

(F) Other points: - No deduction shall be made under this section, where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in section 10(23FCA), owned directly by such business trust.

Practical 37

Ramesh gave a building on sub-lease to Mac Ltd. with effect from **01-07-2019** on a rent of Rs. 25,000 per month. The company also took on hire machinery from Ramesh with effect from **01-11-2019** on hire charges of Rs. 10,000 per month. The rent of building and hire charges of machinery for the year **2019-20** were credited by the company to the account of Ramesh in its books of account on **31-3-2020**. Discuss the liability for tax deduction.

Solution

- Tax is deductible on rent under section 194-I, if the aggregate amount of rent paid or credited to a person exceeds Rs. 2,40,000. As discussed above, definition of rent includes payment for use of land, building, machinery and furniture under lease, sublease or any arrangement.
- In the present case, the aggregate payment made by Mac Ltd. to Ramesh towards rent in **P.Y.2019-20** is Rs. 2,75,000 (i.e., Rs. 2,25,000 for building and Rs. 50,000 for machinery) which is exceeding Rs. 2,40,000. Hence, Mac Ltd. is required to deduct tax under section 194I @10% on rent paid for building and tax @ 2% on rent paid for machinery.

Reader's Note:

Practical 38

"Come Air Ltd." has paid a sum of Rs.12 lakhs during the relevant previous year to Airports Authority of India towards landing and parking charges. The company has deducted tax at source@2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS@10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.

Solution

- The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facility for the aircraft are for the "use of the land" by the airline company came up before the Supreme Court in case of **Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd.(2015)377 ITR372**.
- The Supreme Court observed 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". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport
- There are various international protocols which mandate all authorities manning and managing these airports to construct the airport 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 for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

- The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.
- The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.
- Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source u/s 194-I is not correct.

Reader's Note:**Practical 39**

Whether payment of Passenger Service Fees (PSF) by an airline to an Airport Operator qualifies as rent to attract TDS under section 194-I?

Solution

The CBDT has made following observation in its Circular No. 21/2017, dated 12.06.2017 on the above issue:

The Bombay High Court relied on the Apex Court ruling in *Japan Airlines* and *Singapore Airlines* case, wherein it was observed that the primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I. Accordingly, the Bombay High Court declined to admit the ground relating to applicability of the provisions of section 194-I on PSF charges holding that no substantial question of law arises.

Clarification from CBDT

The CBDT, accepting the view of the Bombay High Court, has clarified that the provisions of section 194-I shall not be applicable on payment of PSF by an airline to Airport Operator.

Reader's Note:**Practical 40**

AB Ltd. had taken residential house property on rent for its General Manager from Mr. Nipur. AB Ltd. is required to make following payments to Mr. Nipur.

Particulars	Amount (Rs.)
Annual rent	2,40,000
One month Advance Rent	20,000
Non-refundable Deposit	20,000

Advise AB Ltd. with regard to its obligation to deduct tax at source while making payment to Mr. Nipur.

Solution

CBDT in its **circular No. 718 dated 22nd August, 1995** clarified as under:

- If advance rent is paid, it is subject to tax deduction under section 194-I at the time of payment.
- In cases where the tenant makes a non – refundable deposit tax would have to be deducted at source as such deposit represents the consideration for the use of the land or the building, etc., and therefore,