

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

**Before Sh. C. N. Prasad, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 5774/Del/2019 : Asstt. Year : 2011-12**

Benetton India Pvt. Ltd., Plot No. 35, Block-B, Infocity, Sector-34, Gurgaon-122001	Vs.	JCIT, TDS Circle, Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACD1013F</b>		

**Assessee by : Sh. S. K. Agarwal, CA**

**Revenue by : Sh. Kanv Bali, Sr. DR**

**Date of Hearing: 27.08.2024**

**Date of Pronouncement: 28.08.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-1, Gurgaon dated 12.04.2019.

2. Following grounds have been raised by the assessee:

*"1. That in facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the order u/s 201(1)/201(1A) of the Act holding that TDS should be deducted on payment of Common Area Maintenance ('CAM') u/s 1941 of the Act treating the same as payment of rent instead of TDS deducted by the assessee u/s 194C of the Act.*

*2. That in facts and circumstances of the case and in law, the Ld. CIT (A) has failed to appreciate that the CAM charges paid are for common area services like general security of mall, housekeeping, repair & maintenance and are in the nature of payment to contractors for services and are liable for TDS u/s 194C.*

*3. That in facts and circumstances of the case and in law, the Ld. CIT (A) has failed to appreciate that CAM charges were paid pursuant to separate agreements against specific invoices and is not in the nature of rent.*

*4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disregarding that the applicability of ratio of the judgment of the Hon'ble Supreme Court in the case of Japan Airlines Co. Ltd. v. CIT (2015) 377 ITR 372 and other judicial precedents quoted in the submission to the Appellant's facts.*

*5. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disregarding that the relevant clarifications under CBDT Circular Nos. 715 and 558 are not applicable to the appellant company."*

3. Benetton India Private Limited is a wholly owned subsidiary of Benetton Group Srl, Italy. The Appellant is engaged in the business of manufacturing and trading of readymade garments. The company operates through various franchisees as well as self-owned stores in India.

4. For the purpose of carrying out its business, the Company had taken on lease a unit/shop in **R City Mall**, Ghatkoper Developers Pvt. Ltd. During AY 2011-12, the Company had paid rent, Common Area Maintenance ('CAM") and miscellaneous amenity charges to the payee. Value of the services for the aforesaid charges had been separately quantified under the different agreements and the payment had been made pursuant to separate specific invoices raised by the payee.

5. During the subject AY 2011-12, the Company had deducted TDS on payments for lease of business premises at the rate of 10% under Section 194-I of the Act. Further, the payments for CAM services were subject to TDS at the rate of 2% under Section 194C of the Act.

6. We find that the issue involved in this case is covered by a series of decisions of Co-ordinate Benches of ITAT in the case of

Connaught Plaza Restaurants P. Ltd vs. DCIT [ITA Nos. 993 & 1984 of 2020), Kapoor Watch Company Pvt. Ltd vs. ACIT (ITA. No. 889/DEL/2020) held as under:

*"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 Pvt. 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% Le 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/s 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, 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 Id. 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."*

7. The Co-ordinate Bench of ITAT in the case of Aero Club vs. Deputy Commissioner of Income-tax (149 taxmann.com 339), dated 28 February 2023, and in Johnson Watch Company Pvt. Ltd. vs. ACIT, ITA No. 1738/Del/2020, where TDS on common area maintenance charges (CAM) @ 2% was upheld in a case where there was a single agreement for payment of rent as well as for CAM charges.

8. Similar, decision has been given by the Co-ordinate Bench of Delhi ITAT in the case of PVR Ltd. v. Assistant Commissioner of Income-tax (ITA No. 7290/Del/2019 and ITA No. 202/Del/2020), dated 9 February 2023 and in the case of Yum Restaurants India (P.) Ltd. vs. ACIT (TDS), ITA No. 1115/Del/2020, dated 3 October 2022.

9. Mumbai ITAT in the case of Kamal Jafferli Wadhwanian (ITA No. 389/Mum/2022), dated 26 September 2022, wherein the recipient of Rent and CAM charges was R Mall Developers Pvt. Ltd., which is the same party as in the Appellant's case. Bangalore ITAT in the case of Lifestyle International (P.) Ltd. [2022] 140 taxmann.com 445, held that TDS on CAM charges shall be deducted at 2% under section 194C. In the given case, the Bench also noted as under:

*"The fact that these two payments are agreed and paid under the same agreement does not change the character/nature of*

*such payments warranting single rate of tax deduction at source. The law has provided for different rates of tax deduction at source based on the nature of payment and it is imperative that the correct rate of tax is applied depending on the nature of payments.”*

10. In the present case, the question under consideration is only in respect of applicability of correct TDS provision on the said charges. In this case, the appellant has taken a shop in R City Mall. The payee has included the amount received as its business income in its return of income and paid the taxes accordingly. The CAM charges paid are for separate and distinguishable services and cannot be said to be for use of building. On similar facts, the Co-ordinate benches of ITAT had held that the CAM charges paid are not covered by Section 194-I of the Act and only TDS provision that can be applied is Section 194C of the Act.

11. Keeping in view the factual matrix and parity of the facts, in the absence of any change in the legal proposition, the appeal of the assessee is allowed.

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

Order Pronounced in the Open Court on 28/08/2024.

Sd/-

**(C. N. Prasad)**  
**Judicial Member**

**Dated: 28/08/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**