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

\+ ITA 261/2025

\+ ITA 263/2025

COMMISSIONER OF INCOME TAX -TDS-01 .....Appellant

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

versus

BOSE CORPORATION INDIA PVT. LTD. .....Respondent

Through: Dr. Shashwat Bajpai, Advocate.

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

O R D E R

% 01.08.2025

CM APPL. 46572/2025 & CM APPL. 46776/2025 (condonation of 35 days)

1. For the reasons stated in the application, the delay of 35 days in filing captioned appeal is condoned.

2. The applications stand disposed of.

ITA 261/2025 and ITA 263/2025

3. The challenge in this appeal under 260A of the Income Tax Act, 1961, is to an order dated 05.12.2024 passed by the Income Tax Appellate Tribunal (ITAT) Delhi Bench, New Delhi in two appeals being ITA No. 2003/De1/2024, Delhi 2024 and ITA No. 2004/De1/2024. Both relate to Assessment Years(A.Y) 2013-14 and 2016-17, whereby, the Tribunal has decided both the appeals in favour of the respondent by stating in paragraph

6 onwards as under :

> *"6. That on the facts and circumstances of the case, the Ld. CIT (A) has erred in ignoring the decision of this Hon'ble Jurisdictional Tribunal in M/s. Johnson Watch Company Pvt. Ltd. v. ACIT Circle 75(1), New Delhi, ITA No. 1738/Del/2020 and Paramount Restaurants Pvt. Ltd. CIT(A), Circle-19(1), Delhi, ITA No. 1730/Del/2021 wherein it was held that the 'rent' is on account of 'use' of the property given into a exclusive possession of the lessee for the running of business at the CAM charges are for maintenance of the common areas, used or not used by the lessee and they are paid under, different clauses of the agreement and by separate invoices.*
> *7. Without prejudice to the above, that on the facts and circumstances of the case, the Ld, CIT (A) has ignored the principle that the Common Area Maintenance Charges shall not fall under the category of rent u/s 194-1 where CAM charges and rent charges are being paid to different vendors/companies, even though under the single composite lease agreement.*
> *8. That on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not appreciating that the Common Area Maintenance Charges are subject to deduction of tax at source u/s 194C of the Income Tax Act at 2% and not at 10% u/s section 1941.*
> *9. That on the facts and circumstances of the case and in law, the Ld, CIT (A) has erred in upholding the findings of Ld. AO in treating the Appellant as "Assessee in Default" under section 201(1)/(1A) of the Act for short deduction of tax of INR 15,16,427/- (along with interest of INR 16,22,103/- therefore total TDS liability of INR 31,38,530/-).*
> *10. That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in ignoring several decisions of the Co-ordinate Bench of this Tribunal wherein it was observed that the primary liability to pay the tax is on the recipient of income and therefore, such tax cannot be recovered from the Appellant.*
> *11. That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has vehemently ignored the law laid down by the Hon'ble Supreme Court in CIT Vs Eily Lilly & Co Pvt. Ltd. (2007) 312 ITR 225 (SC) and reiterated by Hon'ble Mumbai ITAP in ICICI Securities Limited, ITA No. 1511/ Mum /2022 that "the liability of deducting tax at source is in the nature of a vicarious liability, which pre-supposes existence of primary liability. The said liability is a vicarious liability and the principal liability is of the person who is taxable ....."*
> *12. That on facts and in circumstances of the case, the Ld. CIT (A) has evidently ignored the decision of the Co-ordinate Bench of this Tribunal in Ramkrishna Vedanta Math vs. ITO. (2012) 24 taxmann.com 29 (ITAT Kolkata) wherein it was observed that the question of making good the loss of revenue arises only when there is indeed a loss of revenue and the loss*

of revenue can be there only when recipient of income has not paid tax, which the Ld. AO and/or CIT (A) failed to enquire and confirm.

13. That on facts and in circumstances of the case, the Ld. CIT (A) has ignored the fact that in the absence of the statutory powers to requisition any information from the recipient of income, the assessee is indeed not able to obtain the same, and thus the onus was on the Ld. AO/ CIT(A) to enquire as to the payment by the person on whom the principal liability to pay the tax rested upon.

14. That on facts and in circumstances of the case, the Ld. CIT (A) erred in not appreciating the submissions, replies and responses filed before the Ld. AO/Ld. CIT (A) and wrongly treated the Appellant-Assessee as 'Assessee in default' within the meaning of Section 201(1) of the Act despite the settled principles of law in favour of the Appellant – Assessee."

4. The issue which arose before the Tribunal is whether the Common Area Maintenance charges (CAM) shall be liable for TDS under section 194-I or 194C of the Act.

5. Mr. Ruchir Bhatia, learned counsel for the appellant fairly concede that the issue is covered by the decision of this Court in the case captioned ***Commissioner of Income Tax (TDS)-1, Delhi v. Liberty Retail Revolutions Ltd.*** **in ITA 170/2025** decided on 22.05.2025, wherein, this Court on identical issue has in paragraphs 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:

"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:-

"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."

6. If that be so, the position of law being clear in as much as CAM

charges are 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 appeal.

7. The appeal is dismissed in favour of the respondent against the revenue.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 01, 2025
ss