

Passenger Service Fee paid by Jet Airways on behalf of its customers won't attract TDS under sec. 194-I

Summary – The Mumbai ITAT in a recent case of Jet Airways (India) Limited, (the Assessee) held that PSF passenger service fee paid by assessee, airport operator to airport authority on behalf of its customers did not attract provisions of section 194-I.

Facts

- The Assessing Officer noticed that the assessee had paid Passenger Service Fee (PSF) to the Airport Authority of India. Being of the firm belief that the assessee ought to have deducted tax at source as per the provisions of section 194-I on said payment, the assessee was asked to explain as to why the TDS had not been made on PSF.
- The assessee explained that the PSF was a statutory levy collected by the Airport Operators in its fiduciary capacity to be eventually turned over to the Government and that it was only collecting that PSF from the passengers on behalf of the Airport Operators and paying same to the Airport Operators. The assessee had not claimed such payment as expenses in its books of account. Therefore, there was no liability of TDS under Section 194-I.
- The Assessing Officer did not consider the submission of the assessee and computed the TDS deductible under section 194-I and also interest under section 201(1A).
- The Commissioner (Appeals) held that the PSF was not in the nature of rent and, hence, the assessee was not required to deduct tax at source on the PSF collected from the passengers before making payment to the relevant airport operators.
- On Second Appeal.

Held

- A perusal of rule 88 of Indian Aircraft Rules, 1937, clearly shows that it is a statutory liability for every licensee to collect PSF. It is not in dispute that the assessee is only acting as a conduit between the embarking passengers and the Central Government agency. This view is also fortified by the fact that out of Rs.200/-, Rs.130/- is the security component, which is deposited in a separate escrow account, which is operated and can be utilized by airport concerned only to meet the security related expenses of that airport.
- Further, it is pertinent to note that the CBDT in its Office Memorandum dated 30-6-2008 has clearly stated the fact that the licensee of the airport, i.e., the airport operator, is required to collect the PSF which is initially collected by the concerned airlines from the passengers and then handed over to the respective airport operator/authority. Thus, it is absolutely clear that the assessee only collects the PSF from the passengers for and on behalf of the airport authority/operator and passes the same to the airport authority/operator. This view would also be made very clear by the answer

to question No.24 given by the CBDT it is Circular No.715, dated 8th August, 1995, which relates to clarification of various provisions relating to tax deduction at source.

- The facts under consideration show that the PSF is a statutory liability without demarcating/earmarking the area taken on rent, nor it is a case of systematic use of land specified for consideration under an arrangement, which carries the characteristics of lease or tenancy. A mere use of the land and payment charged, which is not for the use of the land but for maintenance of the various services including technical services would not technically bring the transaction and the charges within the meaning of either lease or sub-lease or tenancy or any other agreement or arrangement or any nature of lease or tenancy and rent.
- It would not be out of place to consider the CBDT Circular No.1/2008, dated 10th January, 2008 relating to the clarification regarding the applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners, wherein the CBDT had the occasion to consider the representations in respect of the issue, whether the customer hires the building, plant and machineries etc., without packages for reservation for a required period kept in cold storage after paying cooling charges. The CBDT, thus, clarified that the customer is also not given any right to use any demarcated space/place or the machinery of the cold storage and thus does not become a tenant. Therefore, the provisions of section 194-I is not applicable to the cooling charges paid by the customers of the cold storage.
- Applying the same analogy, the ITAT held that PSF charges paid by the assessee on behalf of its customers, did not attract the provisions of section 194-I.