

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.1672 & 1673/DEL/2020  
Assessment Years 2012-13

|   |     |   |
|---|-----|---|
| Bird Hospitality Services Private Limited,<br>E-9, Connaught Hose, Connaught Place,<br>New Delhi. | Vs. | Dy. Commissioner of Income Tax,<br>Circle-73(1),<br>New Delhi |
| TAN/PAN: AACCB9768P   |     |   |
| (Appellant)   |     | (Respondent)  |

|                        |                           |    |      |
|------------------------|---------------------------|----|------|
| Appellant by:          | Shri Tarandeep Singh Adv. |    |      |
| Respondent by:         | Shri Kanav Bali, Sr.DR    |    |      |
| Date of hearing:       | 03                        | 11 | 2022 |
| Date of pronouncement: | 03                        | 11 | 2022 |

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

Both the captioned appeals are interconnected and therefore have been heard together and are being disposed of by way of this common order.

ITA No.1673/Del/2020 Assessment Year 2012-13

2. As per ITA No.1673/Del/2020, the assessee has challenged the action of the Revenue's Authorities in treating the assessee as assessee in default under Section 201(1) for alleged short deduction of TDS on payment of common area maintenance charges paid to one M/s. Ambience Facilities Management Pvt. Ltd. owing to applying the provisions of Section 194C wrongly instead of Section 194I of the Act. Similarly, appeal in ITA No.1672/Del/2020 is consequential whereby the assessee has challenged the interest charged under Section 201(A) @1% for every month for the period

of alleged default of alleged short deduction of TDS.

3. The Id. counsel at the outset submits that the concerned payee has furnished certificate in Form No.26A prescribed under 1<sup>st</sup> proviso to Section 201(1) of the Act wherein the payee is certified to have fulfilled all the conditions mentioned in 1<sup>st</sup> proviso to sub section 1 of Section 201 of the Act. It is thus contended that where the recipient payee has furnished the certificate in form no. 26A prescribed under Rule 31ACB, the payee assessee should not be treated as assessee in default in the light of the judgment rendered by the Hon'ble Supreme Court in the case of *Hindustan Coca Cola Beverages Vs. CIT, 293 ITR 226 (SC)*.

4. In view of the scheme of Section 201 of the Act and also in the light of the judgment of Hon'ble Supreme Court rendered in the case of *Hindustan Coca Cola (supra)*, where it is found that the recipient has disclosed the receipt in his return of income and tax has been paid on such receipts, in such circumstances, the assessee cannot be treated as 'assessee in default' under Section 201(1) of the Act *per se*.

5. In the light of the certificate issued on behalf of the payee and having regard to the position of law, we consider it expedient to restore the issue to the file of the Assessing Officer to verify whether the recipient of the payment giving rise to alleged short deduction have declared the receipts in their respective return of income and paid taxes thereon. In case, the payee(s) are found to have declared the receipt for the purposes of determination of total income, the issue may be decided in the light of the provisions of law and judicial precedents including dicta laid down in *Hindustan Coca Cola (supra)* in this regard.

6. Accordingly, the issue is restored back to the file of the

Assessing Officer for adjudication afresh in accordance with law in the light of the observation made hereinabove. Needless to say, the assessee shall be given reasonable opportunity to defend the position taken by it.

6. The appeal of the assessee is allowed in ITA No.1673/Del/2020 for statistical purposes.

7. Likewise, the appeal in ITA No.1672/Del/2020 concerning interest payable under Section 201(1A) shall also be determined afresh in sync with the position deduced by the Assessing Officer in respect of liability under Section 201(1), if any, as set aside in ITA No.1673/Del/2020.

8. In the result, the appeal in ITA No.1672/Del/2020 is also allowed for statistical purposes.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open Court on 03/11/2022.**

Sd/-

**[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER**

DATED: /11/2022

*prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**