

Case Laws Discussion

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Case Law discussion of Income
Tax -

Under the Chairmanship of
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For
Delhi Chapter of CTC

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Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

Fact of the case -

- Indigo entered into agreement to Purchase 100 aircraft from AIRBUS.
- As per the purchase agreement the assessee could select the manufactured of the installed engine . The assessee selected IEA.
- Due to such selection, certain credits were passed on to the assessee with the delivery of the aircraft.
- The assessee assigned the contract with the lessor and the lessor paid for such aircraft and thereafter operating lease agreement with the lessor.
- The assessee received the credit of 759.39 Cr, thereby appropriating Rs 268.91 for the given year and rest transferred to the BL under deferred incentive . The amount of Rs 268.91 reduced from Lease rental .
- The assessee claimed such 269.91 Cr as capital receipt and didn't offer for tax .

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- During assessment the assessee contended -
- The assessee explained similar transaction of 2007-08 , 2008-09, 2009-2010 & 2010-11 . However the contention of the assessee that it is capital receipt was accepted by the ITAT in 2007-2008 , however for the next year the matter is disputed before CIT (A) .
- Pleaded the consistency. The assessee applied the purpose test.
- Sahney Steel and Press works - 228 ITR 253 & Ponni Sagar 306 ITR 392
- AO observed - The assessee didn't purchase the aircraft , It entered into operating lease, depreciation claimed by lessor and assessee paid Lease rental.
- The amount of 268.91 Cr is subsidy under 43(1) explanation-10 and revenue receipt and not capital receipt. Also disallowed the Supplementary lease rental (SR) on the ground of 40(ai) that TDS non deducted as it was not part of 10(15A) and liable to tax as royalty under article 12 of India Ireland DTAA

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Appeal before CIT(A) -

- Assessee contended that both the issue are covered in 2007-08.
- Capital receipt was already decided by ITAT and SR issue already decided.
- The CIT(A) accepted such receipt as capital receipt however linked with capital gain from the assignment of the rights in favour of lessor and considered whole 759.39 for capital gain therefore enhanced the assessment .
- Disallowed the expenditure under 37(1) on the ground that such expenditure was for capital receipt and not allowable as deduction .
- Both the assessee and Revenue filed the appeal before the ITAT , The revenue also raised the additional ground of 28(1) and 28(iv) .

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Arguments before ITAT (DB) - Assessee arguments -

- Assessee argued that it is covered matter in the case of 2007-09, 2008-09 and 2009-10 .
- The revenue has appealed before HC where the appeal has been admitted on the issue of Capital receipt however SR issue has not been admitted by HC . No perversity has been raised by revenue .
- No connection between Credits and lease transaction and both are independent .
- 28(i) and 28(iv) not applicable as the credits are monetary transactions.
- SR case is covered by his own case as well Sahara Airlines case of ITAT - 83 ITD 11.

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

Arguments before ITAT (DB) - Revenue Arguments

- Earlier order are erroneous and without complete set of facts before the ITAT and therefore not binding - Distributors (Baroda) Pvt limited - 155 ITR 120 .
- Ponni Sugar and Sawhney steel not applicable because that was the case of grants /subsidy from governments - here the case of private party.
- The credits can be discount / post sale warranty and not subsidy .
- ITAT reliance on AS-12 was fallacious as it deals with Govt grants /subsidy.
- Receipts are from commercial transaction therefore revenue receipts or capital gain .

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DB reference to President for creation of SB -

The DB cited the contention of the revenue and followed the cases of Sayaji Iron & Steel - 253 ITR 749 and Aggarwal warehousing leasing 257 ITR 235 for referred to SB .

Question framed by SB -

1. Whether the FIA from IEA or others are capital receipt or revenue receipt .
2. Whether such credits are covered under 28(i) and or 28(iv) .
3. Whether it is liable to capital gain and disallowance under section 37 was justified .
4. Whether the TDS provision will apply into the transaction of payment or lease rental as well SR .

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

Arguments before SB - Assessee Arguments -

- Capital receipt , Applied purpose test of Sawhney steel and Ponni Sugar .
- 10th edition of Kanga & Palikiwala - Page -214 - immaterial considerations for deciding the revenue or capital receipt .
- Right to receive the credit accrue when entered into agreement with IEA (18/10/2005) and not linked with Subsequent assignment for lease .
- Not a discount .
- Not a subsidy . Revenue reliance on Ambica Mills case was not on the similar law - on the payment of Bonus act .
- Not a colourable transaction - Agreement has to be read as whole - Delhi Development authority - 1973 -2SCC 825.
- 28(i) and 28(iv) not applicable - Mafatlal case -219 ITR 644 (SC)

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

Arguments before SB - Assessee Arguments -

- No allegation of Sham Transaction - Walfort Shares & stock brokers -310 ITR 421 .
- Reduction of the amount in the submission before the CIT (A) to maintain confidentiality as it was very sensitive agreement and have impact on long term basis .
- On the issue of SR - the assessee claimed that prior to 31/03/2007 - it was covered in 10(15A) and after that covered in Article 8 of India Ireland DTAA . Article 12 not covered as aircraft has been specially excluded from article 12 .
- Tribunal has no power to enhance - Mcrop Global Pvt ltd -309 ITR 434

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

Arguments before SB - Revenue arguments -

- Revenue relied on the various documents and agreement including the lease agreements .
- Transactions are composite in nature . It was well planned in advance to enter into lease agreements .
- Credit being a pure accounting terms and it can be revenue receipt unless linked to capital assets . The assessee has not purchased any capital assets .
- Credits are in the nature of discounts and also commission .
- Credited the rental expenses and booked as other income - will be treated as Revenue receipt . Treatment in the books can not be different than tax purpose .
- Covered under 28(i) and 28(iv) .

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

Arguments before SB - Revenue arguments -

- Sawhney Steel and Ponni Sugar not applicable
- Pure commercial transaction and can be discount / post sale warranties .
- Credit was not only linked with the selection of engines but also acquisition of the aircraft and subsequent events also . Therefore can not be terms as capital receipt .
- Vital information can not be erased .
- CIT(A) was right in capital gain as capital assets has been transferred to lessor .
- SR is not the rental but a reimbursement and therefore not deductible under 37 .
- Transaction not covered under 10(15A) and covered in Article 12 therefore taxable in India , TDS required .

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation -

- A. Nature of receipts
- B. Whether the Agreement in transaction are separate or composite .
- C. Purpose and nature of credits and received by assessee and its taxability .
- D. Relevance of entries in the Books of accounts
- E. Issue of Redaction of amounts .
- F. Issue of 28(i) and 28(iv)
- G. Capital gain
- H. Disallowance under 37
- I. Disallowance of SR and TDS issue

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation -Nature of receipts

- The credits are received for the selection of IEA as the installed engines therefore the credits are not the subsidy . It was only for the choice of the engine through which per engine credit was given.
- There is no buy -sell agreement between IEA and assessee . No pricing was negotiated between IEA and assessee.
- The credits is for the selection of IEA engine only .
- Pricing was already decided between Airbus and IEA.
- CIT(A) has upheld this view that price was not discussed between IEA and assessee and price between IEA and airbus was not known to the assessee .
- No Automatic credit . Purchase agreement with airbus was 18/11/2005 much after the agreement with IEA dated 19/10/2005.

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation -Composite or Independent

- The SB observed that all the agreements has taken place on different dates like LOI with Airbus on 29/06/2005 , Agreement with IEA - 10/10/2005 and Agreement with AIRBUS - 18/11/2005 - Sufficient time lag - all independent party - not composite .
- No Sham or dubious or colourable transaction - Please never taken in any assessment at any stage .
- ITAT relied on Bhagat construction 250 ITR 291 & Daulat Ram Rawatmall - 87 ITR 349
- SBI Vs Mulla Sahkari - 132 CC 565 and Ishikawajama Hraima - 288 ITR 408 .
- Section 91 and 92 of the evidence act - Best evidence rule - Preventing the inferior evidence when superior evidence is available

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation -Purpose and Nature of Transaction and Taxability - Held as Capital receipt .

- Till 2019 it was steeled that the credit was for the purpose of selection of engine however now the revenue contended that credit is for the purchase of the aircraft with the engines .
- IATA practice of such transaction .
- Tax department can not ignore the commercial realities .
- Van Den Berghs Ltd Vs Clark - 3 ITR 17 (HL)
- Fixed capital Vs circulating capitals - CIT Vs Vazir Sultan
- Hoshiarpur Electric supply Vs CIT -41 ITR 608 - Nature of the business carried on by the assessee is relevant
- Related to business Vs Incidental to business . In this case the credit are not incidental to business.
- Legal principles of Purpose test - Guffic Chem (Pvt.) limited Vs CIT -332 ITR 602.
- Relied upon Sawhney Steel and Ponni Sugar .

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation - Issue of 28 (i) and 28(iv) .

- Additional ground of law . All facts are on record - NTPC case 229 ITR 383 = Additional ground of revenue allowed to argue .
- Capital receipt can not be covered under 28
- Mahindra & Mahindra case 261 ITR 501
- Jindal Equipment case - 325 ITR 87 .
- Mafatlal case 219 ITR 644 for non monetary transaction .
- On the commission income - The ITAT relied on empire jute company case 124 ITR 1 (SC) .

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation - Capital gain

- Not the transfer of any right in favour of lessor .
 - Lessor has not paid any consideration .
 - The assignment has been done on the PAR VALUE itself .
 - No capital assets were involved .
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- ITAT -SB observation - Disallowance under 37(1)
 - Right to receive credit and lease rental payment are separate transaction.
 - Bharat Seat Ltd Vs JCIT - 120 Taxmann 210
 - No disallowance can be made under 37

Inter Globe Civil Aviation (Indigo Case) Delhi ITAT - SB

ITAT -SB observation - Disallowance of SR and TDS .

- Relied upon 2007-08 order to ensure that SR are mandatory in nature and not as a reimbursement .
- Reimbursement is not linked with mandatory SR .
- Right to cancel the lease agreement if SR not paid .
- It is in the nature of rent and not royalty or interest as contended by Revenue .
- Covered in Section 10(15) of the Income tax and exempt up to 31/03/2007 .
- After 01/04/2007 covered in article 8 of the DTAA and not in article 12.
- Also not covered in Article 13 as interest .