

Provision for re-delivery of leased aircraft doesn't cease to be a liability if lease period is extended

Summary – The High Court of Bombay in a recent case of Jet Airways (India) Ltd., (the Assessee) held that where assessee had made a provision for expenses likely to be incurred on re-delivery of aircrafts taken on lease, but lease was extended for further period along with liability, said provision could not be said to have ceased for purpose of invocation of section 41(1)

Facts

- The assessee had made a provision in earlier year in respect of expenses likely to be incurred on redelivery of the four air crafts taken on lease. During assessment year, the lease period in respect of the four aircrafts was to expire. However, the said lease was extended/renewed for a further period.
- On the basis of the above, the Assessing Officer invoked section 41(1) and held that there was cessation of liability and sought to bring the entire amount to tax.
- In appeal, the Commissioner (Appeals) held that there was no cessation of liability as the lease had been extended for a further period. Thus, the provision that expenses which were likely to be incurred at the time of redelivery of the four air crafts continued. Thus, there was no occasion to invoke section 41(1) and the addition was deleted.
- The Tribunal confirmed said order.
- On appeal:

Held

- There are concurrent findings of fact that the lease for the air crafts had been extended for further period and liability of expenses at the time of redelivery of the aircrafts has not ceased. Thus, the same would have to be provided for, as it is likely to be incurred when the lease expires and said four air crafts are redelivered. Section 41(1) has application only when there is cessation and/or remission of liability incurred (which has been duly paid and/or provided for) in the subsequent years, consequent of which some benefit in cash or in any other manner were obtained by the party whose liability has ceased. In this case, in fact, there is no cessation or remission of liability nor is any benefit obtained by the assessee for the purposes of section 41(1) to be invocable.