

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, E: NEW DELHI**

**BEFORE SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.- 7689/Del/2025
[Assessment Year: 2013-14]**

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| Deputy Commissioner of Income Tax, Room no. 413, 4 th Floor, Aayakar Bhawan, Laxmi Nagar, Delhi-110092. | Vs | Biba Apparels Pvt. Ltd., Gali No. -D/25, Building No. 958, Chhatarpur Hill, New Delhi-110074. |
| | | PAN-AACB9274B |
| Revenue | | Assessee |

**ITA No.- 7684/Del/2025
[Assessment Year: 2014-15]**

| | | |
|---|----|--|
| Deputy Commissioner of Income Tax, Room no. 413, 4 th Floor, Aayakar Bhawan, Laxmi Nagar, Delhi-110092. | Vs | Biba Apparels Pvt. Ltd., Gali No. -D/25, Building No. 958, Chhatarpur Hill, New Delhi-110074. |
| | | PAN-AACB9274B |
| Revenue | | Assessee |

**ITA No.- 7687/Del/2025
[Assessment Year: 2015-16]**

| | | |
|---|----|--|
| Deputy Commissioner of Income Tax, Room no. 413, 4 th Floor, Aayakar Bhawan, Laxmi Nagar, Delhi-110092. | Vs | Biba Apparels Pvt. Ltd., Gali No. -D/25, Building No. 958, Chhatarpur Hill, New Delhi-110074. |
| | | PAN-AACB9274B |
| Revenue | | Assessee |

| | |
|-------------|---|
| Assessee by | Shri Vishal Kalra, Adv. Ms. Sumisha Murgai, CA Shri Kashish Gupta, CA |
| Revenue by | Ms. Ankush Kalra, Sr. DR |

| | |
|------------------------------|-------------------|
| Date of Hearing | 26.05.2026 |
| Date of Pronouncement | 29.05.2026 |

ORDER

Per Renu Jauhri, Accountant Member:

These three appeals have been preferred by the Revenue against the separate orders all dated 29.09.2025 of the Ld. Commissioner of Income Tax, Appeal-49, Mumbai, [hereinafter referred to as the 'Ld. CIT(A)] pertaining to Assessment Years (A.Y.) 2013-14, 2014-15 and 2015-16 respectively. All three appeals were heard together and are being disposed of by way of this common order for the sake of convenience and brevity.

2. Grounds of in all the appeals filed by the Revenue are reproduced as under:

ITA No.- 7689/Del/2025 for A.Y. 2013-14

“ 1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) 49, Mumbai was justified in not considering the judgement of Hon'ble Delhi High Court in the case of Apeejay Surrendera Park Hotels Ltd. vs. UOI in WP (C) 1924/1999, wherein the Hon'ble Court has held that the Word rent in section 1941 of the I.T. Act has to be interpreted widely and not confined to payments received towards a lease, sub lease OR tenancy OR transactions of such like nature.

2. That the appellant craves leave to add OR amend any one OR more of the grounds of the appeal as stated above as and when need for doing so may arise.

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-49, Mumbai was justified in holding that 3 Common Area Maintenance (CAM)

charges paid by the Appellant are in the nature of contractual payment and are liable to be deducted TDS u/s 194C of the I.T Act.”

ITA No.- 7684/Del/2025 for A.Y. 2014-15

“ 1. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-49, Mumbai was justified in holding that Common Area Maintenance('CAM') charges paid by the Appellant are in the nature of contractual payment and are liable to be deducted TDS u/s 194C of the I.T Act.

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-49, Mumbai was justified in not considering the judgement of Hon'ble Delhi High Court in the case of Apeejay Surrendera Park Hotels Ltd. vs. UOI in WP (C) 1924/1999, wherein the Hon'ble Court has held that the Word rent in section 1941 of the IT. Act has to be interpreted widely and not confined to payments received towards a lease, sub lease OR tenancy OR transactions of such like nature.

3. That the appellant craves leave to add OR amend any one OR more of the grounds of the appeal as stated above as and when need for doing so may arise.”

ITA No.- 7687/Del/2025 for A.Y. 2015-16

“Whether on the facts and in the circumstances of the case and in law, the CIT(A)-49, Mumbai was justified in holding that Common Area Maintenance('CAM') charges paid by the Appellant are in the nature of contractual payment and are liable to be deducted TDS u/s 194C of the I.T Act.

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A)-49, Mumbai was justified in not considering the judgement of Hon'ble Delhi High Court in the case of Apeejay Surrendera Park Hotels Ltd. vs. UOI in WP (C) 1924/1999, wherein the Hon'ble Court has held that the Word rent in section 1941 of the IT. Act has to be interpreted widely and not confined to payments received towards a lease, sub lease OR tenancy OR transactions of such like nature.

3. That the appellant craves leave to add OR amend any one OR more of the grounds of the appeal as stated above as and when need for doing so may arise.”

”

3. As the issue involved and the facts are identical in all the three appeals, ITA No. 7689/Del/2025 for A.Y. 2013-14 is taken as the lead case.

4. The sole issue involved pertain to the demand of Rs. 40,58,520/- raised u/s 201(1)(1A) for short deduction of TDS.

5. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and retail of ethnic wear under the brand 'Biba' and 'Rangriti'. A survey was conducted u/s 133A (2A) of the Act. The case for Ambience Group on 12.02.2018. It was found that the Ambience Group operates two malls, namely Ambience, Gurugram and Ambience Mall, Vasant Kunj. Various units / shops in these malls are either sold or rented. The Ambience Group has recovered expenses in the form of common Area Maintenance (CAM) chores from the tenants / occupants who have deducted TDS @ 2% under section 194C of the Act. Since these payments were held to be part of the rental activity. The department was of the view that TDS should have been deducted @ 10% u/s 194I of the Act.

5.1 Accordingly, proceedings u/s 201 were initiated to hold the tenants / deductors as assessee in default. Several notices were issued to the assessee in response to which the assessee submitted that CAM charges are primarily for the services provided and have been correctly classified u/s 194C of the Act. It was further contended that the assessee cannot be treated as assessee in default as the following prescribed conditions are satisfied.

- (i) Payee has furnished his return of income u/s 139 of the Act.
- (ii) It has taken into account such sum for computing its income.
- (iii) Payee has paid tax due to the income declared by it.

5.2 However, the Ld. AO held that the payments are essentially part of rental activity and are therefore covered u/s 194I of the Act. He therefore, held that the assessee to be in default u/s 201(1) of the Act, as no documentary evidence had been submitted in support of the aforesaid prescribed conditions, vide order u/s 201(1) / 201(1A) of the Act, dated 19.03.2021.

5.3 Aggrieved, the assessee has preferred an appeal before the Ld. CIT(A), who has allowed relief to the assessee. Relevant portion of the order of the Id. CIT(A) is reproduced below:

“ 7.2. Having considered the overall facts of the case, I concur with the stand taken by the appellant. The rent paid by an assessee becomes income in the hands of its landlord and the TDS on such rent is liable to be deducted u/s 194I of the Act. However, the CAM charges paid by the assessee is against the service provided for maintenance of the premises and such payments does not get covered by the definition of rent. The payment is nature of contractual service and is liable for deduction u/s 194C of the Act. In the recent case of Commissioner of Income-tax (TDS)- v. Liberty Retail Revolutions Ltd. [2025] 175 taxmann.com 35 (Delhi), Hon'ble High court of Delhi has held as under:

“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 14,41,121/- under Section 201(1) of the Act and also computed the interest on the said amount at Rs. 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 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(1A) 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:-

"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. v. 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 assesseein-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”

7.3. Considering the discussion in the foregoing paras, I hold that the provisions of section 194I are not applicable on the CAM charges paid by the appellant and therefore the demand of Rs. 40,58,420/- raised vide order u/s 201(1)/201(IA) for short deduction of TDS cannot be upheld. The AO is directed to delete the same.”

5.4 Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before us.

6. Before us, the Ld. AR has submitted that the issue stands covered in assessee's own case by order of the Co-ordinate Bench of the ITAT, for A.Y. 2011-12 and A.Y. 2012-13 in ITA Nos. 1996 & 1957/Del/2020, the Co-ordinate Bench after relying on the order of the Co-ordinate Bench on identical issue in the case of *Nijhawan Travel Service (P) Ltd. vs. ACIT in ITA No. 1417/Del/2020 for A.Y. 2012-13*, have held as under:

“5. On careful consideration of the above submissions, first of all from the copies of the agreements placed by the assessee at serial nos. 13 to 17, pages 24 to 138, it is clearly gathered that CAM chares have been paid to different parties by executing agreements which do not form part of rent payment. It has not been disputed by the authorities below, nor by the learned Sr. DR before us, that the assessee has deducted TDS u/s 194C of the Act on the payment of CAM charges to the respective third parties who provided services to maintain common area”.

7. On the other hand, the Ld. Sr. DR strongly relied on the order of the Ld. AO.

8. After hearing the rival submissions and the perusal of the order of the Co-ordinate Bench of the Tribunal for earlier years, we note that the facts and circumstances remain unchanged. Hence, respectfully following the decision of the Co-ordinate Bench, we hold

that the order of the Ld. CIT(A) in deleting the impugned demand of Rs. 40,58,520/- raised u/s 201(1)(1A) of the Act, was justified and no interference is called for in the same. Accordingly, appeal of the Revenue is hereby dismissed.

9. Since identical issue and facts are involved in ITA No. 7684/Del/2025 for A.Y. 2014-15 and ITA No. 7687/Del/2025 for A.Y. 2015-16, the decision rendered hereinbefore in ITA No. 7689/Del/2025 shall apply mutatis mutandis to these two appeals as well.

10. In the result, all the three appeals of the Revenue are dismissed.

Order pronounced in the open court on 29.05.2026.

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[RENU JAUHRI]
ACCOUNTANT MEMBER

Dated- 29.05.2026.
Pooja.

- Copy forwarded to:
1. Assessee
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR

Asst. Registrar,
ITAT, New Delhi,