आयकर अपीलीय अधिकरण, मुंबई "ई" खंडपीठ

Income-tax Appellate Tribunal -"E"Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं पवनसिंह,न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and Pawan Singh,Judicial Member

आयकर अपील सं./ITA/6397/Mum/2014,निर्धारण वर्ष /Assessment Year:2011-12

DCIT (OSD) TDS-1(2), Room No.812, K.G. Mittal, Hospital Bldg. Charni Road Mumbai-400 002.	Vs.	M/s. Emirates, Mittal Chambers, 228, Nariman Point, Ground Floor Mumbai-400 021. **PAN:AAACE 1237 C**

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent)**

प्रत्याक्षेप/C.O/63/Mum/2016,AY.2011-12

M/s. Emirates, Nariman Point Mumbai-400 021.	Vs.	DCIT (OSD) TDS-1(2), Mumbai-400 002.

(Cross Objector) (प्रत्यर्थी **/ Respondent**)

Revenue by: Sh.Vishwas Mundhe **- DR**

Assessee by: Sh.Aliasger Rampurwala- **AR**

सुनवाई की तारीख **/ Date of Hearing: 03.01.2017**

घोषणा की तारीख **/ Date of Pronouncement: 03.01.2017**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य,राजेन्द्र के अनुसार

Challenging the order,dated 01/08/2014,of the CIT(A)-14,Mumbai,the Assessing Officer (AO)and the assessee have filed appeal/Cross objections(CO) for the above-mentioned three AY.s,raising various grounds.As the issues involved in the appeal/ CO.s.are common,so,for the sake of convenience,we are adjudicating both the matters by a single order.Assessee company is engaged in the business of operation of aircraft and other related activities.

ITA/6397/Mum/2014-AY.2011-12

2.During the course of hearing before us, Representatives of both the sides agreed that the issue,raised by the AO in the appeal for the year under consideration,is covered against him by the order of the Tribunal(ITA.s.4982-84/Mum/2013,AY.s.2008-09 to 2010-11,dated 03. 08.2016).

3.We find that the effective ground of appeal is about allowing relief of tax u/s. 201(1)and interest u/s.201(1A)of the Act for short deduction of TDS on Passenger Service Fees.We would like to refer to the relevant portion of the order of the Tribunal for earlier years where the identical issue has been dealt in following manner:

> *"**5.**We have heard the rival submissions and perused the material available on record.We find that the assessee had paid PSF and X-Ray charges to MIAL as per the agreement entered with it, that it had deducted tax at the rate of 2%, that the AO had held that the payment made*

by the assessee was covered by the provisions of section 194-I of the Act,that he treated the assessee in default for not deducting the taxed at higher rate,that it had hired a office premises at the international airport, that a separate agreement was entered into with regard to hiring of that premises, that it was deducting tax as per the provisions of section 194-I of the Act for the said premises.In our opinion PSF/X-Ray charges cannot be treated as rent as envisaged by section 194 I. In the case of Japan Airlines Co. Ltd. & others(377 ITR 372)the Hon'bel Apex Court has defined the word Rent as under:

> "The expression "rent" is given a much wider meaning u/s. 194-I than is normally known in common parlance. In the first instance, it means any payment which is made under any lease, sub-lease, tenancy. Once the payment is made under lease, sub-lease or tenancy, the nomenclature which is given is inconsequential. Such payment under lease, sub-lease or tenancy would be treated as "rent". In the second place, such a 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.
>
> A bare reading of the definition of "rent" contained in the Explanation to section 194-I would make it clear that in the first place, the payment, by whatever name called, under any lease, sub-lease, tenancy, is to be treated as "rent". That is rent in traditional sense. However, the second part is independent of the first part which gives much wider scope to the term "rent". According to this whenever 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 agreement or arrangement gives the definition of rent of very wide connotation. To that extent, the scope of the definition of "rent" is wide and not limited to what is understood as rent in common parlance."

The facts of the case were that the assessees were foreign airline companies which were members of the International Air Transport Agreement and during the relevant year serviced inward and outbound air traffic to and from India. The Airports Authority of India levied certain charges on them for landing and parking their aircraft.For payment of landing and parking charges of their aircraft,the appellants deducted tax at source u/s. 194C of the Act,@ 2% and deposited it with the Department. The Department, however, took the view that the tax was to be deducted u/s. 194-I of the Act which calls for deduction at 20%. Deciding the issue as to whether the landing and parking charges paid by the airline companies to the Airports Authority of India were payments for a contract of work u/s. 194C and not in the nature of "rent" as defined in section 194-I,the Hon'ble Apex Court held as follow:

> "…….the charges fixed by the Airports Authority of India for landing and take-off services as well as for parking of aircraft were not for the "use of the land". These charges were for services and facilities offered in connection with the aircraft operation at the airport, which included providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of

navigational aids and meteorological services at the airport. The Airport Economics Manual and the International Airports Transport Agreement among contracting States on charges for airport and air navigation services showed that there were various international protocols which mandated that all authorities manning and managing these airports construct airports of desired standards which were stipulated in the protocols. The services required to be provided by authorities like the Airports Authority of India were aimed at passengers' safety as well as safe landing and parking of the aircraft. Therefore, it was not mere "use of the land". On the contrary, it was the facilities, that were to be compulsorily offered by the Airports Authority of India in tune with the requirements of the protocol, which was the primary focus. For example, special technology was required for the construction of runways for smooth landing and take-off of the aircrafts. Technical specifications for lighting, safety area and markings were stipulated. Designs and quality of pavement on these runways were also to be taken compliant. The Airports Authority of India provided all these facilities for landing and take-off of an aircraft and in this whole process, "use of the land" was incidental. On the contrary, the protocol prescribed a detailed methodology for fixing these charges. Thus, the charges were not for use of land per se and, therefore, could not be treated as "rent" within the meaning of section 194-I of the Act."

Respectfully,following the above judgment we hold that payment made by the assessee to MIAL cannot be treated rent,as per the provisions of section 194-I of the Act.There was no use of land by the assessee for both the charges collected by it. Thus,the basic ingredient i.e. use of land,plant,machinery etc.is missing and hence it can safely be held that the assessee had rightly deducted the tax at the rate of 2%, as per the provisions of section 194- C of the Act. As far as PSF charges are concerned,we want to mention that in the case of Jet Airways (supra) the Tribunal has held as under:

"The facts under consideration show that the PSF is a statutory liability without demarcating/ earmarking the area taken on the rent, nor it is a case of systematic use of land specified for consideration under an agreement, which carries the characteristics of lease or tenancy. A mere use of land and payment charged, which is not for the use of the land but for maintenance of various services including technical services would not technically bring the transaction and the charges within the meaning of either lease or sublease or tenancy or any other agreement or arrangement or any nature of lease or tenancy or rent. It would not be out of place to consider the CBDT Circular No.1/2008, dated 10th, January, 2008 relating to the clarification regarding the applicability of provisions of section 194 – I to payments made by the customers on account of cooling charges to the cold storage owners, wherein the

CBD had the occasion to consider the representations in respect of the issue, whether the customer five the building, plant and machinery etc.,without packages for reservation for a required period captain the cold storage after paying cooling charges. The CB DT, thus, clarified that the customer is also not given any right to use any demarcated space less place for the machinery of the cold storage and thus does not become a tenant. Therefore, the provisions of section 194 – I is not applicable to the cooling charges paid by the customers of the cold storage. Applying the same technology, the PSF charges paid by the assessee on behalf of its customer, did not attract the provisions of section 194 –I."

After considering the above,we are of the opinion that the order of the FAA does not suffer from any legal or factual infirmity.Therefore, upholding his order,we decide the effective ground of appeal against the AO."

Following the above order,effective ground of appeal is decided against the AO.

4.The Authorised Representative(AR) stated that the CO filed by the assessee would be infructuous,if the appeal filed by the AO was dismissed.We have decided the issue against the AO and therefore the CO,filed by the assessee,is treated infructuous.

As a result appeal filed by the AO stands dismissed and the CO.s.of the assessee is treated infructuous.

फलतः निर्धारण अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है और निर्धारिती का प्रत्याक्षेप निष्प्रभावी माना जाता है.

Order pronounced in the open court on 3rd January,2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 3 जनवरी ,2017 को की गई ।

Sd/	**-Sd/-**
(पवनसिंह / PawanSingh)	**(राजेन्द्र / Rajendra)**
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated : 03.01.2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**