IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: "F" NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
&
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA Nos. 4885 & 4886/Del/2011

Assessment Years: 2007-08 & 2008-09

M/s Jet Lite (India) Limited Jetair House, 13, Community Centre, Yusuf Sarai, New Delhi- 49	**Vs.**	Assistant/Deputy Commissioner of Income Tax Central Circle-6 New Delhi
PAN: AADCS4480L		
(Appellant)		**(Respondent)**

ITA Nos. 3330 & 3331/Del/2014
Assessment Years: 2007-08 & 2008-09

Deputy Commissioner of Income Tax, Central Circle- 06 New Delhi	**Vs.**	M/s Jet Lite (India) Limited Jetair House, 13, Community Centre, Yusuf Sarai, New Delhi- 49
		PAN: AADCS4480L
(Appellant)		**(Respondent)**

Assessee by	None
Department by	Ms. Monika Singh, CIT DR

Date of hearing	16.03.2026
Date of pronouncement	03.06.2026

ORDER

The instant batch of four appeals involves the single assessee herein M/s Jet Lite (India) Ltd.. Its instant twin appeals i.e., ITA Nos. 4885 & 4886/Del/2011, for

assessment years 2007-08 & 2008-09, arise against the Commissioner of Income Tax (Appeals-I) [in short, "CIT(A)"], New Delhi's orders dated 30.08.2011 & 06.09.2011, passed in Order Nos.58/2010-11 & 249/10-11, involving proceedings u/s 115WE(3)/142(2A) of the Income Tax Act, 1961; hereinafter referred to as 'the Act'. The Revenue's as many twin appeals i.e., ITA Nos. ITA Nos. 3330 & 3331/Del/2014, for assessment years, are directed against the Commissioner of Income Tax (Appeals-I), New Delhi's orders both dated 26.03.2014, passed in case Nos. 20/12-13 & 21/12-13, involving proceedings u/s 271(1)(d) of the Act; respectively

Case called twice. None appears at the assessee's behest. It is accordingly proceeded *ex-parte.*

2. We next advert to the assessee's instant twin appeals ITA Nos. 4885 & 4886/Del/2011/ It emerges from a combined perusal of a case records as well as valuable assistance coming from Revenue side represented by the learned CIT(DR) that both the lower authorities' respective identical assessments framed on

25.05.2010 and 29.12.2010 appear to have treated the assessee's expenses incurred on free/concessional tickets, hospitality charges, conveyance/travelling expenses, goods as well as hotel boarding and lodging expenses; involving varying sums, as attracting assessment under the head "fringe benefits" which stand upheld in the CIT(A) lower appellate discussion. We make it clear that there is not much a dispute in principle that the learned Assessing Officer had referred the matter to the special auditor u/s 142(2) of the Act which followed the latter's special audit report submitted on 25.03.2010 *inter alia* computing the impugned fringe benefit assessment in its case.

3. Faced with this situation, we are of the considered view that section 115WB(1)(b), 2(B), F; Q, O & G clauses; respectively, indeed cover the instant five heads of free/concessional tickets, hospitality, conveyance/travelling, goods as well as hotel boarding and lodging expenses incurred at the assessee's behest for its employees. We thus find no reason to interfere with both the learned lower authorities' respective assessment(s) as well as lower appellate discussion assessing the assessee under the very heads in this factual backdrop. We accordingly reject assessee's all

corresponding identical substantive grounds raised in the instant twin appeals.

4. We further notice for the sake of completeness that the learned CIT(A)'s action allegedly restoring the matter back to the Assessing Officer has been challenged at the assessee's behest that no such remand jurisdiction is vested in him to the very effect. We are of the considered view that although there could not be much a dispute to the same in principle, learned CIT(A) has only directed the Assessing Officer to finalize his consequential computations after verifying the assessee's fringed benefit tax already paid as a matter of abundant caution. We thus find no reason to interfere with the same. These assessee's twin appeals i.e., ITA Nos. 4885 & 4886/Del/2011 fail therefore.

5. Next come the Revenue's twin appeals ITA Nos. 3330 & 3331/Del/2014 raising its sole substantive grievance that the learned CIT(A) herein has erred in law and on facts in deleting the section 271(1)(d) consequential penalties (for A.Y. 2007-08 & 2008-09) of Rs. 3,82,37,400/- levied by the Assessing Officer's, vide following identical discussion:

"3.2 I have considered the penalty order and the submissions filed on behalf of the appellant. I have also considered the assessment order, the two earlier appeal orders in the appellant's case for AYs 2006-07 and 2007-08, the relevant provisions of the law, CBDT Circular No.8/2005 and the various case laws cited. The submissions filed cover in detail the merits of each disallowance made / sustained in appeal. The said matters were already subject matter of appeal before the then CIT(A) and are presently in dispute before the Hon'ble ITAT. Applying the principle of res sub-judice [Section 10 of The Code of Civil Procedure, 1908], I decline to go into specific additions and the merits thereof, except as may be required to examine whether its non-disclosure would attract penalty. The matter in issue in this appeal is whether the additions to the value of fringe benefits made by the revenue and confirmed by the CIT(A) constitutes 'concealment' or filing of 'inaccurate particulars' so as to attract penalty u/s 271(1)(d). In order to determine this question, I shall apply the tests laid down in Dilip N Shroffs case (supra) as affirmed in the Reliance Petroproducts case (supra). I shall also examine some related issues such as whether it is a case of two opinions or disallowance of legal claim, and whether reasonable cause is essential to escape attracting penalty.

3.3 In Dilip N. Shroff v. Joint CIT [2007] 291 ITR 519/ 161 Taxman 218 (SC), Hon'ble Supreme Court ruled that irrespective of the deletion of the word 'deliberately' from the statue [Section 271(1)(c)] by the Finance Act 1964, in view of the quasi-criminal nature of penalty proceedings and application of strict construction, the primary burden is on the revenue to establish that the assessee had concealed the particulars of income or filed inaccurate particulars thereof, and that no explanation was offered or the explanation offered was not bona fide or false. This

view was reversed in Union of India v. Dharamendra Textile Processors [2008] 306 ITR 277 (SC), wherein the Apex Court held that mens rea was not an essential ingredient for levy of fiscal penalties, which are civil in nature. The effect of these two judgments was summed up by the Court in CIT, Ahmedabad vs. Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 (SC) as under:

> *"8. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff v. Jt. CIT [2007] 6 SCC 329, this Court explained the terms "concealment of income" and "furnishing inaccurate particulars".*
>
> *The Court went on to hold therein that in order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only*

not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff's case (supra) was upset. In Dharamendra Textile Processors' case (supra), after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff's case (supra) was overruled by this Court in Dharamendra Textile Processors' case (supra), was that according to this Court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in case of Dilip N. Shroff (supra). However, it must be pointed out that in Dharamendra Textile Processors' case (supra), no fault was found with the reasoning in the decision in Dilip N. Shroff's case (supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff's case (supra) to the effect that mens rea was an essential ingredient for the penalty under section 271(1)(c) that the decision in Dilip N. Shroff's case (supra) was overruled."

In the Reliance Petro case, the Hon'ble Court proceeded to hold that a claim made by the assessee but disallowed in law by the revenue did not automatically attract concealment penalty.

3.4 It is well settled that penal provisions are to be construed strictly and all elements required must be present so as to attract penalty. I find from the penalty order that the appellant has not been charged with 'concealment'. Therefore, it leaves to decide only whether appellant has furnished 'inaccurate particulars'. It is undisputed that in the return of fringe benefits filed, the appellant had offered the value of taxable fringe benefits at Rs.3,94,64,084/-, while the value of taxable fringe benefits determined after assessment and appeal effect stands at Rs.15,19,60,077/-. The difference / addition of Rs. 11,24,95,993/- consists of the following (i) Rs.7,07,98,860/- representing value of free / concessional tickets to employees; (ii) Rs.2,13,22,812/- representing value of catering expenses, in-flight expenses, interrupted flight expenses, flight delay expenses and denied pax expenses; (iii) Rs.1,03,30,390/- representing value of conveyance expenses; (iv) Rs.99,05,210/- representing value of hotel boarding & lodging expenses; and (v) Rs.1,38,271/- representing value of tour and travel expenses. I shall proceed to examine each of these items separately and put it through the tests laid down in Dilip N Shroff and Reliance Petro cases (supra).
3.5 Regarding Rs.7,07,98,860/- representing value of free / concessional tickets to employees, I find that the appellant has suo motu made disclosure in Point No.18 of the Notes to the Annual Accounts for FY 2007-08 that "Pending resolution of representation made by the Board of Airline Representatives in India "BAR (1)" to the statutory authorities regarding non levy of Fringe Benefits Tax on free/ concessional tickets issued by the airline companies, no provision for the same has been made upto

31.03.2008 in the books of account amounting to Rs.466 lac (Previous Year Rs.225 lac)." Further, in the Notes to Annexure II to the Tax Audit Report of the appellant for FY 2007-08, it has been specifically disclosed that "Free/concessional tickets are issued to the employees on standby / subject to load basis unlike tickets issued to the general public. Pending consideration and response on the representation filed by the BAR (I) and 96th Parliament Report recommending removal of such Fringe Benefits Tax (FBT), the value of such tickets have considered as NIL." I find that even though the amount of Rs.7,07,98,860/- was not included in the return of taxable fringe benefits, there was adequate disclosure in regard to said amount representing value of free /concessional tickets to employees and, therefore, it cannot be concluded that the appellant had hidden or concealed something or filed 'inaccurate' particulars relating thereto. I further find from the documents that the claim that this benefit to its employees is subject to 'load basis' or availability of vacant seats, which implies that there is no additional cost allocable to this benefit, is well established. On this count also, the non-inclusion of this amount cannot be said to amount to filing 'inaccurate' particulars so as to attract penalty u/s 271(1)(d). I hold accordingly.

3.6 The next item totaling Rs.2,13,22,812/- represents value of catering & in-flight expenses, interrupted flight/flight delay expenses and denied pax expenses. These amounts have been added under the head 'hospitality' u/s 115WB(2)(C). The word 'hospitality' has not been defined, and its ordinary meaning is "the friendly and generous reception and entertainment of guests, visitors, or strangers:" or "Relating to or denoting the business of entertaining clients, conference delegates, or other official visitors:" (Oxford Dictionary, Internet edition) or "the act of being friendly and welcoming to guests and visitors:" (Cambridge

Dictionary, Internet edition). Thus, the word itself is of wide amplitude to include the items of expenses held as chargeable to FBT. However, each and every benefit is not taxable and only those fringe benefits that are chargeable u/s 115WA can be brought to tax. The charging Section 115WA provides for additional income-tax or fringe benefit tax (FBT) in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees. Sub-section (1) of section 115WB provides for taxing 4 types of fringe benefits. Sub-section (2) is a deeming provision wherein any of the 17 types of listed expenditure, such as on entertainment, hospitality, conference, sales promotion and publicity, etc., is deemed to be fringe benefit within the meaning thereof. Sub-section (2) is different from Sub-section (1) in as much as while the latter provides for taxation of fringe benefits given by the employer to its employees, the former provides for taxation of even such fringe benefits that may not specifically benefit the employees. Thus, it is not necessary that employer-employee relation must exist to bring any expenditure within the ambit of sub-section (2). Therefore, in my considered opinion, the plea taken by the appellant that employer-employee relation must exist for taxation of all fringe benefits is not the correct view as this is inapplicable to fringe benefits charged u/s 115WB(2). As the appellant is running low-cost airline service, catering and in-flight services are mostly charged services and, therefore, the question of any 'hospitality' and any fringe benefit arising therefrom does not arise. So far as interrupted flight expenses, flight delay expenses and denied pax expenses are concerned, no doubt many of these expenses, such as food & beverages, hotel stay, etc., are in the nature of 'hospitality' expenses. However, these expenses are incurred due to contractual and/or legal obligation of the appellant towards the passengers/customers and meant to compensate for the delay/cancellation / denied boarding. What is paid in

*consequence of contractual or legal obligation cannot be said to be giving rise to any benefit. It is expenditure only meant to safe-guard the commercial interest of the appellant company and save it from damages. In my considered opinion, such expenses do not result in any fringe benefit and cannot be brought to tax within the said provisions. Accordingly, with regard to any addition on this count, it cannot be said that the appellant has filed 'inaccurate particulars' relating thereto. I also find that my two predecessor CIT(A) have differed in their view on the taxability of these amounts as fringe benefits. Since two judicial / statutory authorities have different opinion about taxability of these amounts, on this count also it cannot be said that the appellant has concealed or filed inaccurate particulars thereof. Therefore, the non-disclosure of the amount of Rs.2,13,22,812/- cannot be said to amount to filing *inaccurate particulars' so as to attract penalty u/s 271(1)(d). I hold accordingly.*

3.7 The next item amounting to Rs.1,03,30,390/- represents value of conveyance expenses incurred on transport of passengers and luggage at the airport terminals. The case of the appellant is that these expenses are incurred during running of the aircraft and gets covered u/s 115WB(2)(1) and not u/s 115WB(2)(Q). As there is a provision u/s 115WC(2) (f) specifically exempting such expenditure from tax by taking its value at 'nil', no fringe benefit tax can be charged on such expenses. I find that the expenditure on transportation of in-flight crew members is essential for running and maintenance of aircrafts. Thus, the claim of the appellant, that it is part of running cost of aircraft, appears correct. This type of expenditure is different from the normal conveyance expenses taxable u/s 115WB(2)(Q), and the exception made u/s 115WC(2) (f) establishes this difference. Therefore, it cannot be said that non-inclusion of Rs.1,03,30,390/- in the return amounts to filing 'inaccurate

particulars so as to attract penalty u/s 271(1)(d). I hold accordingly.

3.8 The next item totaling Rs.99,05,210/- represents value of hotel boarding and lodging expenses incurred by the appellant for its crew members both within the country and abroad. The case of the appellant is that these expenses are incurred during running of the aircraft and gets covered u/s 115WB(2) (I) and not u/s 115WB(2)(Q). As there is a provision u/s 115WC(2)(f) specifically exempting such expenditure from tax by taking its value at 'nil', no fringe benefit tax can be charged on such expenses. I find that the expenditure on in-flight stay of crew members is mandatory under the law as prescribed by the DGCA for running and maintenance of aircrafts. Thus, the claim of the appellant, that it is part of running cost of aircraft, appears correct. This type of expenditure is different from the normal tour and travel expenses taxable u/s 115WB(2)(Q), and the exception made u/s 115WC(2)(f) establishes this difference. Therefore, it cannot be said that non-inclusion of Rs.99,05,210/- in the return amounts to filing 'inaccurate' particulars so as to attract penalty u/s 271(1)(d). I hold accordingly.

3.9 The next item amounting to Rs.1,38,271/- represents chargeable value of 'crew-travelling expenses - international' included under tour and travel expenses. The case of the appellant is that this is per diem allowance given to the crew on international flights in consequence of DGCA regulations and for operational needs and, as it does not result in any benefit to the employees, it is not chargeable to FBT. From the description given by the appellant, it appears that these expenses are covered under clause (G) to section 115WB(2) and not clause (Q). Had the appellant applied this clause, it would have offered this benefit to tax at the same rate of 5% as per the concession provided u/s

115WC(2)(da). No doubt the expenditure is in consequence of DGCA regulations and for operational needs, but the provisions of law are to be applied correctly and to this extent the appellant can be said to have committed an omission. From the available facts I find that it cannot be concluded that the appellant has filed 'inaccurate' particulars except the failure to include this amount in the value of chargeable fringe benefits. However, this appears to be a case of an incorrect claim disallowed in law and, the revenue having failed to establish as to how the particulars filed by the appellant are 'inaccurate', the ratio of the judgment in the Reliance Petro case (supra) will apply. Therefore, no penalty u/s 271(1)(d) is attracted on this addition. I hold accordingly.

3.10 In view of the foregoing discussion, the penalty levied u/s 271(1)(d) is cancelled."

6. Learned CIT(DR) vehemently submits in this factual backdrop that the Assessing Officer herein has rightly treated the assessee's action in not having declared fringe benefits of various heads as an instance of furnishing of particulars of income. We hardly see any merit therein as per the learned CIT(A) detailed discussion holding that the assessee had indeed sought to justify its case against fringe benefit assessment in quantum proceedings which could not be treated as an instance treated as furnishing of inaccurate particulars of income as per Reliance Petro Products (Pvt) Ltd (2010) 322 ITR 158 (SC) . Rejected accordingly. The

Revenue's instant twin appeals ITA Nos. 3330 & 3331/Del/2014 are declined in very terms.

7. These assessee's twin appeals ITA Nos. 4885 & 4886/Del/2011 and the Revenue's as many appeals ITA Nos. 3330 & 3331/Del/2014 are dismissed in foregoing terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 03.06.2026.

Sd/-	***Sd/-***
(MANISH AGARWAL)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated:03.06.2026

Pooja Mittal/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi