Artificial segregation for lounging and catering not permissible; sec. 194C attracted

Summary – The Mumbai ITAT in a recent case of Qantas Airways Ltd., (the Assessee) held that where consolidated payment was made towards lounging and catering services as a part of single arrangement, it was not permissible to artificially bifurcate payment so made towards two limbs or component services in view of two attracting differential tax and same would fall under generalized contractual category under section 194C

Facts

- The assessee-company had entered into an agreement with OFS for providing lounging services, which includes an assortment of vegetarian, non-vegetarian, hot and cold snacks and alcoholic drinks, to its first class and club class passengers. Treating the same as catering services, the assessee-payer deducted tax at source under section 194C at the rate of 2 per cent.
- The Assessing Officer held that payment made by assessee in respect of lounging and catering services was 'rent' within the meaning of the term under section 194-I and, therefore, was liable for tax deduction at source at rate of 20 per cent. Accordingly, the assessee was considered as in default for the difference in tax, and the demand in its respect was raised.
- On appeal, the Commissioner (Appeals) deleted the addition made by the Assessing Officer.
- On revenue's appeal:

Held

- The question, therefore, that arises is if the contract could be considered as toward lounging services only or as catering services only. Consider, for example, a case of a (paying) guest house. The guest pays for both boarding and lodging facilities. It cannot be denied that there is a user of land and building while enjoying the guest house or the key thereat. At the same time, the same cannot be considered as rent only as, apart and distinct from the lodging facilities, there is a provision of meals and other boarding facilities, besides amenities required for a comfortable leaving. Now, even as the use of the amenities could be considered as toward proper enjoyment of the housing, and, thus, a part of or toward user of land and building, so as to be covered under the broader definition of the 'rent', which with effect from 1-6-2007 also covers the use of, apart from furniture and fixture, plant or machinery or equipment (albeit at a different rate of TDS), the provision of meals, an integral part of the arrangement, can by no stretch of imagination or by any means be considered as toward the use of land and building.
- Without doubt the payment other than for food and refreshments, i.e., for lounging services *per se,* is only toward the use of land and building, being only toward providing ambience, relaxation and spending time, akin to a rest or a waiting room. The dictionary meaning of 'lounge' is to stand,

move, sit, lie, *etc.,* in a relaxed or a lazy way; to spend time in idleness, and also includes a place - room, theatre, car, etc. for the purpose. The same is, thus, certainly 'rent' under section 194-I. It is in this context that during the course of hearing, the revenue was queried as to if the payment for food and beverages to passengers is computed or arrived at separately, to no definite reply. Even the order of the Assessing Officer is silent on this. If it is a case of a consolidated payment, as appears to be the case, no part thereof can be said to be 'rent' inasmuch as it is not permissible to artificially bifurcate the payment/s made or to be made under the agreement toward two limbs or component services in view of the attracting differential tax, particularly where they form, as in the present case, part of a single arrangement for provision of composite services. The same in that case would only be considered as a contractual payment, as has been considered by the assessee.

- In view of the foregoing, while agreeing in principle that pure lounging facilities reserved through a contractual arrangement by an airlines for a class of its passengers would attract TDS provision for rent, we confirm it to be not so in the case of composite services for a single consideration, as in the instant case, so that the same would fall under the generalized contractual category under section 194C, as has been considered by the assessee, who thus succeeds.