In the High Court of Judicature at Madras

Dated: 13.07.2012

Coram

The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN

and

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

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

Commissioner of Income Tax

Chennai.

.... Appellant in the above T.Cs

Vs.

M/s.Singapore Airlines Ltd.

108, Dr.Radhakrishnan Salai,

Mylapore, Chennai _x0016_ 600 004.

.... Respondent in the above T.Cs

APPEALs under Section 260 A of the Income Tax Act against the order dated 13.07.2005 in I.T.A.Nos.701 to 706/Mds/2002 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench for the assessment years 1997-98, 1998-99 and 1999-2000.

For Appellant : Mr.T.R.Senthil Kumar

Standing Counsel for Income Tax

For Respondent: Mr.Farooq Irani, S.C.

For M/s.O.R.Santhakrishnan

S.K.Rahul Vivek

COMMON JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The Revenue has filed the above Tax Case (Appeals) as against the order of the Income Tax Appellate Tribunal relating to the assessment years 1997-98, 1998-99 and 1999-2000. This Court, by order dated 06.02.2006 admitted the above Tax Case (Appeals) on the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that payment of landing and parking charges is to be treated as payment of contractors under Section 194 C and not as payment of rent under Section 194 I of the Income Tax Act?"

2. The assessee is an international airlines. In the course of the assessment proceedings, for the assessment years 1997-98 to 1999-2000, the assessee claimed that the charges paid to International Airport Authority towards landing and parking charges would not come within the definition of 'rent' as defined under Section 194 I Explanation of the Income Tax Act and hence, the liability to deduct tax at source under Section 194 I or under Section 194 J of the Income Tax Act in respect of payment of navigation charges did not arise at all.

3. The Assessing Authority pointed out that the charges paid by the assessee on landing and parking to International Airport Authority of India for the use of runway for landing and take off and also the space in the tarmac of the airport for parking of the aircraft represented 'rent'. Since the assessee had failed to deduct TDS at 20%, the assessee was liable to be treated as one in default; consequently, an order under Section 201(1) and 201(1A) was made. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer. Aggrieved by this, the assessee went on appeal before the Income Tax Appellate Tribunal.

4. A perusal of the order of the Tribunal shows that it followed the decision of the Delhi Bench of the Income Tax Appellate Tribunal in the case of DCIT V. Japan Airlines reported in (2005) 92 TTJ 687, which held that the payment made by the airline company could not be construed as payment of rent. Thus the Tribunal agreed with the Delhi Bench of the Tribunal in the case of DCIT V. Japan Airlines reported in (2005) 92 TTJ 687 and held that the payment made for landing and parking charges and on navigation did not answer the description of 'rent' to go for TDS under Section 194 I of the Income Tax Act. However, the Delhi Tribunal held that the charges would attract under the provisions of Section 194 C of the Income Tax Act, a line of reasoning, which was also accepted by the Tribunal of the Madras Bench in the assessee's case. The assessee had also accepted the liability under Section 194 C of the Income Tax Act.

5. As far as navigation facilities were concerned, the assessee did not make a serious dispute, in other words, it 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.

6. In the light of the decision thus arrived at, the Tribunal thought it fit to remand the matter back to the Assessing Authority to work out the interest payable till the date on which the International Airport Authority had paid the tax in respect of the amount received from the assessee, particularly with reference to the liability under Section 194 C of the Income Tax Act. Aggrieved by this, the present appeals have been filed by the Revenue.

7. Learned Standing Counsel appearing for the Revenue placed heavy reliance on the definition of 'rent' as found in Section 194 I Explanation of the Income Tax Act and placed reliance on the decision of the Delhi High Court reported in (2010) 325 ITR 298 (Delhi) (Commissioner of Income-Tax V. Japan Airlines Co. Ltd.), wherein the Delhi High Court reversed the order of the Income Tax Appellate Tribunal. While so reversing the decision of the Tribunal, the Delhi High Court applied the decision of the Delhi High Court reported in (2006) 287 ITR 281 (United Airlines V. CIT), wherein it was held that when the wheels of an aircraft coming into an airport touches the surface of the air-field, use of the land of the airport immediately begins. Consequently, the Delhi High Court accepted the case of the Revenue, thereby confirmed the order of assessment.

8. Considering the identical nature of facts prevailing in the present case, learned Standing Counsel appearing for the Revenue submits that the decision therein may be applied herein too. He, however, pointed out that the decision of the Delhi High Court reported in (2010) 325 ITR 298 (Delhi) (Commissioner of Income-Tax V. Japan Airlines Co. Ltd.) is pending in appeal before the Apex Court in Special Leave to Appeal (Civil) No.4102 of 2009 and the matter was directed to be listed on 7th October, 2009. On verification, it is learnt that the appeal is still pending on the files of the Apex Court. Referring to the decision of the Delhi High Court reported in (2006) 287 ITR 281 (United Airlines V. CIT), learned Standing Counsel appearing for the Revenue reiterated the contentions on the lines held by the Delhi High Court and thus submitted that in the light of the decisions of the Delhi High Court on the very same issue, the Tax Case (Appeals) be allowed.

9. Countering the submissions made by the Revenue, learned Senior Counsel appearing for the assessee took us through the decision of the Delhi Bench of the Income Tax Appellate Tribunal in the case of DCIT V. Japan Airlines reported in (2005) 92 TTJ 687, 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 reported in (2006) 287 ITR 281 (United Airlines V. CIT) wherein the Delhi High Court had considered the definition of 'rent' without considering the nature of services offered by the International Airport Authority of India on the landing and parking of the air craft. Taking us through the definition of 'rent', he pointed out that the definition is 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 has to be understood applying the principle of ejusdem generis; that the said arrangement or agreement has to be 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'. He pointed out that even though the Delhi High Court had referred to the definition of 'rent', it had not taken note of the facts as are projected in the present case that there is no use of any land as in the case of tenancy or lease, that all that the airlines had paid was only for the services rendered by the Airport Authority in providing the facilities for landing including the navigational facility and the payment is measured with reference to the various parameters, which are given by the International

Airport Authority in its various circulars. Thus raising the question as to whether the various facilities offered and the charges fixed therefor on the basis of weight for the use of the facility would fall for 'use of the land' and the charges in the definition of 'rent', learned Senior Counsel appearing for the assessee took us through the decision of the Income Tax Appellate Tribunal, Delhi Bench in the case of Japan Airlines, which had considered the various aspects of the services rendered to the airlines and pointed out that the Delhi High Court in the decision reported in (2006) 287 ITR 281 (United Airlines V. CIT) had not considered any of these aspects while dealing with the issue as to whether the charges would fit in with the definition of 'rent'. On the other hand, the Delhi High Court in the decision reported in (2006) 287 ITR 281 (United Airlines V. CIT) had merely interpreted the provision of law to come to a conclusion that when the wheels of an aircraft coming into an airport touches the surface of the air-field, there is an use of the land immediately, so too on the parking of the aircraft in the airport, there is use of the land; hence, parking and landing fee would be treated as rent. Thus following the said decision, the Tribunal's decision in the case of Japan Airlines was reversed.

10. Objecting to this line of reasoning, learned Senior Counsel appearing for the assessee submitted that on the issues raised, particularly with reference to the nature of services rendered, the decision requires a fresh consideration by this Court and that the decision referred to above cannot be applied straightaway to reject the assessee's contention herein. In the light of the various facilities offered by the Airport Authority of India for landing and parking, unless the facility offered fits in with the definition of 'rent', the case of the assessee could not be brought within the four corners of taxation for the purpose of applying Section 201(1) and 201(1A) of the Income Tax Act.

11. Heard learned Standing Counsel appearing for the Revenue and the learned Senior Counsel appearing for the assessee and perused the materials placed before this Court.

12. 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.

13. 'Rent' is defined under Explanation (i) to Section 194 I of the Income Tax Act, as follows:

"194 _x0016_ I Any person, not being an individual or a Hindu undivided family, who is responsible for paying to any person any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of -

(a) ....

(b).....

.....

Explanation _x0016_ For the purposes of this section -

(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;

(ii)....."

14. As rightly pointed out by the learned Senior Counsel appearing for the assessee, 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.

15. 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.

16. Referring to the decision of the Apex Court reported in AIR 1959 SC 1262 (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.

17. As far as the present case is concerned, learned Senior Counsel 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.

18. 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.

19. Learned Senior Counsel 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 reported in (2006) 287 ITR 281 (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.

20. With great respect we find it difficult to accept the view of the Delhi High Court holding that the payment would fit in with the definition of 'rent' and the use of the land on a touchdown of the air field would amount to a use of land for the purpose of treating the charges as rent under Section 194-I Explanation of the Income Tax Act.

21. As rightly pointed out by the learned Senior Counsel 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.

22. In the circumstances, we respectfully differ from the decision of the Delhi High Court reported in (2006) 287 ITR 281 (United Airlines V. CIT), as well as the decision reported in (2010) 325 ITR 298 (Delhi) (Commissioner of Income-Tax V. Japan Airlines Co. Ltd.), following the decision reported in (2010) 325 ITR 298 (Delhi) (Commissioner of Income-Tax V. Japan Airlines Co. Ltd.),

23. In the light of the above, we have no hesitation in rejecting the case of the Revenue, thereby confirming the order of the Tribunal. Accordingly, the above Tax Case (Appeals) stand dismissed. No costs.

(C.V.,J) (K.R.C.B.,J)

13.07.2012

Index:Yes/No

Internet:Yes/No

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To

1. The Income Tax Appellate Tribunal, Madras 'B' Bench.

2. The Commissioner of Income Tax (Appeals), X, Chennai.

3. The Income Tax Officer, TDS IV, Chennai.

CHITRA VENKATARAMAN,J.

AND

K.RAVICHANDRA BAABU,.

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T.C.(A) Nos.15 to 20 of 2006