

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “B” NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT  
AND  
SHRI RAVISH SOOD, JUDICIAL MEMBER**

I.T.A. No.993 & 1984/DEL/2020  
Assessment Year: 2011-2012 & 2012-13

Connaught Plaza Restaurants P. Ltd., Level 8, DLF Centre, Sansad Marg, Connaught Place, New Delhi	vs.	DCIT, Circle-73(1), New Delhi.
PAN: AAACC1201E		
(Appellant)		(Respondent)

Appellant by:	Shri Rohit Jain, Advocate a/w Ms. Somya Jain, CA.		
Respondent by:	Shri Sumit Kumar Varma, Sr.D.R.		
Date of hearing:	09	12	2021
Date of pronouncement:	31	12	2021

**ORDER**

**PER RAVISH SOOD, JM**

The present appeals filed by the assessee company are directed against the respective orders passed by the Commissioner of Income Tax (Appeals)-38, New Delhi [for short “CIT(A)”], dated 31.01.2020 and 10.1.2020, which in turn arises from the orders passed by the Assistant/Deputy Commissioner of Income Tax, Circle-73(1), Delhi u/ss. 201(1)/201(1A) of the Income Tax Act, 1961 (for short “Act”) for AY 2011-12 & AY 2012-13, respectively. As common issues are involved in the aforementioned appeals, therefore, the same were heard together and are being disposed off by way of a consolidated order. We will first take up the appeal

for AY 2011-12 wherein the impugned order passed by the CIT(A) has been assailed before us on the following grounds :

- “1. That on the facts and circumstances of the case and in law, the order dated 29.03.2018 passed by the assessing officer under section 201(1)/ 201(1A) of the Income Tax Act, 1961 (‘the Act’) is without jurisdiction, illegal, bad in law and liable to be quashed.
2. That on the facts and circumstances of the case and in law, the impugned order passed by the Commissioner of Income Tax (Appeals) [‘CIT(A)’] is erroneous inasmuch as the same has been passed without correct appreciation of facts and is liable to be quashed.
3. That on the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating that the assessment order dated 29.03.2018 passed under section 201(1)/ 201(1A) for assessment year 2011-12 is void ab initio, invalid and bad in law on account of being time barred in view of period of limitation prescribed under section 201(3) of the Act.
4. That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that tax on Common Area Maintenance Charges (‘CAM charges’), paid by the appellant to the lessor, was liable to be deducted under section 194I as against tax deducted under section 194C of the Act by the appellant.
  - 4.1. That the CIT(A) erred on facts and in law in treating the CAM charges paid by the appellant as part of rent without appreciating that the same were paid by the appellant for various common service/ facilities which are not at disposal of appellant and not for use of any land/ building/ space or premise to attract provisions of section 194I of the Act.
  - 4.2. That the CIT(A) erred in facts and in law in not appreciating that CAM charges paid by the appellant were nothing but the reimbursement of expenditure incurred by lessor on maintenance of the common area, which does not fall within the ambit of section 194I of the Act
  - 4.3. That the CIT(A) erred on facts and circumstances of the case in not appreciating that tax on CAM charges, if at all, will fall under the provisions of section 194C and not section 194I of the Act as the same are being paid for work\_carried out for maintenance of common areas/ facilities available alongwith leased premise;
  - 4.4. That the C1T(A)/ assessing officer erred in not appreciating that though rent and CAM charges were paid in accordance with the same agreement, however both rent payable and CAM charges were distinctly defined in the agreements by way of separate schedules.

4.5. That the CIT(A)/assessing officer erred in alleging that CAM charges are a part of rent without disputing the arm's length amount of rent paid by the appellant.

4.6. Without Prejudice, that the CIT(A) erred in not appreciating that once tax on receipt was paid by the recipients, the same could not have been recovered again from the appellant.

5. That on the facts and circumstances of the case and in law, the CIT(A) erred in not directing the assessing officer to delete interest charged under section 201/201(1 A) of the Act.”

2. Briefly stated, the assessee company which is, *inter alia*, engaged in the business of running fast food restaurants in North and East India under the brand name of “Mc. Donalds” had on 29.09.2011 filed its return of income for AY 2011-12, declaring an income of Rs.23,50,89,091/- (before setting off the brought forward business losses and unabsorbed depreciation).

3. Shorn of unnecessary details, in order to verify compliance of the provisions of Chapter XVII-B of the Act, survey proceedings u/s.133A of the Act were conducted in the case of Ambience Group which owns and operates malls having units/shops that had either been sold or leased out. During the course of survey proceedings, it was gathered by the survey officials that the Ambience group (supra) had collected Common Area Maintenance (CAM) charges on which tax was deducted by the payers under Section 194C of the Act i.e @2%. Backed by the aforesaid information gathered in the course of the survey proceedings, it was observed by the A.O that the assessee company which had taken spaces on lease in the malls owned by the Ambience Group (supra) for carrying out its business activities had deducted tax at source

on the amount of the CAM charges u/s 194C i.e @2% instead of u/s 194-I i.e @10%. In the backdrop of his aforesaid observations, the A.O called upon the assessee to explain that as to why it may not be treated as an assessee-in-default u/s 201(1) of the Act for having short deducted the amount of tax at source on the CAM charges. As the reply filed by the assessee did not find favour with the AO, therefore, he held the assessee as an assessee-in-default for the alleged short deduction of tax at source on the CAM charges of Rs.4,26,15,083/-, which therein resulted to a consequential demand of tax/interest u/ss. 201(1)/201(1A) amounting to Rs.64,70,346/-, viz, (i) demand towards short deduction of tax at source u/s. 201(1) of the Act: Rs.34,09,207/-; and (ii) demand towards interest u/s 201(1A) : Rs.30,61,140/.

4. Aggrieved, the assessee assailed the aforesaid order passed by the AO u/ss. 201(1)/201(1A) of the Act before the CIT(A). Observing, that there was a single lease agreement for payment of rent as well as CAM charges, the CIT(A) was of the view that there was no distinction between the CAM charges and the lease rent payments made by the assessee, except for the fact that separate invoices were raised for the same. The CIT(A) further drawing support from definition of the term “rent” as provided in the “Explanation” to Section 194-I of the Act a/w the CBDT Circular No.715, dated 08.08.1995 (Question no.24), and the judgment of the Hon’ble High Court of Punjab and Haryana in the case of Sunil Kumar Gupta vs. ACIT (2016) 389 ITR 38 (P&H) therein concluded that as CAM

charges paid by the assessee company formed a part of the rent, therefore, the assessee company was liable for deduction of tax at source on the same u/s.194-I of the Act. Qua the claim of the assessee that the order passed by the AO treating the assessee company as an assessee-in-default u/s.201(1) of the Act was barred by limitation, the same did not find favour with the CIT(A). Observing, that pursuant to the amendment of sub-section (3) to Section 201 of the Act, vide the Finance Act, 2014 i.e w.e.f. 01.10.2014, the time period for passing an order under sub-section (1) to Section 201 of the Act i.e deeming a person as an assessee-in-default for his failure to deduct the whole or any part of the tax from a person resident in India had been extended upto 7 years from the end of the financial year in which payment was made or credit was given, the CIT(A) was of the view that as the said amendment being clarificatory in nature would have a retrospective effect, therefore, the order passed by the A.O u/ss. 201(1)/201(1A) of the Act being well within the extended period of 7 years was saved by limitation. Accordingly, finding no merit in the claim of the assessee that the order passed by the AO u/s. 201(1) of the Act was barred by limitation the CIT(A) rejected the same. At the same time, the CIT(A) principally concurred with the assessee that now when the respective payees to whom CAM charges were paid by the assessee company had paid taxes on the said amount, therefore, as per the “proviso” to Section 201(1) of the Act and the judgment of the Hon’ble Supreme Court in the case of Hindustan Coca Cola Beverages Pvt. Ltd.

vs. CIT (2007) 293 ITR 226 (SC) it could not be treated as an assessee-in-default, thus, directed the AO to verify the factual position, and in case if the deductees were found to have paid the tax on CAM charges by filing their respective returns of income u/s.139 of the Act, then, the assessee company be not treated as an assessee-in-default.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

6. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. AR to drive home his respective contentions. Before us the assessee has assailed the sustaining of the order passed by the A.O u/ss. 201(1)/201(1A) by the CIT(A), on two fold grounds, viz, (i) that the order passed by the AO u/ss. 201(1)/201(1A) of the Act is barred by limitation; and (ii) that both the lower authorities had erred in concluding that the assessee was obligated to deduct tax at source on the CAM charges u/s.194-I and not u/s. 194C of the Act.

7. We shall first advert to the challenge thrown by the assessee to the validity of the order passed by the AO u/ss. 201(1)/201(1A) of the Act, for the reason, that as per him the same was barred by limitation. On a perusal of 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, we find that the same read 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)”*

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) of sub-section (3) to Section 201 of the Act to a period of 6 years w.r.e.f 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 sub-section (1) to Section 201 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.

8. Controversy involved in the present appeal as regards the validity of the order passed by the AO u/s. 201(1) of the

Act, dated 29.03.2018 lies in a narrow compass, i.e., as to whether the time limit for deeming the assessee as an assessee-in-default under sub-section (1) to section 201 of the Act is regulated by the time period that was made available on the statute vide the Finance Act, 2009, w.e.f. 01.04.2010, as claimed by the assessee, or the same is regulated by the extended time period of 7 years as had been made available on the statute vide the Finance Act, 2014, w.e.f., 01.10.2014, as is claimed by the revenue. Before adverting any further, 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:

Type of Form	Acknowledgment No.	Date of filing
26Q1	074020100030273	15.07.2010
26Q2	074020200084423	15.10.2010
26Q2	074020100036993	14.01.2011
26Q4	060660200370840	14.05.2011

It is the claim of ld. AR, that as per the mandate of sub-section (3) to Sec. 201 as was made available on the statute vide the Finance Act, 2009 w.e.f. 01.04.2010, the time limit for passing of an order under sub-section (1) to Section 201 in the case of the assessee for AY 2011-12 was 2 years from the end of the financial year in which the statement referred to in Section 200 was filed by it, therefore, the order passed by the AO u/ss. 201(1)/201(1A), dated 29.03.2018 was clearly barred by limitation as the same by any means could not have been passed beyond 31.03.2014. On the contrary, it is

the claim of the revenue that as the extended period of 7 years for passing an order under sub-section (1) to Section 201 i.e 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, as had been made available on the statute vide the Finance Act, 2014 w.e.f. 01.10.2014, is clarificatory in nature and would apply retrospectively, therefore, the order passed by the AO u/ss. 201(1)/201(1A) is well within the period of limitation.

9. After deliberating at length on the issue in question, we find substance in the claim of the ld. AR that the aforementioned order passed by the AO u/ss. 201(1)/201(1A) of the Act, dated 29.03.2018 is barred by limitation. Admittedly, as per sub-section (3) to Section 201 of the Act, the time limit for passing an order under sub-section (1) to Section 201 i.e 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 the statement referred to in Section 200 was filed by the assessee prior to 01.10.2014, was 2 years from the end of the financial year in which such statement was filed. Accordingly, as stated by the ld. AR, and rightly so, the time limit for passing of an order under sub-section (1) to Section 201 in the case of the assessee before us could have been done latest by 31.03.2014. Rebutting the aforesaid claim of the assessee, it is the case of the revenue that as the amendment to sub-section (3) to Section 201 of the Act, that had been made

available on the statute vide the Finance Act, 2014, w.e.f. 01.10.2014, therein enlarging the time limit for passing of an order under sub-section (1) to Section 201 to 7 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 thereto the order passed by the Assessing Officer in the case of the assessee u/ss. 201(1)/201(1A) of the Act, dated 29.03.2018 would be saved by limitation. We are unable to persuade ourselves to subscribe to the aforesaid claim of the revenue. As observed by us hereinabove, in the case of the assessee before us the order under sub-section (1) to Section 201 i.e deeming the assessee as an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India could have been passed latest by 31.03.2014. On 01.10.2014, i.e., the date on which sub-section (3) to Section 201 of the Act was amended vide the Finance Act, 2014, the limitation to pass an order under sub-section (1) to Section 201 in the case of the assessee had already lapsed. As stated by the ld. AR, and rightly so, as per the settled position of law, an amendment enlarging the limitation cannot revive the limitation which had already expired prior to the date of such amendment, and as and where the legislature had intended to amend the enacted law with retrospective effect, it had expressly provided for a retrospective operation of the same. In sum and substance, the proceedings which due to bar of limitation had attained finality under the existing law cannot

be revived by referring to the enlarged period of limitation made available on the statute vide a subsequent amendment, unless the amended provision is clearly given a retrospective applicability. Our aforesaid observation is supported by the judgment of the Hon'ble Supreme Court in the case of K.M. Sharma vs. ITO, 254 ITR 772 (SC). In its aforesaid order, the Hon'ble Apex Court while dealing with the scope and gamut of the amendment to sub-section (1) of Section 149 of the Act, had observed, that if it was to be held that the amendment to sub-section (1) of Section 149 would enable the authorities to reopen the assessments which had already attained finality due to bar of limitation prescribed u/s.149 as was applicable prior to 01.04.1989, then, it would amount to giving sub-section (1) a retrospective operation which was neither expressly nor impliedly intended by the amendment so made available on the statute. In fact, we find that the issue before us is squarely covered by the judgment of the Hon'ble High Court of Gujarat in the case of Tata Teleservices vs. UOI, 385 ITR 497 (Guj). As in the case before us, the assessee before the Hon'ble High Court had received notices dated 09.10.2014 u/ss. 201(1)/201(1A) for Financial Years 2007-08 and 2008-09. It was the claim of the assessee that as it was regularly filing its statements u/s 200 of the Act, therefore, the period of limitation for passing an order under sub-section (1) to Section 201 i.e a period of 2 years from the end of the financial year in which the statement was filed, as prescribed in sub-section (3) to Section 201, had already lapsed,

therefore no order treating it as an assessee-in default could validly be passed. However, the AO rejected the aforesaid claim of the assessee, and observed, that as the amendment to sub-section (3) of Section 201 of the Act that was made available on the statute vide the Finance Act, 2014, w.e.f. 01.10.2014 had extended the time limit for passing of the order under sub-section (1) to Section 201 to 7 years, therefore, the order to be passed in the case of the assessee was well within limitation. On a writ petition filed by the assessee, the Hon'ble High Court held that as the amended provisions were to apply prospectively, therefore no order u/s. 201(1) of the Act could have been passed, as the limitation for passing of such an order had already expired prior to the amendment that was made available on the statute vide the Finance Act, 2014 w.e.f. 01.10.2014. For the sake of clarity the relevant observations of the Hon'ble High Court are culled out as under:

*“15. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, to the facts of the case on hand and more particularly considering the fact that while amending section 201 by Finance Act, 2014, it has been specifically mentioned that the same shall be applicable w.e.f. 1/10/2014 and even considering the fact that proceedings for F.Y. 2007-08 and 2008-09 had become time barred and/or for the aforesaid financial years, limitation under section 201(3)(i) of the Act had already expired on 31/3/2011 and 31/3/2012, respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering the fact that wherever legislature wanted to give retrospective effect so specifically provided while amending section 201(3) (ii) of the Act as was amended by Finance Act, 2012 with retrospective effect from 1/4/2010, it is to be held that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(i) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as*

*amended by Finance Act No.2 of 2014. Under the circumstances, the impugned notices / summonses cannot be sustained and the same deserve to be quashed and set aside and writ of prohibition, as prayed for, deserves to be granted.*

*16. In view of the above and for the reasons stated above, all these petitions succeed. The impugned notices / summonses are held to be invalid and the same are hereby quashed and set aside and the respondents herein are hereby restrained by writ of prohibition from proceedings with the impugned notices / summonses which are, as such, hereby quashed and set aside. Rule is made absolute accordingly in each of the petitions. In the facts and circumstances the case, there shall be no order as to costs. ” (emphasis supplied)”*

10. In the backdrop of our aforesaid observations read a/w the settled position of law, we are of the considered view, that as the time limitation for passing an order under sub-section (1) to Section 201 i.e deeming the present assessee before us, as an assessee-in-default under sub-section (1) to Section 201 of the Act 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 31.03.2014, as per the law as was then available on the statute, therefore, the order passed by the AO u/ss. 201(1)/201(1A) of the Act, dated 29.03.2018 is clearly barred by limitation. We, thus, in terms of our aforesaid observations quash the order passed by the AO u/s.201(1)/201(1A), dated 29.03.2018 as barred by limitation. The **Grounds of appeal Nos. 1 to 3** are allowed in terms of our aforesaid observations.

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-I 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 “Mc. 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-I 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-I 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-I, 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-I 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 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;*

.....” *(emphasis supplied)*

On a perusal of the definition of the terminology “rent” as had been provided in the aforesaid statutory provision, viz. Sec. 194-I 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-I 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-I of the Act.

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.

14. That as we have quashed the order passed by the A.O u/ss. 201(1)/201(1A) as barred by limitation, and have also on merits concurred with the assessee that CAM charges so paid/credited by it were liable for deduction of tax at source u/s 194C of the Act, therefore, the claim of the assessee that the CIT(A) had erred in not appreciating that now when the recipients of the amount in question i.e CAM Charges had paid the tax on the same, the assessee company thereafter could not be deemed as an assessee-in-default u/s 201(1) of the Act, is rendered as academic in nature. Accordingly, the **Ground of appeal No. 4.6** is dismissed in terms of our aforesaid observations.

15. That as we have quashed the order passed by AO u/ss. 201(1)/201(1A) of the Act, and had even otherwise held that the assessee company could not be held as an assessee-in-default u/s. 201(1) of the Act, therefore, the contention of the assessee that the AO be directed to delete the interest charged u/s. 201(1A) of the Act having been rendered as infructuous is therein dismissed. The **Ground of appeal no.5** is dismissed.

16. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

**ITA No. 993/Del/2020 (Assessment Year 2012-13)**

17. We shall now take up the assessee's appeal for AY 2012-13 wherein the impugned order passed by the CIT(A) has been assailed before us on the following grounds :

1. That on the facts and circumstances of the case and in law, the order dated 28.03.2019 passed by the assessing officer under section 201(1)/ 201(1 A) of the Income Tax Act, 1961 ('the Act') is without jurisdiction, illegal, bad in law and liable to be quashed.

2. That on the facts and circumstances of the case and in law, the impugned order passed by the Commissioner of Income Tax (Appeals) ['CIT(A)'] is erroneous inasmuch as the same has been passed without correct appreciation of facts and is liable to be quashed.

3. That on the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating that the assessment order dated passed under section 201(1)/ 201(1 A) for assessment year 2012-13 is void ab initio, invalid and bad in law on account of being time barred in period of limitation prescribed under section 201(3) of the Act.

4. That on the facts and circumstances of the case and in law, the CIT(A) erred in holding that tax on Common Area Maintenance Charges ('CAM charges'), paid by the appellant to the lessor, was liable to be deducted under section 1941 as against tax deducted under section 194C of the Act by the appellant.

4.1. That the CIT(A) erred on facts and in law in treating the CAM charges paid by the appellant as part of rent without appreciating that the same were paid by the appellant for various common service/ facilities which are not at disposal of appellant and not for use of any land/ building/ space or premise to attract provisions of section 1941 of the Act.

4.2. That the CIT(A) erred in facts and in law in not appreciating that CAM charges paid by the appellant were nothing but the recovery of expenditure incurred by lessor in lieu of maintenance of the common area, which does not fall within the ambit of section 1941 of the Act.

4.3. That the CIT(A) erred on facts and circumstances of the case in not appreciating that tax on CAM charges, if at all, will fall under the provisions of section 194C and not section 194-1 of the Act as the same are being paid for work carried out for maintenance of common areas/ facilities available alongwith leased premises.

4.4. That the CIT(A)/ assessing officer erred in not appreciating that though rent and CAM charges were paid in accordance with the same agreement, however both rent payable and CAM charges were distinctly defined in the agreements by way of separate schedules.

4.5. That the CIT(A)/assessing officer erred in alleging that CAM charges are a part of rent without disputing the amount of rent paid by the appellant.

4.6. *Without Prejudice, that the CIT(A) erred in not appreciating that once tax on receipt was paid by the recipients, the same could not have been recovered again from the appellant.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in not directing the assessing officer to delete interest charged under section 201/201(1 A) of the Act.”*

18. At the very outset of the hearing of the appeal, it was submitted by the ld. AR that he would confine his contentions in so far the present appeal is concerned only qua the sustainability of the view taken by the AO/CIT(A) on merits i.e the deeming of the assessee company as an assessee-in-default u/s 201(1) of the Act for having short deducted the tax at source u/s 194C i.e @2% instead of u/s.194-I i.e @10%.

19. Ld. Authorized Representatives for both the parties admitted that the issue in question, i.e., as to whether the assessee company was obligated to deduct tax at source u/s.194C or u/s.194-I of the Act remained the same as was there in the appeal of the assessee for the immediately preceding year, i.e., AY 2011-12 in ITA no.1984/Del/2020. In the backdrop of the aforesaid factual position, now when the facts and the issue involved in the present appeal remains the same as were there in the appeal of the assessee for the immediately preceding year i.e A.Y 2011-12 in ITA No. 1984/Del/2020, therefore, our order therein passed, qua the said limited issue, while disposing off the Grounds of appeal No. 4 to 4.6 in ITA No.1984/Del/2020 for AY 2011-12 shall apply *mutatis mutandis* for the purpose of disposing off the Grounds of appeal no. 4 to 4.6 of the present appeal, i.e., ITA

No.993/Del/2020 for AY 2012-13. Accordingly, in terms of our observations recorded while disposing off the Grounds of appeal Nos. 4 to 4.6 in the assessee's the appeal for AY 2011-12 in ITA No.1984/Del/2020, the assessee's appeal for the year under consideration, i.e., AY 2012-13 in ITA No. 993/Del/2020 qua the aforesaid limited issue i.e merits of the case is allowed. The **Grounds of appeal No. 4 to 4.5** are allowed in terms of our observations recorded hereinabove.

20. The **Ground of appeal No. 4.6** is disposed off in terms of our observations recorded hereinabove.

21. As the ld. A.R had not raised any contentions as regards the **Grounds of appeal Nos. 1 to 3**, therefore, they are dismissed as not pressed.

22. Resultantly, the appeal of the assessee is partly allowed in terms of our aforesaid observations.

23. Accordingly, while for the appeal of the assessee for A.Y 2011-12 in ITA No. 1984/Del/2020 is allowed, that for A.Y 2012-13 in ITA No. 993/Del/2020 is partly allowed in terms of our observations recorded hereinabove.

**Order pronounced in the Open Court on 31<sup>st</sup> December, 2021**

Sd/-

**[G.S. PANNU]**

**[PRESIDENT]**

DATED: 31/12/2021

\*\*Prabhat

Sd/-

**[RAVISH SOOD]**

**[JUDICIAL MEMBER]**