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Landing and parking charges of international aircrafts cannot be treated as 'rent' for the purpose of deduction of tax at source under Section 194-I of the Income-tax Act

Background

Recently, the Supreme Court of India (Supreme Court) in the case of Japan Airlines Co. Ltd.[1] (the taxpayer) held that charges paid for the landing and parking of aircrafts by international airlines cannot be treated as 'rent' within the meaning of Section 194-I[2] of the Income-tax Act, 1961 (the Act) since charges paid by these airlines are not for 'use of land' but for various other facilities and services.

The decisions of the Delhi and the Madras High Court were in conflict with each other on the subject matter. The Supreme Court held that the decision of the Madras High Court was justified and observed that the Madras High Court examined the matter keeping a wider perspective in mind; thereby encompassing the utilisation of the airport providing the facility of landing and take-off of the airplanes and also parking facility.

Facts of the case

- The taxpayer is a foreign company incorporated in Japan. It is engaged in the business of international air traffic. It transports passengers and cargo by air across the globe and provides other related services. The taxpayer is a member of the International Air Transport Agreement (IATA) and during the Assessment Year (AY) 1998-99, it serviced inward and outbound air traffic to and from India[3].
- The International Civil Aviation Organisation (ICAO) to which India is also a contracting state has framed certain guidelines and rules which are contained in the Airports Economic Manual and ICAO's policies on charges for airports and air navigation services.
- The Airport Authority of India (AAI) has levied certain charges on the taxpayer for landing and parking its aircrafts. On the basis of the letter of AAI, the taxpayer deducted the tax on landing and parking charges at 2 per cent under Section 194C of the Act.
- The Assessing Officer (AO) held that the taxpayer is to be treated as an assessee in default for a short deduction of tax and passed an order under Section 201(1) of the Act. The AO held that the payments for landing and parking charges were covered by the provisions of Section 194-I and not under Section 194C of the Act and, therefore, the taxpayer ought to have deducted tax at 20 per cent instead of 2 per cent.
- The Commissioner of Income-tax (Appeals) [CIT(A)] and Income-tax Appellate Tribunal (the Tribunal) held the decisions in favour of the taxpayer. However, the Delhi High Court held the decision in favour of the tax department.
- The Delhi High Court relied on its earlier decision in the case of United Airlines[4] where it had taken a view that the term 'rent' as defined in Section 194-I had a wider meaning than 'rent' in the common parlance as it included any agreement or arrangement for use of land. The High Court

[1] Japan Airlines Co. Ltd. v. CIT [2015] 60 taxmann.com 71 (SC)
[2] Section 194-I – Deduction of tax at source at the specified rates on rent paid/credited
[3] The Supreme Court also dealt with the appeal of Singapore Airlines Limited
[4] United Airlines v. CIT 287 ITR 281 (Del)

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further observed that the use of land began when the wheels of an aircraft touched the surface of the airfield and similarly, there was use of land when the aircraft was parked at the airport.

- The Madras High Court, however, taking note of the decision of the Delhi High Court held that the case is covered under Section 194C of the Act and not under Section 194-I of the Act. Thus, the two decisions were in conflict with each other.

Supreme Court's ruling

- As per Section 194-I of the Act, the expression 'rent' is given a much wider meaning than what is normally known in common parlance. In the first instance, once the payment is made under lease, sub-lease or tenancy, the nomenclature given in the section is inconsequential. Such payment under lease, sub-lease and/or tenancy would be treated as 'rent'. In the second place, such payment made even under any other 'agreement or arrangement for the use of any land or any building' would also be treated as 'rent'. Whether or not such building is owned by the payee is not relevant.
- The expressions 'any payment', by whatever name called and 'any other agreement or arrangement' have the widest import. Likewise, payment made for the 'use of any land or any building' widens the scope of the proviso.
- In the present case, it has been found that these airlines[5] are allowed to land and take-off their aircrafts at Delhi Airport for which a landing fee is charged. They are also allowed to park their aircrafts at Delhi Airport for which a parking fee is charged. It is done under an agreement and/or an arrangement with the AAI.
- The decision of the Delhi High Court in the case of the taxpayer refers to its earlier judgment in the case of United Airlines. The Delhi High Court in that case held that the word 'rent' as defined in the provision has a wider meaning than 'rent' in common parlance. It includes any agreement or arrangement for the use of land. In the opinion of the High Court, "when the wheels of an aircraft coming into an airport touch the surface of the airfield, use of the land of the airport immediately begins". Similarly, for parking the aircraft in that airport, there is a use of the land. This is the only reason given by the High Court in support of its conclusion.
- The Madras High Court in the case of Singapore Airlines Limited held that the landing and parking facility was not of 'use of land' *per se* but in respect of number of facilities provided by the AAI which were to be necessarily provided in compliance with various international protocols. Therefore, the charges were not for land usage or area allotted simpliciter. The substance of these charges was ingrained in the various facilities offered to meet the requirement of passengers' safety and on safe landing and parking of the aircraft and these were the consideration that, in reality, governed the fixation of the charges.
- The aforesaid conclusion of the Madras High Court is justified based on sound rationale and reasoning.
- On a perusal of IATA on the charges for airport and air navigation services, it indicates that there are various international protocols which mandate all such authorities manning and managing these airports to construct the airports of desired standards which are stipulated in the protocols.
- The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as on safe landing and parking of the aircrafts. Therefore, it is not mere 'use of the land'. It is the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol, which is the primary focus.
- The Supreme Court emphasised the technological aspects of these runways in detail to highlight the precision with which designing and engineering go into making these runways to be fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of an aircraft and in this whole process, 'use of the land' pails into insignificance. What is important is that the charges are payable for providing these facilities.
- In fact, the charges which are taken from the aircrafts for landing and even for parking of the aircrafts are not dependent upon the use of the land. On the contrary, the protocol prescribes a detailed methodology of fixing these charges.
- The charges on air-traffic which includes charges for landing, lighting, approach and aerodrome control, aircraft parking, aerobridge, hangar, passenger service, cargo etc. are to be fixed by applying the formulae stated therein.
- On a perusal of the same, it clearly indicates that the cost analysis is to be done for fixing these charges. Thus, when the airlines pay for these charges, treating such charges as charges for 'use of land' would be adopting a totally naïve and simplistic approach which is far away from the reality.

[5] Japan Airlines Company Limited and Singapore Airlines Limited

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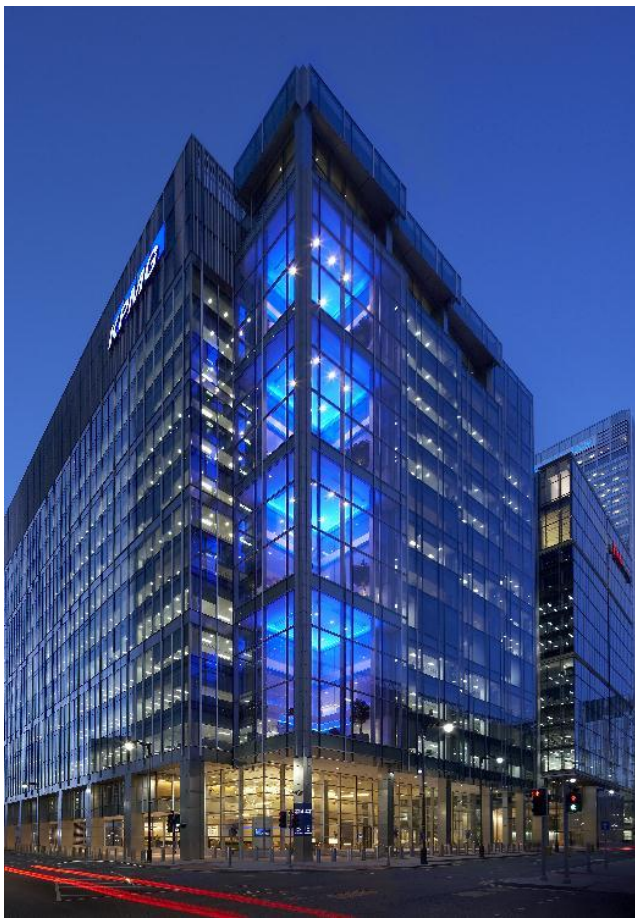
- When we look to the substance behind such charges, keeping in view the full and larger picture in mind, it becomes very clear that the charges are not for use of land *per se* and, therefore, it cannot be treated as 'rent' within the meaning of Section 194-I of the Act. Therefore, the view taken by the Madras High Court is correct. The judgment in the case of United Airlines as well as the impugned Delhi High Court decision is accordingly over-ruled.
- The Madras High Court has held that the words 'any other agreement or arrangement for the use of any land or any building' have to be read *ejusdem generis* and it should take it colour from the earlier portion of the definition namely 'lease, sub-lease and tenancy'. Thereby, it has tried to limit the ambit of words 'any other agreement or arrangement'. This reasoning is clearly fallacious.
- A bare reading of the definition of 'rent' provided in explanation to Section 194-I of the Act would make it clear that in the first place, the payment, by whatever name called, under any lease, sub-lease, tenancy which is to be treated as 'rent'. However, the second part is independent of the first part which gives a much wider scope to the term 'rent'. As per this, whenever a payment is made for use of any land or any building by any other agreement or arrangement that is also to be treated as 'rent'.
- Once such a payment is made for use of land or building under any other agreement or arrangement, such an agreement or arrangement gives the definition of the rent of very wide connotation. To that extent, the Delhi High Court is correct that the scope of the definition of rent is very wide and is not limited to what is understood as rent in common parlance.
- It is a different matter that the Delhi High Court did not apply this definition correctly to the present case as it failed to notice that in substance the charges paid by these airlines are not for 'use of land' but for other facilities and services wherein use of the land was only minor and an insignificant aspect. Thus, it did not correctly appreciate the nature of charges that are paid by the airlines for landing and parking charges which is not, in substance, for the use of land but for various other facilities extended by the AAI to the airlines. The use of land, in the process, becomes incidental.
- Once it is held that these charges are not covered by Section 194-I of the Act, it is not necessary to go into the scope of Section 194C of the Act.

Our comments

The issue with respect to the characterisation of landing and parking charges as 'rent' under the Act has been debated before the Courts. In the instant case, the Supreme Court has settled the controversy and held that charges paid for landing and parking of aircrafts by international airlines cannot be treated as 'rent' within the meaning of Section 194-I of the Act since charges paid by these airlines are not for 'use of land' but for various other facilities and services.

The Supreme Court has interpreted the term 'rent' in a wider perspective and observed that the definition needs to be interpreted widely considering that it extends beyond the common parlance of the meaning of "rent". However, even under such a wide interpretation, it will not include payments which are not, in substance, for the use of land or building but for various other facilities and services.



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