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

\+ ITA 272/2014
\+ ITA 273/2014
\+ ITA 274/2014
\+ ITA 275/2014
\+ ITA 276/2014
\+ ITA 277/2014
\+ ITA 278/2014
\+ ITA 279/2014
\+ ITA 280/2014
\+ ITA 338/2014

DIRECTOR OF INCOME TAX ..... Appellant
Through Mr. N P Sahni, sr. standing counsel with Mr. Nitin Gulati, Adv.

versus

BRITISH AIRWAYS PLC ..... Respondent
Through Mr. Mayank Nagi and Mr. Harkunal Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% 05.03.2015

C.M. Nos.10080/2014, 10082/2014, 10084/2014, 10086/2014, 10088/2014, 10090/2014, 10092/2014, 10094/2014, 10095/2014 and 10853/2014 (delay)

For the reasons stated in the applications, the delay in re-filing the appeal is condoned.

The applications are disposed of.

ITA Nos.272/2014, 273/2014, 274/2014, 275/2014, 276/2014, 277/2014, 278/2014, 279/2014, 280/2014 and 338/2014

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By:AMULYA

1. Issue notice.

2. Mr. Mayank Nagi, Advocate accepts notice.

3. In all these appeals, the common question which the revenue urges is that the assessees were liable to pay interest under Section 234B of the Income Tax Act, 1961.

4. The assessee is a foreign company incorporated under UK Laws and engaged in air transport services. The assessee had disputed liability in respect of a portion of its activities i.e. ground handling services rendered to other entities on the basis of bilateral arrangement or agreement with such users. The portion of attributed income on the basis of that activity was a subject matter of assessment and appellate proceedings. The assessee had also asserted the applicability of the Indo UK Double Taxation Avoidance Agreement (DTAA). It was in these circumstances that the question of payment of interest arose after determination of the assessee's liabilities to pay the tax.

5. The AO ruled that in addition to tax, the assessee was also liable to pay interest under Section 234B. The CIT(Appeals) set aside the direction to pay interest under Section 234B; the ITAT rejected the revenue's appeal. To complete the details, it would also be necessary to notice that pursuant to the mutual agreement procedure (MAP) dated 18.12.2011, the dispute with respect to payment of tax stands resolved. The only surviving bone of contention, therefore, is the applicability of Section 234B and interest liability, if any, of the assessee.

6. At the outset, this Court notices that the issue as to the payment of interest under Section 234B has been answered by this Court in *DIT V. Jacabs Civil Inc.* 330 ITR 578 and the recent decision in *Director of Income*

Tax, International Taxation V. GE Packaged Power Inc. ITA No.352-391/2014 decided on 12.1.2015. The later decision, i.e. *M/s G E Packaged Power Inc.* also took note of an earlier discordant ruling in *Director of Income Tax, International Taxation V. Alcatel Lucent USA Inc.* in ITA No.327/2012 decided on 7.11.2013. The Court was of the opinion that *Alcatel* was decided in the peculiar circumstance of the case and that the rationale in *Jacabs* applies. Consequently, in view of the *Jacabs* and *GE Packaged Power* decisions, question of law sought to be urged by the revenue has to be answered against it.

7. The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 05, 2015
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