CNK & Associates LLP

News Flash – June, 2019

Payment for lounge services by Airlines attracts withholding tax under section 194C of the Act and not section 194-I of the Act

CIT(TDS) vs. Jet Airways (India) Ltd. (Bombay High Court) [ITA No.628 of 2018] (In favor of Assessee)

Background

The assessee, undertaking airline business, provided lounge services to its selected premium class customers at various airports. The lounge facility was provided through a third party agency and involved provision of exclusive secluded hall / place at the Airport site with comfortable sitting arrangement and washrooms. The lounges would also provide basic refreshments to the customers for which no separate charge would be levied.

The assessee compensated the agency as per pre-agreed terms. While making such payment, the assessee withheld taxes under section 194C of the Income-tax Act, 1961 (the Act) treating the same as a payment under a contract for work performed.

However, the income-tax officer was of the view that provision of refreshments was not the dominant part of service. Accordingly, based on the judgments of Delhi High Court in case of Japan Airlines Ltd (2009)(325 ITR 298) and United Airlines (2006)(287 ITR 281) which were in context of treating landing and parking charges as 'rent', the tax officer held that the payment for providing lounge services was 'rent' attracting withholding tax under section 194-I of the Act.

This issue was decided by the Mumbai tribunal in favor of the assessee. Aggrieved by the Tribunal's order, the income-tax authorities had filed an appeal before the Bombay High Court.

Issue involved

Whether payment for lounge services by an airline would be subject to withholding tax under section 194C of the Act or section 194-I of the Act?

Judgment

The Bombay High Court observed that judgment of Delhi High Court in case of Japan Airlines, which was relied on by the tax officer, was overruled by the Supreme Court (377 ITR 372). In its judgment, the Supreme Court had upheld the contrary judgment of the Madras High Court in case of Singapore Airlines (358 ITR 237) wherein it was held that landing and parking charges would not partake the character of 'rent' but would be payment for work performed under contract liable to withholding tax under section 194C of the Act.

Relying on the Supreme Court judgment, the Bombay High Court held that payment for certain services need not be seen in isolation. The real character of the service provided for which the payment is made, would have to be judged. In the assessee's case:

- The agency had rented out the lounge space at the Airport from the Airport Authority. The assessee did not rent out the premises. The assessee did not have exclusive use to the lounge for its customers.

- The assessee was paying committed charges to the lounge operating agency either on lump-sum basis or on the basis of customer flow to such agency.

- Even though the provision of refreshments was not the dominant part of service i.e. the same may only be incidental to providing quiet, comfortable and clean place for customers to spend some spare time, the payment by the assessee was not rent paid to the agency.

- The tax authorities were not correct in invoking provisions of section 194-I of the Act.

In its judgment, the Bombay High Court also referred to the decision in case of Qantas Airways Ltd (152 IT 434) where it was held that payment for lounge services attracted withholding tax under section 194C of the Act and not section 194-I of the Act.

CNK Comments:

In our practical experience on assisting airline clients, we have observed that tax authorities tend to argue that payment for lounge services is mainly for use of space and hence, is in nature of rent. On the other hand, the stand taken by airlines is that the payment is for a composite service (i.e. it involves catering and use of facilities).

The Bombay High Court has put the argument of the income-tax authorities to rest by stating that even where dominant purpose is providing quiet, comfortable and clean place for customers to spend some spare time, the payment for the same is not in nature of rent.

Accordingly, this decision should assist airline companies currently involved in litigation with income-tax authorities on this issue. Whether the income-tax authorities will accept the Bombay High Court judgment or challenge the same before the Supreme Court is yet not known. It would be desirable that a suitable clarification on the acceptability of this judgment is issued by the Central Board of Direct Taxes (CBDT) in India.

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