ITEM NO.13 COURT NO.9 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) DIARY NO(S). 62377/2025

[Arising out of impugned final judgment and order dated 22-05-2025 in ITA No. 170/2025 22-05-2025 in CMAPPL No. 31794/2025 22-05-2025 in CMAPPL No. 31795/2025 passed by the High Court of Delhi at New Delhi]

COMMISSIONER OF INCOME TAX (TDS)-1, DELHI PETITIONER(S)
VERSUS
LIBERTY RETAIL REVOLUTIONS LTD. RESPONDENT(S)

(IA No. 306416/2025 - CONDONATION OF DELAY IN FILING)

Date : 17-12-2025 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE PANKAJ MITHAL
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. N Venkataraman, A.S.G.
Mr. Rupesh Kumar, Sr. Adv.
Ms. Madhulika Upadhyay, AOR
Mr. Udai Khanna, Adv.
Mr. Navanjay Mahapatra, Adv.
Mrs. B Sunita Rao, Adv.

For Respondent(s)

UPON hearing the counsel the court made the following
O R D E R

1. Delay condoned.

2. In the facts and circumstances of the case, we find no error or illegality in the order(s) passed by the High Court.

3. The present petitions are, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.

(Nidhi Mathur) **(Geeta Ahuja)**
Court Master (NSH) **Assistant Registrar-cum-PS**

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

% *Date of Decision: 22.05.2025*

\+ **ITA 170/2025 & CM Appl Nos.31794/2025, 31795/2025**

COMMISSIONER OF INCOME TAX (TDS)-1, DELHI .....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Gibran Naushad, Mr. Rishabh Nangia and Mr. Ashwini Kumar, Advs.

versus

LIBERTY RETAIL REVOLUTIONS LTD. .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The Revenue has filed the present appeal impugning an order dated 22.11.2023 [**impugned order**] passed by the Income Tax Appellate Tribunal [**ITAT**] in ITA No.1016/Del/2020 in respect of Assessment Year [**AY**] 2011-12.

2. The Assessee had preferred the said appeal [ITA No.1016/Del/2020] impugning an order dated 16.01.2020 passed by the Commissioner of Income Tax (Appeals)-38 [**CIT(A)**], whereby the assessment order passed by the Assessing Officer [**AO**] under Section 201(1)/ 201(1A) of the Income Tax Act, 1961 [**the Act**], was confirmed.

3. The Assessee is a company engaged in the business of fashion products, including leather accessories, watches and artificial jewellery at

Ambience Mall, Vasant Kunj, New Delhi. The said premises belong to Ambience Group, which operates Ambience Mall, Vasant Kunj and Ambience Mall, Gurgaon. Various outlets at the said malls have either been sold or have been licensed.

4. The AO found that Ambience Group received Common Area Maintenance [**CAM**] charges from various persons in connection with occupation and license of units in the said malls. The persons paying CAM charges had deducted tax at source [**TDS**] at the rate of 2% on such charges and deposited the same. The TDS was deducted on the basis that the payments were covered under the provisions of Section 194-C of the Act. The Assessee had also paid CAM charges after deducting TDS at the rate of 2% of the said charges, and had deposited the same.

5. However, according to the AO, CAM charges paid by the mall owners were essentially a part of rental activities and, therefore, TDS was required to be deducted on such payments under Section 194-I of the Act. On the aforesaid basis, it was concluded that the TDS was required to be deducted at the rate of 10% on such payments. The AO passed an order dated 30.03.2018 determining the TDS amount payable at ₹4,41,121/- under Section 201(1) of the Act and also computed the interest on the said amount at ₹4,23,477/- under Section 201(1A) of the Act.

6. Aggrieved by the aforesaid decision, the Assessee preferred an appeal before the CIT(A). However, the same was dismissed.

7. As noted above, the Assessee filed a second appeal before the learned ITAT. The learned ITAT following its earlier decision in ITA

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No.504/Del/2020, concluded that CAM charges could not be brought within the scope of definition of "*rent*" as defined under Section 194-I of the Act. According to the ITAT, the payments made would fall within the meaning of "*work*" as defined under Section 194-C of the Act.

8. In the aforesaid context, the Revenue has projected the following questions for consideration of this Court:

> "A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in deleting the demand of Rs.4,41,121/- on account of short deduction of TDS under Section 194-I of Income Tax Act, 1961 as CAM charges are squarely covered under the provisions of section of 194-I and demand of Rs,4,23,477/- u/s 201(IA) of the Income Tax Act, without going through the facts of the case."

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:

> "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."*

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.

11. No substantial question exists for consideration in this appeal.

12. The appeal is accordingly dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 22, 2025
dr

Click here to check corrigendum, if any