IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1080/Del/2020
Assessment Year: 2011-12

Johnson Watch Company Pvt. Ltd., Vs. ACIT, L-21, Connaught Place,
Circle-75(1),
New Delhi. New Delhi.

PAN: AABCJ9807G

(Appellant) (Respondent)

Assessee by : None
Revenue by : Shri Anuj Garg, Sr. DR

Date of Hearing : 16.01.2023 Date of Pronouncement : 20.02.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 16.01.2020 of the CIT(A)-38, Delhi, relating to Assessment Years 2011-12.

2. The grounds of appeal raised by the assessee read as under:-

"1. That the order of the learned CIT(A) is bad in law and on facts in confirming the order of AO in respect of following demands u/s 201(1) and u/s 201(1A) of the Income Tax Act, 1961:-

TDS demand	DLF Utilities Ltd.	Ambience Facilities Management Private Limited	Ambience Facilities Services Private Limited	Total
Short deduction of TDS	21,154	-	-	21,154
Interest on short deduction of TDS	18,511	4,292	8,528	31,331
Total	39,665	4,292	8,528	52,485

2. The CIT(A) has erred by treating the common area maintenance charges (CAM) paid by the lessee to the maintenance company as part of the rent and thus making lessee liable for deduction of tax at source u/s 1941 @ 10% and not u/s 194C @ 2% in respect of such payment.

3. The learned CIT(A) has erred by observing that the lessor is paying the common area maintenance charges to the maintenance company and same are recovered by the lessor company from the lessee and thus such CAM charges are part of the rent and are liable for deduction of tax at source u/s 1941 @ 10% instead of deduction of tax at source u/s 194C @ 2%.

4. That the learned CIT(A) erred by confirming the demand of Rs. 21,154/- u/s 201(1) of the Income Tax Act, 1961 in respect of short deduction of tax by ignoring the certificate from Chartered Accountant of DLF Utilities Ltd. annexed with Form 26A u/s 201(1) r/w rule 31ACB and Rs. 18,511/- in respect of interest on short deduction by applying section 1941 instead of section 194C.

5. The appellant craves leave to add, modify, alter, substitute or delete any of the grounds of appeal on or before the date of hearing."

3. The ld. Counsel for the assessee submitted that the issue is covered by the decision of the coordinate Bench of the ITAT in the case of Kapoor Watch Company Pvt. Ltd., vide order dated 05.01.2021 in ITA No.889/Del/2020, for AY 2011-12. He has also placed reliance on the decision of the ITAT Delhi, 'SMC' Bench dated 1st July,

2022 in the case of Nijhawan Travel Service (P) Ltd. vs. ACIT in ITA No.1417/Del/2020 for AY 2012-13. It was, therefore, submitted that the grounds of the assessee may kindly be allowed.

4. Replying to the above, the ld. Sr. DR supported the orders of the authorities below and submitted that since the assessee has not complied with the TDS provisions of section 194I of the Act and he deducted TDS @ 2% u/s 194C of the Act instead of TDS @ 10% under section 194I of the Act as per the facts of the case, the grounds of the assessee may kindly be dismissed.

5. On careful consideration of the above rival submissions, we find the coordinate bench of the ITAT under identical facts has decided this issue in favour of the assessee in the case of Nijhawan Travel Service (P) Ltd. (supra) and the coordinate

Bench of the Tribunal by order dated 01.07.2022 in ITA No.1417/Del/2020, for AY 2012-13, held as follows:-

> "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 "McDonalds", 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.

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."

6. Respectfully following the same, we hold that the assessee was right in deducting tax @ 2% u/s 194C of the Act on payment of Common Area Maintenance charges and the provisions of section 194I of the Act is not applicable to this payment. Therefore, the assessee cannot be treated as an assessee in default and, thus, the assessee is not liable to pay any amount u/s 201(1) and u/s 201(1A) of the

Act.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.02.2023.

Sd/-	Sd/-
(PRADIP KUMAR KEDIA)	(C.M. GARG)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 20th February, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi