British Airways PLC v. Assistant Commissioner of Income Tax, Circle (Int. Tax.) 1(1)(2), New Delhi & Anr.

W.P.(C) 18856/2025

2026:DHC:1505-DB; W.P.(C) 18856/2025, decided 17.02.2026 | 2026-02-17

British Airways: 0.1% section 197 certificate quashed for the identified airline receipts; NIL certificate directed with expressly qualified continuing relief.

Income-tax Act, 1961: sections 90, 197; India–UK DTAA Article 8

High Court of Delhi | 2-judge bench (Division Bench) | Justice Dinesh Mehta | Justice Vinod Kumar

Assessment years: FY 2025–26 (certificate proceedings)

Exact deadline and service scope matter

Paragraph 17 says 30 days from receipt of application or latest by 15.05.2026, whichever is later, unless law or transaction changes. It does not say 15 May every year. Ground handling and engineering receipts are separately taxable.

01 FACTS OF THE CASE

British Airways PLC, a UK tax resident whose profits from operation of aircraft and cargo in international traffic are exempt in India under Article 8 of the India-UK DTAA read with Section 90, had consistently been granted NIL withholding certificates under Section 197 for 16 years, including for Rs. 3,700 crore of receipts in the first part of FY 2025-26. However, for a supplemental application covering Rs. 3.98 crore, the AO passed an order dated 25.09.2025 issuing a certificate at 0.1% citing erroneous outstanding demands (which the Department later admitted in its counter-affidavit did not exist, with refunds actually due to the petitioner).

Source: PDF pp. 1-4, paras 1-12

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench held that once the order itself acknowledged that income from operation of aircraft is exempt under Article 8 of the India-UK DTAA, and the respondents' own affidavit admitted that no tax demand was outstanding against the petitioner, issuing a 0.1% TDS certificate after 16 years of uninterrupted NIL certificates—and after granting a NIL certificate for Rs. 3,700 crore in the very same financial year—reflected non-application of mind and arbitrary bureaucratic inconsistency.

Source: PDF pp. 4-5, paras 13-15

03 JUDICIAL DECISION

The order and certificate of 25 September 2025 were set aside. A NIL certificate was directed within seven days from the judgment date. Paragraph 17 directs continued NIL certificates for airline income within 30 days of receipt of application or latest by 15 May 2026, whichever is later, unless law or the nature of the transaction changes.

Source: PDF p.4

04 OUTCOME / IN WHOSE FAVOUR

The writ succeeded for the identified airline operations. The continuing direction contains a specific 15 May 2026 date and a whichever-is-later qualification; it does not prescribe an annual 15 May deadline. Taxable ground handling and engineering services remain outside that relief.

Source: PDF p.4

05 EXPERT COMMENTS

Identify the receipt stream — The relief concerns the airline operations discussed in the order. Ground handling and engineering remain expressly distinguished as taxable. A single corporate taxpayer does not make all its receipts treaty-exempt.

Portal entries need reconciliation — The supposed outstanding demand was incorrect while a refund was due. The effective orders and demand history mattered; an unreconciled portal entry did not justify withholding on the accepted non-taxable receipts here.

Preserve the exact continuing direction — Paragraph 17 uses 30 days from receipt or 15 May 2026, whichever is later, with a law-or-transaction-change exception. Recasting it as an annual May deadline or an unconditional certificate guarantee changes the order.

The small rate was still economically material — The Court considered the volume of operations when rejecting the nominal-rate justification. The source prints both a Rs.3.98 crore supplemental figure and much larger annual figures; this note does not silently alter or reconcile them.

Source: PDF p.4

SOURCE & VERIFICATION

High Court of Delhi official judgment PDF - AKHB Repository (DLHC011006682025_1_2026-02-17.pdf)

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STATUTORY SCOPE

The order concerns section 197 and Article 8 read with section 90. Ground handling, engineering and other taxable services are expressly distinguished from the disputed airline receipts.

LATER TREATMENT

Source checked 2026-10-21. Subsequent judicial treatment has not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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