

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 7290/Del/2019 : Asstt. Year: 2011-12**

**ITA No. 202/Del/2020 : Asstt. Year: 2012-13**

PVR Ltd., 61, Basant Lok, Vasant Vihar, New Delhi-110057	Vs.	ACIT, Circle-76(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN NO. AAACP4526D</b>		

**Assessee by : Sh. G. C. Srivastava, Sr. Counsel,  
Sh. Kalrav Malhotra, Adv.  
Revenue by : Sh. Sanjay Nargas, Sr. DR**

<b>Date of Hearing: 30.11.2022</b>	<b>Date of Pronouncement: 09.02.2023</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee against the order of Id. CIT(A)-31, New Delhi dated 30.07.2019 and the order of Id. CIT(A)-38, Delhi dated 29.11.2019.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 7290/Del/2019, following grounds have been raised by the assessee:

*"1. That on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that Common Area Maintenance ('CAM') charges paid by the Appellant are in the nature of rent and are liable to TDS u/s 194I of the Act.*

2. *That on the facts and circumstances of the case and in law, the Ld. CIT (A) has failed to appreciate that the CAM charges paid are towards services in relation to common area which is not in the possession of the Appellant and comprise services like cleaning, maintenance, upkeep, security, air conditioning, landscaping, signages, water, electricity, consumables, lighting, sinking fund etc. Charges for the said services are not in the nature of rent and are thus liable to TDS u/s 194C of the Act.*

3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the ratio of the judgment of the Hon'ble Supreme Court in the case of Japan Airlines Co. Ltd. v. CIT (2015) 377 ITR 372 is not applicable in the Appellant's case.*

4. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the relevant clarifications under CBDT Circular Nos. 715, 558 and 1/2008 are not applicable to the Appellant's facts.*

5. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in placing reliance on the judgment of the Hon'ble Punjab and Haryana High Court in the case of Sunil Kumar Gupta v ACIT (2016) 389 ITR 38.*

6. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the order u/s 201(1 )/201(1A) of the Act had been passed by the Ld. AO in a contradictory manner, as the Ld. AO had himself held that CAM charges paid to independent third party service providers are not in the nature of rent. Further, the Ld. AO has held that CAM charges paid directly to the owner/ developer of the property are in the nature of rent, without taking into account the fact that the underlying common area maintenance services are identical.*

7. *The Ld. CIT(A) erred in ignoring that CAM charges, whether paid to independent service*

*providers or developer/ owner, constitute approximately the same percentage of rent.”*

4. The similar issue involving deduction of TDS on rent and CAM charges stands adjudicated by the order of the Tribunal in the case of Yum Restaurants India (P.) Ltd. in ITA No. 1115/Del/2020 for A.Y. 2012-13 vide order dated 03.10.2022.

5. For the sake of ready reference and completeness, the ratio of the said case is reproduced as under:

“3. The provisions of TDS on rent are governed by Section 194I and maintenance contract are governed by Section 194C of the Income Tax Act, 1961. In this backdrop of the provisions of the Act, the affairs of the assessee are examined. As per the lease deed entered by the assessee with M/s Gopalan Enterprises, Bangalore, the assessee obtained piece and parcel of the shop on lease of unit no. 121 on 1<sup>st</sup> Floor with a carpet area of 1920 sq. ft. and shop no. 226 on 2<sup>nd</sup> Floor with a carpet area of 1722 sq. ft. The assessee shall pay 7% of revenue share on net sales as monthly rent and also pay @Rs.12/- per sq. ft. for maintenance services.

4. The assessee has also submitted sample invoice for payment of CAM charges as entered into an agreement for common area maintenance with GVK Properties & Management Company Pvt. Ltd. for maintenance of the area at Rs.22/- per sq. ft. for a combined area of 4427 sq. ft. for which monthly maintenance of Rs.97,390/- has been paid.

5. Thus, the issue before us narrows down to deductibility of the tax on the entire payment as rent or to be segregated into rent and CAM. On this, the observation of the Id. CIT(A) is as under:

*"4.3 Grounds of appeal Nos. 2(a), 2(b) and 2(c), the Appellant has challenged the action of AO in treating CAM charges as part of rent liable for TDS u/s 1941. Undisputedly there is single lease agreement for payment of rent as well as CAM charges. The AR has submitted that payment of CAM charges is nothing but reimbursement of common area maintenance expenses incurred by the lessor on general maintenance, electric, water and security services etc. Further it has been claimed that, the common area is outside the area which is leased out to the assessee. These arguments are not acceptable because the common area and other services provided by the lessor are also enjoyed by the appellant along with the specified area. As per the same agreement, the appellant is required to pay lease rent as well as CAM charges. It is also noticed that there is no distinction between CAM charges and lease rent payments except, for raising separate invoices. The Explanation below section 1941 which defines "Rent" takes into its ambit any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any (b) building or (c) land appurtenant, to a building (including factory building) or (h) fittings, whether or not any or all of the above are owned by the payee and hence it is clear that any payment even for use of any building and land appurtenant, there to including furniture/fittings is part of rent. CBDT vide circular No. 715 dated 08.08.1995 (Question No. 24) has also clarified that there is composite arrangement for use of premises and provision of manpower, such agreement in essence is for taking premises on rent and hence provisions of section 1941 are-applicable. This view also gets support from the decision of Hon'ble High Court in the case of Sunil Kumar Gupta Vs ACIT (2016) 389 ITR 38 (P & H), in which it is held that where the agreement provides that the owner of the premises shall pay for common facilities, then it is reasonable to presume that the same is factored into the rent payable by the lessee. However, if maintenance charges etc. are stipulated to be payable by the lessor, it must form part of rent for the purposes of computing income from house property. In the case before hand, the CAM charges are paid by*

*the lessor and the appellant has no control on actual expenditure to be incurred by the lessor. In view of above mentioned factual and legal position, thus it is clear that the CAM charges paid by the appellant are part of rent liable for TDS u/s 1941 and accordingly other decisions relied upon by the AR are distinguishable on facts.*

*The appellant has also stated that, the AO has incorrectly held that the decision in the case of Japan Airlines Company Ltd. Vs CIT (2015) 377 ITR 372 (SC) is not applicable.*

*I find that this decision is related to payment of lease charges to AAI for landing and takeoff facilities including for parking of the aircrafts. As is clear from the facts of this case, the lease charges were paid for utilizing the services of airport and not of the premises in essence. Accordingly, I hold that the AO has rightly distinguished the same from the facts of appellant. Hence, the grounds of appeal are dismissed.”*

6. The undisputable fact in this case is that while the lease rentals are paid based on a fixed percentage on the net revenue, the CAM charges are based on the per sq. ft. area. The observation of the Id. CIT(A) is that the rent by any name, lease, sub-lease, tenancy or the reliance on the judgment wherein the services are intrapolated into the rent stand on a different pedestal. In the instant case, the determination of the rent or CAM are separate and the CAM arrangements are not essential and an integral part for use of the premises. While there are no expenses incurred against the rent except for general building maintenance and municipal charges, the CAM involves employment of separate staff and separate operations involved on day to day basis. Hence, we hold that the provisions for rent are governed by Section 194I and CAM charges by Section 194C of the Act. The AO is directed to re-compute the CAM charges, taking into consideration the two sections mentioned above.”

6. In the result, the appeals of the assessee are allowed for statistical purpose.

Order Pronounced in the Open Court on 09/02/2023.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

**Dated: 09/02/2023**

**\*Subodh Kukmar, Sr. PS\***

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**