

F. No. 275/29/2015-IT (B)

Government of India/ भारत सरकार

Ministry of Finance/ वित्त मंत्रालय

Department of Revenue/(राजस्व विभाग)

Central Board of Direct Taxes/(केन्द्रीय प्रत्यक्ष कर बोर्ड)

North Block, New Delhi

13th October, 2016

Subject: Applicability of TDS provisions of section 194-I of the Income-tax Act, 1961 on lump sum lease premium paid for acquisition of long term lease-regarding

Section 194-I of the Income-tax Act, 1961 (the Act) requires that tax be deducted at source at the prescribed rates from payment of any income by way of rent. For the purposes of this section, "rent" has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings.

2. The issue of whether or not TDS under section 194-I of the Act is applicable on 'lump sum lease premium' or 'one-time upfront lease charges' paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by CBDT in view of representations received in this regard.

3. The Board has taken note of the fact that in the case of The Indian Newspaper Society (ITA No. 918 & 920/2015), the Hon'ble Delhi High Court has ruled that lease premium paid by the assessee for acquiring a plot of land on an 80 years lease was in the nature of capital expense not falling within the ambit of Section 194-I of the Act. In this case, the court reasoned that since all the rights easements and appurtenances in respect of the said land were in effect transferred to the lessee for 80 years and since there was no provision in lease agreement for adjustment of premium amount paid against annual rent payable, the payment of lease premium was a capital expense not requiring deduction of tax at source under section 194-I of the Act.

4. Further, in the case Foxconn India Developer Limited (Tax Case Appeal No. 801/2013), the Hon'ble Chennai High Court held that the one-time non-refundable upfront charges paid by the assessee for the acquisition of leasehold rights over an immovable property for 99 years could not be taken to constitute rental income in the hands of the lessor, obliging the lessee to deduct tax at source under section 194-I of the Act and that in such a situation the lease assumes the character of "deemed sale". The Hon'ble Chennai High Court has also in the cases of Tril Infopark Limited (Tax Case Appeal No. 882/2015) ruled that TDS was not deductible on payments of lump sum lease premium by the company for acquiring a long-term lease of 99 years.

5. In all the aforesaid cases, the Department has accepted the decisions of the High Courts and has not filed an SLP. Therefore, the issue of whether or not TDS under section 194-I of the Act is to be made on lump sum lease premium or one-time upfront lease charges paid for allotment of land or any other property on long-term lease basis is now settled in favour of the assessee.

6. In view of the above, it is clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act. Therefore, such payments are not liable for TDS under section 194-I of the Act.

Hindi version follows.



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