IN THE HIGH COURT OF DELHI

ITA Nos. 1107/08, 1167/08, 1176/08 & ITA 1200/08

COMMISSIONER OF INCOME TAX

Vs

NIIT LTD

A K Sikri And Valmiki J Mehta JJ.,

Dated: September 22, 2009

Appellant rep by: Ms. Rashmi Chopra, Advocate
Respondent rep by: Mr. Ajay Arora, Ms. Kavita Jha, Mr. Sriram Krishna and Ms. Akansha Aggarwal, Advocates.

Income tax - Sec 194I - Assessee is into the business of providing computer education and training - enters into contract with franchisees in metro cities - franchisees provide land, building, other fittings and fixtures and marketing of computer coursewares - as per the terms of agreement, the entire fee is deposited in the account of the assessee which in turn makes payments to the franchisees under two heads - marketing claims and infrastructure claims - Revenue treats the payment for infrastructure claims as rent, liable to TDS u/s 194I - Tribunal disagrees with the AO - held, 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 assessee is not liable to TDS u/s 194I - Revenue's appeal dismissed

JUDGEMENT

Per: Valmiki J Mehta J.:

1 The present appeals under Section 260 A of the Income Tax Act, 1961, are filed against the common order passed by the Income Tax Appellate Tribunal for the Assessment Years 1998-1999, 1999-2000, 2000-2001 and 2001-2002. The appellant/revenue has proposed the following question of law:

(a) Whether in the facts and circumstances of the case, the Ld. ITAT erred in holding that the assessee was not liable to deduct tax u/s 194I of the Act in respect of the payments made to the Franchisee under the head “Infrastructural Claims”?

2 The facts of the case are that the respondent is a public limited company, inter alia, engaged in the business of providing computer education and training. During the relevant assessment year it was providing computer education and training through its own centres and also through franchisees who, are providing NIIT courses under a licence from respondent. One of the models being adopted by the respondent to run its business mainly in big cities was Metro Centre. Under the arrangement the Franchisees were providing NIIT courses under the license from respondent and the respective franchisees were to bring together their resources for the purposes of providing computer education to the students. The respondent was required to provide the franchisees the relevant courseware and its expertise in providing computer education. The franchisees were required to provide the infrastructure facilities like class room facility, equipment, furniture, fixture administrative set up etc. It was the obligation of the franchisee to operate and manage the education centre on a day to day basis. The administrative control of the education centre was with the franchisee who, were responsible for marketing the courses admitting the students, conducting the classes and perform all other administrative functions relating to the education centre. The respondent as the owner of the technical information was to provide the relevant courseware for providing education to the students. Since, the education centre was to run under the brand name of the respondent and the respondent was providing its valuable technical knowhow and other intellectual rights to franchisees it was necessary on the part of the respondent to put in place certain restrictions on the running of the education centre in order its name, brand, value, intellectual property rights as also the interest of students were protected.

3 Under the model fees collected from the students was deposited in the account of the respondent and then the fees collected was shared with the Franchisees in accordance with the terms of the Franchisees/License agreement. To ensure that the Franchisees delivered the services in accordance with the methods and process provided by the respondent it was essential that the respondent collected the fee and pay the Franchisees share on milestone basis. The fees shared by the respondent with the Franchisees, was for the purpose of convenience in the following nomenclature viz.

(1) Marketing Claim

(2) Infrastructure Claim.

4 Before us, the counsel for the Revenue has very strenuously canvassed with reference to the definition of rent as contained under Section 194 I, that the said definition is extremely wide and it includes within its fold charges paid towards use of any land or building. She has further referred to the explanation provided under Section 194 I to further contend that it may either be that rent charges may be claimed separately or together with any other subjects. She has also relied upon the decisions in United Airlines Vs. CIT & ors, 287 ITR 281, CIT Vs. Vimal Lalchand Mutha, 248 ITR 6 and Continental Construction Ltd. vs. CIT, 195 ITR 81, in support of her contentions. For the sake of reference, we reproduce the relevant para of Section 194-I which reads as under:-

"194-I. Any person, not being an individual or a Hindu undivided family, who is responsible for paying to [a resident] any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, [deduct income-tax thereon at the rate of-

(a) ten per cent of the use of any machinery or plant or equipment;

(b) fifteen per cent of the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fitting where the payee is an individual or a Hindu undivided family; and

(c) twenty per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings where the payee is a person other than an individual or a Hindu undivided family:]]..... .

Explanation.---- For the purpose of this section,----

(i) "rent" means any payment , by whatever name called, under any lease, sub-lease tenancy or any other agreement or arrangement for the use of (either separately or together) any,--

(a) land; or
(b) building (including factory building); or
(c) land appurtenant to a building (including factory building); or
(d) machinery; or
(e) plant; or
(f) equipment; or
(g) furniture; or
(h) fittings,

whether or not any or all of the above are owned by the payee;]... .”

5 The counsel for the respondent/assessee has on the other hand strongly relied upon the terms of the Franchisees agreement which is called the NIIT License Agreement and with reference to its various terms, has urged and argued that the nature of the transaction is in fact like a partnership where different persons bring in their own contributions and the revenue thereafter is shared between the parties. The counsel has also relied upon Delta International Ltd. Vs. Shyam Sunder Ganeriwalla and Another (1999) 4 SCC 545 to contend that the intention of the parties is to be gathered from the document itself and unless it is proved that the document is a camouflage, the words used in the document have to prevail. Referring to the judgment, he further contended that that where the parties were capable of understanding their rights fully and expressly agreed that the document should be construed in one way, no inference should be drawn so as to construe it in a different way.

6 In the facts of the present case, we find that the order of the Tribunal is correct and must be upheld. The relations between the parties in the present case are not of a lessor and lessee as has been sought to be contended by the Revenue. A reference to the clauses of the agreement which has been placed on record shows that a limited license is granted by the assessee company to Sh. Ashok Arora and Sh. Ashish Bhatia(i.e the licencee) for use by the licensee of the trademark and trade name of the assessee company for the education centre. The assessee company granted the license for the purpose of the Agreement within the specified territory the use of it's confidential technical knowhow contained in its manuals and any improvements and developments to such know how. The licensee was given the right to operate the education centre in relation to marketing of NIIT courses specified in the agreement. Various other terms

and directions could be issued by the licensor to protect its technical knowhow and its trademark/trade name. The agreement further provided for sharing of the fees received from the students. The charges which were payable to the assessee company by the licensee were not fixed and were variable as per the number of students. The assessee company instead of giving a deposit which it would have done if it was a tenant in fact receives a security deposit from the licensee. There are other clauses with regard to the term of the license agreement, its renewal, indemnification, effect of default and so on. The assessee never got possession of the premises and there is no minimum guarantee in the agreement.

7 Reading of the agreement therefore clearly shows that the agreement was in fact a franchises agreement and it cannot be said that by the agreement, rent was in fact being paid by the assessee company to the licensee. No doubt, the charges have been broken up under two heads viz that of, marketing claim and infrastructure claim. However, the agreement is an agreement as a whole and such a composite agreement cannot be broken up as is sought to be done and contended by the Revenue. The provision of section 194I cannot be read to break up composite contracts and when that is not the intention of the parties themselves. If, the interpretation of the Revenue is accepted then, in a case where there is a partnership and one of the partner brings in his capital in the form of his premises from where the partnership business is carried on, then, payment made to such partner by the firm can be stretched to be included in the definition of rent under Section 194 I, and which surely cannot be the intention of the legislature.

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 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.

9. None of the judgments cited by the revenue have any bearing with the facts of the present case. Those judgments only deal with the meaning of ''rent'', however, the definition has to be necessarily applied in the context of the facts of each case, and on so doing in the facts of the present case, we find that there is no payment of rent by the assessee company to the licencees/franchisees.

10 In view of the above, we find that no substantial question of law arises and the present appeals are, therefore, dis