brought to tax as income from business. However, the assessing officer has noticed

the contentions of the assessee that the said income has been offered to tax on receipt basis for the assessment year 2013-14, as such, it has been considered and observed that if this income is brought to tax for the assessment year 2012-13, the same has to be excluded for the assessment year 2013-14.

28. On appeal before the Commissioner of Income Tax (Appeals) and on further appeal before the Tribunal, the assessee has failed. The reasoning of the authorities as well as the Tribunal is in conformity with the settled Accounting Standard and principles of taxation in the method of accounting.

29. Though the learned counsel for the assessee has referred to the Account Standard (AS9) and contended that the effect of uncertainties of revenue recognition requires to be considered, when recognition of revenue is postponed due to the effect of uncertainties, it has to be considered as revenue of the

period in which it is properly recognized. This argument cannot be countenanced as no hybrid system of mercantile method and cash accounting method is permissible in one assessment year as per the settled principles of accounting system.

30. The Hon'ble Apex Court in the case of ***Commissioner of Income Tax v. A.Gajapathy Naidu, reported in (1964) 53 ITR 114 (SC)*** has explained the two principal methods of accounting for the income. The same is quoted hereunder for ready reference;

"Under this definition accepted by this Court, an income accrues or arises when the assessee acquires a right to receive the same. It is common place that there are two principal methods of accounting for the income, profits and gains of a business; one is the cash basis and the other, the mercantile basis. The latter system of accountancy "brings into credit what is due immediately it becomes legally due and before it is actually received; and it brings

into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed. The book profits are taken for the purpose of assessment of tax, though the credit amount is not realized or the debit amount is not actually disbursed. "

31. Thus, it is clear that the assessee being a company has adopted the mercantile system of accounting only for the expenses relating to M/s NACIL without offering the corresponding income to tax in one year, the hybrid method of accounting in one Assessment Year is not permissible. Hence, we answer this question i.e., substantial question of law No.2 in favour of the Revenue and against the assessee. However, we confirm the order of the assessing officer inasmuch as the tax offered on receipt basis for the assessment year 2013-14 would be excluded and the same shall be given effect to in the proceedings for the assessment year 2013-14.

32. Re: common substantial question of law in ITA.No.702/2018 and 701/2018.

In view of the decision taken by this Court in the appeals filed by the assessee as aforesaid, this question would render academic.

Resultantly, the appeals filed by the Revenue are disposed of as indicated above.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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