No TDS on supplementary rent of Aircraft if no facilities or services were given by foreign lessor

Summary – The High Court of Delhi in a recent case of Jet Lite (India) Ltd., (the Assessee) held that Under provisions of Section 10(15A) prior to 1st April 1996 payments made for acquisition of an aircraft or an aircraft engine on lease, were exempted from taxation but from 1st April 1996, the Legislature has excluded the payments made for providing spares, facilities or services in connection with the operation of the leased aircraft from the ambit of the exemption under Section 10(15A). Supplemental rent did not fall within the ambit of the exclusionary provisions of Section 10 (15A) as revenue was unable to point out any clause in the agreement that required the lessor to provide facilities or services in connection with the leased aircraft. Thus, there was no obligation of assessee to deduct tax at source on supplementary lease rentals

Facts

- Assessee took aircrafts on lease from International Lease Finance Corporation and it entered into separate agreements for each aircraft. In addition to the lease rent assessee was also required to pay supplemental lease rentals in the form of reserves. These reserves were created to meet the cost of expenditure incurred by the lessee.
- Assessee was entitled to reimbursement from such reserves after the work was completed and engine had left the repair agency. The balance left in the said reserve would be retained by the lessor. Assessee made similar payments of supplemental lease rentals to other non-resident foreign companies.
- The AO disallowed payments of supplemental lease rentals under Section 40(a)(i) due to non-deduction of tax on such payments under Section 195. CIT(A) deleted the addition on the ground that agreement was entered into after the amendment to Section 10 (15A). ITAT held that such payment was exempt under Section 10(15A).

The Delhi High Court held as under:

- A perusal of Section 10 (15A) as existed with effect from 21st January 1989 and substituted with effect from 1st April 1996 shows that prior to 1st April 1996 payments made for acquisition of an aircraft or an aircraft engine on lease, were exempted from taxation but from 1st April 1996, the Legislature has excluded the payments made for providing spares, facilities or services in connection with the operation of the leased aircraft from the ambit of the exemption under Section 10(15A).
- The ITAT has examined the object behind amending Section 10 (15A) with effect from 1st April 1996. If any payment had to be brought within the exclusionary portion of Section 10(15A) of the Act, then it must be shown (i) that the lessor either had supplied the spares or provided any facility or service in connection with operation of the leased aircraft; and (ii) the payment has been made by the lessee in consideration of such spares/facilities/services. The ITAT has rightly pointed out that the supplement rental was within the ambit of the original provision of Section 10 (15A) of the Act.

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- On facts the Revenue was unable to point out any clause in the agreement that required the lessor to provide facilities or services in connection with the leased aircraft. Therefore, the supplemental rent did not fall within the ambit of the exclusionary provisions of Section 10 (15A) of the Act. Since prior to 1st April 1996 such payments continued to be exempted under Section 10 (15A) of the Act, they were not chargeable to tax. Consequently, there was no obligation on the Assessee to deduct the tax at source under Section 195 of the Act. The question of holding the Assessee as an Assessee in default under Section 201 (1) of the Act, therefore, did not arise.

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