

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR.B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1048/Del/2020
Assessment Year: 2012-13

Smaaash Leisure Limited, 2 nd Floor, Trade View Building, Gate No. 4, Pandurang Budhkar Marg, Oasis Complex, Kamala Mills, Lower Parel, Mumbai 400013 PAN AAECF 6342 B	vs.	The ACIT Circle 76(1), Laxmi Nagar 110092
(Appellant)		(Respondent)

For Assessee :	None
Revenue For :	Shri Ravi Kant Choudhary, Sr.DR

Date of Hearing :	26.06.2023
Date of Pronouncement :	30.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Id. CIT(A), Delhi order dated 28.01.2020 for AY 2012-13.

2. When the case was called for hearing neither the assessee nor any authorized representative or counsel appeared nor any adjournment application has been filed. However, with the consultation of Id. Senior DR and on perusal of appeal record we find that the appeal may be disposed of on the basis of material available on record after hearing the argument of Id. Senior DR in absence of assessee. Therefore we proceed to adjudicate the appeal ex-parte qua assessee.

3. From the grounds and statements of facts, we find that the assessee is aggrieved with the orders of the authorities below wherein the revenue dismissed explanation and claim of the assessee that the payment of common area maintenance charges (CEM) directly to service provider attracts TDS provision of section 194C of the Act. The identical issue was posed for adjudication before ITAT Delhi 'D' Bench in the

case of Kapoor Watch Company P Ltd. vs. ACIT in ITA No 889/Del/2020 for AY 2011-12 and the Tribunal by order dated 05.01.2021 adjudicate the issue in favour of the assessee dismissing the orders of the authorities below. In the said order the Tribunal under identical facts and circumstances hold that the common area maintenance charges directly to paid to the service providers was not forming the part of actual rent paid by the assessee company. Therefore, we are in agreement with the contention of assessee that the TDS provision of section 194I is not applicable and the assessee was correct in deducting TDS @ rate of 2% u/s. 194C of the Act and hence the assessee cannot be treated as assessee in default for not deducting TDS u/s. 194I of the Act. Accordingly grievance/grounds of the assessee are allowed.

4. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 30.06.2023.

Sd/-
(DR.B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated: 30th June, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi