

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA Nos.1216 & 1217/DEL/2021
[Assessment Years: 2012-13 & 2013-14]**

Paramount Restaurants Private Limited, T-308, Level 3, Ambience Mall, Nelson Mandela Road, Vasant Kunj, Delhi-110070	Vs	National Faceless Appeal Centre, Delhi
PAN-AAFCP2633N		
Assessee		Revenue

Assessee by	Sh. Ravi Khanna, CA
Revenue by	Sh. Amit Katoch, Sr. DR

Date of Hearing	29.11.2023
Date of Pronouncement	05.12.2023

ORDER

PER SHAMIM YAHYA, AM,

These appeals by the assessee are directed against the order of the National Faceless Appeal Centre, Delhi, for the concerned Assessment Years.

2. Since, the issues are common and connected and the appeals were heard together, these are being consolidated and disposed of together for the sake of convenience by this common order.

3. Since, the facts are identical in both appeals, we are referring to the grounds of appeal of ITA No.1217/Del/2021 for AY 2013-14.

- i. On the facts and in the circumstances of the case the learned assessing officer has erred in law in treating the Common Maintenance Charges as part of rent.*
- ii. The appellant had correctly deducted tax at source at 2 percent on these payments and interference by the learned assessing officer for treating it as part of rent and deduction of TDS at 10 percent is uncalled for, unjustified and deserves to be deleted.*
- iii. The learned assessing officer has wrongly charged interest under section 201(A) of the Income Tax Act.*

4. Brief facts of the case are that the assessee company is in the business of owning, operating, managing or otherwise dealing in restaurants and bars. A survey u/s 133A(2A) was conducted in the case of Ambiance Group on 12.02.2018 with the purpose to verify compliance by the assessee company to the provisions of chapter XVII B of the Income Tax Act, 1961. Further, The AO noticed that the malls have various units/shops that either have been sold or rented. The AO further noticed that the group i.e. mall owners have recovered/collected expenses in the form of Common Area Maintenance charges. The AO further observed that the deductors/tenants have been deducting TDS at 2% being considering the same to be covered under the provisions of section 194C of the Act. However, the AO was of the opinion that the deduction should have been done u/s 194I calling for TDS at 10%. The AO made the disallowance accordingly.

5. Upon assessee's appeal, the Ld. CIT(A) considered the assessee's submission that this issue is covered by the decision of the Delhi Tribunal in the case of Kapoor Watch Company Private Limited vs ACIT in ITA

No.889/Del/2020 for AY 2011-12, vide order dated 05.01.2021. The Ld. CIT(A) distinguish the same by observing that in the said judgment, it was mentioned that “*there is a separate agreement between the Owner, Tenant and service provider for common area maintenance which is distinguishing fact and thus, the decision of the Hon’ble Punjab and Haryana High Court will not be applicable in the present case.*” But in assessee’s case, no separate agreement between the assessee, the owner and the service provider for common maintenance was brought on record by the assessee. Hence, the Ld. CIT(A) confirmed the Assessing Officer’s order.

6. Against the above order, the assessee is in appeal before us. We have heard both the parties and perused the record.

7. The ld. Counsel for the assessee has filed additional evidence in the form of Common Area Maintenance Agreement which was not filed before the Ld. CIT(A) or Assessing Officer on the ground that it was misplaced. Now it has been submitted by the Ld. Counsel for the assessee that in the interest of justice, the additional evidence may please be admitted.

8. Upon careful consideration, we find that this additional evidence has direct link to the case laws cited by the assessee. Hence, in the interest of justice, we admit the additional evidence and remit the issue to the file of the Ld. CIT(A) to consider the issue afresh in the light of this Common Area Maintenance Agreement. Needless to add that the assessee should be given opportunity of being heard.

9. Our above adjudication applies *mutatis mutandis* to both the appeals.

10. In the result, both the appeals of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 05th December, 2023.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Delhi; 05.12.2023.

Shekhar,

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi