IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE

BEFORE SHRI N V VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.400-405/Bang/2021
Assessment year : 2013-14 to 2017-18

Lifestyle International Pvt. Ltd., 77 Town Centre, Building No.3 West Wing, Off. HAP Airport Road, Yemalur PO, Bengaluru-560 037. **PAN – AAACL 2937 J**	Vs.	The Asst. Commissioner of Income-tax TDS, Circle-2(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. T Suryanarayana, Sr. Advocate
Revenue by	:	Shri. Priyadarshini Mishra, Addl.CIT DR

Date of hearing	:	20.04.2022
Date of Pronouncement	:	26.04.2022

O R D E R

Per Padmavathy S, Accountant Member

The assessee has filed these appeals challenging the order of the CIT(A) NFAC dated 30.06.2021 for the asst. year 2013-14 to 2017-18. As common issues are involved in these appeals they were heard together and are being disposed off by way of a common order.

2. The common issue for all the assessment years under appeal (2013-14 to 2017-18) is the treatment of common area maintenance charges (CAM charges) as rent and applying TDS rates at 10% u/s. 194I of the Act instead of 2% u/s. 194C of the Act. For the assessment year 2013-14 and 2014-15 the assessee is also contending that the order passed by the assessing officer (AO) is time barred u/s. 201(3) of the income tax Act 1961 (the Act). The grounds raised by the assessee for the assessment year 2013-14 are reproduced below.

"I. The order passed by the Learned assessing officer ["AO"] is barred u/s. 201(3) of the Income-tax Act, 1961 ["the Act"]

1. The order passed by the learned assessing officer ["AO"] u/s. 201 of the Income tax Act, 1961 ["the Act"] dated 18 February 2020 (as upheld by the Learned Commissioner of Income-tax (Appeals) ["CIT(A)"]) was barred by time as per the erstwhile provisions of section 201(3) of the Act as it stood prior to Finance Act 2014.

2. The Learned CIT(A) and Learned AO failed to appreciate that the amendment vide Finance Act 2014, which extended the time limit to pass order u/s. 201 of the Act, is effective from 1 October 2014.

3. The Learned CIT(A) and Learned AD have erred in not relying on various judicial pronouncements which have held that the amendment brought vide Finance Act 2014 has to be applied prospectively.

4. The Learned CIT(A) and the Learned AD have erred in not taking into consideration the favourable order passed by the Hon'ble Income tax Appellate Tribunal ["ITAT"] in Appellant's own case for AY 2011-12.

II. Characterisation of common area maintenance charges ["CAM charges"] as rent and applying TDS rate at 10% u/s. 1941 of the Act instead of 2% u/s. 194C of the Act

5. The Learned CIT(A) and Learned AD have grossly erred in stating that CAM charges are subject to withholding tax at 10% u/s. 1941 of the Act as against 2% u/s. 194C of the Act.

6. The Learned CIT(A) grossly erred in upholding the view of Learned AO that CAM charges are in the nature of rent.
7. The Learned CIT(A) and the Learned AD failed to appreciate that the payments made by the Appellant towards CAM charges is in the nature of contractual payments and has erroneously considered the same as rent.
8. The Learned CIT(A) and Learned AD ought to have appreciated that CAM charges constitutes payments for various services rendered to the Appellant which cannot be equated with rental payments.
9. The Learned CIT(A) and Learned AD grossly erred in treating CAM charges as rent merely because of the fact that there was a common agreement for both rental payments and CAM charges.
10. The Learned CIT(A) and Learned AO failed to consider various judicial precedents relied upon by the Appellant in its submissions, wherein it was inter-alia observed that actual nature of the transaction and the terms of the contract have to be looked upon before concluding the payment as rent.
11. The Learned CIT(A) and Learned AO erred in not complying with the circular issued by the Central Board of Direct Taxes, which clarifies that any routine maintenance charges, which is not technical in nature, will be covered u/s. 194C of the Act.
12. The Learned CIT(A) and Learned AO ought to have appreciated various judicial pronouncements which held that maintenance charges fall under preview of section 194C of the Act.
13. The Learned CIT(A) and Learned AO erred in relying on certain judicial precedents which are distinguishable from the facts of the Appellant's case.
14. The Learned CIT(A) has grossly erred in relying on the CIT(A)'s order in Appellant's own case for AY 2011- 12 without appreciating that the said order has been quashed by the Hon'ble ITAT.

III. Erroneous levy of interest u/s. 201(1A) of the Act

15. The Learned CIT(A) and Learned AO have erred in levying interest u/s. 201(1A) of the Act amounting to INR 868,207/- which is consequential in nature."

3. The assessee is a private limited company and is engaged primarily in retailing in ready-made garments, leather products, furniture, toys, baby basics, footwear and other household accessories. The survey u/s. 133A(2A) of the Act was conducted on the registered address of the assessee on 08.03.2018 for the purpose of verifying whether appropriate taxes have been deducted at source on the expenses incurred/payments made by the assessee. During the survey the AO observed that the assessee has taken many properties on lease and the assessee has been deducting TDS on rent payments u/s. 194I of the Act. The AO also noticed that the common area maintenance charges (CAM charges) paid on these leased properties is treated as contractual payments and tax is deducted u/s. 194C at the rate of 2%. The AO stated that the CAM charges are directly relatable to and are part of the rental activity hence prime facie these payments fall under the purview of 194I and not of 194C calling for a deduction at 10% instead of 2%. The AO therefore treated the assessee as an assessee in-default and passed an order u/s. 201(1) of the Act on 18.02.2020 stating that there is short deduction of tax at source on the CAM charges. The AO also computed interest u/s. 201(1A) on the tax short deducted.

4. Aggrieved by the order of the AO the assessee preferred an appeal before the CIT(A). The CIT(A) observed that there was a single lease agreement for the premise's rent and the CAM charges and

concluded that CAM charges are integral part of the agreement between the assessee and the lessor. The CIT(A) therefore dismissed the appeal of the assessee by confirming that TDS on CAM charges should be done at 10% u/s. 194I of the Act by relying on the earlier year order passed by the CIT(A) in assessee's own case. The CIT(A) also dismissed the claim of the assessee that the assessment order passed by AO was barred by limitation u/s. 201(3) of the Act.

5. The assessee is in appeal before the Tribunal against the order of the CIT appeals. We will first consider the issue of AO's order u/s. 201(1) being time barred u/s. 201(3) of the Act which is raised as an issue for the assessment year 2013-14 and 2014-15

6. The learned AR submitted that as per the provisions of section 201(3) as it existed prior to amendment made by Finance (no.2) Act 2014 an order u/s. 201(1) cannot be made after the expiry of two years from the end of the financial year in which the statements u/s. 200 is filed. The learned AR submitted that the assessee has filed the statements as required to be filed u/s. 200 and the same fact has been verified and confirmed by the AO in his order (Page 8 para 13 of AO's order). Therefore the learned AR contented that the assessee's case would fall within the provisions of clause (i) of section 201(3) of the Act and assessment order passed by the AO on 18.02.2020 is way beyond the time limit described u/s. 201(3) rendering the same bad in law

7. The learned DR on the other hand submitted that amendment to section 201(3) that was made in the statute vide Finance Act 2012 w.r.e.f. 01.04.2010 enlarging the time limit for passing of an order u/s. 201(1) to Six years from the end of the financial year in which payment is made or credit is given is clarificatory in nature, therefore it would be applicable retrospectively and as a consequence the time limit available to the AO for passing the order u/s. 201(1) is six years from the end of the financial year in which the payment is made or credit is given and hence the order passed by the AO u/s. 201(1) is not time barred.

8. We heard the rival submissions and perused the materials on record. Sub-section (3) to Section 201 of the Act, as was made available on the statute vide the Finance Act, 2009 w.e.f. 01.04.2010, reads as under:

> *"(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of –*
> *(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;*
> *(ii) four years from the end of the financial year in which payment is made or credit is given, in any other case" (emphasis supplied)"*

9. In so far the time limit for passing of an order u/s. 201(1) of the Act in a case where statement of tax deducted at source u/s. 200 of the Act was not filed by the deductor, the same was thereafter extended vide the Finance Act, 2012 from 4 years as was earlier provided in clause (ii) to Section 201 (3) of the Act to a period of 6 years with retrospective effect from 01.04.2010, i.e., from AY 2010-11 onwards. However, the time limit for deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India, in a case where a statement of tax deducted at source u/s. 200 of the Act was filed by the deductor remained unchanged i.e. 2 years as was earlier provided on the statute vide the Finance Act, 2009 w.e.f. 01.04.2010. We find that the aforesaid time limit for deeming a person to be an assessee-in- default within the meaning of Section 201(1) of the Act, had thereafter further been extended vide the Finance Act, 2014 w.e.f. 01.10.2014 to a period of 7 years from the end of the financial year in which payment is made or credit is given.

10. Before proceeding further it would be important to examine based on facts whether the time limit for deeming the assessee as an assessee-in-default u/s. 201(1) of the Act is regulated by the time period as mentioned in clause (i) of section 201(1) as claimed by the assessee, or the extended time period of 6 years as per clause (ii) of section 201(1) as was prevalent prior to the Finance Act, 2014, i.e. prior to 01.10.2014, as claimed by the revenue. For this purpose it

would be relevant to cull out the respective dates on which the statements referred to in Section 200 of the Act had been filed by the assessee company, as under:-

Assessment year 2013-14 **Assessment year 2014-15**

Form No	Quarter	Date of filing	Form No	Quarter	Date of filing
26Q	Q1	13.07.2012	26Q	Q1	14.07.2013
26Q	Q2	15.10.2012	26Q	Q2	15.10.2013
26Q	Q3	15.01.2013	26Q	Q3	15.01.2014
26Q	Q4	15.05.2013	26Q	Q4	15.05.2014

11. In the assessee's case, the assessee has deducted tax and has filed statements well within the time limit as prescribed in section 200 of the Act. We are of the considered view, that as the time limitation for passing an order u/s. 201(1) deeming the assessee, as an assessee-in-default could have validly been done within a period of 2 years from the end of the financial year in which the statement u/s. 200 was filed by the assessee, i.e. latest by 31.03.2016 for the assessment year 2013-14 and by 31.03.2017 for the assessment year 2014-15 as per the law as was then available on the statute. Therefore the order passed u/s. 201(1) / 201(1A) for these assessment years on18.02.2020 is clearly beyond the time limit as per clause (i) of section 201(3). We, thus, in terms of our aforesaid observations quash the order passed by the AO u/s.201(1)/201(1A), dated 18.02.2020 as barred by limitation.

12. We will consider now the issue on merits whereby it is contented that the lower authorities have erred in law and the facts of the case in concluding that the CAM charges paid by the assessee were liable for deduction of tax at source at 10% u/s. 194I and not @ 2% u/s. 194C.

13. The learned AR submitted that the assessee has entered into a common agreement with the owner of the property for rent as well common area maintenance. The learned AR drew our attention to the relevant clauses of the agreement relating to payment of CAM charges. The learned AR stated that as per the provisions of section 194I rent means any payment made towards use of land, building, machinery, plant etc. The learned AR also submitted that in the assessee's case the CAM charges are paid towards common maintenance such as electricity, water, lift maintenance etc. and therefore will not fall within the ambit of 194I of the Act. The Learned AR also placed reliance on the decision of Delhi Bench of the Tribunal in the case of Connaught Plaza Restaurants P. Ltd. Vs DCIT (I.T.A. No.993 & 1984/DEL/2020) where the same issue is considered where the Hon'ble Tribunal has held that the CAM charges paid were liable for deduction of tax at source @ 2% u/s. 194C and not 194I.

14. The learned DR submitted that the CAM charges are integral part of the lease deed and are inseparable since the payment of rent and

CAM charges are done under a single agreement. The learned DR also submitted that the unique nature of the business of the assessee needs to be considered where the maintenance charges paid towards the ambience, cleanliness, and attractive looks of the business premises improves the marketability of the assessee. The learned DR therefore argued that the CAM charges paid should be treated as an integral part of the rent whereby tax is required to be deducted at source at 10% u/s. 194I of the act.

14. We have heard the rival submissions and perused the materials on record. The assessee has entered into lease agreement with AKM enterprises Private Limited whereby the assessee has taken a property on lease. As per the terms of the lease deed the assessee is required to pay rent (clause 8 of the lease agreement) and maintenance (clause 9 of the lease agreement). The issue contended is whether the rent and maintenance which are paid as part of single agreement is liable to be deducted tax at source at the same rate of 10% u/s. 194I. For this purpose we will look at the provisions of section194I is reproduced below.

> "***"194-1.Rent.***
>
> *Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident 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) two per cent for the use of any machinery or plant or equipment; and*

(b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:

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 eighty thousand rupees:

Explanation.-For the purposes of this section,-

(i) "rent" means any payment, by whatever name called, under any lease, sublease, 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";

15. From the definition, the term "rent" would include payments for the use of land building land pertinent to building, machinery, plant, equipment, furniture, fitting. In short the payments for use of premises/equipment are covered by section 194I of the Act. We notice that a similar issue is considered by the honourable Delhi Tribunal in the case of Connaught Plaza Restaurants P. Ltd (supra) where to held that

13. In the backdrop of our aforesaid deliberations, we concur with the claim of the ld. AR that as the payments towards CAM

charges are in the nature of contractual payments that are made for availing certain services/facilities, and not for use of any premises/equipment, therefore, the same would be subjected to deduction of tax at source u/s.194C of the Act. Our aforesaid view is supported by the order of the ITAT, Delhi in the case of Kapoor Watch Company P. Ltd. vs. ACIT in ITA No.889/Del/2020. In the aforesaid case, the genesis of the controversy as in the case of the assessee before us were certain proceedings conducted by the Department in the case of Ambience Group (supra) to verify the compliance of the provisions of Chapter XVII-B of the Act. On the basis of the facts that had emerged in the course of the proceedings, it was gathered by the Department that the owners of the malls in addition to the rent had been collecting CAM charges from the lessees on which TDS was deducted @2% i.e u/s.194C of the Act. Observing, that payment of CAM charges were essentially a part of the rent, the AO treated the assessee as an assessee-in-default for short deduction of tax at source u/ss. 201(1)/201(1A) of the Act. On appeal, it was observed by the Tribunal that the CAM charges paid by the assessee did not form part of the actual rent that was paid to the owner by the assessee company. As the facts involved in the case of the assessee before us remains the same as were therein involved in the aforesaid case, therefore, in the backdrop of our aforesaid deliberations, and respectfully following the aforesaid order of the Tribunal, we herein conclude, that as claimed by the assessee, and rightly so, the CAM charges paid by it were liable for deduction of tax at source @2%, i.e., u/s.194C of the Act. We, thus, in terms of our aforesaid observations set-aside the order of the CIT(A) who had approved the order passed by the AO treating the assessee company as an assessee-in-default u/s.201(1) of the Act. The Grounds of appeal no.4 to 4.5 are allowed in terms of our aforesaid observations.

16. As per clause 9 of the lease agreement (pages 62 of paper book) makes it clear that the maintenance charges paid are not paid for use of land/building to fall within the ambit of the definition of rent u/s. 194I. The CAM charges are in the nature of contractual payments towards electricity, water supply, security, lift maintenance etc., falling within the meaning of section 194C whereby these charges are paid for carrying out the work for maintenance of the common area that are available along with the lease premises. The fact that these two payments are agreed and paid under the same agreement does not change the character / nature of such payments warranting single rate of tax deduction at source. The law has provided for different rates of tax deduction at source based on the nature of payment and it is imperative that the correct rate of tax is applied depending on the nature of payments.

17. In view of the aforesaid discussions we are of the considered view that the payments made towards CAM charges are in the nature of contractual is payments that are made for availing maintenance services and they are not paid for use of any premises/equipment. Therefore the cam charges would be subjected to deduction of tax at source u/s. 194C of the Act at 2%. The assessee has applied the right rate of tax for deduction at source at 2% on CAM charges and therefore the assessee cannot be held to be an assessee in default u/s. 201(1) of the Act. We therefore allow the appeal in favour of the assessee on merits also

18. Since we have quashed the order passed by the AO u/ss.201(1)/201(1A) of the Act both on legal ground that the order is barred by limitation and also otherwise on merits stating that the assessee could not be held to be an assessee in default, the interest charged by the AO u/s.201(1A) which is consequential in nature and been rendered infructuous. The ground raised by the assessee on this count does not require separate adjudication and hence dismissed.

19. The grounds raised by the assessee for the assessment year 2014-15 are same as assessment year 2013-14 (both legal grounds and grounds on merits. We have in the aforesaid paragraphs pertaining to assessment year 2013-14 held that the order of the AO is time barred and on the basis of facts also assessee could not be treated as assessee in default. Since the facts are similar if the assessment year 2014-15 also we hold the same view for assessment year 2014-15 and allow the appeal in favour of the assessee.

20. For the assessment years 2015-16, 2016-17 and 2017-18, the learned AR confined his contentions to merits i.e. deeming the assessee as an assessee in default u/s.201(1) of the Act for having short deducted the tax at source u/s. 194C @ 2% instead of 194I @ 10%. In the backdrop of the fact that the issue in question is same, we allow the issue in favour of the assessee in terms of our observations recorded in paragraphs 14 to 18 herein above.

21. In the result, appeals of the assessee are allowed.

Order pronounced in court on 26th day of April**,** 2022

Sd/- Sd/-

(N.V.VASUDEVAN) **(PADMAVATHY S)**
Vice President Accountant Member

Bangalore,
Dated, 26th April**,** 2022
/ vms /

Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
   ……
2. Date on which the typed draft is placed
   before the dictating Member …….
3. Date on which the approved draft comes to Sr.P.S
   …….
4. Date on which the fair order is placed
   before the dictating Member ……..
5. Date on which the fair order comes back to the Sr.
   P.S. ……..
6. Date of uploading the order on
   website……..
7. If not uploaded, furnish the reason for doing so
   ……..
8. Date on which the file goes to the Bench Clerk
   ……..
9. Date on which order goes for Xerox &
   endorsement……
10. Date on which the file goes to the Head Clerk
    …….
11. The date on which the file goes to the Assistant
    Registrar for signature on the order
    …….
12. The date on which the file goes to dispatch section
    for dispatch of the Tribunal Order
    ……
13. Date of Despatch of Order.
    ……..