

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1016/Del/2020
Assessment Year: 2011-12

Liberty Retail Revolutions Ltd., 4/42, Punjabi Bagh, West New Delhi PAN No. AABCL0641A (APPELLANT)	Vs.	ACIT Circle – 75 (1) New Delhi (RESPONDENT)
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Appellant by	Dr. Rakesh Gupta, Advocate
Respondent by	Sh. M. Dwivedi, Sr. DR

Date of hearing:	20/11/2023
Date of Pronouncement:	22/11/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-38, Delhi dated 16-01-2020 pertaining to A.Y.2011-12.

2. The grievance of the assessee read as under :-

1) *That the order of the learned Commissioner of Income Tax(Appeals) is against law and facts.*

2) *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income*

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Tax(Appeals) in confirming the order of ACIT relating to the issue that order of learned ACIT in reprocessing the TDS return vide orders JL.30.3.2018 in which orders u/s 201(1)/201(1A) had already been passed on 21.3.2013 which was a subject matter of appeal without any comments is altogether, arbitrary, illegal and uncalled for.

3). That the order of the learned Commissioner of Income Tax(Appeals) in confirming the order of ACIT relating to ground of appeal that the order of the ACIT u/s 201(1)/201(A) is barred by time limitation without any specific findings is altogether against provisions laid under law and uncalled for.

4) That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax(Appeals) in confirming the order of ACIT that appellant had made short deduction of tax amounting to Rs.5389724/- in respect of share in common area maintenance to the against/owners is against provisions laid under law, against judicial pronouncement arbitrary, illegal, void and uncalled for.

5) That the order of the learned Commissioner of Income Tax(Appeals) in confirming a finding on the ground of appeal relating to charging of interest u/s 201(1A)

amounting to Rs.423477/- is arbitrary illegal, void and uncalled for.

6. That appellant craves to amend and raise any ground of appeal at the time of hearing appeal.

3. At the very outset, the Counsel for the assessee referred to ground No.4 wherein the addition has been made ^{by} ~~of~~ short } deduction of tax in respect of share in common area maintenance has been challenged by the assessee.

4. Referring to the assessment order the Counsel pointed out that during the course of survey action it was found that the Ambience Group operating two malls, namely Ambience, Gurgaon and Ambience, Vasant Kunj was recovering, collecting expenses in the form of Common Area Maintenance CAM charges. The tenants have been deducting TDS @ 2% as per the provisions of section 194C of the Act.

5. The Counsel pointed out that during the proceedings under section 201 and 201A the AO was of the opinion that the TDS should have been deducted as per provisions of section 194I of the Act @ 10% as CAM charges are part of rent. On this belief the assessee was directed to pay Rs.53,89,724/- and further directed to pay interest of Rs.42,34,477/-.

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6. The assessee challenged the order before the CIT(A) but without any success.

7. Before us the Counsel for the assessee submitted that on identical set of facts in the case of other tenant in the same mall this Tribunal has deleted the addition. Copy of the order was supplied.

8. The DR could not bring any distinguishing decision in favour of the revenue.

9. We have given a thoughtful consideration to the orders of the authorities below. We find force in the contention of the Counsel. This Tribunal in ITA No.504/Del/2020 order dated 15.02.2023 ^{had} at the occasion to consider an identical grievance in the case of another tenant of the same mall and decided as under

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“7. We have carefully considered the orders of the authorities below. The undisputed fact is that the impugned payment is not rent but common area maintenance charges paid by various tenants/ owners of the shop to the mall owners. On this undisputed facts the decision of the coordinate Bench (supra) clearly apply wherein the coordinate Bench has held as under :-

“In sum and substance, only the payments for use of premises/equipment is covered by Section 194-1 of the Act. In our

considered view, as the CAM charges are completely dependent 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 194-1 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. Respectfully following the decision of the coordinate Bench (supra) we direct the AO to delete the impugned addition. The appeal of the assessee is allowed.”

10. On finding parity of facts, respectfully following the decision of the coordinate Bench we direct the AO to delete the impugned additions.

11. In the result, the appeal of the assessee is accordingly allowed.



Order pronounced in the open court on 22.11.2023.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA

Date:- .11.2023

Copy forwarded to:

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

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	20.11.2023
Date on which the typed draft is placed before the dictating Member	21.11.2023
Date on which the typed draft is placed before the Other member	22.11.23
Date on which the approved draft comes to the Sr.PS/PS	✓
Date on which the fair order is placed before the Dictating Member for Pronouncement	✓
Date on which the fair order comes back to the Sr. PS/ PS	✓
Date on which the final order is uploaded on the website of ITAT	✓
Date on which the file goes to the Bench Clerk	✓
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	