



Global Business Tax Alert Sharp Insights

Landing and parking charges for Aircrafts are not for 'use of land' and hence not subject to TDS u/s 194-I of the Act

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Synopsis

The Hon'ble Supreme Court of India has settled the dispute whether landing and parking charged paid by airlines to airport authorities amounts to 'rent' for the reason that it entails 'use of land'. It noticed the facts need to be viewed in its larger perspective, and considering the complex nature of facilities provided by airport authorities, it held that charges for its facilities and services, including for aircraft landing and parking charges, cannot be called 'rent' for 'use of land', and hence is not subject to tax deduction at source under section 194-I of the Act.

Facts

- Japan Airlines Company Limited ('the Assessee'), a foreign airline company, is engaged in the business of operating aircraft in international air traffic. It transports passengers and cargo by air across the globe including inward and outbound air traffic to and from Delhi.
- For landing the aircrafts and parking it at Delhi Airport, the Airports Authority of India ('AAI') levies charges. The Assessee had deducted tax at source ('TDS') @ 2% under section 194C of the Income Tax Act, 1961 ('Act') on such payments. The Income Tax Authorities, however, contended that the applicable TDS should be under section 194-I of the Act.
- The Delhi High Court had ruled against the Assessee holding that landing and parking charges would attract TDS under Section 194-I of the Act. It had emphasized that the definition of the term 'rent' under section 194-I of the Act is much wider than the meaning given to the word in common parlance. The High Court held that use of land is entailed even when the wheels of an aircraft flying into an airport touch the surface of the airfield, and also when the aircraft is parked in that airport.
- In the case of another similar foreign airline (Singapore Airlines), Madras High Court on identical facts had taken a contrary view that the landing and parking charges would attract TDS under section 194C of the Act. The High Court held that the payment was not for 'use of land' per se but was in respect of number of facilities necessary for complying with international protocols. The Madras High Court dissented from Delhi High Court's view that, in the definition of 'rent' under section 194-I, the words "any other agreement or arrangement for the use of any land or

any building” should be read ejusdem generis and take colour from earlier portion of the definition, namely “lease, sub-lease and tenancy”. Thereby, it has tried to limit the meaning of words “any other agreement or arrangement”.

Issues for consideration before the Supreme Court

The issue that was disputed was as to whether landing and parking charges paid by Airlines would attract TDS under section 194-I of the Act. In other words, the question was as to whether landing, take-off and parking facilities would mean to ‘use of the land’ and therefore qualifies as ‘rent’ under section 194-I of the Act.

Decision of the Supreme Court

- The Supreme Court noted with approval the reliance of Madras High Court on the fact that International Civil Aviation Organization ('ICAO'), to which India is also a contracting State, framed guidelines prescribing the facilities to be provided by authorities like AAI and the charges to be levied by them for such facilities and services, including landing/parking charges. It also noted that the runways necessary for landing and take-off were not constructed like any ordinary roads, but had to meet technical specifications and standards. It highlighted that considering the technical specifications and standards involved in building and maintaining a runway and similar facilities, use of land becomes insignificant.
- Supreme Court held that landing and parking charges are not for mere ‘use of the land’. On the contrary, it is for the use of facilities that are to be compulsorily offered by AAI in tune with the requirements of the international protocols.
- Supreme Court held that treating these charges as charges for 'use of land' would be adopting a totally naive and simplistic approach which is far away from the reality and substance of the transaction. In substance, the charges paid by the airlines are not for 'use of land' but for other facilities and services wherein use of the land was only minor and insignificant aspect. Use of land, in the process, becomes incidental.
- Keeping in view the full and larger picture in mind, it was held that the charges cannot be treated

as 'rent' within the meaning of Section 194-I of the Act. Once it was held that these charges are not covered by section 194-I of the Act, Supreme Court did not go into the scope of Section 194C of the Act.

- The Supreme Court however disapproved the interpretation placed by the Madras High Court on the words “any other agreement or arrangement for the use of any land or any building” and held that the definition of word 'rent' under section 194-I had very wide connotation; whenever payment is made for use of any land or any building by any agreement or arrangement (other than lease, sub-lease or tenancy), that would also be treated as 'rent'.
- In conclusion, it held that payment of charges for landing and parking of aircraft would not be subject to TDS under section 194-I of the Act.

Comments

The Supreme Court held that landing and parking charges paid by the airline companies are not only for the use of land but for other facilities and services wherein use of the land is insignificant. The Supreme Court again gives importance to substance of transaction. The Supreme Court however did not raise or answer the question on why the payment should be chargeable to TDS under section 194C of the Act.

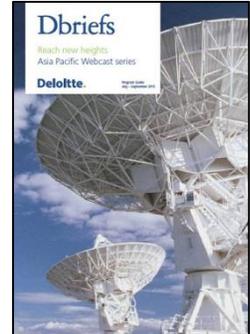
Source: Decision of Supreme Court in the case of Japan Airlines Co. Ltd. v. Commissioner of Income-tax, New Delhi [2015] 60 taxmann.com 71 (SC)

Upcoming Dbriefs - Register

India's New Export Incentive Schemes: A Real Boost for Exporters of Goods and Services

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As a step further to raise the global competitiveness of the Indian manufacturing and service sectors, the new FTP has revamped various export incentives available to the exporters of goods and services. The two new schemes under the FTP, namely Merchandise Export from India Scheme (MEIS) and the Service Exports from India Scheme (SEIS), aim to provide benefits to all exporters doing business in India. For more information, visit the [Dbriefs](#) page.



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