



\* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 14.08.2008

+ **ITA No.101/2007**

**THE COMMISSIONER OF INCOME  
TAX DELHI -XVII**

**..... Appellant**

**versus**

**ASIANA AIRLINES**

**..... Respondent**

**Advocates who appeared in this case:**

For the Appellant : Mr R.D.Jolly with Mr Paras Chaudhary

For the Respondent : Mr Salil Aggarwal with Mr Prakash Kumar

**CORAM :-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED  
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal by the revenue has been filed against the order dated 28.02.2006 passed by the Income Tax Appellate Tribunal in ITA No. 65/Del/02 pertaining to the assessment year 2001-02.



2. The sole question for our consideration is :-

Whether the Income Tax Appellate Tribunal was correct in law in holding that the payment for landing charges and parking charges made by the assessee to the Airport Authority of India would be covered within the meaning of Section 194-C of the Income Tax Act, 1961?

3. The assessee had deducted tax at source under the provisions of Section 194-C of the said Act at the rate of 2% on such payments. The Assessing Officer, however, held that the present case fell within the purview of Section 194-I of the said Act and that the deduction of tax at source should have been at the rate of 20%. The Commissioner Income-tax (Appeals) took an entirely different view and arrived at the conclusion that neither the provisions of section 194-C nor those of section 194-I of the said Act were applicable but that the tax was deductible under section 194-J of the said Act. The Commissioner Income-tax (Appeals) also directed the Assessing Officer to verify as to whether Airport Authority of India had paid the taxes.

4. The Tribunal, in the impugned order, has relied upon its decision in the case of *DCIT Vs. Japan Airlines* wherein it had been held that the payments of the nature involved in the present case fell



under section 194-C of the said Act. Consequently, following its decision in the case of *Japan Airlines* (supra), the Tribunal concluded that the assessee was right in deducting tax at source at 2% as per section 194-C of the said Act. The Tribunal also held, as a consequence, that no interest under Section 201 (1A) of the said Act could be charged in the facts and circumstances of the case and in view of decision with regard to the deductibility of tax at source under section 194-C of the said Act.

5. Mr Jolly, who appears on behalf of the appellant, submits that the decision of the Tribunal is liable to be set aside and the question is liable to be decided in favour of the Revenue inasmuch as the very issue of whether landing and parking charges could be deemed to be rent under Section 194-I of the said Act had come up for consideration before this Court in the case of *United Airlines v. CIT : 287 ITR 281* when this Court had concluded that payments made for landing and parking charges would be deemed to be 'rent' under Section 194-I of the said Act.

6. We have heard the learned counsel for the parties and have examined the decision in the case of *United Airlines* (supra). The issue is entirely covered by the decision of this Court in *United*



*Airlines* (supra) wherein the Court has categorically held payments made for landing and parking charges to be deemed to be ‘rent’ under Section 194-I of the said Act. Our answer to the question formulated in this appeal is that the Tribunal was not justified in law in holding that the payment for landing charges and parking charges made by the assessee to the Airport Authority of India would be covered within the meaning of section 194-C of the said Act. On the contrary, such payments would be deemed to be ‘rent’ under section 194-I of the said Act.

7. The appeal, therefore, succeeds. We make it clear that any consequential benefits that the assessee would be entitled to would be granted by the department in case the assessee is able to demonstrate that the Airport Authority of India has paid the taxes. The department shall also calculate interest under Section 201 (1A) of the said Act in accordance with the relevant provisions and as a consequence of this order.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**August 14, 2008/sb**