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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision : 17.02.2026*

+ W.P.(C) 18856/2025

BRITISH AIRWAYS PLC

.....Petitioner

Through: Mr. Vishal Kalra, Mr. Anil Kumar
and Mr. S.S. Tomar, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE
(INT. TAX) 1(1)(2), NEW DELHI & ANR.Respondents

Through: Mr. Anurag Ojha, SSC

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VINOD KUMAR****JUDGMENT****DINESH MEHTA, J. (ORAL)**

1. The instant writ petition impugns the order dated 25.09.2025 (purported to be dated 01.08.2025) so also the certificate dated 25.09.2025 (annexure P-2 and P-1 respectively), whereby a certificate at the rate of .1% has been issued under Section 197 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*).

2. As per the facts pleaded, petitioner-British Airways PLC is a company and a tax resident of the United Kingdom as per Tax Residency Certificate issued by UK authorities. The disputed services fall under Airline services, which are essentially "Operation of Airline & Cargo Service" which is exempted under Article 8 of the India-UK Double Taxation Avoidance Agreement (*hereinafter referred to as 'the India-UK Treaty'*)



read with Section 90 of the Act of 1961.

3. Learned counsel for the petitioner at the outset submitted that so far the 'operation of airline and cargo services' is concerned for the last sixteen years, a certificate of 'NIL' rate is being issued to the petitioner by the competent authority. Even for the earlier part of the present Financial Year (2025-26) when the petitioner moved an application for issuance of certificate in relation to the transactions which were to the tune of roughly Rs.3,700Crores, the competent authority issued a NIL rate certificate, but when the application for remaining part of the year was filed for the transaction of roughly Rs.3.98Crores, surprisingly a certificate at .1% has been issued to it.

4. He submitted that the reason assigned in para no. 5 of the impugned order that there is demand outstanding against the petitioner is factually incorrect and highlighted that rather a huge amount of refund is due to be paid by the respondents at that time. He expressed concern that wrong fact has been indicated in the order just to sway the mind of the court.

5. He further submitted in spite of the fact that it has been observed that operation of the aircraft is not taxable, the Competent Authority has proceeded to issue a certificate at .1% for no sustainable reasons.

6. Learned counsel pointed out that the respondents have clarified in their affidavit that factually no demand is outstanding against them and the refund too has been made to the petitioner and prayed that the impugned order be set aside and the respondents be directed to issue a certificate at NIL rate as the petitioner-company already operates at a very thin margin.

7. Mr. Anurag Ojha, learned Senior Standing Counsel for the Income Tax Department, on the other hand, contended that the tax collected under



the certificate issued under Section 197 of the Act of 1961 is only an advance tax and the same is subject to final assessment and submitted that apart from the operation of Airline and Cargo services, the petitioner provides variety of other services such as Ground Handling and Engineering services which are definitely taxable in India and therefore, the certificate issued by the competent authority cannot be faulted with.

8. So far as the contention of Mr. Vishal Kalra, learned counsel for the petitioner that for the last sixteen years, NIL rate certificates have been issued is concerned, Mr. Ojha submitted that each assessment year is to be considered separately and the competent authority is not bound to issue a certificate at 'NIL' rate simply because certificate at 'NIL' rate has been issued by his predecessor or for the preceding years.

9. Having heard learned counsel for the parties, we are of the view that the main reason which appears to have prevailed in the mind of the competent authority for issuing certificate at .1% is the fact that there were outstanding demand for assessment years 2013-14, 2014-15, 2015-16 and 2016-17 as per the ITBA portal which has turned out to be an incorrect fact, else he himself has observed that operation of Airline Services is exempt.

10. As a matter of fact, the refund of about Rs.7.86 Crores was due to the petitioner. It will not be out of place to reproduce para No. 5 of the impugned order which reads thus:

“5. Outstanding demand: There are outstanding demands pending for AY(s) 2013-14, AY 2014-15, AY 2015-16 and AY 2016-17 as per ITBA portal (F/F). The order giving effect to VSVS 2020 for the said AYs passed on 19.06.2025 (Accounting closed by CPC), but outstanding demand of these AYs are still showing pending on ITBA portal, for the same tickets have been raised on ITBA (ticket no. 3017051, 3017061, 3017062, 3017067).”



11. If para No. 5, which has been found to be incorrect, is excluded, then, the only reason remains to be taken into consideration is in para No. 4 wherein the competent authority himself admits that the services apart from the Ground Handling and engineering services are not exigible to tax under Act of 1961.

12. It is true that the rate of .1% appears to be very low or negligible but given the volume of transactions which the petitioner undertakes in India (about Rs.4000 Crores per year) even this .1% turns out to be substantial for an Airline company. It is not in dispute that so far as the Ground Handling and Engineering services or any other service, which are taxable in India are concerned, the petitioner-company is obliged to pay the tax and has been paying the same.

13. It is to be noted that petitioner's assessment has been made and so far as airline services *qua* which the certificate was demanded is concerned, no tax was found to be payable.

14. If the facts of the present case are considered from another perspective, viz certificate at NIL rate has been issued for the last fifteen-sixteen years and even for part of current financial year, a certificate at .1% cannot be countenanced, as the same reflects non-application of mind by the competent authority on the one hand and shows inconsistent approach of the officers of the country and thus portrays unhealthy picture of the bureaucracy.

15. We, therefore, allow the writ petition and set aside the impugned order and certificate dated 25.09.2025.

16. The competent authority is directed to issue a certificate at NIL rate within a period of seven days from today.



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17. While allowing the writ petition and directing the competent authority to grant certificate at NIL rate, we hereby direct the competent authority to continue issuing certificates at NIL rate so far as income from airline operation is concerned, within a period of thirty days of receipt of the application or latest by 15.05.2026 whichever is later, unless there is change in law or nature of transaction to be carried out by the airline company.

DINESH MEHTA, J

VINOD KUMAR, J

FEBRUARY 17, 2026/ss