

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE,
SHRI G.S.PANNU, PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1869/Del/2023
(ASSESSMENT YEAR 2013-14)**

**ITA No.1870/Del/2023
(ASSESSMENT YEAR 2014-15)**

M/s Welgrow Hotels Concepts (P) Ltd. B-6, Geetanjali Enclave New Delhi-110 017 PAN-AAACW 5407C (Appellant)	Vs.	Income Tax Officer Ward-78(4) Delhi (Respondent)
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Appellant by	Sh. V. Rajkumar, Advocate
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	25/09/2023
Date of Pronouncement	05/10/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The both appeals filed by the assessee are against the common order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A)", for short], dated 28/12/2022 for Assessment Years 2013-14 & 2014-15 respectively.

2. The common grounds taken in both appeals which are as under:

“1. On the facts and in the circumstances of the case and in law, first appellate authority erred in confirming finding in order u/s. 201(1A), holding the Assessee to be 'Assessee in default', in respect of withholding tax liability on CAM charges, when the same were payable as per provisions of section 194-C of the Act, and not as per section 194-1 of the Act.

2. On the facts and in the circumstances of the case and in law, the first appellate authority erred in confirming order u/s.201(1A), when it was admitted position that the receiver of CAM charges had duly offered the said amount as income and paid taxes there-upon.

3. On the facts and in the circumstances of the case and in law, the first appellate authority erred in not adjudicating ground of appeal as to wrong calculation of the interest amount.

The Assessee seeks leave to add to, modify, forego, or otherwise alter all or any of the grounds of appeal as above.”

3. There is a delay of 115 days in filing both the Appeals. An application for condonation of delay filed by the assessee wherein contended that, the reasons for delay in filing the above appeals are due to oversight at the end of the Counsel and the Assessee was not aware of the procedures, who timely conveyed the passing of the order impugned to his counsel. The delay caused due to oversight of one Mr. Himanshu Sood who left the employment and there was a communication gap between the counsel and the assessee. Further, the assessee had also placed an affidavit of one Mr. Himanshu Sood confirming the averments made by the assessee. For the reasons stated in the application for condonation of delay, the delay of 115 days in filing the above captioned appeals are condoned.

4. Brief facts of the case are that, the Assessing Officer passed orders u/s 201(1)/201(1A) computing the total income of the assessee at Rs. 38,35,746/- on 26/03/2021 for Assessment Year 2013-14 and also computed income at Rs. 78,38,564/- on 25/03/2022 for Assessment Year 2014-15 by holding that the payment made by the assessee in the nature of Common Area Maintenance (CAM) which essentially part of rental activities are covered u/s 194-I of the Act. The A.O. treated the Assessee as 'Assessee in default' within the meaning of Section 201(1) of the Act for failing to appropriately deduct the tax on payment as required in the provisions of the Act. Aggrieved by the orders passed u/s 200(1)/201(1A) of the Act for Assessment Year 2013-14 & 2014-15, the assessee preferred the Appeals before the CIT(A). The Ld. CIT(A) vide orders dated 28/12/2022 dismissed the Appeals filed by the assessee. Aggrieved by the orders of the CIT(A) dated 28/12/2022 for Assessment Year 2013-14 and Assessment Year 2014-15, the assessee preferred the above captioned two appeals on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) erred in confirming the findings and the conclusions made in the order passed u/s 201(1A) of the Act holding that the assessee to be 'Assessee in default' in respect of withholding tax liability on CAM charges when the same were payable as per provisions of Section 194 C of the Act and not as per Section 194-1 of the Act. Further submitted that the issue involved in the present Appeals are covered by the order of the Coordinate Bench dated 03/10/2022

passed in Yum Restaurants India (P) Ltd. [ITA No. 1115/Del/2020 for A.Y 2012-13] and also covered in Assessee's own case in ITA No. 1915/Del/2021 for Assessment Year 2012-13 vide order dated 30/01/2023.

6. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

7. Heard the parties, perused the material available on record. The only dispute arose for consideration in the above Appeals is that whether the provisions of Section 194-I of the Act are applicable to Common Area Maintenance Charges and whether the same has to be treated as part of 'Rent' or not. The Co-ordinate Bench in the case of Yum Restaurants India (P) Ltd. [ITA No. 1115/Del/2020 for A.Y 2012-13] while deciding the similar issue in favour of the Assessee held that the provisions for rent are governed by Section 194-I and CAM charges by Section 194C of the Act in following manners:-

“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 ld. CIT(A) is that the rent by any name, lease, sub-lease, tenancy or the reliance on the judgment wherein the services are interpolated 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 194-I 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.”

8. The Co-ordinate Bench in Assessee’s own case for the Assessment Year 2012-13 in ITA No. 1915/Del/2021 (for Assessment Year 2012-13) decided the issue in favour of the assessee in following manners:-

“6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. Considering the peculiar facts and circumstances of the case, as the Hon'ble Coordinate Bench has already dealt with the identical issue and categorically held that for CAM charges the provisions of Section 194-C of the Act are applicable.

In the instant case it is an admitted fact, as not refuted by the learned DR, that the Assessee has deducted TDS u/s 194C of the Act, and the facts are not distinguishable to the facts involved in Yum Restaurants India case (Supra) consequently we are inclined to direct the AO to recompute the tax liability accordingly.”

9. By respectfully following the order of the Co-ordinate Bench in the case of Yum Restaurants India (supra) and also the order passed in Assessee’s own case for A.Y 2012-13, we hold that the provisions for rent are governed by Section 194-I and CAM charges by Section 194C of the Act, accordingly, we allow the Grounds of appeals of the Assessee and set aside the impugned order and direct the AO to re-compute the CAM charges, taking into consideration the two sections mentioned above.

10. In the result, Appeals filed by the assessee in ITA No. 1869/Del/2023 and ITA No. 1870/Del/2023 are allowed.

Order pronounced in open Court on 05th October, 2023

Sd/-

(G.S.PANNU)
PRESIDENT

Dated: 05/10/2023

Pk/R.N, Sr ps

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI