IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES, NEW DELHI, BENCH: A

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA 9063/DEL/2025
निर्धारण वर्ष/Assessment Year: **2017-18**)

FAIRWOOD HOLDINGS PVT LTD. M-304, DHARMA APARTMENT, PLOT NO. 2, IP EXTENSION, PATPARGANJ, NEW DELHI-110092.	**Vs.**	**ITO, CIRCLE-7(1)** C.R. BUILDING DELHI-110002.
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**

Permanent A/c Number of Assessee**:**	**AAACF1302P**
अपीलार्थी द्वारा/Appellant represented by:	**Sh. Vineet Garg, Adv (VC) & Sh. Vikas, Adv**
प्रत्यर्थी द्वारा/Respondent represented by:	**Sh. Ajay Kumar Arora, Sr. DR (VC)**
सुनवाई की तारीख / Date of conclusion of hearing:	**26-May-2026**
घोषणा की तारीख / Date of pronouncement:	**24th July, 2026**

आदेश / ORDER

PER KAVITHA RAJAGOPAL, JM:

This is an appeal filed by the assessee challenging the order of the Ld.CIT(A) passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relevant to Assessment Year 2017-18. The assessee has raised the following grounds of appeal:-

> *"1 That the appellant denies its liability to tax/penalty as upheld by the ld. CIT(A) as determined and computed by the learned assessing officer and the manner in which it has been so determined or computed.*
>
> *2 The ld. CIT(A) has erred on facts and in law in determining short deduction of TDS amounting to Rs.1,90,584/- on CMA charges by applying section 194I.*
>
> *3 The Id. CIT(A) has erred on facts and in law in charging interest of Rs. 1,52,139/- on short deduction of TDS on CMA charges by applying section 194I.*
>
> *4 That the Id. CIT(A) has erred both on facts and in law in not granting sufficient opportunity of being heard to the Appellant before passing the order under section 250 which is against the principles of natural justice.*
>
> *5 The appellant prays for leave to amend, modify, or introduce any additional grounds of appeal at any time before the final date of hearing before the Hon'ble ITAT.*
>
> *6 PRAYER:*
>
> *The order passed by the Id. CIT(A), NFAC, along with the order of the AO u/s 147, may kindly be declared null and void ab initio. Alternatively, any other order as may be deemed fit by Your Honours in the facts and circumstances of the case may kindly be passed."*

2. Brief facts of the case are that the assessee company was incorporated on 10.10.1991 in the name and style of Fairwood Consultants Pvt. Ltd. which was re-named as Fairwood Holdings Pvt. Ltd. w.e.f. 18.06.2012 and was engaged in the business of project development and consultancy services in energy, transportation, city development, turnkey projects in the infrastructure, residential, industrial, commercial fields along with supplementary services for

provision of layouts, blueprints, design plans and drawings. The assessee's case was taken up for verification under Section 201(1)/201(1A) of the Act and the order under Section 201(1)/201(1A) of the Act was passed on 02.03.2023 wherein it was held that the assessee, as a tenant has made Common Area Maintenance (CAM) payment to M/s IT Enfra Services Pvt. Ltd. amounting to Rs.23,82,310/- during the year under consideration where TDS @ 2% was deducted as per the provisions of Section 194C of the Act instead of 10% towards CAM charges which is part of rent expenses which are in the nature of maintenance, housekeeping and security.

3. On the basis of the documentary evidences furnished by the assessee, the Ld. AO held that the payment of CAM expenses are covered under the provisions of Section 194-I of the Act and since the assessee had defaulted in deducting tax on the said payment, was held to be 'the assessee in default' liable to pay TDS of Rs.3,42,723/-. The Ld. AO also initiated penalty proceedings under Section 271C and 272A(2)(g) of the Act.

4. Aggrieved, the assessee was in appeal before the First Appellate Authority, who, vide order dated 30.10.2025 had dismissed the appeal filed by the assessee by holding the assessee to be 'assessee in default' for failure to deduct TDS under Section 194J of the Act. Further aggrieved, the assessee is in appeal before us challenging the order of the Ld.CIT(A).

5. We have heard the rival submissions and perused the material available on record. It is observed that pursuant to TDS survey conducted at the registered office of M/s Logix Infra Developers Pvt. Ltd. and its group companies dated 31.01.2019, it was observed that the said group companies have collected/recovered expenses in the nature of maintenance, housekeeping, security, etc., from the occupants in the form of CAM charges for which the deductees/tenants have deducted TDS @2% in accordance with the provisions of Section 194C of the Act. The Ld. AO initiated proceedings under Section 201(1)/201(1A) of the Act in the case of the assessee who is one of the deductor company of the said group by way of a lease deed executed between M/s Fairwood Holdings Pvt. Ltd. (the deductor company) and M/s IT Enfra Services Pvt. Ltd. which is one of the group company of M/s Logix Infra Developers Pvt. Ltd. A survey action under Section 133A(2A) of the Act was also conducted on 10.03.2017 at the business premises of the assesseee wherein it was found that a TDS liability amounting to Rs.6,69,097/- was outstanding on the deductor company/assessee. The Ld. AO observed that the malls owned by Logix group companies have various units/shops that are either sold or rented as per the contractual agreement and common area maintenance were paid by shop owners/deductors with respect to the same. It was further observed that the deductors/tenants have only deducted 2% TDS on the said charges as per the provisions of Section 194C of the Act which ought to be 10% as per Section 194I of the Act. The Ld. AO determined total demand of Rs.3,42,723/-

(Rs.1,90,589/- under Section 201(1) of the Act and Rs.1,52,139/- under Section 201(1A) of the Act on account of interest) thereby holding the assesseee to the 'assessee in default.'

6. In the appeal preferred by the assessee, the Ld. CIT(A) upheld the order of the Ld. AO. On perusal of the order of the Ld.CIT(A), it is observed that the finding of the CIT(A) was completely on different facts where he has held the expenses incurred by the assessee under the head 'Fee for professional or technical services' and had not dealt with the issue whether the CAM charges are liable to be taxed @ 2% or 10% as in accordance with the Section 194C or 194I, respectively. This fact was also not controverted by the Ld. AR as well as the Ld. DR. Since the CIT(A) has not adjudicated the issue on its merits and has proceeded on an erroneous appreciation of facts, the impugned finding cannot be sustained. In the interest of justice, we deem it fit to restore the issue back to the file of the Ld.CIT(A) to adjudicate the issue in hand de novo on the basis of the facts of the present case as there is error apparent in the order of the Ld.CIT(A). We, therefore, remand all these issues back to the file of the Ld.CIT(A) for proper and *denovo* adjudication on the basis of the material available on record and on the submission of both the parties and decide on the basis of the correct facts and applicable law after affording adequate opportunity of hearing to both sides. The contentions of both sides are left open. The grounds of appeal are allowed for statistical purpose.

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

Order pronounced in the open court on 24th July, 2026.

Sd/-	Sd/-
(M. BALAGANESH) **ACCOUNTANT MEMBER**	**(KAVITA RAJAGOPAL)** **JUDICIAL MEMBER**

Delhi, 24th July, 2026.

dk

Copy to:

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2	**ITO CIRCLE-7(1),** **C.R. BUILDING,** **DELHI-110002, DELHI**
3	THE PCIT / CIT,
4	THE D.R., ITAT, DELHI BENCH
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