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* **HIGH COURT OF DELHI : NEW DELHI**

\+ **WP (C) No.1011/2000**

% Decided on: February 13, 2006

M/s. United Airlines ...Petitioner
Through Mr.Ajay Vohra with Ms.Kavita Jha and Mr.Vinay Vaish

versus

The Commissioner of Income-tax & Ors. ...Respondents
Through Mr.R.D. Jolly with Mr.Ajay Jha and Mr.Deepak Shukla

Coram:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

√1. Whether the Reporters of local papers may be allowed to see the judgment?

√2. To be referred to Reporter or not?

√3. Whether the judgment should be reported in the Digest?

MARKANDEYA KATJU, CJ (ORAL) :

This writ petition has been filed against the impugned order of the Commissioner of Income Tax dated 16th December, 1999 under Section 264 of the Income Tax Act.

2. Heard learned counsel for the parties and perused the record.

3. The Petitioner is an airline incorporated in USA. Its aircraft land at Indira Gandhi International Airport. The short question in the case is whether the landing and parking charges can be deemed to be rent under Section 194-I Explanation (i) of the Income Tax Act.

4. Learned counsel for the Petitioner submitted that the landing and parking charges cannot be treated as rent within the aforesaid provision.

5. Explanation (i) of Section 194-I of the Income Tax Act reads as follows: -

> "(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;"

6. A perusal of the above provision shows that the word "rent", as defined above has a wider meaning than 'rent' in common parlance. It

includes any agreement or arrangement for use of land.

7. When the wheels of an aircraft coming into an airport touch the surface of the air-field, use of the land of the airport immediately begins. Similarly, for parking the aircraft in that airport, again, there is a use of the land. Hence we are of the opinion that landing and parking fee is definitely 'rent' within the meaning of the aforesaid definition as they are payments made for use of the land of the airport.

8. The word "rent" in the aforesaid definition has a wider meaning, as already stated above, than in common parlance and it amounts to a legal fiction. Legal fictions are well-known in law. For instance, Section 43 (3) of the Income Tax Act defines 'plant' to include a book. Normally, in common parlance 'plant' means a factory but Section 43 (3) include books within the meaning of word "plant" for the purpose of depreciation.

9. Learned counsel for the Petitioner sought to go into the intention of the provision and the background etc. but in interpreting a taxing statute all these considerations are irrelevant. In a taxing statute the principle of literal interpretation is very strictly applied. It is often said that there is no equity in taxes and tax and equity are strangers.

10. In our opinion, there is no equity in a tax and considerations of

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equity are wholly out of place in a taxing statute. This is because the principle of strict interpretation applies to taxing statutes.

11. The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J in his classic statement:

> "In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used, (vide Cape Brady Syndicate v. IRC (1921) 1 KB 64 [cited with approval in AIR 1968 SC 623])."

12. In *AV Fernandez v. State of Kerala, AIR 1957 SC 657*, the Supreme Court of India stated the principle as follows: "If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the taxing statute no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

13. Hence in taxing statutes the language cannot be strained, vide *State of Punjab v. Jullunder Vegetable Syndicate, AIR 1966 SC 1295*. If the words of a taxing statute fail, so must the tax. The courts cannot, except

rarely and in clear cases, help the draftsman by a favourable construction,vide *ITO v. Nadar, AIR 1968 SC 623*.

14. In ***Innamuri Gopalan v. State of AP, 1964 SCR (2) 888***, exemption was denied to the assessee on the ground that the intention of the notification was to avoid double taxation, and as this was not a case of double taxation, no exemption could be granted. The Supreme Court held that on the plain language of the notification the assessee was entitled to exemption, and since the intention was not reflected in plain words, it could not be taken into consideration.

15. It is said that tax and equity are strangers, vide ***Partington v. Attorney General (1869) LR 4 HL 100***. This view was best expressed by Lord Carins;

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind. On the other hand if the court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be", vide Partington v. Attorney General (supra)."

16. Thus, in interpreting a taxing statute one cannot go by the notion as to what is just and expedient, vide *CIT v. Shahzada Nand, AIR 1966 SC*

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1342. In ***IRC v. Hinchy, (1960) AC 748***, the House of Lords held that a provision in the Income Tax Act 1952 for a statutory penalty (for making an incorrect return of income) of £20 and trebling 'the tax which he ought to be charged under this Act' referred not to the tax on the amount which the taxpayer had failed to declare, but to the whole tax which he ought to be charged for the relevant year, notwithstanding the extravagant consequences which flowed from giving the words their natural meaning.

17. The Supreme Court of India has held that equity is out of place in tax laws, vide ***CIT v. Firm Muar, AIR 1965 SC 1216.*** In ***CIT v. Madho Prasad Jatia, (1976) 4 SCC 92***, It held that there could be no consideration of equity if the language of the provision was plain and clear, but where it was not, and two interpretations were possible, the one in consonance with equity and fairness should be preferred.

18. In our opinion, the definition of the word "rent" in Explanation (i) of Section 194 I is very clear and the plain meaning of that provision shows that even the landing of aircraft or parking aircraft amounts to user of the land of the airport. Hence, the landing fee and parking fee will amount to 'rent' within the meaning of aforesaid provision, even if it could not have such a meaning in common parlance.

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19. For the reasons given above, we find no infirmity in the impugned order of the Commissioner of Income Tax. The petition is dismissed.

M. Katju
CHIEF JUSTICE

Madan Lokur
MADAN B. LOKUR, J

FEBRUARY 23, 2005
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