

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**
Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Manish Agarwal, Accountant Member

ITA No. 5062/Del/2024 : Asstt. Year: 2011-12
ITA No. 5063/Del/2024 : Asstt. Year: 2015-16

Diamondtree, Ground Floor, G-07, Ambience Mall, Vasant Kung, New Delhi-110070 (APPELLANT)	Vs	Income Tax Officer, Ward-28(5), New Delhi (RESPONDENT)
PAN No. AAFFD4285M		

**Assessee by : Sh. Amit Goel, CA &
Sh. Pranav Yadav, Adv.**
Revenue by : Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing: 27.02.2025	Date of Pronouncement: 27.02.2025
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ORDER

Per Satbeer Singh Godara, Judicial Member:

These assessee's twin appeals ITA No. 5062 & 5063/Del/2024 for Assessment Years 2011-12 and 2015-16, arise against the Addl./JCIT(A), Ranchi's DIN & order No. ITBA/APL/S/250/2024-25/1068058350(1) & 1066581499(1) dated 10.07.2024 and 28.08.2024, in proceedings u/s 201 of the Income Tax Act, 1961 (in short "the Act"); case wise, respectively.

2. Heard both the parties at length. Case files perused.

3. It emerges during the course of hearing that both the learned lower authorities have treated the assessee as the

"assessee in default" for not having deducted TDS @ 10% prescribed u/s 194I of the Act on common area maintenance charges in the impugned twin assessment years involving identical set of facts.

4. It is in this factual backdrop that the Revenue vehemently argues before us that there was a composite agreement for rent as well as common area maintenance charges which attracts the impugned higher rate of TDS deduction u/s 194I of the Act in light of Sunil Kumar Gupta (2016)(9) TMI 1198 (P&H). We note that this tribunal in Connaught Plaza Restaurants P. Ltd. Vs. DCIT in ITA Nos. 993 & 1984/2020 and Kapoor Watch Company Pvt. Ltd. Vs. ACIT in ITA No. 889/Del/2020 has already settled the very issue in assessee's favour and against the department, regarding TDS deduction of such common area maintenance charges 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."

5. We adopt the above extracted detailed reasoning *mutatis mutandis* to reverse the lower authorities action treating the assessee as the assessee in default u/s 201(1) of the Act in very terms. Ordered accordingly.

6. These assessee's twin appeals ITA Nos. 5062 & 5063/Del/2024 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 27/02/2025.

Sd/-

(Manish Agarwal)
Accountant Member

Sd/-

(Satbeer Singh Godara)
Judicial Member

Dated: 27/02/2025

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR