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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 06.08.2025*

\+ **ITA 275/2025**

\+ **ITA 276/2025**

COMMISSIONER OF INCOME TAX-TDS-01

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC & Ms.Aditi Sabharwal, Advocate.

versus

DIAMOND TREE

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO, J. (*ORAL*)

1. The challenge in these appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 (**the Act**) is to the common order dated 27.02.2025 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi (**ITAT**) in ITA No.5062/Del/2024 and ITA No.5063/Del/20024.

2. Both the appeals relate to Assessment Year (AY) 2011-12 and AY 2015-16 respectively.

3. The ITAT decided the aforesaid appeals in favour of the respondent/

Assessee by stating in paragraph no.4 onwards as under:

> *"4. It is in this factual backdrop that the Revenue vehemently argues before us that there was a compo site 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:*
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> > *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."

4. The issue that arose before the ITAT was whether the Common Area Maintenance (CAM) shall be liable to Tax Deducted at Source (TDS) under Section 194I or under Section 194C of the Act.

5. Mr Ruchir Bhatia, learned Sr Standing Counsel appearing for the Appellant fairly concede that this issue is covered by the decision of this Court in ***Commissioner of Income Tax (TDS)-1, Delhi v. Liberty Retail Revolutions Limited : Neutral Citation : 2025: DHC:4589-DB*** wherein this Court on the said identical issue which fell for consideration, has in paragraphs no.9 and 10, stated as under:

> *"9. At the outset, it would be relevant to refer to the decision of the learned ITAT in ITA 504/Del/2020. The relevant extract of the same as reproduced by the learned ITAT in the impugned order, is set out below:*
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> *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 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-I 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 ld. 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 pertain 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."*
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> *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. We find no infirmity with the aforesaid reasoning. CAM charges are essentially maintenance charges paid by a unit for proper maintenance of the common area. The said charges are contributed towards expenditure ON cleanliness, utilities and maintenance. These charges are shared expenses for common works and utilities. The said charges cannot, by any stretch, be construed as payment of rent for occupying the premises in question. The fundamental premise that CAM charges are, by their nature, lease rentals or license charges is erroneous. Thus, the orders passed by the CIT(A) and the AO have rightly been set aside by the learned ITAT."*

6. Mr Bhatia, learned counsel for the Revenue also states that two similar ITA No.261/2025 and ITA No.263/2025 captioned *Commissioner of Income Tax-TDS-01 v. Bose Corporation India Private Limited* have already been dismissed by this Court on 01.08.2025.

7. If that be so, the position of law being clear in as much as CAM charges can be covered under provisions of 194C of the Act of 1961, the said charges cannot be construed as payment of rent for occupying the premises in question. No substantial question of law arises in the present appeals.

8. The appeals are dismissed in favour of the respondent against the revenue.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 06, 2025
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