OD-19

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/34/2025
IA NO: GA/2/2025

COMMISSIONER OF INCOME TAX INTERNATIONAL (IT&TP), KOLKATA
VS
HONG KONG DRAGON AIRLINES LIMITED

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 19th May, 2025.

Appearance :
Mr. Aryak Dutt, Adv.
Mr. Amit Sharma, Adv.
...for appellant
Mr. Pratyush Jhunjhunwala, Adv.
Ms. Sretapa Sinha, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv.
...for respondent

The Court:- This appeal filed by the appellant/department under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated January 9, 2024 passed by the Income Tax Appellate Tribunal, “C” Bench, Kolkata (Tribunal) in ITA No. 419/Kol/2023, for the assessment year 2016-17.

The revenue has raised the following substantial questions of law for consideration :

i) Whether the Learned Tribunal has substantially erred in law in deleting the service tax from the gross receipts in computation of total income of the assessee without considering that as per provisions contained under Section 44BBA of the Income Tax Act, 1961 the entire amount, including service tax, received by the assessee is taxable ?

ii) Whether Service Tax is an allowable deduction from the gross receipts while determining the income of a non-resident assessee under Section 44BBA of the Income Tax Act, 1961 ?

iii) Whether the presumptive scheme of taxation under Section 44BBA of the Income Tax Act, 1961 permits any deduction from the amounts indicated in the section itself ?

iv) Whether the Learned Tribunal substantially erred in law by not considering that the gross amount to be taken into consideration under Section 44BBA of the Income Tax Act, 1961 is the same as that raised in the bills which include service tax also ?

v) Whether there is any scope for the respondent to do any mathematical calculation of any amount as per section 44BBA(2) of the Income Tax Act, 1961 except as provided in the provision itself when an assessee opts for invoking section 44BBA of the Income Tax Act, 1961 ?

We have heard Mr. Aryak Dutt, learned counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwalla, learned Advocate appearing for the respondent/assessee.

It is not disputed by the revenue that the tax effect involved in this appeal is below the threshold limit fixed by the CBDT Circular. If that be the undisputed factual position, the Department cannot pursue this appeal any further.

Accordingly, the appeal stands disposed of on the ground of low tax effect and consequently, the substantial questions of law suggested are left open.

The stay application, IA NO: GA/2/2025, also stands disposed of accordingly.

Written instructions given by the Department be kept on record.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

Pkd./SN.