IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 1417/DEL/2020
[Assessment Year: 2012-13

Nijhawan Travel Service Pvt. Ltd., F-53, Bhagat Singh Market, Near Gole market, New Delhi-110001 PAN- AAACN0150D	Vs	ACIT, Circle-76(1), New Delhi.
APPELLANT		**RESPONDENT**
Appellant by	**Sh. A.K. Srivastava, CA**	
Respondent by	**Sh. Om Prakash, Sr. DR**	
Date of hearing	**05.05.2022**	
Date of pronouncement	01.07.2022	

O R D E R

PER CHANDRA MOHAN GARG, JM:

This appeal has been filed against the order of CIT(Appeals), Delhi-42, dated 17.02.2020 for assessment year 2012-13. Though the assessee has raised as

many as six grounds in this appeal, but the sole grievance of the assessee is that the Assessing officer (AO) has erred in holding that the claim of common maintenance charges (CAM) was in the nature of rent liable for TDS @ 10% u/s 194-I of the Income Tax Act, 1961 (in short "the Act"). Hence, the assessee committed a default u/s 201(1) of the Act and was, therefore, liable for payment of tax and interest, since there was a short deduction of TDS.

2. I have heard the arguments of both the sides and carefully perused the material available on record of the Tribunal, inter alia, two paper books of assessee, consisting of 138 and 19 pages respectively. The learned counsel submitted that AO has erred on facts and law in completing the assessment u/s 201(1)/201(1A) of the Act and making addition on account of short deduction of tax amounting to Rs 11,16,161/-. The learned counsel also submitted that AO has grossly erred in holding that the common maintenance charges paid by the assessee were in the nature of rent liable for TDS @ 10% u/s 194-I of the Act and thus the assessee is liable for payment of tax and interest thereon since there was a short deduction of TDS due to default committed by it u/s 201(1) of the Act. The learned counsel vehemently pointed out that the AO was not correct in holding that the provisions of Section 194-I read with section 201(1) and 201(1A) of the Act were applicable in the present case, because in view of first proviso to Section 201(1),

the assessee cannot be deemed to be in default in respect of short deduction of TDS, since the same, representing common maintenance charges, has already been taken and declared as income and tax has been paid thereon by the recipients of CAM charges. Learned counsel has also placed reliance on the order of ITAT Delhi Bench New Delhi in the case of Kapoor Watch Company Pvt. Ltd. ITA no. 889/Del/2020 and subsequent order of ITAT Delhi "B" Bench in the case of Connaught Plaza Restaurants P. Ltd. Vs. DCIT (ITA nos. 993 & 1984/Del/2020 for assessment years 2011-12 & 2012-13) and submitted that in the present case CAM charges have not been paid by the assessee to the owner of the property but have been paid to a third party after deducting TDS u/s 194C of the Act as applicable on the payment of CAM charges. Learned counsel also submitted that learned CIT(A) relying on the first proviso of Section 201(1) of the Act, as inserted by the Finance Act, 2012 w.e.f. 1.7.2012 and under Rule 31ACB of the income-tax Rules, 1962, inserted w.e.f. 12.9.2012, which was inserted after the end of financial year, has held that the assessee had not fulfilled the prescribed requirement to file the prescribed format from the payee. But this conclusion was drawn by the learned CIT(A) without show causing or confronting the assessee about this requirement. Therefore, the assessee obtained relevant certificates from certain payees and submitted before this Bench in the form of paper book which

may kindly be accepted as additional evidence in order to grant justice to the assessee.

3. Replying to the above, the learned Sr. DR drew our attention towards para 6 of the assessment order and submitted that CAM expenses is duly covered u/s 194I of the Act and, therefore, the assessee was rightly treated as an assessee in default within the meaning of Section 201(1) of the Act for failing to appropriately deduct tax on payment as per provisions of the Act. Learned DR also submitted that the Assessing Officer was right in rejecting the explanation of the assessee that TDS on CAM charges has to be deducted u/s 194C of the Act.

5. On careful consideration of the above submissions, first of all from the copies of the agreements placed by the assessee at serial nos. 13 to 17, pages 24 to 138, it is clearly gathered that CAM chares have been paid to different parties by executing agreements which do not form part of rent payment. It has not been disputed by the authorities below, nor by the learned Sr. DR before us, that the assessee has deducted TDS u/s 194C of the Act on the payment of CAM charges to the respective third parties who provided services to maintain common area.

6. Now I advert to the proposition rendered by ITAT Delhi Bench "B" in the case of Connaught Plaza Restaurants P. Ltd. Vs. DCIT(supra), where in paras 11 to 13, the coordinate Bench of the Tribunal, by referring earlier judgment of the ITAT

Delhi Bench in the case of Kapoor Watch Company Pvt. Ltd. (supra), held as under:

> *"11. We shall now advert to the claim of the assessee that both the lower authorities had erred in law and the facts of the case in concluding that the CAM charges paid by the assessee to Ambience Group (supra) were liable for deduction of tax at source @10%, i.e., u/s 194-1 and not @2%, i.e., U/S.194C of the Act, as claimed by the assessee. Succinctly stated, the assessee company which is engaged, inter alia, in the business of running of fast food restaurants in North and East India under the brand name "Me. Donalds", had taken shop/spaces/units in commercial areas/malls on lease from various parties by way of lease agreements. Apart from the rent, the assessee-company had also paid CAM charges, i.e., charges which are fundamentally for availing common area maintenance services, which may either be provided by the landlord or any other agency. In so far the CAM charges that were paid by the assessee to the same party to whom rent was being paid pursuant to the lease agreements, or to an appointed or related party with whom the lease agreement had been entered into, the AO was of view that the assessee was obligated to deduct tax at source @10%, i.e., 194-1 of the Act. Backed by his aforesaid conviction the A.O had held the assessee as an assessee-in-default u/s.201(1) of the Act, for short deduction of tax at source @2%, i.e. U/S.194C instead of @10% u/s 194-1 of the Act.*
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> *12. Issue involved qua the aforesaid controversy lies in a narrow compass, i.e., as to whether the CAM charges paid by the assessee were liable for deduction of tax at source u/s. 194-1, i.e., @10% or u/s 194C, i.e, @2%. Before adverting any further it would be relevant to cull out the provisions of Section 194-1 of the Act, which reads as under:*
>
> > *"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 ofpayment 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;

……. ……." (emphasis supplied)

On a perusal of the definition of the terminology "rent" as had been provided in the aforesaid statutory provision, viz. Sec. 194-1 of the Act, we find that the same includes payment for the use of land, building, land appurtenant to a building, machinery, plant, equipment, furniture or fittings. In sum and substance, only the payments for use of premises/equipment is covered by Section 194-1 of the Act. In our considered view, as the CAM charges are completely independent and separate from rental payments, and are

fundamentally for availing common area maintenance services which may be provided by the landlord or any other agency, therefore, the same cannot be brought within the scope and gamut of the definition of terminology "rent". On the other hand, we are of the considered view, that as the CAM charges are in the nature of a contractual payment made to a person for carrying out the work in lieu of a contract, therefore, the same would clearly fall within the meaning of "work" as defined in Section 194C of the Act. In our considered view, as the CAM charges are not paid for use of land/building but are paid for carrying out the work for maintenance of the common area/facilities that are available along with the lease premises, therefore, the same could not be characterized and/or brought within the meaning of "rent" as defined in Section 194-1 of the Act.

13. In the backdrop of our aforesaid deliberations, we concur with the claim of the Id. 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."

7. In view of the foregoing discussion and factual position noted by us, which has not been controverted by the learned DR, I am in agreement with the claim of the learned AR that the payment towards CAM charges are in the nature of contractual payment which are made for availing services/ facilities and not for the use of any premises/ equipment, therefore, same would be subject to deduction of tax at source u/s 194C of the Act and not u/s 194I of the Act. This view has also been taken by the Tribunal in the case of Kapoor Watch Company Pvt. Ltd. (supra). As the facts involved in the present case of assessee before us are quite identical and similar to the facts of the case involved in the cases of Connaught Plaza Restaurants P. Ltd. (supra); and Kapoor Watch Company Pvt. Ltd. (supra), therefore, respectfully following the same, I conclude that as claimed by the assessee the TDS on CAM charges paid by it is liable for deduction of tax at source @ 2% u/s 194C of the Act. I, thus, in terms of my above noted observation,

set aside the order of the AO as well as that of learned CIT(A) treating the assessee company as an assessee in default u/s 201(1) of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in open court on 01.07.22.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

MP
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI