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

% *Date of Decision : 22.01.2026*

\+ ITA 187/2008

COMMISSIONER OF INCOME TAX DELHI XVII

.....Appellant

Through: Mr. Vipul Agrawal, SSC and Mr. Gaoraang Ranjan, Adv.

versus

ROYAL JORDANIAN AIRLINES

.....Respondent

Through: Mr. Anil Makhija, Adv.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

DINESH MEHTA, J. (ORAL)

1. Mr. Vipul Agrawal, learned Senior Standing Counsel for the appellant/Income Tax Department submitted that the issue involved in the present case is squarely covered in favour of Revenue by the judgment of this Court in **Commissioner of Income Tax v. Singapore Airlines Ltd.** reported in 2009 SCC OnLine Del 823 as affirmed by Hon'ble the Supreme Court in the case of **Singapore Airlines Ltd. v. Commissioner of Income Tax**, reported in (2023) 1 Supreme Court 497.

2. Learned counsel submitted that in light of the adjudication made by this Court and affirmed by Hon'ble the Supreme Court, the appeal deserves to be allowed.

3. Learned counsel for the respondent, on the other hand, submitted that since the tax effect in the instant case is about Rs.26,00,000/-, the appeal deserves to be dismissed in light of Circular No. 5/2024 read with Circular No. 9/2024 issued by Central Board of Direct Taxes (CBDT).

4. At this juncture, Mr. Agrawal submitted that as the case falls within the ambit of exception, inasmuch as sub-clause l of Clause 3.1 of the Circular No. 5/2024 covers the instant case because the present case is that of TDS between two parties.

5. Mr. Anil Makhija, learned counsel for the respondent-assessee while maintaining that the appeal deserves to be dismissed, however, alternatively prayed that the appeal be disposed of in terms of para No. 68 and 69 of the above judgment of Hon'ble the Supreme Court.

6. He further prayed that the Assessing Officer (AO) be directed to create demand in relation to the amount of interest only inasmuch as the agents of respondent-airline company have/must have deposited the amount of tax and if the AO starts disputing such position or directs the respondent to prove the payment of tax, it will be very difficult for the respondent-company to establish as to whether the agents have paid applicable tax or not. Because in the past ten years, the operations of the respondent-airlines remained closed in India and all its contacts with the earlier agents have severed. He submitted that no particulars are available with the respondent-company, hence, so much indulgence be granted.

7. Having heard the rival submissions, we agree with the submission of the respondent that after more than ten years of the transactions having taken place, it will be very difficult for the respondent-company to prove the factum of the tax having been paid by the agents.

8. In view of the submission which Mr. Makhija has made, we dispose of the present appeal in light of para No. 68 to 71 of judgment of Hon'ble the Supreme Court, which are reproduced herein below:-

> *"68. Our conclusion in terms of the application of Section 194-H of the IT Act to the supplementary commission amounts earned by the travel agent is unequivocally in favour of the Revenue. Section 194-H is to be read with Section 182 of the Contract Act. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicate the existence of a principal-agent relationship as defined under d Section 182 of the Contract Act, then the definition of "commission" under Section 194-H of the IT Act stands attracted and the requirement to deduct TDS arises. The realities of how the airline industry functioned during the period in question bolsters our conclusion that it was practical and feasible for the assessees to utilise the information provided by the BSP and the payment machinery employed by the IATA to make a consolidated deduction of TDS from the supplementary commission to satisfy their mandatory duties under Chapter XVII-B of the IT Act.*
> *Having said this, in light of the consensus between the parties that the travel agents have already paid income tax on the supplementary commission. there can be no further recovery of the shortfall in TDS owed by the assessees. However, interest may be levied under Section 201(1-A) of the IT Act. As an epilogue to this aspect of the matter, the assessing officer is directed to compute the interest payable by the assessees for the period from the date of default by them in terms of failure to deduct TDS, till the date of payment of income tax by the travel agents. It will be open to the assessing officer to look into any details that are necessary for completion of this exercise, including verification of whether tax was actually paid at all by the agents on the amounts from which TDS was supposed to be subtracted. Given that no documentary evidence was placed before us, we are conscious that there may be certain anomalies which the assessing officer is best positioned to iron out.*
> *70. In the eventuality that any of the agents have not yet paid taxes on the supplementary commission, the Revenue will be at liberty to proceed in accordance with law under the IT Act for recovery of shortfall in TDS from the airlines. However, we limit the ability to levy penalties against the assessees in light of Section 273-B of the IT Act.*
> *71. Having concluded so, we hope that closure has been brought to a*

legal controversy that has persisted for two decades. While we reject the arguments of the assessees on merits in terms of their liability under Section 194-H of the IT Act, we hold in their favour on the count of the matter having been rendered revenue neutral due to the apparent payment of income taxes on the amounts in question by the travel agents. The assessing officer is directed to expeditiously complete the assignment of determining the interest payable in accordance with the guidelines laid down above, so as to bring a quietus to the litigation."

9. As an abundant caution, we hereby clarify that in terms of the above judgment, the AO shall issue demand notice in relation to applicable interest, on the applicable TDS amount, which the respondent-assessee shall have to deposit within a period of two months of the receipt of the demand notice. The AO shall not enquire into as to whether the amount of tax has been paid/deposited by the agent of the assessee inasmuch as it is ultimately upon the respective jurisdictional assessing officers of the agents to ensure assessment and collection of the tax (if any) on their income.

DINESH MEHTA, J

VINOD KUMAR, J

JANUARY 22, 2026/*ss*