



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

% Judgment delivered on: 23.10.2008

+ **ITA 652/2006**

**COMMISSIONER OF INCOME TAX,  
DELHI – XVII**

... Appellant

- versus -

**M/S. JAPAN AIRLINES CO. LTD.**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr R.D. Jolly

For the Respondent : Mr Y.K. Kapoor with Ms Rajni Mahajan

**CORAM:-**

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

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

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

Admit.

2. The following substantial questions of law arise for our consideration:-

- 1) Whether the Income-tax Appellate Tribunal was correct in law in holding that the landing / parking charges paid by the assessee to the Airports Authority of India were payments for a contract of work under Section 194-C of the Income-tax Act,



1961 and not in the nature of rent as per Section 194-I of the said Act ?

- 2) Whether the Income-tax Appellate Tribunal was correct in law in holding that the respondent was not an assessee in default in respect of payments of landing / parking charges to the Airports Authority of India under Section 194-I of the said Act ?

3. The filing of the paper books is dispensed with. The appeal is taken up for hearing straightaway because this court already has the benefit of the decision in the case of *United Airlines v. Commissioner of Income-tax and Others*: 287 ITR 281 where this very issue arose for consideration. In the said decision, the question that arose was whether the landing and parking charges could be deemed to be rent under Section 194-I of the said Act. A division Bench of this court concluded that such landing and parking charges would be rent under Section 194-I of the said Act. The court observed that the word “rent” as defined in the said provision had a wider meaning than “rent” in the common parlance. It included any agreement or arrangement for use of land. The court further observed that when the wheels of an aircraft coming into an airport touch the surface of the airfield, use of the land of the airport immediately begins. Similarly, for parking the aircraft in that airport, again, there is use of the land. Consequently, the Division Bench was of the opinion that landing and parking fee were definitely



“rent” within the meaning of the provisions of Section 194-I as they were payments made for the use of the land of the airport.

4. In view of the definitive conclusion arrived at in *United Airlines (supra)*, the questions have to be answered in favour of the revenue and against the assessee.

5. We may also note that the learned counsel for the assessee sought to argue that they had been instructed by the Airports Authority of India itself to deduct tax under Section 194-C. In this context, the learned counsel drew our attention to a letter dated 02.08.1996 which is quoted in paragraph 13 of the impugned order. In that letter, it is clearly indicated that landing and parking charges would be subject to tax deduction at source under Section 194-C of the said Act. While this may be a valid argument in the course of the penalty proceedings, if any, inasmuch as the letter reflects the *bona fides* of the assessee, this would not be an argument available to the assessee for the purposes of considering the questions at hand.

In view of the answers to the questions given above, the appeal is allowed. The impugned order is set aside.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**