

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI****BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER****ITA No. 1915/Del/2021
[Assessment Year: 2012-13]**

M/s Welgrow Hotels (P) Ltd., B-6, Geetanjali Enclave, New Delhi-110017 PAN:AAACW5407C	<u>Vs</u>	Income-tax Officer, Ward-78(4), New Delhi.
APPELLANT		RESPONDENT

Assessee represented by:	Sh. S Krishnan, Adv.
Department represented by:	Sh. S.L. Verma, Sr. DR
Date of hearing	18.01.2023
Date of pronouncement	30.01.2023

ORDER**PER N.K.CHOUDHRY, JM:**

The Assessee has preferred the instant appeal against the order dated 24.01.2019, passed by the Ld. Commissioner of Income tax (Appeals)-38, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2012-13.

2. In the instant case the Assessing Officer vide order dated 26.03.2019 impugned herein passed u/s 201(1)/(1A) of the Act directed the Assessee to pay TDS amounting to Rs. 2,55,745/- u/s 201(1) of the Act and interest thereon to the tune of Rs. 2,29,478/- u/s 201(1A) of the Act on account of CAM charges under Section 194-I of the Act, whereas the Assessee had claimed that Assessee was liable to deduct TDS u/s 194-C of the Act.

3. The Assessee being aggrieved challenged the directions/additions made by the AO before the learned Commissioner, who vide impugned order though affirmed the action of the AO in holding that CAM charges paid by the Assessee are part of rent, liable for TDS u/s 194-I of the Act, however, held that if the deductee has paid tax on the CAM charges received from the Assessee, then the Assessee cannot be treated as Assessee in default.

The learned Commissioner further, noticing from the form no. 26A filed by the Assessee, directed the AO under the proviso to Section 201(1) of the Act to verify the factual position to find if the deductee has paid taxes on the CAM charges received from the Assessee by filing return of income u/s 139, then the Assessee cannot be treated as Assessee in default and no further tax can be collected. Needless to mention that the Assessee shall provide necessary evidences such as Form 26A etc. to the AO.

4. The Assessee being aggrieved is in appeal before us and claimed that the learned Commissioner erred in not directing relief qua CAM charges paid after deducting tax at source under section 194C of the Act in spite of the fact that common area maintenance charges were paid under a single lease agreement. The Assessee in support of its claim also relied upon the order dated 03.10.2022 passed by the Hon'ble Coordinate Bench in the case of Yum Restaurants India (P) Ltd. [ITA no. 1115/Del/2020 for A.Y. 2012-13], wherein the Hon'ble Coordinate Bench clearly

held that provisions of Section 194-C of the Act are applicable to CAM charges.

5. On the contrary, the learned DR heavily relied upon the impugned order.

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. Considering the peculiar facts and circumstances of the case, as the Hon'ble Coordinate Bench has already dealt with the identical issue and categorically held that for CAM charges the provisions of Section 194-C of the Act are applicable.

In the instant case it is an admitted fact, as not refuted by the learned DR, that the Assessee has deducted TDS u/s 194C of the Act, and the facts are not distinguishable to the facts involved in Yum Restaurants India case (Supra) consequently we are inclined to direct the AO to recompute the tax liability accordingly.

7. In the result, appeal filed by the Assessee is allowed.

Order pronounced in open court on 30.01.2023.

Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI