

**F.No. 279/Misc./140/2015/ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi, Dated 12th June, 2017

SUBJECT: Non-Applicability of the provisions of section 194-I of the I.T. Act, 1961 on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator - reg. -

Under the existing provisions contained in section 194-I of the Income Tax Act, 1961 ('the Act'), tax is required to be deducted at source on payment of rent. The term "rent" is defined in the Explanation to the said section to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any (a) land; or (b) building (including factory building); or (c) land appurtenant to a building (including factory building); or (d) machinery; or (e) plant; or (f) equipment; or (g) furniture; or (h) fittings, whether or not any or all of the above are owned by the payee.

2. A dispute arose on applicability of the provisions of section 194-I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport Operator. The Hon'ble High Court of Bombay in CIT vs. Jet Airways (India) Ltd.¹ declined to admit the ground relating to applicability of provisions of section 194-I of the Act on PSF charges holding that no substantial question of law arises. While doing so it relied on the judgement of the Hon'ble Supreme Court dated 4.8.2015 in the case of Japan Airlines and Singapore Airlines² where the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word '**rent**' stood expanded, however, the primary requirement 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 of the Act.

¹ITA No.1181 of 2014 dated 04.01.2017- NJRS-2017-LL-0104-100

²CA No. 9875/2013& CA No.9876-9881 of 2013 (SC), NJRS 2015-LL-0804-5

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12/06/17

3. The Board has accepted the above view of the High Court of Bombay. Accordingly, it is now a settled position that section 194-I of the Act, will not apply on PSF.
4. In view of the above, henceforth, appeals may not be filed by the Department on the above settled issue, and those already filed may be withdrawn/not pressed upon.
5. The above may be brought to the notice of all concerned.
6. Hindi version of the same will follow.

NBansal
12/6/17
(Neetika Bansal)

Deputy Secretary to Government of India

Copy to:

1. The Chairperson, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
4. The Comptroller and Auditor General of India.
5. The Pr. Director General of Income-Tax, NADT, Nagpur.
6. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
7. The Pr. DGIT (Vigilance), New Delhi.
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