

## **Sec. 44BBA can't be applied to tax presumptive income of foreign Airlines if it has produced books revealing losses**

**Summary – The High Court of Delhi in a recent case of Royal Jordanian Airlines., (the Assessee) held that when there is no taxable income, section 44BBA cannot be applied to bring to tax presumptive income constituting 5 per cent of gross receipts**

### **Facts**

- The assessee-airline was established by the Ministry of Transport of the Kingdom of Jordan. It appointed Jet Air Pvt. Ltd. as its general sales agency in India. The assessee commenced its operations in India, carrying passengers and cargo on international flights from and to India from 1989 onwards. Since commencement of operations in India, assessee had been incurring losses.
- For relevant years, the assessee filed its return declaring nil income. The Assessing Officer opined that assessee was a foreign company and was liable to pay tax in India in terms of section 44BBA. He thus proceeded to determine income at the rate of 5 per cent of the net sales.
- The Tribunal upheld the order of Assessing Officer on merits. However, the Tribunal remanded the matter back for recomputation of income under section 44BBA.
- On appeal:

### **Held**

- Inasmuch as section 44BBA is not charging provision, but only a machinery provision, it cannot preclude an assessee from producing books of account to show that in any particular assessment year there is no taxable income.
- Where there is no income, section 44BBA cannot be applied to bring to tax the presumptive income constituting 5 per cent of the gross receipts in terms of section 44BBA(2). No doubt, for that purpose the assessee has to produce books of account to substantiate that it has incurred losses or that its assessable income is less than its presumptive income, as the case may be.
- The Tribunal has noted the factual position regarding the losses incurred by assessee for the relevant years. This has not been disputed by the revenue in its appeal against the aforesaid order. Consequently, the question of assessee being asked to pay tax on presumptive basis under section 44BBA for the said year, or the matters being sent to the Assessing Officer for verifying the said facts does not arise.
- In the result, assessee's appeal has to be allowed.