IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA No.4414/DEL/2017
(Assessment Year: 2009-10)

Addl.CIT, Special Range 9, New Delhi.	vs.	VLCC Health Care Ltd., M – 14, Commercial Complex, Greater Kailash Part II, New Delhi - 110 048.
		(PAN : AAACC4808P)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Bindal, CA
Ms. Rinky Sharma, Advocate
REVENUE BY : Shri Vivek K. Upadhyay, Sr. DR

Date of Hearing : 27.08.2024
Date of Order : 09.10.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal has been filed by the Revenue against the order of ld. Commissioner of Income Tax (Appeals)-33, New Delhi ["ld. CIT(A)", for short] dated 08.11.2016 for the Assessment Year 2009-10.

2. Brief facts of the case are, assessee filed its return of income on 29.09.2009 for the AY 2009-10 declaring an income of Rs.14,34,56,042. The case was processed under section 143(1) of the Income-tax Act, 1961 (for short 'the Act'). The case was selected for scrutiny and notices u/s

143(2) & 142 (1) along with questionnaire were issued and served on the assessee. In response, ld. AR of the assessee attended from time to time and filed the relevant information as called for.

3. Assessee is engaged in the business of slimming and beauty services. The assessee has not disclosed any other source of income during the year. During assessment proceedings, AO observed that the assessee is carrying substantial credit balances as current liabilities under the head 'Advance from customers'. The assessee was asked to explain along with supporting documents. Assessee vide its letter dated 22.11.2011 submitted as under :-

"With respect to the above-said proceedings we have submitted all the information required by you from time to time during the course of assessment proceedings. Further we furnish the information relating to Unexecuted Packages (UEP) as follows:

1.1 It must be appreciated that the receipts from the clients for various services are assessable as a part of profit and gains from business and profession and not directly as income. Profits and gains from business and profession are computed as provided in section 29 of the Act. Mere receipts are not taxable as profits. A Note on UEP (Unexecuted Packages) is enclosed.

1.2 Receipt is different than income and the income is different than profits. In mercantile method of accounting, money receipt by itself is not taxable. It is also not material when the right to receive the payment accrued. However, what is important for appreciation is whether the said accrual of right 'to receive the payment for converted into income or not. It is only the income based on services provided which is taxable and not the right to receive the payment for services to be performed or its receipt. The receipt becomes income when services to be given against the receipts are performed or goods are sold. Even readiness of the goods for the purpose of sales does not convert such advance *receipts into sales, till the goods are actually dispatched or corresponding services are provided. Undisputedly, in this case the services were to be provided, as on the cut-off date being 31/03/2009 and therefore advance received though non-refundable did not partake the character of accrued income because of pending obligation of the assessee against the same in a particular defined time. Character of money received changes with the circumstances attached thereto.*

1.3 The Hon'ble Delhi High Court in the case of Uttam Singh Duggal& Co. (P) Ltd Vs CIT (1981) 127 ITR 21 (Delhi) held that an amount received in advance converts into an income only when the work corresponding to the amounts received in advance is actually done. In the said case work against the advance received earlier was done in subsequent two years and it was held that the advance receipts proportionate to work done in subsequent years is income by way of accrual only in those succeeding years.

1.4 The receipts should be viewed as an advance against sales to be made in a defined period of twelve months. In commercial trading parlance at the time of entering into a contract with a client, the appellant agrees to sell its ready stock by way of pre- defined sittings for various health care activities. Thus, the sales value of each sitting is well known in advance. The unsold stock which may be called as pending sittings on the cut off date has to be equated as inventory of the same as on the said. date. Therefore, at the end of each financial year an inventory of unexecuted services by way of stock ready but not sold is drawn and is termed as Unexecuted Packages (LEP) and is carried forward to the next year when the same is considered as income as the UEP services are utilized then or the period to provide such services expires.

1.5 In mercantile method of accounting while computing the business income all inbuilt liabilities against the receipts have to be deducted because incurrence of the said liability is an inevitable precondition to earn the profits. Such a liability of not precisely quantifiable at the particular time then a fair estimate of the same has to be made deducted while computing the said income. Presuming but not admitting, that the amount received in advance is income of the year of receipt then admittedly the assessee has to provide services against the same in the subsequent year and the cost for such series on the particular date has to be estimated and deducted who considering the receipt as taxable income and in absence of the same no correct profits can be determined as per accepted accounting principles.

Thus the method of accounting has been accepted by the department and therefore the same should not be disturbed following the principle of Judicial discipline."

4. After considering the submissions of the assessee, AO rejected the submissions made by the assessee that method of accounting adopted by the assessee is accepted by the Revenue over the years and he opined that similar claims made by the assessee were rejected in the earlier years assessments. The AO observed from the record that assessee follows three types of business model which are :

(a) VLCC (assessee) executed MoU with the Joint Venture Partner (JVP) wherein both come to terms with regard to investment in machinery, interior, rent of the place, franchisee fee, etc.. The centre is managed by VLCC and JVP in the ratio of 60 : 40 or 50 : 50, as the case may be. The sales of centre are included in the accounts of VLCC. Part of the sales on which services remain to be rendered are shown as unexecuted packages at the end of the year.

(b) In the second model, franchise agreement is executed between VLCC and JVP wherein sales are declared in the accounts of JVP. Operating surplus or net cash surplus are determined which is to be shared between VLCC and JVP, in this case part of the sales on which services remain to be rendered are shown as liability towards customers in the name of the unexecuted packages at the end of the year by the JVP.

(c) In the third model, a partnership firm is formed between VLCC and JVP. The sales are recorded in its books and unexecuted packages are claimed in the return of partnership firm. AO observed that four such partnership firms based on this model are operating in the name of : (i) M/s. Vee Gee, Enterprises, Kher, Bombay; (ii) M/s. KaaVee Enterprises, Pune; (iii) M/s. Vee Gee Enterprises, Chembur, Bombay and (iv) M/s. Vee Kay Enterprise, Marine Drive, Bombay. These four firms were merged with VLCC on 31.10.2011. The accounting policy and method for UEP adopted by the assessee are as under :-

"Accounting Policies and method for UEP

It has been submitted by Assessee that Assessee offers various packages of slimming and beauty to the clients and the whole of the packages money is collected in advance from the client. Client card or client services ledger are maintained at the centers in the name of each client for slimming /beauty packages. The card carry details about the packages, services availed by the client, the progress of the client vis-a-vis the package booked etc, broadly the type packages can be divided into three categories i.e. weight lose package which is valuated into kilograms against the targeted weight loss, body firming for which fixed number of sessions are to be.

At the end of the year, the progress of each client for the various packages given to him is evaluated vis-a-vis the amount received from him and the sales corresponding to the services which remains to be rendered are claimed as unexecuted packages i.e. in the nature of liability in the B/S. it has been claimed by the assessee that no package is of a duration of more than one year meaning thereby that the unexecuted package claimed as a liability in one loss account in any particular year is calculated as under :

Net sales reflected in P&L A/c= Opening Unexecuted package lie closing unexecuted package of the last year) + Total sales of the year closing UEP of the current year which is shown as liability in the B/S)."

5. Based on the facts and modus operandi, relevant UEP followed by the assessee are as under :-

F.Yr.	Opening UEP as at start of F.Yr. (A) (in lacs)	Total Sales (B) (in lacs)	Closing UEP as at end of F.Yr. (C) (in lacs)	Closing UEP as a% of total sales	Net sales shown in P&L=A+B+C	Total income Shown by assessee
1997-98	Nil	519.74	141.52	27	378.22	4,80,440
1998-99	141.52	782.94	176.36	22	748.09	5,92,220
1999-00	176.36	1662.42	255.96	15	1542.82	17,17,240
2000-01	255.96	2774.15	387.02	13	2643.09	29,83,890
2001-02	387.02	3871.44	982.45	25	3276.01	30,67,140
2002-03	982.45	4958.76	930.69	19	5010.52	1,80,06,650
2003-04	930.69	9655.09	940.25	14	6945.53	3,86,04,813
2005-06	925.95	11778.91	1298.42	11	11406.44	5,62,70,556
2006-07	1298.42	15267.19	1272.11	8	15293.50	12,93,14,650
2007-08	1272.11	18538.46	1591.65	9	18218.93	14,74,57,970
2008-09	1591.65	20404.70	1627.67	8	20368.68	14,34,81,040

6. The AO observed that the above table shows how the accounts are operated so that assessee pays less tax in any particular year and do not pay the tax in perpetuity. Further, he observed that the amounts paid by the clients are not refundable for the programmes for which the payment was collected for 365 days or expiry of the current financial year, whichever is earlier. Therefore, AO observed that the amount taken from customers is non-refundable as evident from the declaration/consent from

which has to be signed by every client before availing any package. The same is reproduced by the AO. For the sake of brevity, it is reproduced below :-

> "I further undertake that the validity of program /package is for the total 365 days and the amount paid therefore is non-refundable as well as non transferable. I accept and agree that no money will be refunded by VLCC on closure slimming clinic/center, due to force majeure or other causes beyond VLCC control. And I shall take remaining treatment in another slimming clinic/center of VLCC".

7. By referring to the above declaration form, AO observed that based on the balance sheet outstanding balance of UEP as on 31.03.2009, the assessee has not made any provision for refund of the amount received from customers. A detailed findings and reasons were discussed in detail in assessment order of preceding year. Since there is no change in the facts and circumstances of the case for this year and additions on account of difference in closing and opening value of UEP is liable to be added to the total income of the assessee for the current year. Accordingly, he determined the difference as under :-

Closing Balance of UEP as on 31.03.2009	Rs. 16,27,66,801/-
Opening Balance of UEP as on 31.03.2009	Rs. 15,91,64,697/-
Difference added to total income	Rs. 36,02,104/-

Accordingly, he made the addition.

8. During assessment proceedings, the AO observed that assessee has claimed huge expenses of Rs.2,39,80,342/- under the head 'Share of

profit of collaborators'. AO observed that the nature and details of such expenses were not furnished by the assessee and it furnished vide letter dated 12.12.2011 a copy of one agreement and calculation of such share of profit amounting to Rs.12,14,541/- against the sum of Rs.2,39,80,342. He further observed that the assessee had not deducted any TDS from the abovesaid sum. On an enquiry of such claim to the assessee, assessee filed its response vide letter dated 22.12.2011. The same is reproduced below :-

"The share of profits of Collaborators; please not that under the collaboration agreement, the collaborator carries out the interior work under the guidance, und supervision of the assessee. The collaborator also procures the necessary equipment and hardware under the advice of the assessee from its approved sources/suppliers. After establishing/ developing the centre, its management and control gets fully vested in the assessee. The collaborator gets its share as a percentage of profit for surplus) or loss of the centre which is mutually decided between the parties. In case of loss, the collaborators has to bear the same percentage of loss. It is clear from the agreement that the assessee and collaborator have joined together by pooling their respective resources to run the healthcare centre and to share the profits/ losses therefrom in un agreed ratio.

The assessee is in possession of various processes, systems and procedures, technical know-how in relation to the location, design and operation of healthcare centres as well as the trademarks/trade names in connection thereto. The collaborator on its part has pooled in equipments, hardware, premises necessary for establishing and operating the healthcare centre with the assessee. While the Task of day-to-day management and operation of the healthcare centre is with the assessee, the collabonitur has to co-operate and co-ordinate with the assessee in smooth administration and overall management of the centre, development and maintenance, including interiors of the premises and obtain requisite permissions/sanctions from the statutory bodies to carry out activities at the centre. The profits/losses arising from operating the healthcare centre are to be shared amongst the assessee and the collaborator in an agreed ratio, In the case of loss arising from operation of healthcare centre, the collaborator has to bear the loss in the same agreed ratio and has to compensate/reimburse that loss to the assessee.

No party is rendering service to the other. The fees generated from operating the healthcare centre is collected by the assessee initially, simply for administrative convenience and the share of collaborator is disbursed thereafter Ender the circumstances, provisions of Chapter XVII-B relating to deduction of tax at source.

Since the joint venture collaborator shall share in losses of the centre also, the amount paid to the Collaborator as per terms of agreement, a specimen copy of which is already submitted, cannot be subject to TDS at all under any of the provisions of TDS under the Act. It needs to be appreciated that where language of lane is clear no presumption and ifs and buts can be made while interpreting the law as has been held in the under noted judicial pronouncements:

CGT VS N.S.Getti Chettiar (1971) 82ITR 599 (SC)
In interpreting tax laws, the Courts merely look at the words of the Section. If a case clearly comes within the section, the subject is taxed and not otherwise.

M.P.Poddar (HUF) Vs Appropriate Authority (1999) 107 Taxman 251 / 240 ITR 372 (Delhi) Meaning and intention of a statute must be gathered from the plain and unambiguous expression used therein rather than to find out what is just or expedient.

CIT Vs National Agriculture Co-operative Marketing Federation of India Ltd. (1999) 105 Taxman 586/236 ITR 766 (Delhi)
The law is well settled that where the language is plain, it can neither be stretched wider nor squeezed narrowly with an eye of assumed or implied intention of the Legislature. In a fiscal law much scope for interpretative process is not available if the language of an enactment permits of no ambiguity.

CIT Vs IIT Limited HC Delhi

The Delhi High Court in case of N Limited has clearly held that sharing of the profits is not liable to TDS A copy of the judgment is also attached herewith for your reference.

Thus, in view of the said legal proposition and decided case laws by High Courts sum payable to the collaborator as a fixed percentage of profit (or surplus) under the said joint venture collaborator arrangements is undoubtedly his share in profit of the centre only payment for which is not covered under any type of the payment prescribed under Chapter XVIIB of the Income tax Act, 1961 for the purpose of deduction of tax at source.

This matter has been discussed in previous year's assessments also and the assessee had given to the department various opinion taken from the experts in this regard."

9. The AO observed that as per the reply filed by the assessee, it was submitted that after establishing/developing the centre, its management and control gets fully rested with the assessee. The AO verified the above submission with the records available on record, he observed that on perusal of the franchisee agreement, it shows that the third party was an independent business entity with no partnership at interlacing with the assessee. As a matter of fact from the said agreement, third party established and managed its entire business set up with all risks and obligations. He observed that assessee did not gain any control in the said set up or premises but merely used the experience, skills, services and set up of said third party. AO reproduced the relevant clauses of the franchisee agreement in particular Clauses E & F. He also reproduced the obligations of franchisee at page 8 of the assessment order. The AO observed that based on the above clauses of the franchisee agreement, the

assessee was availing specific services, skills, experience, requisite set up of the said party called as franchisee. The assessee is not responsible for any legal obligations, duties or business related management or obligations. The assessee is also not authorized to intervene in day-to-day affairs not to exercise any control or decision making with regard to personnel of said third party or any legal obligations relating thereto. He further observed that various case laws relied on by the assessee relating to applicability of provisions of section 194I of the Act. In those cases, assessee showed the expenses under the head 'infrastructure payments'. The facts in the instant case are entirely different wherein assessee claimed the expenses as share of profit. The assessee admittedly not deducted any TDS on such payments. The assessee claimed such expenses as share of profits of collaborators. He further observed that the assessee did not form any partnership firm with such entities and, therefore, sharing of profit is out of question because sharing of profits can only be between the partners or shareholders and the said issue was clearly confronted to the assessee and assessee did not furnish any explanation on the same. Based on the above discussion, he rejected the submissions wherein assessee merely submitted calculation of Rs.12,14,541/- against the claim of Rs.2,39,80,342/-. Accordingly, he disallowed the claim of abovesaid expenditure.

10. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A). During appellate proceedings, assessee furnished detailed submissions. For the sake of clarity, the same is reproduced below :-

"In this regard, it is submitted that the assessee is engaged in the business of running beauty and slimming centres through out the country. The assessee carried out its business under the following two business models during the year under consideration:

a) Joint Venture Partners / Collaborators (JVP) - The first model is Joint Venture Partnership wherein an agreement 'Infrastructure and Facility Management Agreement' is entered into with the joint venture partner / Collaborator. A copy of the agreement entered with Kasganj Ispat Udyog (P) Ltd. for running Bhopal centre as submitted before the assessing officer as sample is enclosed. In this business model, the collaborator carries out the interior work, procures equipment and hardware under the guidance and supervision of the assessee. After establishing / developing the centre its management and control gets fully vested in the assessee. While the task of day-to-day management and operation of healthcare centre is with the assessee, the collaborator has to co-operate and co-ordinate with the assessee in smooth administration and overall management of the centre, development and maintenance including obtaining requisite permissions / sanctions from the statutory bodies to carry out the activities at the centre. The Collaborator gets its share as a percentage of profit or loss of the centre which is mutually decided between the parties. Since the entire fee is received by the assessee and credited to the profit and loss account, the assessee gives the share to the collaborators which is claimed as expense under the head 'Share of profit to Collaborators'.

b) Franchisee - In case of franchisee centres, the other party runs the centre on its own. A copy of the franchisee agreement entered into with Kaveri Super Market Private Ltd. for Trichy Centre as submitted to the assessing officer is enclosed. The assessee provides technical support and its brand name to the other party for which franchisee fees is received from the said party. The assessee does not control or manage the said centre but the brand name, techniques, processes etc. of the assessee are used by the franchisee. The assessee" gets franchisee fees from the franchisee at the time of agreement and then receives royalty at a fixed percentage on the sales achieved by the said centre. Thus in case of franchisee model, the assessee does not make any payment to its frachisee but the amounts are received from its franchisee as income. The assessee has declared an income of Rs.1,26,60,001 under the head Franchisee Fees and Rs.1,78,93,164/- under the head Royalty from this model of business as can be seen from the enclosed photocopy of the financial statements of the assessee.

Thus in the JVP models, the sales are recorded in the books of the assessee and then share of profit is paid to collaborators as per agreement but in case of the franchisee, the sales are recorded in the books of account of the franchisee and not of the assessee and franchisee fees and royalty are received from them by the assessee. In the JVP model, the management lies with the assessee but in case of franchisee, the management lies with the franchisee and not with the assessee. Such centres have their independent status.

In JVP model, the fees generated from operating the healthcare center is collected by the assessee and is recorded in its books of account. The share of the collaborator is disbursed thereafter. The profits I loss arising from operating the centre under JVP model are to be shared between the assessee and the collaborator in an agreed ratio. In the case of loss arising from operation of healthcare centre, the collaborator has to bear the loss in the same agreed ratio. It is not a case, where the collaborator is rendering certain services to the assessee but it is a case of sharing of profits of business undertaken together by the assessee and its collaborator. If the collaborator would have rendering services to the assessee as alleged by the assessing officer, then it would not have shared the loss incurred by the centre at all. This distinction clearly spells out the fact that the collaborator was not rendering any services to the assessee but sharing the profits of the business with the assessee and therefore it was a joint. Thus it is a case where the assessee and the collaborator have joined together by pooling their respective resources to run the healthcare centre and to share the profits I losses therefrom in an agreed ratio and there is no provision of services at all by one to another.

It is further submitted that the assessee has provided a copy of the joint venture agreement i.e. Infrastructure and Facility Management Agreement with M/s Kasganj Ispat Udyog (P) Ltd. for running the centre at Bhopal and a franchisee agreement with Kaveri Super Market Private Ltd. for Trichy Centre to the assessing officer during the course of assessment proceedings. The assessing officer confused the franchisee model with JVP model. The assessing officer has mentioned in detail about the terms and conditions of franchisee agreement in the assessment order while disallowing the share of profit paid to Collaborators /JVP. Thus the assessing officer misunderstood the facts of the two business models and made the addition without properly understanding and appreciating the business models.

The assessing officer made most of his allegations on the basis of agreement of the assessee with its franchisee which are not at all applicable to the amount of Rs.2,39,80,342/- claimed by the assessee as expense on account of 'Share of Profit of Collaborator' as the said amount has been claimed as expenses on the basis of agreement with JVP and not with franchisee. The terms and conditions of the franchisee are different than JVP model as can be seen from the enclosed copies of the Franchisee agreement and JVP agreement and therefore the franchisee agreement cannot be considered at all for the purpose of making the said disallowance. On perusal of the terms and conditions of the JVP agreement, it would be seen that the fees is collected by the assessee and then the share of the JVP is computed on the basis of terms and conditions of the JVP agreement which is then paid to the collaborators and claimed as expense in the books of the assessee.

The computation of share of profit of Collaborator for Bhopal centre was submitted before the assessing officer as a sample basis. The assessing officer while making addition alleged that the assessee submitted details of only one centre for Rs.12,14,541/- out of Rs.2,39,80,342/-. In this regard it is submitted that the share of profit of the collaborator is computed for each centre in the similar manner on the basis of terms and conditions of the agreement. If the assessing officer wished to verify the computation of share of profit for all JVPs, then he could have asked for the same to the assessee during the course of assessment proceedings. However, the assessing officer did not raise any further query in this regard and therefore no further documents were submitted on this issue. Photocopies of the computation of the share of profit of Collaborator of the centres along with copies of agreement with them for the five centres are produced for your verification on sample basis and copies of the same can be submitted, if desired.

As regards the non-deduction of tax at source on the said payment, it is submitted that the said amount is not liable to deduction of tax at source at all. The said amount is neither interest, royalty, fees for professional and technical services nor rent or commission which is liable to tax deduction. The said amount is sharing of profit of the joint venture and therefore is not covered under the provisions of tax deduction at source. The assessee places its reliance on the judgment of CIT Vs NIIT Ltd. in ITA Nos. 1107/08, 1176/08 and 1200/08 wherein the facts of the case were identical to the facts of the assessee. In the said case, the NIIT is into the business of providing computer education and training and enters into the contract with franchisees in metro cities. (The franchisee model of NIIT is the JVP model of the assessee.) These franchisees provide land, building, other fittings and fixtures and marketing of computer course wares as per the terms of agreement. The entire fee is deposited in the account of NIIT which in turn makes payment to the franchisees under two heads - marketing claims and infrastructure claims. Revenue treated the payment of infrastructure as rent and therefore liable to TDS u/s 194-1. The Hon'ble Tribunal held that the dominant intention of the parties of the agreement is to do business and not to let out the building and furniture and the sum shared between them is not fixed nor any minimum amount is guaranteed by the assessee and above all, it was a composite contract for providing training. Since the broad objective was to share the profit and not to hire premises, the NIIT is not liable to deduct tax at source u/s 1941 of the Act. The Hon'ble Delhi High Court approved the decision of Tribunal and dismissed the appeal of the revenue. A copy of the said judgment is enclosed.

In view of the above judgment, it is clear that the payment of share of profit to collaborator is not liable to tax deduction at source. Further the assessing officer has not mentioned in the assessment order the section under which the tax is required to be deducted at source on the said payments. The assessing officer did not appreciate correctly the nature of the payment made to the collaborators and merely stated that tax has not been deducted at source. If the assessing officer makes any disallowance, it has to clarify as to under which section or due to default in following which section, the disallowance is being made. Merely mentioning that the TDS is not deducted on such payment is not sufficient to make an addition. This approach shows that the assessing officer himself could not understand as to under which provisions tax was to be deducted on these payments.

It is further submitted that the assessee took an opinion from M/s Vaish Associates regarding the deduction of tax at source on the payments made to Collaborators I Joint Venture Partners under the Infrastructure Facility Management Agreement wherein the Professionals opined on the facts of the case that no tax is to be deducted at source on such payments. While framing such opinion, the professionals relied upon the decision of ACIT Vs NIIT Ltd. 112 TTJ 800 which has been approved by the jurisdictional High Court as explained above. A copy of the said opinion is enclosed.

The assessee has been making such payments since its inception and the said payments have been scrutinized by the department in a number of years whenever the assessee was assessed u/s 143(3). However the assessing officer after properly understanding the facts of the case and the business models of the assessee, never drew an adverse opinion about the same. No such disallowance has been ever made in any of the preceding years. There is no Change in the facts and circumstances of the case and therefore, following the principle of consistency, no such disallowance should be made.

In view of the above facts of the case and judgments, it is clear that the share of profit to JVP is not covered under any of the specified payments mentioned in Chapter XVII-B of the Act on which tax is required to be deducted at source. The dominant purpose of the agreement was not to use the premises of the collaborator but to run a centre by pooling their respective resources to run the healthcare centre and to share the profits I losses therefrom in an agreed ratio. Since the collaborator has to share the losses also, it cannot be termed as a payment of rent or contract or services and therefore no tax is required to be deducted at source on such payments. Since these payments were made for the purpose of business of the assessee, the said amount are fully allowable as expense and therefore the addition so made should be deleted."

11. After considering the detailed submissions of the assessee, ld. CIT (A) deleted the addition with following observations :-

"6.3 The nature of arrangement by the appellant with the Joint Venture Partners has been examined. It is understood that the share of profit of the Joint Venture Partners as per 'Infrastructure and facility management agreement' is worked out at 40% of 'Surplus' (total revenues as reduced by certain deductions). The A.O. has held this amount as non allowable u/s 40(a)(ia). It is also understood that the A.O. formed this view because it treated the payments made to the Joint Venture Partners in the nature of rent on which TDS provisions of section 194-I are attracted.

6.4 From the Joint Venture Partnership arrangement it is noted that the deductions mentioned in para 6.3 above include 5% of total revenue for initial investments on interiors which are paid to the Joint Venture Partnership. These 'Interior uses charges' are in fact in the nature of rent and provision of section 194-I are applicable in respect of all these payments. During the appellant proceedings the appellant has submitted that rents amounting to Rs.88,45,308/- were paid as Interior Uses Charges' to such Joint Venture Partners on which TDS amounting to Rs.15,79,703/- was deducted and deposited with the Government. In effect, the rent was paid to collaborators & TDS was deducted thereon.

6.6 After considering the facts and circumstances in totality, I find that the amount of Rs.2,39,80,342/- represents share of profit of Joint Venture Partners. I hold that these payments were in the nature of share of profit of the collaborators and therefore, Section 40(a)(ia) is not attracted. As regards A.O.s view that profits cannot be distributed without a partnership firm etc., the existence of Joint Venture Agreement is sufficient for distribution of profits as per mutual agreements."

12. Aggrieved with the above order, Revenue is in appeal before us by taking the following grounds of appeal:-

"1. That the Ld.CIT(A) has erred on facts and circumstances of the case and in law in ignoring the fact that the assessee has paid to the collaborators for expenses on services/ premises which are clearly covered under the ambit of TDS provisions.

2. That the Ld. CIT(A) has erred on facts and circumstances of the case and in law in not appreciating the fact that the assessee did not form any partnership firm with any of the collaborators and accordingly payments made to them/ revenue shared with them cannot be treated as share of profits in the absence of partnership firm."

13. At the time of hearing, ld. DR for the Revenue brought to our notice detailed findings of the AO at page 6 of the assessment order. He submitted that from the facts on record, it is clear that assessee has shared the profit with the collaborators. Further, he brought to our notice page 9 of the first appellate order wherein ld. PCIT has discussed the issue in detail and by relying on the submissions of the assessee, ld. CIT (A) has decided the issue in favour of the assessee. He brought to our notice findings placed at pages 13 & 14 of the order. Ld. DR opposed the brief conclusion of the ld. CIT (A) and he submitted that ld. CIT (A) has not

given clear finding and he wondered how a share of profit can be allowed as deduction in the nature of rent.

14. On the other hand, ld. AR for the assessee submitted that franchise agreement is having different model of business. In this regard, he brought to our notice page 24 of the paper book where computation sheet is placed on record wherein assessee shares the revenue based on the surplus derived after allowing the operational expenses, cost of additional capital outlay for equipment. Based on the agreement entered with the franchisee, assessee shares 40% or 50% with the franchisee partner and the basis of sharing of the revenues are demonstrated at pages 24 & 25 of the paper book. Further, he submitted that the issue of sharing of revenue with franchisee partners are in fact covered issue and he relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. NIIT Ltd. 2009-TIOL-533-Hon'ble High Court-DEL-IT. He heavily relied on the findings of the ld. CIT (A) and submitted that the findings are just and proper.

15. Considered the rival submissions and material placed on record. From the copy of the franchise agreement, we observed that from the terms of agreement, franchiser is the absolute owner of VLCC brand and logo, it operates the business in accordance with the fully owned distinctive system, plant, utilizing and comprising certain proprietary markets etc.

The assessee as a franchiser grant the franchisee to the partner to engage the business as per the terms of the agreement and as per the fee collection, sharing of payment arrangements given at clause 9 are as under :-

(a) Franchisee shall pay a non-refundable franchise fee to the franchiser i.e. assessee;

(b) The franchisee and franchiser shall also issue the sales collection from the franchised business. As per Schedule – A, the monthly collections are given below :-

"Monthly Collection Sharing (based on sales)

It is agreed by the parties that the monthly Sales Collections shall be shared between the Parties in the following ratio:

Year 1: 10% to Franchisor and 90% to Franchisee
Year 2: 12% to Franchisor and 88% to Franchisee
Year 3: J 5% to Franchisor and 85% to Franchisee
Year 4: 15% to Franchisor and 85% to Franchisee
Year 5: 15% to Franchisor and 85% (0 Franchisee

The Sales Collections means amount collected by the Franchisee from the clients either by way of cash, cheque, credit card or such other mode convertible in cash. The Sales Collections for this Agreement shall be inclusive of Service tax collected from the clients. This is to cover service tax amount payable to the Franchisor."

16. The same is computed as per the model share placed by the assessee at pages 24 & 25 of the paper book. For the sake of clarity, the same is reproduced below :-

COMPUTATION OF INFRASTRUCTURE AND FACILITY MANAGEMENT INCENTIVE

Total Revenues (see Note 1/ 13)		Rs X
Less:	Operational Expenses	
	- Clinic Upkeep Maintaining expenses(See Note 2)	
	- Human resource expenses(See Note 3)	
	- Advertisement and sales promotion expenses(See Note 4)	
	- Consumables (Note 5)	
	- Administration expenses (Note 6)	
	- Lease rent of Premises/ Usage charge (Note 7)	
	- 5 percent of Total Revenues for initial investment on interiors as per clause 4 (Note 8)	
	- Corporate expenses (Note 9)	
	- 1 percent royalty for brand usage as per Clause (Note 10)	
	- Other operational expense	(Rs A)
Less:	Cost of additional capital outlay for equipment, (if any)	(Rs B)
Less :	Transfer to reserve to the extent of 5 percent of the Total Revenues during the last six month of term of the Agreement (see Note 11)	(Rs C)
Total deductions (A to C)		Rs Y
Surplus (X- Y)		Rs Z
Infrastructure and Facility Management Incentive to party of Second Part (see Note 12)		Z*40%
Infrastructure and Facility Management Incentive to party of First Part (see Note 12)		Z*60%

<u>The amount payable to the party of the Second Part would be computed as follows:</u>

Infrastructure Facility Management Incentive (cumulative basis)	Rs.Z*40%
Add : Interior Usage Charges @ 5% Sales	
Less: Amount already paid (on a cumulative basis)	
Amount Due for the month	Rs._______

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17. From the above, we observed that the assessee is sharing the revenue based on the franchise agreement and as far as claiming the expenditure or sharing of surplus depends upon the method adopted by the assessee. It follows two method i.e. (a) franchise method; and (b) JV method. In franchise model, the revenue and expenses are under control of collaborator. The assessee only shares the income/loss. Whereas in JV model, all the revenues are recorded by the assessee and shares the surplus/loss which are recorded by the assessee and shares the surplus/loss with the collaborator. We observed that the assessee has claimed the sharing of surplus, which is under dispute. In our view, the Assessing Officer has mixed up with the methods adopted by the assessee. Whatever expenses claimed as share of surplus with the collaborator, it is only sharing of revenue and not the claim of expenditure, as per the terms of agreement, the collaborator does not render any service to the assessee.

18. As per the computation model submitted by the assessee in the paper book, it shows that assessee records the whole revenue and after adjusting operational expenses and cost of capital outlay and the services, the same is shared with the franchisee partner/collaborator. Therefore, it is only a revenue sharing model and there is no involvement of any rental income as observed by the ld. CIT (A).Further, at the time of hearing, ld. AR

relied on the decision of CIT vs. NIIT Ltd. (supra) wherein Hon'ble High Court held as under :-

"8. We find that the Tribunal has given the following valid finding and which we uphold : "The appellant is entered into the agreement with the Franchisees for running the education centre at various Metro Cities. The fees was shared between the assessee and the Franchisee as per the clauses of the agreement. The details of provisions regarding conduct of the business were stipulated in the franchisee. The dominant intention of the parties of the agreement was to conduct the business not mere letting out of the building, furniture and fixture. The amount to be shared with the Franchisee was variable and it was not fixed. There was no minimum 2009:DHC:4004-DB ITA Nos. 1107,1167, 1176, 1200 of 2008 Page 9 guarantee amount which the assessee was to make. The composite arrangement in the essence of the agreement for conducting the business. The essence of agreement is to conduct the business of running education centre jointly. Mere certain rights of the assessee to protect the business interest stipulated in the agreement would not change the essence of the agreement. The share of the Revenue with the Franchisee is on account of composite services provided by the Franchisee. In view of these facts, we hold that the broad objective of the agreement between the assessee and the Franchisee was to share the revenue and certainly it was not hire the premises provided by the assessee. Therefore, the assessee is not liable to deduct the taxes under section 194-I of the act in respect of the amount shared by the assessee and remitted to the Franchisee for infrastructure claims."

19. From the above decision, we observed that the Hon'ble High Court allowed the claim of the assessee where the assessee shared the revenue with the franchise partner on account of composite services provided by the franchisee. Based on the above observation, Hon'ble High Court held that it was not the hire of the premises provided by the assessee. Accordingly, Hon'ble High Court held that the provisions of section

194-I is not applicable. In that case, the franchise agreement was entered by the assessee with education centres at various metro cities. The issue involved in this case is only sharing of revenue. In the present case, we observed that the issue involved no doubt relating to sharing of revenue only and the assessee has shared the surplus with the collaborator and it is not fall under any expenditure covered u/s 30 to 37 or section 40(a)(ia) of the Act.

20. Considering the fact on record, in our considered view, sharing of revenue and its impact of taxability vis-à-vis application of TDS provision depends upon the method of accounting adopted by the respective assessees. In this case, the franchise agreement and method of sharing the revenue based on computation sheet clearly shows that assessee records all the revenue and share the surplus with the franchisee/ collaborator after adjusting the expenditure. In this case, the assessee follows the JV model and incurs all the expenditure and shares only the surplus with the franchisee that means it is clearly shares the surplus and all the facilities are operated and controlled by the assessee. The issue is whether the provisions of TDS will apply in this case. In our considered view, as per the facts on record, merely shares the revenue and the collaborator does not render any service to the assessee, hence the provisions of TDS has no application. In the given case, the assessee is

claiming expenditure for sharing the surplus which is nothing but sharing of revenue as per the agreement with the parties. Therefore, we do not see any reason to disturb the findings of ld. CIT (A).

21. Therefore, the grounds raised by the Revenue are dismissed.

22. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 9th day of October, 2024.

Sd/-	**sd/-**
(SUDHIR PAREEK)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 09.10.2024
TS

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-33, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI