
(2002) 06 AP CK 0132
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9792 of 1996

Krishna Oberoi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Income Tax Act, 1961 — Section 141I, 194I, 197

Citation : (2002) 5 ALD 318 : (2002) 257 ITR 105

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : C. Kondandaram, for the Appellant; J.V. Prasad, SC for Income Tax Department, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The petitioner, Krishna Oberoi, which is a division of Novopan Industries Limited is a company registered under the Indian Companies Act, 1956, with its registered office at Banjara Hills, Hyderabad. The writ petition was filed initially seeking mandamus declaring that the charges paid/payable to the petitioner company by its customers on account of room charges are not in the nature of rent within the meaning of Section 194-1 of the Income Tax Act. Later, that prayer was amended by filing WPMP No. 13783 of 1996 and that WPMP was ordered by this Court on 7-10-1996. The amended prayer reads as follows:

"In the facts and circumstances stated above this Hon"ble Court may be pleased to issue an appropriate Writ order or order or direction declaring that the charges paid/payable to the 1st petitioner's company by its customers on account of room charges are not in the nature of rent and thus outside the scope of Section 194-1 of the Income Tax Act, consequently issue a writ of mandamus directing the respondents 1 and 2 to issue order/instructions and directions, clarifying the non-applicability of the provisions of the Section 194-1 of Income Tax Act to the amounts 1st petitioner herein receives in its Hotel business and pass such other order or orders as this Hon"ble Court deems fit and proper in the interest of

justice and pass such other order or orders as this Hon"ble Court deems fit and proper in the circumstances of the case."

2. Along with WPMP No. 13783 of 1996, the petitioners had also filed WPMP No. 13782 of 1996 to implead Indian Airlines Limited, Begumpet, Hyderabad and Asian Paints India Limited, Goregaon (West), Bombay as party-respondents to the writ petition. That WPMP was also ordered by this Court on 7-10-1996. Accordingly, they are added as parties -respondents 4 and 5 respectively to the writ petition.

3. The facts leading to filing of the writ petition as set out in the writ affidavit be summarised as follows : The 1st petitioner is engaged in hospitality business and is running a Five-star hotel under the name and style of Krishna Oberoi at Hyderabad. At the hotel, the 1st petitioner provides to its customers various types of furnished rooms with certain other facilities for a consideration which is normally known as "room charges". The room charges is composite in nature and it includes the charges for various services catered by the hotel. Therefore, the consideration received by the hotel management cannot be treated as rent within the meaning of Section 194-I of the Income Tax Act, 1961 (for short "the Act"). Indian Airlines Limited and Asian Paints India Limited, respondents 4 and 5 respectively, are few of the 1st petitioner's regular customers. Indian Airlines Limited had entered into an agreement with the 1st petitioner to utilise the 1st petitioner hotel services for accommodating their cock-pit crew and Indian Airlines officials. As against the normal room tariff of Rs. 2,000/- per day, the Indian Airlines crew are provided with accommodation for a sum of Rs.825/-only. The 1st petitioner had approached Indian Airlines Limited requesting not to deduct TDS u/s 194-I of the Act as those provisions have no application to the payments that are being made to the 1st petitioner-Hotel by the management of Indian Airlines Limited. However, the Indian Airlines Limited had refused to accede to the request of the 1st petitioner for the fear of prosecution proceedings u/s 201 of the Act At certain point of time, the 1st petitioner had approached the 2nd respondent, seeking a clarification u/s 197 of the Act with respect to payments receivable from Indian Airlines Limited. But, that did not yield any useful result and that the process of applying for and obtaining certificate u/s 197 of the Act is cumbersome and time consuming. Due to the deduction of TDS at 23%, the petitioners are receiving only about 2/3rd's of the actual amount, thus, the 1st petitioner deprived of the working capital which is paralysing the day to day functioning of the petitioner's hotel. The 1st petitioner had addressed a letter to the official respondents explaining the hardship caused to the petitioners with a request to issue necessary clarifications in exercise of their power under the Act. In particular, requests were made to the Central Board of Direct Taxes, 2nd respondent herein constituted u/s 116 of the Act to issue Circular/ Clarification with regard to the applicability of Section 194-I of the Act to the hotel industry. The requests made to the 2nd respondent are pending consideration and in the meanwhile, the customers of the petitioner continued to deduct the TDS and on account of this, the petitioner would not be able to carry

their business, in the above circumstances, the petitioners have filed the writ petition seeking the relief already noticed.

4. The Deputy Commissioner of Income Tax (Assts.), Circle V, Hyderabad, the 3rd respondent in the writ petition, has filed counter-affidavit opposing the writ petition. That counter affidavit is adopted by the Central Board of Direct Taxes, New Delhi, the 2nd respondent in the writ petition by filing a Memo dated 27-6-2001. The Union of India, Ministry of Finance and Commerce, the 1st respondent in the writ petition, has not filed any counter-affidavit. In the counter-affidavit filed by the 3rd respondent and adopted by the 2nd respondent, the material averments are as follows: The rent, as defined under the provisions of Section 194-I means 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 any building. As such, the agreement or arrangement under which the petitioner provides accommodation to a particular organisation/customer would therefore come under the ambit of the provisions of Section 194-I. The phrase "use of any land or any building" occurring in Section 194-I takes care of the facts and circumstances arising in the case of the petitioner and, therefore, the provisions of Section 194-1 are clearly applicable. The Circular No. 715, dated 8-8-1995 issued by the Central Board of Direct Taxes, the 2nd respondent, clearly explains the applicability of the provisions of Section 194-I with regard to the payments made for accommodation taken/secured on regular basis from the hotel. In the case of the petitioners, admittedly, Corporate bodies have entered into agreements or arrangements with the petitioners to provide accommodation for their use and, therefore, the provisions of Section 194-I are clearly applicable. Financial difficulties pleaded by the petitioner in the affidavit in the event of holding that Section 194-I applies is no valid ground at all to exclude application of Section 194-I. The writ petition is liable to be dismissed in limine inasmuch as it is premature and also on the ground that since the petitioner has not assailed the constitutional validity of Section 194-I, he has to work out legal remedies as provided under the Act and he cannot be permitted to circumvent or by-pass the statutory remedies directly approaching this Court for the relief.

5. We have heard Sri C.Kodandaram, learned Counsel for the petitioners and Sri J.V.Prasad, learned Standing Counsel for the Income Tax Department. Sri C. Kodandaram, contended that the relationship between the 1st petitioner and its customers is a kind of licensing- arrangement, and, not a leasing-arrangement, and, therefore, consideration received by the 1st petitioner cannot be treated as rent to attract the provisions of Section 194-I of the Act. Sri Kodandaram contended that the object of Section 194-I of the Act is to bring into the tax net such of those persons who are otherwise earning income by way of house rentals by letting out their immovable property. The income arising out of transactions of letting out of immovable property would be assessable under the head of "INCOME FROM HOUSE PROPERTY" falling within the scope of Section 14(C) read with Section 22 - 27 of the Act and not falling u/s 2(13), Section 14(D) of the Act. The learned Counsel contended that the income arising out of running of a

hotel is assessable under the head of "income arising out of business" and not under the head of "Income from house property". The 1st petitioner-hotel division, was all along was assessed under the head of business income. According to the learned Counsel, Section 194-I would be attracted only when land and building is given on lease, sub-lease, tenancy or any other agreement or arrangement for the exclusive use of the lessees, thus creating a right, though in a limited sense, in the nature of property right under the provisions of the Transfer of Property Act or other enactments governing Tenancy Rights. In contrast, according to the learned Counsel, in the case of hotels, the customer is allowed to use the room and other facilities for certain time subject to various restrictions and, therefore, no right as such is created in the property of the hotel in favour of the customer. The customer thus uses the premises and enjoys the facilities in the hotel as a licensee, not as a lessee or a tenant. Sri C.Kodandaram, contended that in the guise of deduction of TDS u/s 194-1 of the Act, many of the corporate customers of the 1st petitioner are withholding huge amounts to the extent of 23% and this has resulted in much inconvenience and hardship to the petitioner in carrying on their business operations. The deduction of 23% of tax is totally unreasonable and harsh and that in addition, the hotel is paying various other taxes like sales tax, luxury tax, and expenditure tax for a tune of 25% on its collections. This situation has resulted in deprivation of working capital to the 1st petitioner. Sri C.Kodandaram would point out that if this situation is continued for some more time, the 1st petitioner's hotel business would be in financial jeopardy and ruined resulting in the closure of the hotel. Lastly, Sri Kodandaram contended that if the TDS is permitted at the hands of the corporate customers of the 1st petitioner, it will have deleterious effect on the finance of the petitioner company impairing the petitioner's fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

6. Sri J.V.Prasad, learned Standing Counsel for the Income Tax Department, on the other hand, justified the TDS by the corporate customers of the 1st petitioner by contending that the rent as defined under the provisions of Section 194-I includes the consideration received by the 1st petitioner by letting out accommodation and providing the facilities to the customers. The learned Standing Counsel also contended that if provisions of Section 194-1 are attracted, the financial hardship pleaded by the petitioner, even if it is true, would not be a valid or legal ground to exclude the application of Section 194-I.

7. In the premise of the rival contentions of the learned Counsel for the parties, the only question that arises for our consideration and decision is whether the corporate customers of the 1st petitioner viz., the impleaded respondents 4 and 5, are entitled to effect TDS with regard to the rents paid or payable to the 1st petitioner.

Section 194-1 reads as follows :

"194-1. Rent :--Any person, not being an individual or a Hindu undivided family, who is responsible for paying to any person any income by way of rent, shall, at

the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rate of.

- (a) fifteen per cent if the payee is an individual or a Hindu undivided family; and
- (b) twenty per cent in other cases;

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and twenty thousand rupees. "

Explanation :--For the purposes of this section,--

(i) "rent" means 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 any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;

(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

8. Section 194-I inserted by the Finance Act, 1994 with effect from 1st June, 1994. The scope and effect of the provisions of Section 194-I as explained by the Board in its Circular No. 684, dated 6th June, 1994 : (1994) 208 ITR 8 is to provide an effective method of widening the tax base and to enlarge the scope of deduction of income tax at source. Apart from bringing in more persons in the tax net, it also helps in reporting of correct incomes. An item of income which needs to be covered within the scope of deduction of income tax at source is the income by way of rent. Therefore, new Section 194-I provides that the income tax has to be deducted at source at the rate of 15% if the payee is an individual or a Hindu undivided family and at the rate of 20% in other cases beyond One Hundred and Twenty Thousand Rupees in a financial year. The expression "rent" has been defined in the Explanation to the 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 any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee. Thus, the word "rent" has been defined in a wider sense to include not only consideration paid under a lease, or sublease or tenancy, but also the consideration paid under any other agreement or arrangement for the use of any land or building etc.

9. The expressions "any payment", by whatever name called, and "any other agreement or arrangement" occurring in the definition of the term "rent in

Explanation to Section 194-I have widest import. According to Slack's Law Dictionary, the word "any" is often synonymous with either "every" or "all. Its generality may be restricted by the context in which that word occurs in a statute. The Supreme Court in Lucknow Development Authority v. M.K. Gupta, AIR 1984 SC 787 dealing with the use of the word "service" in the context it has been used in the definition of the term in Clause (O) of Section 2 of the Consumer Protection Act has opined that the word "any" indicates that it has been used in wider sense extending from "one to all". In G.Narsingh Das Agarwal v. Union of India, (1967) 1 MLJ 197 the Court opined that the word "any" means "all" except where such a wide construction is limited by the subject-matter and context of the statute. The Patna High Court in Ashiq Hasan Khan and Others Vs. Sub Divisional Officer and Others, , and Chandi Prasad Vs. Rameshwar Prasad Agarwal and Another, , has held that the word "any" excludes "limitation or qualification". In State of Kerala v. Shaju, 1985 K. LT 33, the Court held that the word "any" is expressive. It indicates in the context "one or another" or "one or more", "all or every", "in the given category"; it has no reference to any particular or definite individual, but to a positive but undetermined number in that category without restriction or limitation of choice. Thus, having regard to the context in which the expressions "anypayment", and "any other agreement or arrangement" occurring in the definition of the term "rent", it only means each and every payment made to the petitioner - hotel under each and every agreement or arrangement with the customers for the use and occupation of the hotel rooms.

10. The crux of the argument of Sri Kodandaram is that a customer in the hotel is not the lessee or a tenant, but a licensee and, therefore, the consideration paid by him to the management of the hotel for accommodation and facilities provided to him in the hotel room cannot be regarded as "rent" within the meaning of that term for the purpose of TDS u/s 194-I. In support of the above contention, Sri Kodandaram placed reliance on the judgments of the Apex Court in Associated Hotels of India Ltd. Vs. R.N. Kapoor, , State of Punjab and Another Vs. British India Corporation Ltd., , Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik, , Rajbir Kaur and Another Vs. S. Chokesiri and Co., , Commissioner of Income Tax Vs. Darjeeling Club Ltd., ; Commissioner of Income Tax, Trivandrum Vs. M/s. Anand Theatres, , and Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, AH these judgments cited by Sri Kodandaram except Anand Theatre's case (supra) were handed down by the Supreme Court and Calcutta High Court before the insertion of Section 194-1 by way of Finance Act, 1994 w.e.f. 1-6-1994. In Anand Theatre's case (supra) also, the word "rent" as defined in the Explanation to Section 194-I did not fall for interpretation. In other words, the enlarged and wide definition of the word "rent" as defined under the Explanation to Section 194-I did not fall for interpretation/ construction in any of the judgments cited by the learned Counsel.

11. In R.N. Kapoor's case (supra), the question that arose for consideration was what is the meaning of the expression "a room in a hotel". In that case, the

appellants, the Associated Hotels of India were the proprietors of Hotel Imperial, New Delhi. The respondent, R.N. Kapur, was in occupation of two rooms described as ladies' and gentlemen's cloak rooms, and carried on his business as a hairdresser. He secured possession of the said rooms under a deed dated 1-5-1949 executed by him and the appellants. He got into possession of the said rooms, agreeing to pay a sum of Rs. 9,600/- a year i.e., Rs. 800 per month, but later on, by mutual consent, the annual payment was reduced to Rs. 8,400 i.e., Rs. 700 per month. On 26-9-1950, the respondent made an application to the Rent Controller, Delhi, alleging that the rent demanded was excessive- and, therefore, a fair rent might be fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947. The appellants appeared before the Rent Controller and contended that the Act had no application to the premises in question as they were premises in a hotel exempted u/s 2 of the Act from its operation, and also on the ground that under the aforesaid document, the respondent was not a tenant but only a licensee. By order dated 24-10-1950, the Rent Controller held that the exemption u/s 2 of the Act related only to residential rooms in a hotel and, therefore, the Act applied to the premises in question. On appeal the District Judge, Delhi, came to a contrary conclusion; he was of the view that the rooms in question were rooms in a hotel within the meaning of Section 2 of the Act and, therefore, the Act had no application to the case. Further, on a construction of the said document, he held that the appellants only permitted the respondent to use the said two rooms in the hotel, and, therefore, the transaction between the parties was not a lease but a licence. On the basis of the aforesaid two findings, he came to the conclusion that the Rent Controller had no jurisdiction to fix a fair rent for the premises. The respondent preferred a revision against the said order of the District Judge to the High Court of Punjab at Simla, and Khosla, J., held that the said premises were not rooms in a hotel within the meaning of Section 2 of the Act and that the document executed between the parties created a lease and not a licence. On those findings, he set aside the decree of the learned District Judge and restored the order of the Rent Controller. In the premise of the above facts, K.Subba Rao, J (S.K.Das, J agreeing) held that the rooms in question were not let out as part of a hotel or for hotel purpose and, therefore, they are not rooms in a hotel within the meaning of Section 2 of Delhi and Ajmer-Merwara Rent Control Act, 1947. We are at a loss to understand how the above opinion of the Supreme Court in any way would advance or support the contention of Sri Kodandaram. It has no bearing on the decision-making in this case.

12. In *Ramamurthy Subudhi v. Gopinath* (supra) where the suit is for ejectment of tenant after termination of tenancy, having been dismissed, a compromise decree was passed in the appellate Court, enabling the decree-holder, by its terms to execute the decree if the judgment-debtor failed to pay "rent" for any three consecutive months. The Court was called upon to decide whether the said compromise deed did create a lease. The Court held that the compromise deed did not create a lease but a licence. In deciding so, the Court has to deal with the

principles and the tests to be applied to distinguish a lease from a license on consideration of several decisions including those in *Ramjibhai Virpal Shah Vs. Gordhandas Maganlal Bhagat*, , *Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*, , *Associated Hotels of India Ltd. v. R.N.Kapur* (supra), *Isack v. Hotel De Paris*, 1960 All ER 348 *Errington v. Errington and Woods*, 1952 All ER 149 *Cobb v. Lane*, 1952 All ER 1199 *Clarke v. Grant*, 1949 All ER 768 *Booker v. Palmer*, 1942 All ER 674 *State of Punjab v. British India Corporation Ltd.* (supra) and held that exclusive possession is not conclusive evidence of a lease and that only exclusive possession coupled with an interest in the property would construe as a lease.

13. In *Rajbir Kaur's* case (supra), the Supreme Court dealing with the controversy whether the transaction in question could be said to be a lease or a licence and speaking through M.N. Venkatachaliah, J on consideration of the decisions in *Wood v. Leadbitter*, (1845) 153 ER 351 *Glenwood Lumber Co. v. Phillips*, (1904) AC 405 *Cobb v. Lane* (supra), *Marachant v. Charters*, (1977) 3 All ER 918 *R.N.Kapur's* case (supra), *B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others*, , *Qudrat Ullah Vs. Municipal Board, Bareilly*, , *Board of Revenue and Others Vs. A.M. Ansari and Others*, , *Dipak Banerjee Vs. Lilabati Chakraborty*, , *Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala*, , *M.N.Clubwala v. Fida Hussain Saheb* (supra) held :

"..... This exclusive possession itself is not decisive in favour of a lease and against a mere licence, for, even the grant of exclusive possession might turn out to be only a licence and not a lease where the grantor himself has no power to grant the lease. In the last analysis the question whether a transaction is a lease or a licence "turns on the operative intention of the parties" and that there is no single, simple litmus-test to distinguish one from the other. The "solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties."

14. The above ratio has no bearing on the decision-making in the present case and it would not help in considering the definition of "rent" as defined under the Explanation to Section 194-I. In *State of Punjab v. British India Corpn* (supra), the Supreme Court dealing with the question whether the payment received from the employees of the British India Corporation, on leave and license, the respondent therein is liable to be taxed under the Punjab Urban Immovable Property Tax Act, 1940 as "rent" within the meaning of the Rule 18(4)(ii) of the Punjab Urban Immovable Property Tax Rules, 1941 held that the payment received from those employees not being rent within the meaning of the above rule, no tax was leviable under the Act in respect of the building in question. The Court dealing with the meaning of the word "rent" in Clause (ii) of Rule 18(4) held :

"The next question is what is the meaning of "rent" in Clause (ii) of Rule 18(4). In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of the use and occupation

of any land or building. In its narrower sense it means payment made by tenant to landlord for property demised to him."

15. The above observation of the Constitution Bench of the Supreme Court supports the stand of the department because the word "rent" in its wider sense may mean payment made by a licensee also for the use of land or buildings and not necessarily a payment made by a tenant or a lessee. If such a wider meaning can be given to the word "rent", even in the absence of definition of the word "rent" in a statute, we do not find any weighty or sound reasons to limit the meaning of the word "rent" occurring in Explanation to Section 194-I only to the payment made by a tenant or a lessee for the use of land or buildings demised to him. We say this because, the term "rent" is defined in the Explanation in a wider sense. As per the definition; "rent" includes and means not only a payment made under any lease or sub-lease or tenancy, but also means and includes payment made under any other agreement or arrangement for the use of building or land. If that is so, even accepting the contention of Sri Kodandram, that the relationship between the 1st petitioner and its corporate customers is a kind of licence-arrangement and not a leasing-arrangement as correct, the payment made by such licensees could validly be treated as "rent" within the meaning of that term for the purpose of Section 194-I. There is no controversy that the payments have to be made by the corporate customers of the 1st petitioner under agreements entered into between them and for the use of the building owned by the 1st petitioner. Therefore, the consideration paid to the 1st petitioner by its customers under the agreements for the use and occupation of the hotel rooms squarely falls within the term "rent" as defined under the Explanation.

16. The decision of the Apex Court in CIT v. Anand Theatres (supra) also is of no help to the petitioner. That case involved the question whether a building which was used as a hotel or cinema theatre could be considered to be a plant or whether it remained a building for the purposes of depreciation u/s 32 of the Act. The Court held that the business of a hotelier is carried on in a building or premises, but the building is not an apparatus for running such business. The Court also held that the same would be the position with regard to a theatre in which cinema business is carried on. Moreover, such buildings cannot be termed as tools for running business but they are merely shelters for carrying on such business activities. So opining, the Court held that building used as hotel or cinema theatre is nonetheless a building and not a plant for the purpose of allowing depreciation u/s 32 of the Act.

17. The judgment of Calcutta High Court in CIT v. Darjeeling Club Ltd. (supra), cited by Sri Kodandaram is also of no help to the petitioner. In that case, one of the questions that arose for decision was whether the income derived from the club from providing accommodation to its members could be regarded as "rent" and, therefore, could be assessed as income from house property. The Calcutta High Court while answering the question in the negative held that facilities

including accommodations were provided to the members by the club as agent of the members and not as owner of the house property; the members had provided for themselves these facilities through the instrumentality or agency of the club; the club was not the landlord and the members, during their stay, were not the tenants of the club. Therefore, the Court held that the amounts paid by the members for accommodation could not be regarded as rent and was not assessable as income from house property. It is an authority to state that the relationship between a club and its members cannot be equated to the relationship between the management of a hotel and its patrons/ customers.

18. The contention of Sri Kodandaram that rents payable under the agreement to the 1st petitioner includes not only the charges for occupancy but also the charges of other facilities provided by the hotel management, the payment could not be regarded as rent within the meaning of that term, is also not well founded. Suffice it to state that the agreement between the 1st petitioner and the Indian Airlines as reflected in the letter Ref No. MDS/CPS/48B/2461, dated 8th September, 1995, for example, clearly shows that the room rent does not include all service charges. As per the above communication, daily room rent (including bed-tea) is charged at Rs. 825/-, whereas Rs. 100/- is separately fixed for breakfast. That clearly indicates that rent charged by the hotel for rooms does not include charges of all other facilities and services provided by the hotel management.

19. Having regard to the well-settled principles governing interpretation/ construction of statutes also, the interpretation suggested by Sri Kodandaram on the definition of the "rent" as defined under the Explanation to Section 194-I cannot be accepted. If the Court were to exclude the payments made by the licensees under an agreement or an arrangement for the use of land or building, that would tantamount to modifying the definition of the word "rent" and such an interpretation cannot be placed. A Constitution Bench of the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, , held:

"..... If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the Legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature....."

It is well recognised principle governing interpretation of the statute that only if there is ambiguity in the terms of the provision, recourse must naturally be had to well established principles of construction, but it is not at all permissible for the Court first to create an artificial ambiguity and then try to resolve the ambiguity by resort to some general principle. That is exactly what the learned Counsel for the petitioners attempted in the present case. In opining as above, we derive support from the judgment of the Supreme Court in *Commissioner of Income Tax, Madras Vs. Indian Bank Ltd.*, . In *Babu Manmohan Das Shah and*

Others Vs. Bishun Das, , the Court while opining that a departure could be made from literal construction from the ordinary rule of literal construction only where such departure is necessary to avoid absurdity or prevent the manifest intention of the lawmaker from being carried out held :

"In our view Clause (c) of Section 3(1) cannot bear the construction suggested by Mr. Desai. The clause is couched in simple and unambiguous language and in its plain meaning provides that it would be a good ground enabling a landlord to sue for eviction without the permission of the District Magistrate if the tenant has made or has permitted to be made without the landlord's consent in writing such construction which materially alters the accommodation or is likely substantially to diminish its value. The language of the clause makes it clear that the legislature wanted to lay down two alternatives which would furnish a ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantially diminish its value. The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. There is no reason why the word "or" should be construed otherwise than in its ordinary meaning. If the construction suggested by Mr. Desai were to be accepted and the word "or" were to be construed as meaning "and" it would mean that the construction should not only be such as materially alters the accommodation but is also such that it would substantially diminish its value. Such an interpretation is not warranted for the simple reason that there may conceivably be material alterations which do not, however, diminish the value of the accommodation and on the other hand there may equally conceivably be alterations which are not material alterations but nevertheless would substantially diminish the value of the premises. It seems to us that the Legislature intended to provide for both the contingencies and where one or the other exists it was intended to furnish a ground to the landlord to sue his tenant without having to obtain the previous permission of the District Magistrate. The construction of Clause (c) placed by the High Court is, therefore, not correct."

20. The contention of Sri Kodandaram that if the stand of the department is upheld, it would have deleterious effect on the finance of the 1st petitioner company and it would violate the fundamental right of the 1st petitioner guaranteed under Article 19(1)(g) of the Constitution of India is untenable. Before considering this contention, it needs to be noticed that the constitutionality of the provisions of Section 194-I is not questioned in this case. Therefore, for the purpose of deciding the present writ petition, the provisions of Section 194-1 should be regarded as constitutionally valid. The only thing that arises in this case is the interpretation of the provisions of Section 194-1, particularly the definition of "rent" in the Explanation to the said section. It is well settled by the decisions in Himmatlal Harilal Mehta Vs. The State of Madhya

Pradesh and Others, , Nazeria Motor Service etc. Vs. State of Andhra Pradesh and Another, , Shaik Madar Saheb and Others Vs. The State of Andhra Pradesh and Others, , S. Kodar Vs. State of Kerala, , Prag Ice and Oil Mills and Another Vs. Union of India (UOI), , Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others, , that mere excessiveness of a tax or reduction of profits does not render it an unreasonable restriction on the freedom guaranteed under Article 19(1)(g) of the Constitution unless such levy seeks to confiscate property in the name of taxation. Further, merely because a restriction on the right guaranteed under Article 19(1)(g) of the Constitution operates harshly, it cannot be said that that restriction is unreasonable, In Krishnan Kakkanth Vs. Government of Kerala and others, , the Supreme Court held that the fundamental rights guaranteed under Article 19 of the Constitution are not absolute, but they are subject to the social control permitted by Clauses (2) to (6) under Article 19. The Supreme Court held:

"The reasonableness of restriction is to be determined in an objective manner and from the standpoint of the interests of general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders Mohd. Hanif Quareshi and Others Vs. The State of Bihar,). In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into Judicial verdict."

21. Therefore, even accepting that the obligation to effect TDS creates hardship, financial inconvenience to the 1st petitioner, even then, that circumstance itself cannot be a valid or legal ground to take out the payments received by the payee from the patrons for use of the hotel rooms in pursuance of agreements between them from the purview of "rent" as defined in the Explanation to Section 194-I. If TDS results in hardship, financial burden on the recipient, the Parliament itself has made provision in Section 197 for obtaining certificate for deduction at lower rate or no deduction of Income Tax. Section 197 of the Income Tax Act relating to certificate for deduction of Income Tax at lower rate or for no deduction of Income Tax in appropriate cases has been amended to include income by way of "rent" within the scope of the said section. Therefore, it is open for the 1st petitioner to make necessary application u/s 197 if there is any justification or hardship for it to do so. In conclusion, we hold that the charges paid to the 1st petitioner-company by its customers like the respondents 4 and 5, for use and occupation of the hotel rooms should be regarded as "rent" within the meaning of Section 194-I of the Act.

22. In the result and for the foregoing reasons, writ petition is dismissed with no order as to costs.