

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE
SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1312/Del/2022
(Assessment Year: 2014-15)**

Chadha Sugars and Industries P. Ltd, C/o. Deepak Singh, Advocate, 2, Court of Wards Compound, Aligarh, UP-202001 (Appellant)	Vs.	ACIT, Circle-73(1), Delhi (Respondent)
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PAN: AACCC5309B

Assessee by :	Sh. Deepak Singh, Adv
Revenue by:	Sh. Vipul Kashyap, Sr. DR

Date of Hearing	20/04/2023
Date of pronouncement	27/04/2023

ORDER

PER C. M. GARG, J. M.:

This appeal has been preferred by the assessee against the order of the CIT(A)-30, New Delhi, dated 27.04.2022 for AY 2014-15.

2. The sole issue in this appeal for consideration and adjudication is the Id CIT(A) erred in confirming the demand of TDS plus interest amounting to Rs. 2,20,319/- (Rs. 1,10,992/- short TDS plus interest Rs. 1,09,327/-).

3. The Id. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the various orders of the coordinate bench of this Tribunal including the order of the ITAT Delhi, in the case of Kapoor Watch Company Pvt. Ltd. vs. ACIT, vide order dated 05.01.2021 in ITA No.889/Del/2020 for AY 2011-12 and order of ITAT, Delhi Bench 'B' in the case of Connaught Plaza Restaurants P. Ltd. vs.

DCIT dated 31.12.2021 in ITA No.993/ and 1984/Del/2020 for AYs 2011-12 and 2012-13 submitted that the CAM charges paid by the assessee were liable for deduction of tax at source @ 2% u/s 194C of the Act and not @10% u/s 194-I of the Act. Therefore, as the assessee has deducted tax @2% towards payment of CAM charges u/s 194-C of the Act, the assessee cannot be treated as an assessee in default and the AO was not right in making addition in the hands of the assessee for differential amount of 8% by holding that the provisions of section 194-I of the Act is applicable to the payments made by the assessee towards CAM charges.

4. The Id. AR, drawing our attention to the facts that both rent and CAM charges were paid to Ambience Group entities. The rent was paid to M/s. Ambience Developers and Infrastructure Pvt. Ltd while CAM charges were paid to M/s. Ambience Facilities Management Pvt. Ltd which is incidentally sister concern of M/s. Ambience Developers & Infrastructure Pvt Ltd. As per the assessee M/s. Chadha Sugar and Industries Pvt. Ltd the premises shall use as corporate office and not for any other purposes and as per agreement the assessee will pay CAM charges with rent which is addiotnal rent charges on the top of base rent and is mainly composed of maintenance fees for work performed on the common area of the property. As per the agreement the premises will be used as corporate office therefore, the provision of section 194I should be attracted and TDS shall be deducted @10% as against the deduction of TDS at 2% by the assessee u/s 194C of the Act as the provisions of section 194-I of the Act are not applicable to payment of CAM charges as per orders of the ITAT, Delhi, in the cases Kapoor Watch Company Pvt. Ltd. vs. ACIT (supra) and Connaught Plaza Restaurants P. Ltd. vs. DCIT (supra).

5. Replying to the above, the Id. Sr. DR has placed heavy reliance on the order of the AO and the order of the CIT(A) and drew our attention toward para 8 to 8.6 of the first appellate order and submitted that a perusal of the relevant lease deeds/franchise agreements clearly shows

that it was mandatory for the owners of the rented premises to pay CAM charges in respect of such premises for maintenance of common area and for services. The Id. DR also submitted that after analyzing the relevant agreements and facts and circumstances of the case, the AO was right in holding that the provisions of section 194-I of the Act is applicable to the payment of CAM charges and the assessee has deducted TDS @ 2% instead of 10% and, therefore, liable to be held as 'the assessee in default' and he was right in making addition of the differential amount of 8% in the hands of the assessee towards short deduction @ 8% and interest u/s 201(1A) of the Act.

6. On careful consideration of the rival submissions, first of all, we are of the considered opinion that the details of CAM, the details of rent and CAM charges paid by the assessee, copy of agreement, copy of agreements between M/s. Ambience Developers & Infrastructure Pvt. Ltd and M/s. Chadha Sugars Pvt. Ltd dated 15.07.2013 reveals that the Ambience Facilities Management Pvt. Ltd secured the rented premises and under franchise agreement given the same to the present assessee and the franchisee was under obligation to pay rent and CAM charges on behalf of original tenant to the owner as well as CAM service providers. It has not been controverted by the Id. Sr. DR that the assessee has paid rent to different property owners and CAM charges to separate service providers.

7. Now, we turn to the findings given by the ITAT, Delhi 'B' Bench in the case of Connaught Plaza Restaurants P. Ltd. (supra), wherein the Bench has also considered the earlier judgement of ITAT 'B' Bench in the case of Kapoor Watch Company Pvt. Ltd. (supra) and 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-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 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.”

8. In view of the above, we have no hesitation to hold that the CAM charges paid by the assessee did form part of the actual rent payment which was paid to the property owner by the assessee company. In the present case, the facts and circumstances of the payment of CAM charges are quite similar to the facts and circumstances of the above two cases i.e., Kapoor Watch Company Pvt. Ltd. (supra) and Connaught Plaza Restaurants P. Ltd. (supra). Therefore, I am inclined to hold that CAM charges paid by the assessee were liable for deduction at source @ 2% i.e., u/s 194C of the Act. Therefore, in terms of the proposition rendered by ITAT Delhi in the above referred orders and observations made by me in the earlier part of this order, I set aside the order of assessment as well as first appellate order and direct the AO to delete the entire addition made in the hands of the assessee.

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

Order pronounced in the open court on 27/04/2023.

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 27/04/2023

A K Keot

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi