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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 3rd September, 2012.

\+ **ITA 487/2012, 488/2012, 489/2012 and 490/2012**

CIT ..... Appellant
Through: Ms.Rashmi Chopra, Advocate

versus

SRC AVIATION PVT LTD ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

S. RAVINDRA BHAT,J: (OPEN COURT)

CM No.14792/2012 in ITA No.487/2012
CM No.14794/2012 in ITA No.488/2012
CM No.14797/2012 in ITA No.490/2012

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

CM No.14793/2012 in ITA No.487/2012
CM No.14795/2012 in ITA No.488/2012
CM No.14796/2012 in ITA No.489/2012
CM No.14798/2012 in ITA No.490/2012

For the reasons stated in the application, the delay in filing the appeals is condoned.

The applications stand disposed of.

ITA Nos.487/2012, 488/2012, 489/2012 and 490/2012

1. The appellant claims to be aggrieved by an order dated 26.8.2011 in appeal Nos. 2215/Del/2010, 1557/Del/2010, 1558/Del/2010 and 3824/Del/2010. Three

appeals had been preferred by the SRC Aviation Private Limited and one appeal by CDIT.

2. The following questions are sought to be urged, i.e.,

> *1. Whether the deletion of disallowance under Section 14A was justified?*
>
> *2. Whether the depreciation deductible under the head " Plant & Machinery ", particularly the relevant entry "Aeroplane-Aeroengines" prescribing 40% depreciation was applicable and justifiably applied by the Tribunal and the Commissioner(Appeals) in the facts of this case?*
>
> *3. Whether in the facts of the present case the cash payment claimed as deductible as expenditure incurred, was correctly allowed by application of Rule 6DD(k) of Income Tax Rules?*

3. The assessee is engaged in the business of airchartering/air taxi services. The Commissioner of Income Tax, invoking his powers under Section 263 of Income Tax Act, 1961 (Act, for short) held that depreciation granted to the extent of 40% on account of its acquiring 'Beechcraft Super King Air B-200C' was wrongly granted and the correct depreciation ought to have been 20%. In respect of this and the other items such as the disallowance under Section 14A (expenditure claimed) as well as the amount under Section 40A(3), the assessee felt aggrieved and approached the Income Tax Appellate Tribunal ('Tribunal', for short).

4. So far as the first question, i.e., applicability of Section 14A is concerned, this Court is of the opinion that the law having been declared in ***Maxopp Investment Limited v. CIT***; *2012 (247)CTR 162 (Del),* the matter has to be remitted. The Tribunal's decision to that extent is upheld. The Assessing Officer shall take into consideration the direction in Maxopp (supra) while carrying out the directions of the Tribunal.

5. So far as the second question regarding the correct rate applicable for depreciation of Aircraft is concerned, the counsel for the revenue urged that till 1987-

88 the relevant entry read as follows:

> *"D(1) Aeroplanes – Aircraft, aerial photographic apparatus (NESA)* - *30%*
> *E(1) Aeroplanes-Aero engines (NESA)".* - *40%*
>
> *However, with effect from 1.4.1988, the relevant entry reads as follows:*
> *3(i):"Aeroplane-Aeroengines"* - *40%*

6. It was urged that the deletion of the expression "aircraft" is a significant change which entitled the assessee in this case to claim larger depreciation of 40% for the acquisition of its 'Beechcraft Super King Air B-200C'. Learned counsel also placed reliance on the Aircraft Act, 1934 and a decision of the Bombay High Court in ***CIT Vs. Kirlosker Oil Engines*** (1998) 230 ITR 88 (Bom).

7. The relevant discussion of the Tribunal on this score is as follows:

> *"11. We have carefully considered the rival submissions in the light of the material placed before us. Ld.CIT while invoking the power u/S 263 has mainly relied upon the earlier description of depreciation rate which was applicable for assessment years 1984-85 to 1987-88 in which the aeroplane as aircraft and aeroplane as aero-engines were treated differently for the purpose of computing depreciation. From such description of different rates of depreciation, it is the case of ld. CIT that aircraft owned by the assessee cannot be termed to be aeroplane which only is entitled for higher depreciation under the rates of depreciation applicable for the years under consideration as described in Appendix-I. For this purpose, ld.CIT has also relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs. Kirlosker Oil Engines (supra). In our opinion, such reliance by the CIT on the decision of Hon'ble Bombay High Court is misplaced as in that case the assessee was owner of the aircraft and it claimed depreciation @ 40%. The Appendix-I as applicable for the relevant assessment years in the case of that assessee had described depreciation in respect of aeroplanes under Item D(1) and E(1) which read as under:-*
>
> *" D(1) Aeroplanes – Aircraft, aerial*

photographic apparatus (NESA)

E(1) Aeroplanes – Aero engines (NESA)."

12. Under D(1) the rate of depreciation was described as 30% and under E(1) it was described as 40%. Referring to the above mentioned rates, it was observed by the Hon'ble Bombay High Court that the aforementioned two items are quite different and distinct. That both the items are given under the heading 'aeroplanes.' Item D(1) described the rates of depreciation on 'aircraft and aerial photographic apparatus', whereas the Item E(1) describe the rate of depreciation of aero engines. As the assessee was admittedly claiming depreciation on aircraft, it was held that it will fall under item D(1) which have specific one and, therefore, the assessee will be entitled for depreciation @ 30% and the depreciation @ 40% is applicable only on aero engines and the aero engines is not covered under aircrafts. But the position under the Appendix-I which is applicable in the case of the assessee is different. In the present case, there is no such classification under the head 'aeroplanes'as it was applicable in the case of the CIT vs. Kirlosker Oil Engines (supra). During the year under consideration, only one description is there which is in item 3 which read as under:-

"Aeroplane-aeroengines"

13. No other separate head has been given for claiming of depreciation under the head 'aeroplanes'which was distinctively described in the old Appendix as applicable in the case of the CIT vs. Kirlosker Oil Engines (supra)."

8. The Tribunal then discussed the different meanings of the expression 'aircraft and air-plane' in the ensuing part of its order.

"16. It is so, then the description of depreciation rate @ 40% under the head 'aeroplane-aero-engines' cannot be understood to be depreciation rate prescribed only for aero-engines as that will never fall within the category of 'aeroplane' as aero –engines is only a power unit of an

aircraft. Therefore, no analogy can be drawn from the old Appendix to hold that aircraft cannot be granted depreciation under the head 'aeroplane'as the term 'aeroplane'does not describe the aircraft therein. The definition of 'aricraft'has already been given in the above part of this order. Apart from that, Aircraft Act, 1934 describe the 'aircraft' as under:-

> *"Aircraft"means any machine which can derive support in the atmosphere from reactions of the air (other than reactions of the air against the earth's surface) and includes balloons, whether fixed or free, airships, kites, gliders and flying machines."*

16.1. Further, Encyclopedia Britannica (Macropaedia) Vol. I describe the 'aircraft' in broad two categories which are defined as under:-

> *" All aircraft fall into two general categories – lighter–than– air or hearvier-than-air. Several distinct types are recognized within each group. Each may perform a variety of missions calling for modifications for special usage.*
>
> *Lighter-than-air craft rise and float because they displace a volume of air the weight of which is equal to or greater than the total weight of the aircraft. Such aircraft include balloons and airships.*
>
> *Heavier-than-air craft derive their flight capability (lift) form the dynamic reaction of air flowing around suitably shaped surfaces (wings or airfoils). Such craft include gliders and sailplanes, conventional*

airplanes, short takeoff and landing (STOL) airplanes, and vertical takeoff and landing (VTOL) aircraft."

16.2 The international Civil Aviation Organisation (ICAO) in its Aviation Glossary Terms & Definitions has defined 'Aircraft' and "Aeroplane' as under:-

"Aircraft – An aircraft is any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface (ICAO Annex.1, Annex 6 Part I).

Aeroplane – A power driven heavier than air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight (ICAO Annex I, Annex 6)"

17. A combined reading of all these definitions will be that aeroplane in comparison to aircraft has a fixed wings and is powered by propellers or jets. Though both the definitions have been given by the ld. CIT in his order, but he has ignored the submission of the assessee that aircraft owned by it has fixed wings and is powered by propellers or jets on the ground that it should be heavier than the aircraft. We find no justification in such observations of ld. CIT that the aircraft of the assessee should not be described as 'aeroplane'simply for the reason that 'aeroplane'is a machine much bigger, heavier and powerful than an aircraft which travels in the air more than an aircraft. Though technical details have not been furnished before us, but, it is clear from the picture submitted to us that the aircraft owned by the assessee has fixed wings and has the characteristics of the aeroplane though it may be of a smaller capacity which is able to fly only nine passengers on board. But, for that reason the aircraft owned by the assessee cannot be thrown out of the category of 'aeroplane'and the aircraft owned by the assessee cannot be considered only as 'Plant and

Manchinery'which is a term distinct to such type of aircraft.

18. Further, it has been demonstrated by the learned AR of the assessee that in many cases the department is considering such aircraft as 'aeroplane'and granting depreciation to the respective assesses @ 40% and such contention of the assessee is based on the information given by the department itself. The department has not been able to bring on record any of the cases wherein such aircraft has been considered by them eligible for depreciation under the head 'Machinery and Plant.' Not going into the controversy whether or not the issue regarding the claim of depreciation was deliberated during the course of original assessment proceedings, we are of the opinion that the Assessing Officer had granted the depreciation to the assessee @ 40-% in accordance with the provisions of the Rule, therefore, such grant of depreciation cannot be considered to be a claim not supported by law, as the department cannot straightaway show that such claim of depreciation was not in accordance with the law and, in such, circumstances, the powers u/s 263 could not be invoked."

9. This Court is conscious of the fact that the generic term 'aircraft' is broader and there can be no doubt that it encompasses the expression aeroplane. However, this Court is not called upon to interpret the term "aircraft" in the present appeal. The question is whether the 'Beechcraft Super King Air B-200C' purchased by the assessee fell within the description of aeroplane. Ld. counsel for the revenue sought to urge that the "airplane –aeroengine" included only aero engine which can be used for airplane, covered by the Entry III(3)(i) in the head "Plant & Machinery". We see no warrant for such a restrictive interpretation. Even with regard to the history of the entry all that can be inferred is that "aircraft" is a broader description which includes all manner of craft or means of transport aided by flight, (such as balloons, planes etc.) within the Depreciation Rule. For the reasons best known, the rule making authority confined and narrowed definition to "aeroplane". This conclusion is also supported by the fact that other entries in Rule III(3) of the depreciation table extend to entire

vehicles such as commercially pliable buses, cars etc. They do not confine the scope of depreciation only to parts of such vehicles.

10. In view of the above discussion, this Court is satisfied that the Tribunal's judgment does not disclose any error as regards interpretation of Entry III(3)(i) of the Depreciation Rules. Its upholding the depreciation allowable in the present case to the tune of 40% cannot be termed as unjustified or unwarranted.

11. On the third issue, the Tribunal concluded that the charges payable and claimed by the assessee were in respect of the route navigational and parking charges for an aircraft required by Airport Authority of India. The relevant procedure was outlined through a letter dated 22.12.2009 written by the Airport Authority of India which stated that as per Rules of RNFC (Route Navigation Facilities Charges) and TNLC (Traffic) (Terminal Navigation landing Charges) charges with AAI and DIAL are to be paid in cash before the departure of a non scheduled flight. Therefore, the revenue had urged that this payment, though supported by the facts of the case do not fall within the Rule 6DD(k) which allows expenditure in cash only when it is made by a person to an agent who is required to make payment in cash .

12. The revenue stressed upon the fact that cash was not paid to the agent and therefore Rule 6DD(K) was inapplicable. There can be no dispute that the Airport Authority of India is a statutory body entitled to claim its dues and even entitled to frame Rules and Regulations under the parent Act (see judgment of the SC in ***International Airports Vs. M/s Grand Slam International*** (1995) SCC (3) 151. In such an eventuality, once the authority required that cash had to be paid as a condition for flight clearance required by the assessee, it had really no choice in the matter. The interpretation urged by the revenue is far removed from reality. Furthermore, this Court is fortified in holding that such expenditure in cash is deductible by reference to Rule 6DD(b) which states that when payment is made to the government, as per the Government of India Rules, it is deductible.

13. For the above reasons, this Court finds no reason to interfere with the orders of

the Tribunal in all the three aspects. The appeals are, accordingly, dismissed.

S. RAVINDRA BHAT, J.

R.V.EASWAR, J.

SEPTEMBER 03, 2012
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