

**IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 2379 & 2380/Mum/2022  
(Assessment Years: 2017-18 & 2016-17)

M/s. Jet Airways (India) Limited Authorised Representative of Monitoring Committee of Jet Airways (India) Ltd. Global One, 3 <sup>rd</sup> Floor, 252, LBS Marg, Kurla (W), Mumbai-400 070	Vs.	Dy. CIT, Circle-5(2), Mumbai
PAN/GIR No. AAACJ 0920 H		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri Vijay Mehta
<b>Revenue by</b>	:	Shri Manoj Mishra

<b>Date of Hearing</b>	:	12.01.2023
<b>Date of Pronouncement</b>	:	24.02.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

These appeals are filed by the assessee, challenging the assessment order passed by the Assessing Officer dated 27.07.2022 passed u/s. 144 r.w.s. 147, 92CA and 144C(13) of the Income Tax Act, 1961 ('the Act'), pursuant to the direction of the Id. Dispute Resolution Panel ('DRP' for short), relevant to the Assessment Year ('A.Y.' for short).

2. As the facts are identical in both these appeals, we hereby pass a consolidated order by taking ITA No. 2380/Mum/2022 as the lead case.
3. The brief facts are that the assessee is a public limited company engaged in the business of scheduled airline carrying out transportation of passengers and cargo and

other allied services and was incorporated under the Companies Act, 1956 on 01.04.1992 consisting of nine directors. The assessee filed its return of income dated 29.11.2016, declaring total income at Rs.Nil under the normal provisions and book loss of Rs.Nil u/s. 115JB of the Act.

4. Subsequently, the assessee revised its return dated 28.03.2018, declaring total income at Rs.Nil under the normal provisions and book loss of Rs.Nil u/s. 115JB of the Act. Pursuant to the survey action u/s. 133A of the Act conducted in the case of the assessee dated 19.09.2018, the assessee's case was selected for scrutiny, as it was observed that the assessee has entered into a large value international transaction as per Form No. 3CED with its Associated Enterprises (AEs) and also as per the survey report. The assessee was issued notice u/s. 142(1) of the Act calling for details, documents, evidences, explanation, along with the copy of order u/s. 92CA(3) of the Act seeking for assessee's explanation as to the transfer pricing adjustment proposed by the TPO. It is observed that inspite of several notices, the assessee has failed to furnish details before the A.O. except for a letter dated 18.02.2021 received from Shri Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd. stating that the assessee company was undergoing Corporate Insolvency Resolution Process (CRIP for short) as per Insolvency and Bankruptcy Code, 2016 as directed by the Hon'ble National Company Law Tribunal (NCLT for short) vide order dated 20.06.2019, seeking for the assessment proceedings to be kept as abeyance. Subsequent to this, the assessee was again furnished with the notice u/s. 142(1) seeking for details, documents and explanation. It is observed that the reply from Shri Ashish Chhawchharia dated 06.03.2021, reiterating the earlier

submission that the assessee company was undergoing proceedings in the NCLT was furnished. The TPO/A.O. proceeded to bench mark the international transactions and specific domestic transaction of the assessee, thereby making an adjustment which are as follows: (Draft Assessment order pg.13 of 33)

1	Slot Rent Expenses	Rs.34,30,59,063/-
2	Aircraft Lease Rental Income	Rs.105,39,00,000/-
3	Labour Charges for Aircraft Maintenance Services	Rs.21,56,66,189/-
4	Standby Letter of Credit Commission	Rs.19,67,62,500/-
5	Reimbursement of Expenses by assessee to AE	Rs.59,57,65,377/-
6	International Transaction of GSA Commission	Rs.24,54,84,368
	Total	Rs.265,06,37,497/-

5. The impugned amount was then added to the total income of the assessee and the penalty proceedings were also initiated. The A.O. had passed a draft assessment order u/s. 143(3) r.w.s. 144C(1) of the Act by making the addition as mentioned below: (page 22 of the final assessment order)

	<b>Particulars of Income</b>	<b>Amount (Rs.)</b>	<b>Amount (in Rs.)</b>
1	Income from Normal Business & Profession as per computation sheet		667,45,17,024
2	Income from Normal Business & Profession as per computation sheet		1,22,67,137
3	Income from Capital Gains as per computation sheet		1,10,59,050
4	Income from other sources – as per computation sheet		5,23,20,682
5	Less: Unabsorbed Depreciation against Speculation Business & Profession as per computation sheet		(668,67,84,161)
6	Less: Brought forward losses against capital income and others income as per computation sheet		(6,33,79,732)
Add:	1. Addition as per TP adjustment u/s. 92CA(3) as discussed above in order	265,06,37,497/-	
	2. Cash payments in violation of section 40A(3) r.w.s. 6DD – as discussed above in order	1,33,59,881	
	3. Professional & consulting fees, proff. Fees – as discussed above in order	317,22,00,000	
	4. Aircraft lease transactions as discussed above in order	146,48,00,000	
	5. Professional charges – as discussed above in order	18,75,00,000	
	6. Aircraft maintenance engg cost – as discussed above in order	1077,52,00,000	
	7. Selling & Distribution expenses – as discussed above in order	346,88,14,902	
	8. Profit on sale FFP business – as discussed above in	346,88,14,902	

	<i>order</i>		
	9. <i>Difference in transactions by Special Auditors – as discussed above in order</i>	121,98,00,000	
	10. <i>Profit received as share of development of Plot at BKC – as discussed above in order</i>	153,20,00,000	
	11. <i>Disallowance of provision of Redelivery of Aircraft – as discussed above in order</i>	47,24,00,000	
	12. <i>Disallowance of provision for spares obsolescence – as discussed above in order</i>	67,96,00,000	
	13. <i>Interest received on FD &amp; others and loan and advances given – as discussed above in order</i>	143,75,00,000	
	14. <i>Disallowance of repair and maintenance expenses of leased premises and others – as discussed above in order</i>	5,74,80,000	
	15. <i>Disallowance of in-flight and other tax amenities expenses – as discussed above in order</i>	91,29,20,000	
	16. <i>Disallowance of landing, navigation and other airport charges expenses – as discussed above in order</i>	181,57,30,000	
	17. <i>Disallowance of component capitalization on Aircraft taken on fixed lease expenses - as discussed above in order</i>	212,40,00,000	
	18. <i>Disallowance of capital expenditure incurred on aircraft taken on finance lease expenses – as discussed above in order</i>	73,08,00,000	
	19. <i>Disallowance of miscellaneous expenses – as discussed above in order</i>	46,24,10,000	
	20. <i>Penalty – as discussed above in order</i>	151,69,00,000	4246,81,14,783/-
	<b>Total Assessed Income</b>		<b>4246,81,14,783/-</b>

6. The A.O. has made the impugned addition of Rs.4246,81,14,783/- under the normal provisions, which was more than that of the income computed u/s. 115JB of the Act, wherein the income under the normal provision was considered for computing the tax liability of the assessee company.

7. The assessee was in appeal before us, challenging the impugned addition made by the A.O in pursuance to the direction given by the Id. DRP.

8. The Id. AR for the assessee contended that since the assessee's company was going through insolvency process before the Hon'ble NCLT, the assessee was unable to furnish the required documentary evidence along with the explanation proposed by the assessee in view of the various additions made by the A.O. The Id. AR further contended

that Shri Ashish Chhawchharia has been appointed as an Authorized Representative by the Monitoring Committee for which the assessee is said to have filed Revised Form 36 dated 02.01.2023. The Id. AR prayed for one last opportunity to present the assessee's case before the A.O.

9. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, vehemently opposed to remanding this issue back to the A.O. for the reason that the assessee has been given sufficient opportunity before the lower authorities to present its case.

10. Having heard the rival submissions and perused the materials on record, it is observed that the assessee company is going through the resolution process before the Hon'ble NCLT for which the Resolution Personnel (RP) was appointed in order to manage the FS of the company. The Id. AR submitted that a resolution plan dated 21.09.20220 was submitted by the 'Jalan Fritsch' consortium which was amended on several occasion and was passed by a majority votes and was approved by Hon'ble NCLT. It is observed that the assessee has failed to make compliance with the notices issued by the lower authorities inspite of several opportunities.

11. Considering the nature of the addition, we are of the considered view that the assessee may be given one last opportunity to present its case before the A.O. It is also evident that the considerable amount of time and revenue has been spent by Exchequer in carrying out the assessment proceedings followed the appellate proceedings. The assessee is directed to pay a cost of Rs.25,000/- each in both these appeals for being delinquent before the lower authorities and the same is to be paid towards Prime Minister's Relief

Fund within 30 days from the date of this order. The assessee is also directed to appeal and fully co-operate with the A.O. to present its case without any further delay.

12. The appeal in ITA No. 2379/Mum/2022 filed by the assessee for A.Y. 2017-18 is also on identical facts, except for quantum and the observations held in ITA No. 2380/Mum/2022 holds good and apply *mutatis mutandis* to this appeal also.

13. In the result, both these appeals are allowed for statistical purpose.

*Order pronounced in the open court on 24.02.2023*

Sd/-

(Prashant Maharishi)  
Accountant Member

Mumbai; Dated : 24.02.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Kavitha Rajagopal)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai