

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE
PRESIDENT AND SHRI B.R. BASKARAN,
ACCOUNTANT MEMBER**

ITA Nos.1349 to 1352/Bang/2018
Assessment Year: 2009-10 to 2012-13

JCIT (OSD) Circle-4(1)(1) Bangalore	Vs.	M/s. Kingfisher Airlines Limited The Official Liquidator, High Court of Karnataka, Corporate Bhavan, No.26-27, 12 th Floor Raheja Towers, M.G. Road Bangalore-560001 PAN NO : AAACD5301J
APPELLANT		RESPONDENT

Appellant by	:	Ms. Neera Malhotra, D.R.
Respondent by	:	NONE

Date of Hearing	:	19.01.2021
Date of Pronouncement	:	19.01.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

All the four appeals filed by the revenue are directed against the orders passed by Ld CIT(A)-4, Bangalore and they relate to the assessment years 2009-10 to 2012-13.

2. None appeared on behalf of the assessee, even though the adjournment was granted on the last occasion on the specific request of the assessee. Hence, we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

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3. Since one of the issues urged in all these appeals are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

4. We heard Ld. D.R. and perused the record. The assessee company is engaged in Airline business.

5. The common issue urged in all the four appeals relate to relief granted by Ld. CIT(A) in respect of disallowance of repairs & maintenance expenses claimed by the assessee. The A.O. took the view that the assessee has got enduring benefit by incurring the Repairs & Maintenance expenses and hence they are capital in nature. Accordingly, he took the view that the repairs expenses claimed by the assessee in all the four years needs to be disallowed. Since they were taken as capital in nature, the A.O. allowed depreciation thereon and accordingly disallowed only net amount. The details of disallowance made by the A.O. in all the years under consideration are tabulated below:

Assessment year	Repairs expenses	Depreciation	Disallowance
2009-10	4,63,10,048	23,15,503	4,39,94,545
2010-11	1,44,73,000	7,23,650	1,37,49,350
2011-12	67,70,000	6,77,000	60,93,000
2012-13	35,33,000	3,17,970	31,79,700

(As per workings made by A.O.)

6. The Ld. CIT(A) however deleted the disallowance with the following observations:-

“Having considered the rival submissions, it is apparent that there is no specific reason or evidence available so as to discern whether the nature of repairs/maintenance items was such that could lead to permanent creation of an asset. It is apparent that the assessee’s business set up is huge and to run, the building establishment, such maintenance/repair activity is a routine matter.”

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7. In assessment year 2009-10, the revenue is also aggrieved by the decision of Ld. CIT(A) in deleting the disallowance of Rs.10 crores relating to helicopter expenses. The facts relating thereto are that the A.O. noticed that the assessee has purchased two helicopters during the year relevant to the assessment year 2009-10. Though the assessee had claimed depreciation on purchase of helicopters, it did not declare any revenue there from. Hence the A.O. asked the assessee to submit DGCA records to prove that there was no revenue. The A.O. also asked the assessee to furnish the details of expenditure incurred thereon. However, the assessee did not produce the details called for. Since the assessee was unable to prove the business expediency in purchasing the helicopters, the A.O. disallowed the depreciation claimed on the cost of helicopters. In the absence of any other information, the A.O. also disallowed an adhoc amount of Rs.10 crores as expenses relating to operation of helicopters during the year under consideration.

8. In the appellate proceedings the Ld. CIT(A) confirmed the disallowance of depreciation. However, he deleted the adhoc disallowance of expenses of Rs.10 crores on the reasoning that the A.O. did not furnish any valid basis for arriving at this figure.

9. Aggrieved by the order passed by Ld. CIT(A) on the above said issues, the revenue has filed these appeals before us.

10. We notice that the revenue is contesting the decision rendered by Ld. CIT(A) in respect of helicopter expenses and repairs & maintenance expenses in assessment year 2009-10. In other three years, the revenue is contesting the decision rendered by Ld. CIT(A) in respect of repairs & maintenance expenses only.

11. We notice that the amount in dispute in assessment years 2010-11 to 2012-13 is as under:

Assessment year	Repairs expenses	Depreciation	Disallowance
2010-11	1,44,73,000	7,23,650	1,37,49,350
2011-12	67,70,000	6,77,000	60,93,000
2012-13	35,33,000	3,17,970	31,79,700

Admittedly, the tax effect involved in respect of the issue contested by the revenue in assessment years 2010-11 to 2012-13 is less than Rs.50 lakhs. Accordingly, in view of the circular No.17/2019 dated 8.8.2019 issued by CBDT, the revenue is precluded from pursuing these three appeals. Accordingly, we dismiss the appeals filed by the revenue for assessment years 2010-11 to 2012-13 in limine, on account of low tax effect.

12. We shall take up the appeal filed by the revenue for A.Y. 2009-10. The first issue is related to disallowance of helicopter expenses. We notice that the A.O. was constrained to make adhoc disallowance since the assessee has failed to furnish details called for by the A.O. We also notice that the assessee did not appear before Ld. CIT(A) also. In effect, the assessee did not furnish details of helicopter expenses as sought by the A.O. even before the Ld. CIT(A). Under these set of facts, we are of the view that the Ld. CIT(A) was not justified in deleting the disallowance. However, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to furnish the details called for by A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh.

13. The next issue relates to disallowance of repairs & maintenance expenses. We notice that the A.O. has made the above said disallowance by entertaining a presumption that the repairs &

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maintenance expenses incurred by the assessee has given enduring benefit to the assessee. We notice that the A.O. has not examined critically the details of repairs & maintenance expenses incurred by the assessee. We also notice that the Ld. CIT(A) has deleted the disallowance without examining the details of expenses. In effect, both the tax authorities have not examined the nature of expenses incurred by the assessee under the head 'repairs & maintenance'. In our view, without examining the details of Repairs & Maintenance expenses, particularly with regard to the nature of expenses, one cannot decide the nature of expenses, i.e. whether they are capital or revenue in nature. Accordingly, we are of the view that this issue also requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh.

14. In the result, the appeal filed by the revenue for A.Y. 2009-10 is treated as allowed for statistical purposes. The appeals filed by the revenue for other three years are dismissed.

Order pronounced in the open court on 19th Jan, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 19th Jan, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.



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