

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY JURISDICTION

SPECIAL LEAVE PETITION (C) No. 34800/2010

THE COMMISSIONER OF INCOME TAX (CENTRAL 1)

PETITIONER(S)

VERSUS

JET LITE (INDIA) LTD.

RESPONDENT(S)

WITH

SLP(C) No. 2606/2011, SLP(C) No. 3084/2011, SLP(C) No. 3087/2011,
SLP(C) No. 9528/2011, SLP(C) No. 534/2011, SLP(C) No. 3088/2011,
SLP(C) No. 3086/2011, SLP(C) No. 4872/2014, SLP(C) No. 7520/2011,
SLP(C) No. 533/2011, SLP(C) No. 379/2011, SLP(C) No. 3807/2011,
SLP(C) No. 5376/2011, SLP(C) No. 12614/2011, SLP(C) No. 34801/2010,
SLP(C) No. 34811/2010, SLP(C) No. 34812/2010, SLP(C) No. 34816/2010,
SLP(C) No. 34815/2010 & SLP(C) No. 58/2011, SLP(C) No. 34802/2010

O R D E R

We have heard learned panel counsel/advocate appearing for the petitioner/Revenue(s) and Mr. Himanshu Mehta, learned counsel for the respondent(s).

During the course of submissions, it was brought to our notice that the respondent-Jet Lite (India) Limited is in Liquidation and therefore the said fact may be borne in mind while passing orders in these cases. It was also submitted that these appeals could be disposed of by following the order passed by this Court in C.A. Nos.6511-6518/2010 (Director of Income Tax, New Delhi vs. Travelport Inc.).

For the sake of immediate reference, the relevant portion of the order passed in the aforesaid appeals disposed of on 19.04.2023 is extracted as under:

"21. Therefore, we are of the view that the impugned order(s) of the High Court do not call for interference. Insofar as the second issue, namely the question of permanent establishment is concerned, we are not going into the same, as we have concurred with the High Court on the first issue."

Following the aforesaid order, the petitions filed by the petitioner/department(s) of income tax are dismissed.

Pending application(s), if any, shall stand disposed of.

In view of the fact that Jet lite (India) Limited is stated to be in liquidation, we request the learned counsel Mr. Himanshu Mehta appearing for the respondent(s) to transmit a copy of this order to the Official Liquidator/Competent Authority appointed in the matter(s).

The Registry to also send a copy of this order to the Monitoring Committee at the following address:

Address: Monitoring Committee of Jet Airways
Global One, 3rd Floor
252, LBS Marg,
Kurla (West)
Mumbai-400707
Email: RP.JETAIRWAYS@IN.GT.COM

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 20, 2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE / EXTRA ORDINARY JURISDICTION

CIVIL APPEAL No.8057/2011

AMADEUS IT GROUP SA

APPELLANT(S)

VERSUS

THE DIRECTOR OF INCOME TAX 1

RESPONDENT(S)

WITH

C.A. No. 8055/2011, C.A. No. 8058/2011, C.A. No. 10023/2017, C.A. No. 10024/2017, C.A. No. 8059/2011, C.A. No. 8056/2011, C.A. Nos.1596-1598/2014, C.A. No.942/2020, C.A. Nos.406-407/2022, C.A. Nos. 470-472/2022, C.A. No. 405/2022, SLP(C) No. 21595/2022, C.A. No. 9063/2022, C.A. No. 766/2023, SLP(C) No.21162/2022, SLP(C) No. 4132/2023, SLP(C) No. 5238/2023, SLP(C) No. 5177/2023

O R D E R

Learned counsel appearing for the appellant/assessee(s) submitted that in view of paragraph 21 of the order dated 19.04.2023 passed by a Coordinate Bench of this Court in C.A. Nos.6511-6518/2010 (*Director of Income Tax, New Delhi vs. Travelport Inc.*) and having regard to the fact that the Coordinate Bench observed that since the first issue was held against the department, it was not necessary to go into the second issue, namely, the question regarding permanent establishment. Therefore, appropriate orders may be made in these cases filed by the assessee(s).

We find that though the High Court has stated that there was no substantial question of law in the appeals filed by the assessee(s) before the High Court, the fact remains that at this stage going into the question as to whether there was a permanent establishment of the assessee(s) in India is now wholly academic

and therefore would not require consideration and answer in these appeals. In that view of the matter, it would not be necessary to answer the questions of law raised in these appeals/petitions.

The appeals/petitions, accordingly, stand disposed of.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 20, 2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE /EXTRA ORDINARY JURISDICTION

CIVIL APPEAL No. 4332/2017

TRAVELPORT L.P., USA

APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX (INTERNATIONAL)
TAXATION-3 NEW DELHI

RESPONDENT(S)

WITH

C.A. No.4333/2017

C.A. No.4552/2017

SLP(C) No. 16376/2017

SLP(C) No. 16416/2017

O R D E R

In view of the order passed by this Court in SLP(C) No.33572/2017 and connected cases and by following the order passed by this Court in C.A.No.8057/2011 and connected matter(s), these appeals are disposed of as the questions raised therein would no longer require consideration at the hands of this Court.

In the circumstances, the questions of law are left open and may be agitated in appropriate matters.

The appeals/petitions are disposed of, accordingly.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 20, 2023

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY JURISDICTION

SPECIAL LEAVE PETITION (C) No. 33572/2017

TRAVELPORT L.P. USA

PETITIONER(S)

VERSUS

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)
3 NEW DELHI

RESPONDENT(S)

WITH

SLP(C) No.33548/2017,

SLP(C) No.33551/2017,

SLP(C) No. 33552/2017

AND

SLP(C) No. 33556/2017

O R D E R

Learned counsel for the petitioner(s) submitted that these petitions could be disposed of having regard to the judgment of the High Court of Delhi in Galileo Nederland BV vs. Assistant Director of Income-Tax, Circle-1(2), (International Tax), New Delhi reported in (2014) 367 ITR 319 which judgment has been affirmed by this Court in C.A. Nos.6511-6518/2010 (Director of Income Tax, New Delhi vs. Travelport Inc.) dismissed on 19.04.2023 and consequently, the reasoning given by the High Court in paragraphs 21 & 22 of the judgment in Galileo Nederland BV (supra) requires to be affirmed in these cases also. It was further submitted that having regard to the aforesaid judgment, the appeals may have to be allowed.

Learned panel counsel/advocate(s) appearing for the Revenue very fairly did not dispute the aforesaid submissions.

It would be useful to refer to and extract paragraphs 21 & 22 of the judgment of the High Court in *Galileo Nederland BV* (supra), which read as follows:

"21. In these circumstances, the Sr. Standing Counsel for the Revenue made specific reference to paragraph 19 of the order of Tribunal and submitted that there is a distinguishing factor. The estimate of 15% ratio requires reconsideration because of increase in bookings from India. It was submitted that the estimate of 15% was made ten years back, therefore, cannot be considered to be appropriate. The Tribunal has observed that estimation of profits would be ideally based upon number of bookings originating from India in comparison with the bookings in a particular year and on consideration of global accounts. It is not possible to agree with the said submission for several reasons. Firstly, this is not the basis of the assessment made by the Assessing Officer. In fact, the Assessing Officer had mentioned in the assessment orders that the facts and circumstances of the case remain the same. Foundation and basis should have been first made in the assessment order. Secondly, the Tribunal in the earlier appeal in the case of Galileo International Inc. v. Dy. CIT [2008] 19 SOT 257 (Delhi) relating to Assessment Years 1995-96 to 1998-99 had undertaken the FAR Analysis and in respect of functions of the appellant- assessee observed:-

"9. ...Thus in a given case if all the operations are not carried out in India, the income has to be apportioned between the income accruing in India and income accruing outside India. In the present case, we find that only part of CRS system operates or functions in India. The extent of work in India is only to the extent of generating request and receiving end result of the process in India. The major functions like collecting the database of various airlines and hotels, which have entered into PCA with the appellant takes place outside India. The computer at Denver in USA processes various data like schedule of flights, timings, pricing, the availability, connection, meal preference, special facility, etc. and that too on the basis of neutral display real time on line takes place outside India. The computers

at the desk of travel agent in India are merely connected or configured to the extent that it can perform a booking function but are not capable of processing the data of all the airlines together at one place. Such function requires huge investment and huge capacity, which is not available to the computers installed at the desk of subscriber in India. The major part of the work or to say a lion's share of such activity, are processed at the host computer in Denver in USA. The activities in India are only minuscule portion. The appellant's computer in Germany (sic USA) is also responsible for all other functions like keeping data of the booking made worldwide and also keeping track of all the airlines/hotels worldwide that have entered into PCA. Though no guidelines are available as to how much should be income reasonably attributable to the operations carried out in India, the same has to be determined on the factual situation prevailing in each case. However, broadly to determine such attribution one has to look into the factors like functions performed, assets used and risk undertaken. On the basis of such analysis of functions performed, assets used and risk shared in two different countries, the income can be attributed. In the present case, we have found that majority of the functions are performed outside India. Even the majority of the assets i.e. host computer which is having very large capacity which processes information of all the participants is situated outside India. The CRS as a whole is developed and maintained outside India. The risk in this regard entirely rests with the appellant and that is in USA, outside India. However, it is equally important to note that but for the presence of the assessee in India and the configuration and connectivity being provided in India, the income would not have generated. Thus the initial cause of generation of income is in India also. On the basis of above facts we can reasonably attribute 15% of the revenue accruing to the assessee in respect of bookings made in India as income accruing or arising in India and chargeable under Section 5(2) read with Section 9(1)(i) of the Act."

22. It was this reasoning, which was approved by the Delhi High Court in Director of Income Tax versus Galileo International Corporation, [IT Appeal No.851/2008, decided on 25th February, 2009 along with

other ITAs, rejecting the submission of the Revenue that the Tribunal had erred in attributing only 15% of the said income as attributed to Indian operations. High Court also rejected the submission that the Tribunal's finding was erroneous as Double Taxation Avoidance Agreement with USA advanced attribution of profits and not revenue, observing that the Tribunal had applied principles of attribution of profits and not revenue. It was specifically held that the Tribunal had undertaken the exercise to assess what would be attributable to operations in India and thereafter found that only a small or miniscule part of CRS operations and functions were performed in India. These were limited to the extent of generating the request and receiving the result in India. The major functioning, i.e., collecting data bases with various airlines, hotels etc. and entering or feeding them into the computer took place outside India. It was in the computer in Denver, USA that various processed data with regard to schedule of flights timing, pricing, availability, meal preference, special facilities etc. was stored and process undertaken. The role performed by the computers in India or the Indian agents was to merely get connected or be configured so that the travel agents could perform the booking function. The computers in India were not capable of processing data, which was processed abroad. Further, the functions required huge investment and capacity, which was not installed and available in the computers at the desk of the travel agents in India but were available in the host computer in the USA. Thus, it was looking at the nature and the character of the functions undertaken in India viz., the functions and assets outside India, 15% was attributed to India. (Aspect of risk has not been discussed but it has never been the case of the revenue that risk factor tilts the scale for higher attribution of income to Indian PE). This worked out to Euro 0.45 and this was less than the commission of Euro 1, which was paid by the appellant- assessee to the distributor in India. There was substantial difference between expense of Euro 1 and attribution of Euro 0.45, as an income, which left a gap of Euro 0.55 per booking."

It is needless to observe that the judgment of the High Court in *Galileo Nederland BV* (supra) has now merged with the order of this Court in *Travelport Inc.*, C.A. Nos.6511-6518/2010 filed by the Revenue before this Court. Those appeals were dismissed. It would be useful to refer to the relevant portion of the order passed by

this Court on 19.04.2023 which is extracted as under:

"21. Therefore, we are of the view that the impugned order(s) of the High Court do not call for interference. Insofar as the second issue, namely the question of permanent establishment is concerned, we are not going into the same, as we have concurred with the High Court on the first issue."

In view of the fact that the judgment of the Delhi High Court has been affirmed by this Court by dismissing the appeals filed by the Revenue, we find that the appeals filed by the assessee(s) are liable to be allowed.

The special leave petitions are, accordingly, allowed.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 20, 2023

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY JURISDICTION

SPECIAL LEAVE PETITION (C) No. 17421/2011

DIRECTOR OF INCOME TAX
(INTERNATIONAL TAXATION)

PETITIONER(S)

VERSUS

LIQUIDATOR OF M/S ABACUS DISTRIBUTION SYSTEM
PVT. LTD. THROUGH ITS DIRECTOR

RESPONDENT(S)

WITH

SLP(C) No. 22279/2011

O R D E R

Learned counsel appearing for the petitioner/Revenue(s) as well as learned counsel for the respondent(s) jointly submit that these petitions could be dismissed in terms of the order of this Court in C.A. Nos.6511-6518/2010 (Director of Income Tax, New Delhi vs. Travelport Inc.).

Their submission is placed on record.

For the sake of immediate reference, the relevant portion of the order passed in the aforesaid appeals disposed of on 19.04.2023 is extracted as under:

"21. Therefore, we are of the view that the impugned order(s) of the High Court do not call for interference. Insofar as the second issue, namely the question of permanent establishment is concerned, we are not going into the same, as we have concurred with the High Court on the first issue."

Following the aforesaid order, the special leave petitions filed by the petitioner/department(s) of income tax are dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 20, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).34800/2010

(Arising out of impugned final judgment and order dated 21-12-2009 in ITA No. 1194/2009 passed by the High Court of Delhi at New Delhi)

COMMISSIONER OF INCOME TAX (CENTRAL 1)

Petitioner(s)

VERSUS

JET LITE (INDIA) LTD.

Respondent(s)

WITH

SLP(C) No. 2606/2011 (XIV)
(IA No. 2/2011 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

SLP(C) No. 3084/2011 (XIV)

SLP(C) No. 3087/2011 (XIV)

SLP(C) No. 9528/2011 (XIV)

SLP(C) No. 5177/2023 (XIV)
(FOR ADMISSION)

SLP(C) No. 534/2011 (XIV)

SLP(C) No. 3088/2011 (XIV)

SLP(C) No. 3086/2011 (XIV)

C.A. No. 4332/2017 (XIV-A)

C.A. No. 4333/2017 (XIV-A)

C.A. No. 4552/2017 (XIV-A)

SLP(C) No. 16376/2017 (XIV)
(FOR ADMISSION)

SLP(C) No. 16416/2017 (XIV)

SLP(C) No. 4872/2014 (XIV)

C.A. No. 10023/2017 (XIV-A)

(FOR ADMISSION)

**C.A. No. 10024/2017 (XIV-A)
(FOR ADMISSION)**

**SLP(C) No. 33572/2017 (XIV)
(IA No. 123745/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**SLP(C) No. 33548/2017 (XIV)
(IA No. 127310/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**SLP(C) No. 33551/2017 (XIV)
(IA No. 127619/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**SLP(C) No. 33552/2017 (XIV)
(IA No. 124471/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**SLP(C) No. 33556/2017 (XIV)
(IA No. 123900/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**C.A. No. 942/2020 (XIV-A)
(FOR ADMISSION)**

C.A. No. 470-472/2022 (XIV-A)

**C.A. No. 406-407/2022 (XIV-A)
(FOR ADMISSION)**

**C.A. No. 405/2022 (XIV-A)
(FOR ADMISSION)**

**SLP(C) No. 21595/2022 (XIV)
(FOR ADMISSION)**

**C.A. No. 9063/2022 (XIV-A)
(FOR ADMISSION and I.R.)**

**C.A. No. 766/2023 (XIV-A)
(FOR ADMISSION and I.R. and IA No.197616/2022-CONDONATION OF DELAY
IN FILING and IA No.197617/2022-CONDONATION OF DELAY IN REFILING /
CURING THE DEFECTS)**

**SLP(C) No. 21162/2022 (XIV)
(FOR ADMISSION)**

SLP(C) No. 4132/2023 (XIV)

**SLP(C) No. 5238/2023 (XIV)
(FOR ADMISSION)**

SLP(C) No. 7520/2011 (XIV)

SLP(C) No. 533/2011 (XIV)

SLP(C) No. 379/2011 (XIV)

SLP(C) No. 3807/2011 (XIV)

**SLP(C) No. 5376/2011 (XIV)
(IA No. 1/2011 - CONDONATION OF DELAY IN FILING)**

SLP(C) No. 12614/2011 (XIV)

C.A. No. 1596-1598/2014 (XIV-A)

SLP(C) No. 34801/2010 (XIV)

SLP(C) No. 34811/2010 (XIV)

SLP(C) No. 34812/2010 (XIV)

SLP(C) No. 34816/2010 (XIV)

SLP(C) No. 34815/2010 (XIV)

SLP(C) No. 58/2011 (XIV)

**SLP(C) No. 17421/2011 (XIV)
(IA No. 1/2011 - CONDONATION OF DELAY IN FILING)**

C.A. No. 8059/2011 (XIV-A)

C.A. No. 8058/2011 (XIV-A)

C.A. No. 8057/2011 (XIV-A)

SLP(C) No. 34802/2010 (XIV)

**SLP(C) No. 22279/2011 (XIV)
(IA No. 1/2011 - CONDONATION OF DELAY IN FILING)**

C.A. No. 8055/2011 (XIV-A)

C.A. No. 8056/2011 (XIV-A)

Date : 20-07-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For PARTY (s) Mr. Anup Kumar, AOR
Mrs. Neha Jaiswal, Adv.
Mr. Shivam Kumar, Adv.
Ms. Shruti Singh, Adv.
Mr. Shubham Rajhans, Adv.
Mr. Vaibhav Prasad Deo, Adv.

Ms. Kavita Jha, AOR
Mr. Ajay Vohra, Sr. Adv.
Ms. Kavita Jha, Adv.
Mr. Udit Naresh, Adv.

Mr. Balbir Singh, A.S.G.
Mr. Arijit Prasad, Sr. Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Rupesh Kumar, Adv.
Mr. V Chandrashekhara Bharathi, Adv.
Mrs. Gargi Khanna, Adv.
Mr. H R Rao, Adv.
Mrs. Alka Agarwal, Adv.
Mr. Prahlad Singh, Adv.
Mr. VijAY Nand Tripathi, Adv.

Mr. Shantanu Chaturvedi, Adv.
Mr. V. Bhargava, Adv.
M/S. Khaitan & Co., AOR

M/S. Gagrat And Co, AOR
Mr. Ujjwal A. Rana, Adv.
Mr. Himanshu Mehta, Adv.

Mrs. Anil Katiyar, AOR
Mr. Raj Bahadur Yadav, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. SLP No(s). 34800/2010, SLP(C) No. 2606/2011, SLP(C) No. 3084/2011, SLP(C) No. 3087/2011, SLP(C) No. 9528/2011, SLP(C) No. 534/2011, SLP(C) No. 3088/2011, SLP(C) No. 3086/2011, SLP(C)No. 4872/2014, SLP(C) No. 7520/2011, SLP(C) No.533/2011, SLP(C) No.379/2011, SLP(C) No. 3807/2011, SLP(C) No. 5376/2011, SLP(C) No. 12614/2011, SLP(C) No.34801/2010, SLP(C) No. 34811/2010, SLP(C) No. 34812/2010, SLP(C) No.34816/2010, SLP(C) No. 34815/2010 & SLP(C) No. 58/2011, SLP(C) No. 34802/2010:

Delay condoned.

The Special Leave Petitions are dismissed in terms of the

signed order.

Pending application(s), if any, shall stand disposed of.

2. C.A. No.8057/2011, C.A. No. 8055/2011, C.A. No. 8058/2011, C.A. No. 10023/2017, C.A. No. 10024/2017, C.A. No. 8059/2011, C.A. No. 8056/2011, C.A. Nos.1596-1598/2014, C.A. No.942/2020, C.A. Nos.406-407/2022, C.A. Nos. 470-472/2022, C.A. No. 405/2022, SLP(C) No. 21595/2022, C.A. No. 9063/2022, C.A. No. 766/2023, SLP(C) No.21162/2022, SLP(C) No. 4132/2023, SLP(C) No. 5238/2023, SLP(C) No. 5177/2023:

Delay condoned.

The appeals/petitions stand disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

3. C.A. No. 4332/2017, C.A. No. 4333/2017, C.A. No. 4552/2017, SLP(C) No. 16376/2017, SLP(C) No. 16416/2017:

The appeals/petitions are disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

4. SLP (C) No.33572/2017, SLP(C) No.33548/2017, SLP(C) No.33551/2017, SLP(C) No. 33552/2017 & SLP(C) No. 33556/2017:

The special leave petitions are, accordingly, allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

5. SLP(C) No.17421/2011 and SLP(C) No. 22279/2011:

Delay condoned.

The Special Leave Petitions are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)

(MALEKAR NAGARAJ)
COURT MASTER (NSH)

(Five signed orders are placed on the file)