REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9875 OF 2013

M/S JAPAN AIRLINES CO. LTD. .....APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX, NEW DELHI .....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 9876-9881 OF 2013

J U D G M E N T

A.K. SIKRI, J.

In these appeals, the issue involved relates to the deduction of tax at source ('TDS'). In both the cases, assessees are foreign Airlines. One is Japan Airlines Company Limited (hereinafter referred to as the 'JAL') and the other is Singapore Airlines Limited (hereinafter referred to as the 'SAL'). As both are international Airlines, they are flying their aircrafts to various destinations across the world. Their services include inward and outbound air traffic to and from New Delhi as well. For landing

the aircrafts and parking thereof at New Delhi Airport i.e. Indira Gandhi International Airport ('IGIA'), New Delhi, the Airports Authority of India ('AAI') which manages IGIA levies charges on these two Airlines. For payment of landing and parking charges in respect of its aircrafts, the two Airlines are deducting TDS under Section 194-C of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The TDS under Section 194-C of the Act is deductible @ 2%. After deducting this TDS while making payment to AAI, the same is deposited with the Income Tax Authorities. The Income Tax Authorities, however, are of the view that the TDS is to be deducted under the provisions of Section 194-I of the Act which calls for deduction @20%. Thus, the dispute is as to whether TDS to be deducted under Section 194-C or under Section 194-I of the Act.

2. We may point out at this stage itself that in the appeal pertaining to JAL, it is the JAL which is the appellant as the High Court of Delhi by the impugned judgment dated 23.10.2008 has taken the view that the TDS is to be deducted under Section 194-I of the Act. In the other appeal which involves SAL, it is the Commissioner of Income Tax/Revenue which has filed the appeals as the High Court of Madras in its judgment dated

13.07.2012 has taken contrary view holding that the case is covered under Section 194-C of the Act and not under Section 194-I of the Act thereof. The Madras High Court has taken the note of the judgment of the Delhi High Court but has differed with its view. Thus, the two judgments are in conflict with each other and we have to determine as to which judgment should be treated in consonance with the legal position and be allowed to hold the field.

3. For the sake of convenience, we are mentioning the facts of JAL's case, with the reiteration that the operations of the two Airlines on the basis of which the case is to be decided is identical.

4. JAL is a foreign company incorporated in Japan and is engaged in the business of international air traffic. It transports passengers and cargo by air across the globe and provides other related services. The assessement year involved in this appeal is the assessement year 1998-1999, corresponding to the financial year ending on 31.03.1998. The International Civil Aviation Organization ('ICAO') to which India is also a contracting state has framed certain guidelines and rules which are contained in the Airports Economic Manual and ICAO's Policies on Charges

for Airports and Air Navigation Services. All member States abide by the guidelines and rules prescribed for various charges to be levied for facilities and services provided including landing/parking charges.

5. The AAI under the provisions of the Airport Authority of India Act, 1994 has been authorized to fix and collect charges for landing, parking of aircrafts and any other services and facilities offered in connection with aircraft operations at the airport and for providing air traffic services such as ground safety services, aeronautical communications and navigational aids, meteorological services and others at the airport.

6. JAL is a member of the International Air Transport Agreement ('IATA') and during the relevant year it serviced inward and oubound air traffic to and from New Delhi, India. The AAI levied certain charges on the JAL for landing and also for parking its aircrafts. The JAL paid the charges after deducting tax at source under Section 194-C of the Act. The JAL received letter dated 02.08.1996 from the AAI informing it that AAI had applied to the Income Tax Authorities for exemption from the tax deduction and were awaiting the clearance. It was further stated in the said letter that in the meanwhile JAL should deduct the tax on landing

and parking charges @2% under Section 194-C. JAL, accordingly, starting making TDS @2%. In the relevant assessement year, it paid AAI a sum of Rs.61,60,486/- towards landing and parking charges. On this amount, TDS comes to Rs.1,57,082/- when calculated @2% which was deducted from the payments made to AAI and deposited with the Revenue. The JAL thereafter filed its annual return in Form 26-C for the financial year 1997-1998.

7. The Assessing Officer passed an order under Section 201(1) of the Act on 04.06.1999 holding the JAL as an assessee-in-default for short deduction of tax of Rs.11,59,695/- at source. He took the view that payments during landing and parking charges were covered by the provisions of Section 194-I and not under Section 194-C of the Act and, therefore, the JAL ought to have deducted tax @20% instead of @2%. The JAL filed the appeal against this order before the Commissioner of Income Tax (Appeals). The CIT(A) accepted the contention of the JAL and allowed the appeal vide order dated 31.01.2001, holding that landing and parking charges were inclusive of number of services in compliance with the International Protocol of the ICAO. The Revenue challenged the order of CIT(Appeals) by filing appeal

before the Income Tax Tribunal. ITAT dismissed this appeal on 25.10.2004 confirming the order of the CIT(Appeals).

8. The Revenue persisted with its view that the matter was covered by Section 194-I and, therefore, dissatisfied with the orders of the ITAT, it went to the High Court by way of further appeal under Section 260A of the Act. Two questions were raised - (i) whether the Tribunal was correct in holding that the landing/parking charges paid by the JAL to the AAI were payments for a contract of work under Section 194-C and not in the nature of 'rent' as defined in Section 194-I; and (ii) whether the Tribunal was correct in law in holding that the JAL was not an assessee-in-default. The High Court allowed the appeal by answering the questions in favour of the respondent following its earlier decision in the case of ***United Airlines*** v. ***CIT***[1]. In that case, the High Court had taken the view that the term 'rent' as defined in Section 194-I had a wider meaning than 'rent' in the common parlance as it included any agreement or arrangement for use of land. The High Court further observed that the use of land began when the wheels of an aircraft touched the surface of the airfield and similarly, there was use of land when the aircraft was parked at the airport.

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9. Special leave petition was filed against the aforesaid judgment of the High Court in which leave was granted and that is how the present appeal arises for consideration of the issue at hand.

10. Before proceeding further, it would be apposite to take note of the provisions of Section 194-C as well as 194-I of the Act. Insofar as Section 194-C is concerned, our purpose would be served by reproducing sub-section (1) which deals that the nature of payments on which tax at source is to be deducted. It reads as under:

> "**Section 194C. (1)** Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to-
> (i) one per cent. where the payment is being made or credit is being given to an individual or a Hindu Undivided family;
> (ii) two per cent. where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,
> of such sum as income-tax on income comprised therein."

11. Section 194-I, on the other hand, which was in force at the relevant time, reads as under:

> "**Section 194-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) fifteen per cent. if the payee is an individual or a Hindu undivided family; and
> (b) twenty per cent. in other cases.
> "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."

12. Since the main discussion in the impugned judgment rendered by the High Court of Delhi and also the High Court of Madras centres around the interpretation that is to be accorded to Section 194-I of the Act, we would first discuss as to whether the case is covered by this provison or not. In fact, even before us the main focus of the counsel for the assessees as well as counsel for the Revenue was on this very issue. Otherwise also, the fate of these appeals would depend on the answer to the question as to whether the case is covered by the provisions of Section 194-I of the Act or not.

13. Section 194-I of the Act, which was inserted by Finance Act, 1994 w.e.f. June 01, 1994, provides for deduction of tax at source in

respect of payment of 'rent' by any person, other than an individual and a hindu undivided family, at the time of payment or credit, whichever is earlier. The rate at which deduction of tax is to be made at source is 20%. There have been amendments in this Section in the years 2002, 2007 and 2009 and with these amendments, the scope of this Section has been enlarged. However, as the assessement year in question is prior to 2002 and otherwise also, the later amendments have no bearing insofar as the assessees are concerned, it is not necessary to spell out the amendments made to this Section.

14. From the reading of this Section, it becomes clear that TDS is to be made on the 'rent'. The expression 'rent' is given much wider meaning under this provision than what 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 and/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.

15. In the present case, we find that these Airlines are allowed to land and take-off their Aircrafts at IGIA for which landing fee is charged. Likewise, they are allowed to park their Aircrafts at IGIA for which parking fee is charged. It is done under an agreement and/or arrangement with AAI. The moot question is as to whether landing and take-off facilities on the one hand and parking facility on the other hand, would mean to 'use of the land'.

16. As pointed out above, the impugned judgment of the Delhi High Court refers to its earlier judgment in the case of ***United Airlines***. Therefore, in order to ascertain the reasons that persuaded the High Court to take the view that it amounted to use of land, one has to scan through the reasons given in ***United Airlines*** case. In this case, the High Court held that the word 'rent' as defined in the provision has a wider meaning than 'rent' in common parlance. It includes any agreement or arrangement for use of land. In the opinion of the High Court, "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, there is use of the land. This is the basic, *nay,* the only reason given by the High Court in support of its conclusion.

17. The Madras High Court, on the other hand, had a much bigger canvass before it needed to paint a clearer picture with all necessary hues and colours. Instead of taking a myopic view taken by the Delhi High Court by only considering use of the land *per se,* the Madras High Court examined the matter keeping wider perspective in mind thereby encompassing the utilization of the airport providing the facility of landing and take-off of the airplanes and also parking facility. After taken into consideration these aspects, the Madras High Court came to the conclusion that the facility was not of 'use of land' *per se* but the charges on landing and take-off by the AAI from these airlines were in respect of number of facilities provided by the AAI which was to be necessarily provided in compliance with the various international protocol. The charges, therefore, were not for land usage or area allotted simpliciter. These were the charges for various services provided. The substance of these charges was ingrained in the

various facilities offered to meet the requirement of passengers' safety and on safe landing and parking of the aircraft and these were the consideration that, in reality, governed the fixation of the charges. To our mind, the aforesaid conclusion of the High Court of Madras is justified which is based on sound rationale and reasoning.

18. We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the 'use of the land'. That would be too simplistic an approach, ignoring other relevant details which would amply demonstrate that these charges are for services and facilites offered in connection with the aircraft operation at the airport. To point out at the outset, these services include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

19. Before the High Court of Madras, the assessee had filed the material in the form of Airport Economics Manual, the International Airports Transport Agreement (IATA) to the contracting states on charges for airport and air navigation services. This material which was shown for our perusal as well,

would candidly show that there are various international protocols which mandate all such authorities manning and managing these airports to construct the airports of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as on safe landing and parking of the aircrafts. Therefore, it is not mere 'use of the land'. On the contrary, it is the facilities, that are to be compulsarily offered by the AAI in tune with the requirements of the protocol, which is the primary focus.

20. For example, runways are not constructed like any ordinary roads. Special technology of different type is required for the construction of these runways for smooth landing and take-off of the aircrafts. According to ICAO, a runway is a "defined rectangular area on a land aerodrome prepared for the landing and takeoff of aircraft." Runways may be a man-made surface (often asphalt, concrete, or a mixture of both) or a natural surface (grass, dirt, gravel, ice, or salt). Specialised kind of orientation and dimensions are needed for these runways which are prescribed with precision and those standards are to be adhered to. Further, there has to be proper runway lighting, runway safety area, runway markings etc. Technical specifications for such

lighting, safety area and markings are stipulated which have to be provided. Insofar as runway lighting is concerned which is essentially used at airports that allow night landings, requires that there has to be Runway End Identification Lights, Runway End Lights, Runway Edge Lights, Runway Centerline Lighting System, Touchdown Zone Lights, Taxiway Centerline Lead-Off Lights, Taxiway Centerline Lead-On Lights, Land and Hold Short Lights, Approach Lighting System etc. Technical specifications for all these lights have to be complied with. Same applies to runway markings. Runway markings and signs on most large runways include Threshold, Touch Down Zone, Fixed Distance Marks, Center Line etc. and all these have specific purpose. So much so, designs and quality of pavement on these runways are also to be taken compliant.

All these technical specifications keep in mind the basic fact, namely, on landing the aircraft is light on fuel and usually less than 5% of the weight of the aircraft touches the runway in one go. On take-off the aircraft is heavy but as the aircraft accelerates the weight gradually moves from the wheels to the wings. It is while the aircraft is being loaded and taxiing prior to departure, that the apron experience significant loads from aircraft weight.

We have emphasised the technological aspects of these runways

in some detail to highlight the precision with which designing and engineering goes into making these runways to be fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of an aircraft and in this whole process, 'use of the land' pails into insignificance. What is important is that the charges payable are for providing of these facilities.

21. In fact, the charges which are taken from the aircrafts for landing and even for parking of the aircrafts are not dependent upon the use of the land. On the contrary, the protocol prescribes a detailed methodology of fixing these charges. Chapter 4 of Airport Economics Manual issued by International Civil Aviation Organization deals with 'Determine the cost basis for charging purposes'. The charges on air-traffic which includes Landing Charges, Lighting Charges, Approach and Aerodrome Control Charges, Aircraft Parking Charges, Aerobridge Charges, Hangar Charges, Passenger Service Charges, Cargo Charges etc. are to be fixed applying the formulae stated therein. A reading thereof would clearly point out the cost analysis which is to be done for fixing these charges. Thus, when the airlines pay for these charges, treating such charges as charges for 'use of land' would be adopting a totally naïve and simplistic approach which is far

away from the reality. We have to keep in mind the substance behind such charges. When matter is looked into from this angle, keeping in view the full and larger picture in mind, it becomes very clear that the charges are not for use of land *per se* and, therefore, it cannot be treated as 'rent' within the meaning of Section 194-I of the Act.

22. We, therefore, are of the considered opinion that the view taken by the Madras High Court is correct and we are unable to subscribe to the view taken by Delhi High Court in ***United Airlines*** case. The judgment in ***United Airlines*** case as well as the impugned judgment of the Delhi High Court are accordingly over-ruled.

23. At this stage, we would like to make one comment about the judgment of the Madras High Court. Madras High Court has given one more reason in support of its view that the charges paid by the Airlines to the AAI do not come within the definition of the 'rent' as defined under Section 194-I. The High Court has held that the words 'any other agreement or arrangement for the use of any land or any building' have to be read *ejusdem generis* and it should take it colour from the earlier portion of the definition namely “lease, sub-lease and tenancy”. Thereby, it has tried to

limit the ambit of words 'any other agreement or arrangement'. This reasoning is clearly fallacious. A bare reading of the definition of 'rent' contained in 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 which is to be treated as 'rent'. That is rent in traditional sense. However, second part is independent of the first part which gives much wider scope to the term 'rent'. As per 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, High Court of Delhi appears to be correct that the scope of definition of rent under this definition is very wide and not limited to what is understood as rent in common parlance. It is a different matter that the High Court of Delhi did not apply this definition correctly to the present case as it failed to notice that in substance the charges paid by these airlines are not for 'use of land' but for other facilities and services wherein use of the land was only minor and insignificant aspect. Thus it did not correctly appreciate the nature of charges that are paid by the airlines for

landing and parking charges which is not, in substance, for use of land but for various other facilities extended by the AAI to the airlines. Use of land, in the process, become incidental. Once it is held that these charges are not covered by Section 194-I of the Act, it is not necessary to go into the scope of Section 194-C of the Act.

24. As a result of the aforesaid discussion, Civil Appeal No.9875 of 2013 filed by the JAL against the judgment of Delhi High Court is allowed and Civil Appeal Nos.9876-9881 of 2013 filed by the Revenue against the judgment of Madras High Court are hereby dismissed. There shall be no order as to cost.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI;
AUGUST 04, 2015.