2012-TIOL-646-HC-MAD-IT

(Also see analysis of the Order)

IN THE HIGH COURT OF MADRAS

Tax Case (Appeal) Nos.15 to 20 of 2006

COMMISSIONER OF INCOME TAX, CHENNAI

Vs

M/s SINGAPORE AIRLINES LTD
108, DR RADHAKRISHNAN SALAI
MYLAPORE, CHENNAI-600004

Chitra Venkataraman And K Ravichandrabaabu, JJ7

Dated: July 13, 2012

Appellant Rep by: Mr T R Senthil Kumar, Standing Counsel
Respondent Rep by: Mr Farooq Irani, SC., For M/s O R Santhakrishnan S K Rahul Vivek

Income Tax - Sections 194C, 194I, 194J, 201(1) & (1A) - *"ejusdem generis"* - ''use of land'' - Whether landing and parking charges paid by international airlines to AAI can be considered as rent, so as to attract TDS liability u/s 194-I - Whether mere landing an aircraft on airport amounts to usage of area, even though such landing is only incidental to other complex services provided by AAI - Whether payments made not in pursuance of any existing tenancy agreement, can also qualify as rent u/s 194 I - Whether landing and parking charges paid to AAI for availing complex services i.e landing, take off, navigational facilities, etc,. is in the nature of FTS u/s 194J.

The assessee is an international airlines. In the course of the assessment proceedings, the assessee claimed that the charges paid to International Airport Authority of India (IAAI) towards landing and parking charges would not come within the definition of 'rent' u/s 194 I Explanation. Hence, the liability of TDS u/s 194 I or under Section 194 J in respect of payment of navigation charges was not attracted. However, the AO treated such charges as rent and since the assessee failed to deduct TDS @ 20%, the assessee was at default in terms of section 201(1) and 201(1A). CIT(A) confirmed the order of the AO and the assessee appealed before the Tribunal which relied on the order of Delhi Bench of ITAT in *DCIT V. Japan Airlines reported*, wherein it was held that the payment made by the airline company could not be construed as payment of rent. However, the Delhi Tribunal held that the charges would attract the provisions of Section 194 C and the assessee also accepted this liability. Regarding the navigation facilities, the assessee conceded that it was in the nature of charges paid for getting technical services, apart from using the equipments for the purpose of communication between the aircraft and the air traffic controller, thus, Section 194 J was held applicable. Hence, the Tribunal remanded the matter to the AO to work out the interest payable till the date on which the IAAI had paid the tax in respect of the amount received from the assessee, with reference to the liability u/s 194 C. Aggrieved, the Revenue had filed an appeal before the High Court.

The DR placed reliance on the definition of rent given in section 194I and decision of the Delhi High Court *in Commissioner of Income-Tax V. Japan Airlines Co. Ltd.,* wherein the High Court reversed the order of the ITAT. While so reversing the decision of the Tribunal, the Delhi High Court applied the decision of the Delhi High Court *in United Airlines V. CIT*, wherein it was held that when the wheels of an aircraft touched the surface of the air-field, use of the land of the airport immediately began. However, this judgement is pending before the Supreme Court.

In the counter argument, the AR referred to the decision of the Delhi Bench of the Income Tax Appellate Tribunal in the case of *DCIT V. Japan Airlines*, as well as to the decision of the Delhi High Court in the case of Japan Airlines and pointed out that the Delhi High Court while reversing the order of the Tribunal had applied the decision of the Delhi High Court wherein the Delhi High Court had considered the definition of 'rent' without considering the nature of services offered by the IAAI on the landing and parking of the air craft. It was further submitted that definition of Rent was an exhaustive definition and that considering this reference to the preceding enumeration, namely, lease, sub-lease or tenancy, the reference to any other agreement or arrangement as appearing in the definition was to be understood applying the principle of ejusdem generis; that the said arrangement or agreement was in respect of use of any land or any building as under a tenancy or lease, that the payment received qualified to be treated as 'rent'. Thus, AR contended the Delhi High Court judgement missed out addressing several issues, the decision required a fresh consideration by this Court and cannot be applied straightaway to this case.

Having heard the parties, the High Court held that,

+ We agree with the contention of the learned Senior Counsel appearing for the assessee and with respect, we express our disagreement to the decision of the Delhi High Court. The facts are not in dispute;

+ 'Rent' is defined under Explanation (i) to Section 194 I of the Income Tax Act. As rightly pointed out by the AR, the definition begins with a phrase "rent to mean". Being an exhaustive definition, by whatever name called, payment made for the use of any land or building and the land appurtenant thereto under a lease or sub-lease or tenancy or under any agreement or arrangement with reference to the use of the land, would be "rent". Thus to be called a lease, sub-lease or tenancy, an agreement or arrangement must necessarily be of the same nature or character of the preceding narrative terms, namely, lease, sub-lease and tenancy, that only if and when the agreement or arrangement has the characteristics of lease or sub-lease or tenancy for use of the land, the charges levied would fall for consideration under the definition of 'rent' in the Explanation. Thus, going by the principle of ejusdem generis, when the exhaustive definition is associated with limited words having the limited operation, unless agreement or arrangement fall under the same clause or genus preceding the words "agreement or arrangement", that payment would not qualify as rent for the purpose of Section 194-I;

+ in the decision rendered in the case of United Airlines, we find that neither the Revenue nor the assessee produced before the Court any materials on the nature of services rendered or any arrangement or agreement in the nature of lease deed or for that matter, lease deed or license deed for the use of the land to speak on the character of the payments to be called as 'rent'. The decision of the Income Tax Appellate Tribunal, Delhi Bench in the case of Japan Airlines is the only case where the various details regarding the nature of services rendered and the payment charged for as per the policy guidelines and principles laid down by the Council of International Civil Aviation Organisation were considered to

come to the conclusion that the charges paid did not fall under the definition of 'rent'. The Tribunal pointed out to the various materials and held that the Airport Authority of India provides various facilities to the aircrafts for which it charged fee/charges/rent. The services provided include charges for landing and take off facilities, taxiways with necessary draining and fencing of airport, parking route, navigation and terminal navigation. These charges are based on weight formula and maximum permissible take off weight and length of stay;

++ referring to the decision of the Apex Court in Associated Hotels of India Ltd. V. R.N.Kapoor that a tenancy is created only when the tenant is granted the right to enjoyment of the property by having exclusive possession, the Tribunal held that the Airports Authority of India never intended to give exclusive possession of any specific area to the assessee in relation to the landing and parking area and hence, the payment could not be called as rent. Thus it held that whether the nature of services offered, would fit in with the definition of lease or tenancy, has to be decided with reference to the materials. As far as the present case is concerned, AR produced before us materials like Airport Economic Manual, the International Airports Transport Agreement (IATA) to the contracting States on charges for Airport and Air Navigation Services, indicating the nature of services offered by the Airports Authority of India. Under the provisions of the Airports Authority of India Act, 1994, the Airport Authority is given powers to charge rent etc. for landing, housing and parking of aircrafts and any other services or facilities offered in connection with the aircraft operations at the airport and also for providing air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport, which are necessary for the safe aircraft landing and for air passengers' safety in connection with the aircraft operation at the Airport. The charges for landing of the aircraft are based on the weight of aircraft using the maximum permissible take-off weight of the aircraft. The landing charges include the charges for landing and take off facilities, taxiways with necessary air traffic control for approach. Thus, the principles guiding the charges on landing and take-off show that the charges are with reference to the number of facilities provided by the Airport Authority of India in compliance with the various international protocol and the charges made are not for any specified land usage or area allotted. The charges are governed by various considerations on offering facilities to meet the requirement of passengers' safety and on safe landing and parking of the aircraft. Depending on the traffic, there is a shared use of the air field by the airliner. Thus the charges levied are, utmost, in the nature of fee for the services offered rather than in the nature of rent for the use of the land;

+we may herein point out that we had referred to the order of the Tribunal in the case of Japan Airlines, by reason of the fact that the Tribunal, in the case before us, had merely followed the decision of Japan Airlines rendered by the Delhi Bench of the Income Tax Appellate Tribunal and the entire nature of the operation are dealt with elaborately by the Delhi Tribunal in Japan Airlines case;

+ AR appearing for the assessee took us through the literature on how the runways are maintained with various other technical details on runway lighting, runway safety area, runway marking etc. Reading those materials along with the order of the Tribunal in the case of Japan Airlines, we are constrained to hold that the nature of payments made by the assessee do not partake the character of 'rent' for the use of the land or any building. It is not denied by the Revenue that the services rendered are not with reference to any specified area or land nor it is contended by the Revenue that irrespective of this aspect, the agreement would nevertheless be treated as a payment as rent. Given the definition of 'lease or tenancy' and the definition of 'rent' as appearing in Section 194 I Explanation, unless the payment is with reference to the use of any specified land or a building, payment

made for availing of the services as in the nature landing or parking, as available in the present case before us, cannot be construed as 'rent'. It is difficult to accept the case of the Revenue that a mere touchdown on the land surface would bring the case of the assessee that there is a lease or an agreement or arrangement answering the character of lease that the charges would fall within the meaning of 'rent', as appearing in Section 194-I Explanation. It is no doubt true that in the decision in United Airlines V. CIT, the Delhi High Court pointed out that an aircraft on coming into an airport and on touching the surface of the airfield, the use of the land immediately beings. So too, on parking of the aircraft, there is a use of the land. But by this alone, one cannot come to the conclusion that the use of the land leads to an inference of the existence of a lease or an arrangement in the nature of lease. By the very nature of things, as a means of transport, an aircraft has to touch down for disembarking the passengers and the goods before it takes off; for this facility to be offered, the Airport Authority charges a price. Given the complexity in landing and take-off, unlike in the case of vehicles on road, the Airport Authority has to provide navigational facilities and the charges thus made are calculated based on certain criteria like the weight of the aircraft. Thus in so charging for the facility, we do not find, there is any scope of importing the concept of 'rent' as defined under Section 194 I Explanation;

+ as rightly pointed out by the AR appearing for the assessee, the payment contemplated under the Explanation is for the use of the land under a lease, sub-lease or tenancy. This means, what is contemplated under the said definition is a systematic use of land specified for a consideration under an arrangement which carries the characteristics of lease or tenancy. Going by the logic of the said provisions, we feel that a mere use of the land for landing and payment charged, which is not for the use of the land, but for maintenance of the various services, including the technical services involving navigation, would not automatically bring the transaction and the charges within the meaning of either lease or sub-lease or tenancy or any other agreement or arrangement of a nature of lease or tenancy and rent. As far as the runway usage by an aircraft is concerned, it could be no different from the analogy of a road used by any vehicle or any other form of transport. If the use of tarmac could be characterised as use of land, so too the use of a road would be a use of land. We do not think that for the purpose of treating the payment as rent, such use would fall under the expression "use of land". Thus, going by the nature of services offered by the Airport Authority of India for landing and parking charges thus collected from the assessee herein, we do not find any ground to accept that the payment would fit in with the definition of 'rent' as given under Section 194-I of the Income Tax Act;

+ in the circumstances, we respectfully differ from the decision of the Delhi High Court in United Airlines V. CIT, as well as the decision in Commissioner of Income-Tax V. Japan Airlines Co. Ltd., following the decision in Commissioner of Income-Tax V. Japan Airlines Co. Ltd. In the light of the above, we have no hesitation in rejecting the case of the Revenue, thereby confirming the order of the Tribunal.

Revenue's appeal dismissed

Case followed:

Associated Hotels of India Ltd. V. R.N.Kapoor AIR 1959 SC 1262

Cases distinguished:

United Airlines V. CIT (2006-TIOL-111-HC-DEL-IT)