IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Sudhir Kumar, Judicial Member

ITA No. 5109/Del/2012 : Asstt. Year: 2008-09
ITA No. 6228/Del/2013 : Asstt. Year: 2009-10
ITA No. 326/Del/2015 : Asstt. Year: 2010-11

Mayar Health Resorts Ltd., Plot-A, Basant Lok Community Centre, Vasant Vihar, New Delhi-110057	Vs	DCIT, Circle-6(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AADCM6414C		

ITA No. 3548/Del/2018 : Asstt. Year: 2011-12

JCIT(OSD), Circle-16(2), New Delhi	Vs	Mayar Health Resorts Ltd., Plot-A, Basant Lok Community Centre, Vasant Vihar, New Delhi-110057
(APPELLANT)		(RESPONDENT)
PAN No. AADCM6414C		

Assessee by : Sh. Raghav Sharma, CA &
Sh. Shivam Garg, Adv.
Revenue by : Sh. Anshul, Sr. DR

Date of Hearing: 21.05.2024		Date of Pronouncement: 29.07.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of ld. CIT(A)-IX, New Delhi dated 22.06.2012, 27.09.2013, 2909.2014 and the appeal filed by the Revenue against the order of ld. CIT(A)-38, New Delhi dated 01.12.2017. Since, the issue involved in ITA No. 5109/Del/2012, ITA No. 6228/Del/2013 and ITA No.

326/Del/2015 are similar, they were heard together and being adjudicated by a common order.

2. In ITA No. 5109/Del/2012, following grounds have been raised by the assessee:

> *"1. That the assessment under section 143(3) is bad in law and is liable to be annulled.*
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> *2. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for making the addition on account of membership fee amounting to Rs 1,94,68,282/- pertaining to the period from 1 April 2008 and onwards as shown under the head membership fee received in advance' on accrual basis of accounting over the life of membership period as per accounting standard as notified by CBDT under section 145(2) being mandatory on assessee to follow.*
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> *3. That the learned CIT(A) was not Justified on facts and law in sustaining the action of the assessing officer in ignoring the contention of the assessee that when the change of method of accounting is bonafide and mandatory u/s 145(2) and consistently followed in the subsequent years by the assessee company, no addition can be made by invoking the provision of section 145(3) of the Income Tax Act.*
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> *4. That the learned CIT(A) under the facts and circumstance of the case has committed a mistake of law in sustaining the action of the assessing officer in not accepting the change of policy of accounting in respect of membership fees from cash systematic mercantile system, as per provision of section 209 of the Companies Act and subsequently followed consistently year after year by the assessee company.*
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> *5. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for incorrectly holding that the assessee's action in apportionment of the income, which had accrued and received in the year itself, is not justified. The assessee has apportioned only the income received between the income accrued and not accrued during the year.*
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> *6. That the learned CIT(A) had acted against the law and facts of 07 the case in sustaining the addition of Rs. 1,94,68,282/- by incorrectly holding that the appellant had a vested right,*

with no obligation to return the same, the income is absolutely ascertained determined and specified over which the appellant has exclusive right in contravention of the Judgement of Jurisdictional Delhi High Court in case of CIT VS Dinesh Kumar Goyal 331 ITR 10 which is squarely applicable in case of assessee.

7. That the learned CIT(A) had acted against the law and facts by incorrectly holding that assessee acquire a right to received the 8 membership fees and the amount received by appellant in its own right and there was a debt incurred by the payers in favour of appellant and amount received by appellant was clearly in the nature of Accrual Income.

8. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in not allowing a sum of 1/5th of Rs.10,37,958 under section 35D(2)(c)(iii) of the income tax Act as the fund so received was invested in the expansion of the Existing project of the assessee.

9. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in confirming the action of the AO in not allowing a sum of Rs 304540/- out of total deferred revenue Expenditure out of total deferred revenue Expenditure."

3. In ITA No. 6228/Del/2013, following grounds have been raised by the assessee:

"1. That the assessment under section 143(3) is bad in law and is liable to be annulled.

2. That on facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the disallowance of Rs. 1,42,500/- made by the Assessing officer under section 14A of the Income tax Act read with rule 8D(iii) of the Income Tax.

3. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for making the addition on account of membership fee amounting to Rs. 3,13,512/- on the basis of decision of predecessor CIT(A) for A.Y. 2008-2009.

4. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for incorrectly holding that the assessee's action in apportionment of the income, which had

accrued and received in the year itself, is not justified. The assessee has apportioned only the income received between the income accrued and not accrued during the year.

5. That the learned CIT(A) had acted against the law and facts of the case in sustaining the addition of Rs. 3,13,512/- by incorrectly holding that the appellant had a vested right, with no obligation to return the same, the income is absolutely ascertained determined and specified over which the appellant has exclusive right in contravention of the Judgement of Jurisdictional Delhi High Court in case of CIT VS Dinesh Kumar Goyal 331 ITR 10 which is squarely applicable in case of assessee.

6. That the learned CIT(A) had acted against the law and facts by Incorrectly holding that assessee acquire a right to received the membership fees and the amount received by appellant in its own right and there was a debt incurred by the payers in favour of appellant and amount received by appellant was clearly in the nature of Accrual Income.

7. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for disallowing a sum of Rs.5,00,000/- out of business promotion expenses on the basis of incorrectly holding that since the bill is shared by the two companies of the group it is not incurred for the purpose of business of the appellant while the expense was incurred wholly and exclusively for the business purposes of the appellant company and on which FBT was also paid by the appellant company as per provision of section 115WB of the Income tax act.

8. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law and facts in sustaining the action of the assessing officer by disallowing a sum of Rs.16,000/- out of the Misc expenses which was incurred wholly and exclusively for the business purpose of the Appellant company.

9. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law and facts in sustaining the action of the assessing officer by treating Interest credited by bank of Rs. 34,477/- as income from other sources instead of Income from business.

10 That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law and facts in sustaining the action of the assessing officer in disallowing a

sum of Rs. 6,62,715/- being interest paid to Noida relating to Noida property by treating the same as capital expenditure.

11 That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law and facts in sustaining the action of the assessing officer in disallowing a sum of Rs. 57,039/- being interest paid on service tax (counter veiling duty) for which credit was not allowed by the department by treating the same as capital expenditure."

4. In ITA No. 326/Del/2015, following grounds have been raised by the assessee:

"1. That the assessment under section 143(3) is bad in law and is liable to be annulled.

2. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for disallowing a sum of Rs.3,33,617/- on estimated basis as of personal nature being 5% of claimed expenses of Rs. 30,51,838/- on business promotion expenses, Rs. 28,65,257/- on travelling expenses and Rs. 7,55,236/- on telephone expenses which was incurred wholly and exclusively for the business purpose of the appellant company.

3. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law and facts in sustaining the action of the assessing officer by disallowing Depreciation of Rs. 3,39,503/- out of the depreciation claimed @ 60% as per entry III(5) of the New App I of Income tax Rule 1962 by the appellant company on Microsoft Navision software when the assessee has not acquired the software or its source code but has only acquired the right to use and as per Note 7 to appendix I to I.T Rules Computer software is goods and is a tangible asset by itself and not intangible asset.

4. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for making the addition on account of membership fee amounting to Rs. 1,57,74,577/- on the basis of decision of predecessor CIT(A) for A.Y 2008-2009.

5. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law in sustaining the action of the assessing officer for incorrectly holding that the assessee's action in apportionment of the income, which had accrued and received in the year itself, is not justified. The

assessee has apportioned only the income received between the income accrued and not accrued during the year.

6. That the learned CIT(A) had acted against the law and facts of the case in sustaining the addition of Rs. 1,57,74,577/- by incorrectly holding that the appellant had a vested right, with no obligation to return the same, the income is absolutely ascertained determined and specified over which the appellant has exclusive right in contravention of the Judgment of Jurisdictional Delhi High Court in case of CIT Vs. Dinesh Kumar Goyal 331 ITR 10 which is squarely applicable in case of

7. That the learned CIT(A) had acted against the law and facts by Incorrectly holding that assessee acquire a right to received the membership fees and the amount received by appellant in its own right and there was a debit incurred by the payer in favour of appellant and amount received by appellant was clearly in the nature of Accrual Income.

8. That the learned CIT(A) under the facts and circumstances of the case has committed a mistake of law and facts in sustaining the action of the assessing officer in disallowing a sum of Rs.1,26,300/- being interest paid to Noida relating to Noida property by treating the same as capital expenditure.

5. That on facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the disallowance of Rs 18,93,389/- made by the Assessing officer under section 14A of the Income tax Act of Rs. 16,74,655/- and Rs. 2,18,734/ respectively read with rule BD (ii) & 8D(iii) of the Income Tax rule 1962 because:

(a) The appellant company did not earned any exempt income,

(b) Investment was made in subsidiary private company out of the internal accrual and fund raised through issue of shares capital and no interest bearing fund was invested,

(c) No satisfaction was recorded u/s 14A(2) of the Income tax Act having regard to the account of the incorrectness of claim of the assessee as well as ignoring the case laws relied on by the appellant,

(d) The assessee company did not incur any expenditure."

5. In ITA No. 3548/Del/2018, following grounds have been raised by the Revenue:

> *"1. Whether on facts and circumstances of the case, Ld. CIT(A) is legally justified in deleting disallowance of Rs.20,38,149/- u/s 14A of the Income Tax Act, 1961 (hereinafter referred as "the Act") by not considering the provisions of Section 14A of the Act which stipulate computation of disallowance u/s 14A of the Act mandatorily under Rule 8D(2) of the Income Tax Rules, 1962 (hereinafter referred as "the Rules")?*
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> *2. Whether on the facts and circumstances of the case, Ld. CIT(A) is legally justified in deleting disallowance of Rs.20,38,149/- u/s 14A of the Act without considering legal principle that allowability & disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in the case of CIT vs. Rajendra Prasad Moody [1978] 115 ITR 519 and without considering ratio decidendi as upheld in the cases of CIT Vs. Walfort Share and Stock Brokers P. Ltd. [2010] 326 ITR 1 (SC) and Maxopp Investment Vs CIT[2012] 347 ITR 272 (Delhi) on application of provisions of section 14A of the Act?*
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> *3. Whether on the facts and circumstances of the case, fid, CIT(A) is legally justified in deleting the addition of Rs.1,33,83,324/-on account of undisclosed membership fee by not considering the fact that the assessee company is following mercantile system of accounting?*
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> *4. Whether on the facts and circumstances of the case, Ld. CIT(A) is legally justified in deleting the addition of Rs.1,33,83,324/-on account of undisclosed membership fee by accepting additional evidence under Rule 46A of the Rules during appellate proceedings without providing an opportunity to the Assessing Officer of being heard?*
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> *5. Whether on the facts and circumstances of the case, Ld. CIT(A) is legally justified in deleting the disallowance of Rs.4,68,145/- on account of interest paid to NOIDA Authority for a plot of land without considering the proviso to Section 36(1)(iii) of the Act?*
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> *6. Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs.16,65,607/- u/s 40(a)(ia) of the Act on account of non-deduction of TDS on transaction charges levied by the bank on credit card transactions by ignoring the contents of Notification No.56/2012 of the CBDT in this regard issued vide*

F.No.275/53/2012-IT (B)/SO 3069 (E) dated 31.12.2012 and also by ignoring the fact that the said notification had come into force w.e.f. 1st January 2013?

7. Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of its earlier order in the assessee's own case despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year Is a separate year?"

ITA No. 5109/Del/2012 : A.Y. 2008-09

6. The assessee is a company engaged in the business of providing healthcare facilities and also engaged in the business of running boutique and restaurant. The assessee has been receiving membership fee from the customers, the accounting of which is in dispute.

7. Ground No. 1 is general.

8. Ground No. 2 to 7 relates to membership fee.

9. Ground No. 8 & 9 is not pressed.

Membership Fee:

10. The details of the proceedings before the AO and the ld. CIT(A) are as under: [Page 6 to 12 of the order of the ld. CIT(A)]

> "The Assessing Officer as per assessment order observed as under:
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> *"From the audit report of the auditors in Form No 3CD it has been noticed that during the*

year under consideration the assessee company has made changes in the accounting policy being regularly followed with regard to reorganization of revenue from membership fee from cash basis to accrual basis. The assessee company was consistently following the mercantile system of accounting but the membership fee received from the customer was being accounted for by the assessee company on the receipt basis up to A. Y. 2007-08. The change in the accounting policy is stated to be bona fide and had been done to match with the mercantile system of accounting regularly followed by the assessee As a result of this change in the accounting policy the assessee company, out of total receipts of Rs.3,99,153/- received during the year as membership fee, has shown only Rs.2,04,51,871/- as income for the year under consideration and the balance amount of Rs. 1,94,68,282/- has been taken in schedule 13, annexed to balance sheet, of current liabilities and provision as advance for membership fees.

I have considered the submissions made on behalf of the assessee. The question which is to be looked in to in this case is whether the receipts by way of membership fee, which was undoubtedly is not an advance and is also not refundable, is the income in the hands of the assessee. The assessee is not receiving this membership fees in advance and there is no system of running bills. The membership fee

received by the assessee full and final payment in respect of services rendered by the assessee to its members. The fee received by the assessee is not only accrued but received by the assessee in year itself. As per mercantile principle, which was regularly followed by the assessee, once the revenue is accrued, it becomes income irrespective of the fact whether the assessee has to provide services in next financial year for the payment received in the financial year relevant to assessment year under consideration. Moreover, as stated above, the payment received by the assessee is not an advance-payment as there is no system of running bills. The bills raised by the assessee are full and final payment in respect of services rendered by it. Therefore, the fees which is not only accrued but in fact received by the assessee, is to be assessed as income of the assessee for the year under consideration and should be taxed accordingly. Accordingly, considering all the facts and the circumstances of the case it is held that the fees, which was not only accrued to the assessee but is in fact received by it, which is also not disputed by the assessee, unequivocally is the income of the assessee for the year under consideration. Therefore, the assessee's action in apportionment of the income, which was not only accrued but received in the year itself, is not justified. In view of all these facts, I treat the amount of Rs. 1,94,68,282/- shown as advance from customers as income of the

previous year relevant to assessment year under consideration and taxed it in the previous year itself. This will mean an addition of Rs. 1,94,68,282/-. "

During the proceedings before me, the assessee submitted as under:

"The appellant company is consistently following the mercantile system of accounting but the membership fees received from the members were accounted for by the appellant company wrongly on receipt basis up to the assessment year 2007-2008 ignoring the provision of section 145(1) of the Income tax Act as amended w.e.f. 1.04.1997. When the auditor of the appellant company pointed out to the appellant company that the appellant being a company, it must follow mercantile system of the accounting as per provision of section 209 of the companies Act 1956 which is mandatory for a company, the appellant company accounted for the membership fees from receipt basis to accrual basis. During the assessment year 2008-2009, the appellant company received membership fees of Rs.39,920,153/- out of which a sum of Rs.19,468,282/- has been shown under the head ***'membership fees received in advance'*** *as it pertains to the membership for the period from 1st April 2008 and onwards and balance membership fees of Rs.20,451,871/- since relate to assessment*

year 2008-2009 under consideration was shown as income during the assessment year 2008-2009. The same accounting policy has been consistently followed in subsequent years. Even under section 145(1) of the Income tax Act, the company is bound to follow one system of accounting either cash or mercantile. It cannot adopt mixed system of accounting i.e. hybrid system."

The Id. AR argued that as per Accounting Standard 1 which is mandatory u/s 145(2), 'Accrual' refers to the assumption that revenues and costs are accrued, that is recognized as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the period to which they relate. Therefore the appellant company apportioned the membership fees on accrual basis over the life of membership period. The assessing officer incorrectly held at para 5 of page 7 of assessment order that the appellant is not receiving this membership fees in advance and there is no system of running bills, the membership fees received by the appellant is full and final payment in

respect of services rendered by the appellant to its members. He wrongly held that as per mercantile principle, once the revenue is accrued, it becomes Income irrespective of the fact whether the appellant has to provide services in the next financial year for the payment received in the financial year relevant to assessment year under consideration ignoring accounting standard 1 as notified and mandatory to be followed u/s 145(2). Accounting standard 1(IV) requires that the accounting policy should be selected on the basis of following considerations:- (i) Prudent; (ii) substance over form (iii) materiality; The prudent concept means anticipate the expenses/losses but do not book the income until it is accrued.

I have considered the submissions of the appellant, the findings of the A.O. and the facts on record. The appellant has claimed that it received membership fee, which partly pertains to the period under consideration and the balance amount pertains to the next financial year commencing from 01.04.2008. The

assessing officer has, however, pointed that it is not in doubt that the membership fee collected by the appellant is no refundable, which has not been objected to by the letter. Thus, the amount received by the appellant is received as a result of the vested right in it to receive the membership fee. Such fees, it is important to note, shall always continue to vest in the appellant as it is not at all required to be refund the same to the payer under any circumstance. Thus, in my considered view, the appellant received the amount in its own right and exercises complete control over the usage/ appropriation/ownership of the same. Therefore, the amount received cannot, be regarded as a mere advance.

The Assessing Officer has pointed that, it is not in doubt that the membership fee collected by the assessee is not refundable, which has not been objected by the assessee. Under these facts, in my view, the segregation of the portion of membership fee collected during the year as pertaining to the year under

consideration and balance as advance pertaining to succeeding years is purely arbitrary, more so when the amount is not refundable. It is a settled principle that a receipt constitutes income, when an assessee is vested with the right to receive the payment. In the present case, as pointed above, since the appellant was vested with the right to receive the entire amount of membership fee from the payer, which is not refundable and there is no matching of corresponding services / facility / expenditure to be incurred by the assessee for a specified period of time, nor the same has been pointed out by the assessee, no portion of the membership fee collected by the assessee during the year can be said to be in the nature of advance and thus, not income of the relevant year.

On the concept of "accrual of income", the Supreme Court in the case of E. D. Sassoon and Co. Ltd. vs. CIT as reported in 26 ITR 27 held as under:

"It is clear, therefore, that income may accrue to an assessee with the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may received later on its being ascertained. The basis conception is that they must have acquired a right to receive the income. There must be a debt owned to him by somebody……….Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right receive the income or that income has accrued to him………..."

Hon'ble Supreme Court held that for the accrual of income a debt must be created in the favour of the assessee. Meaning thereby, that a debt must have come into existence and the assessee must have acquired a right to receive the payment. There must be a debt owed to the assessee by somebody.

Applying the aforesaid legal position to the facts of the appellant's case, it is noticed that it is hot in dispute that the amount received by the appellant was in its own right. There was a debt incurred by the payers in favour of the appellant

and if that be so, the amount received by the appellant was clearly in the nature of accrued income.

Furthermore, the assessee in the earlier years, had been following the consistent policy of offering for tax the entire amount received. The appellant has not been able to give any reasonable justification for sudden change in the accounting policy in deferring a part of the accrued income/fees to the subsequent years. In the present case, as pointed above, since the appellant was already vested with the right to receive the entire amount of membership fees from the payers, which is not refundable, in my considered, there can be no justification in deferment of a part of the accrued income to the subsequent years, more so when in the earlier years the appellant had been consistently following the accounting policy of offering the entire amount received in a year for taxation as income of such year.

In the aforesaid facts, the artificial segregation of the portion of Membership fees collected by the appellant in its own right during the year, in my opinion, is not permissible under the scheme of taxation as per the Act.

The decision of the High Court in the case of CIT Vs. Dinesh Kumar Goyal (331 ITR 10), relied upon by the Id. AR, is distinguishable from the facts of the appellant and therefore, does not come to its rescue. In that case, the assessee was in the business of running a coaching institute, where students were coached for entrance examinations conducted by engineering institutes for a specified period of courses as well as it was running a beauty and slimming business providing packages for a specified period. In both the aforesaid businesses, the assessee collected total fee in lieu of the services, viz., coaching/beauty/slimming package to be provided over a period of time. The amount of total fee collected in relation to aforesaid services rendered during

the year were offered to tax as income and the balance payment corresponding to services in the succeeding year(s) was treated as advance and not as income exigible to tax. The Hon'ble Delhi High Court upheld that the amount of fee collected relating to unexecuted services was in the nature of advance and not income liable to tax in the hands of the assessee.

The aforesaid case is clearly distinguishable from the facts of file appellant, inasmuch as the fee collected in the aforesaid case satisfied the matching concept. Further, in the above case, the assessee had not changed the accounting policy of segregating the income during the relevant year, as in the case of the appellant.

In the present case, there is clear attempt on the part of the appellant in deferring the taxation of accrued/ vested income received during the relevant year by suddenly changing the accounting policy. Such income is received by the appellant as its accrued

> income, over which the appellant had a vested right, with no obligation to return the same. The income is absolutely ascertained, these circumstances, the deferment of part of the accrued income to the subsequent year on account to sudden change in the accounting policy cannot be approved. Accordingly, the action of the AO is upheld and the ground no. 3 is dismissed."

11. Before us, the ld. AR argued that the 'membership fees' received has been offered to tax as and when the customers have been offered after completion of provision of services like beauty treatment and restaurant. The amounts are received in advance and the Revenue cannot expect to offer all the advances received to tax.

12. The ld. DR relying on the Assessment Order submitted that the assessee has been in receipt of 'membership fees' and offering it in installments over a period of time on the grounds that the services have not been offered and the amount has been offered to tax only after completion of services cannot be accepted. Repeating the ratio of the ld. CIT(A), the ld. DR argued that the question which is to be looked in to in this case is whether the receipts by way of membership fee, which was undoubtedly is not an advance and is also not refundable, is the

income in the hands of the assessee. The membership fee received by the assessee full and final payment in respect of services to be rendered by the assessee to its members. The fee received by the assessee is not only accrued but received by the assessee in year itself. The ld. DR argued that, once the amount is received, it becomes income irrespective of the fact whether the assessee has provided services in next financial year for the payment received in the financial year relevant to assessment year under consideration or not. The fees which is not only accrued but in fact received by the assessee, is to be assessed as income of the assessee for the year under consideration and should be taxed accordingly. Relying on the order of the ld. CIT(A), the ld. DR submitted that the income has been received by the assessee over which the assessee had vested right with no obligation to return the same. The income is absolutely ascertain, determined or specified over which the assessee has exclusive right.

13. Rebutting the arguments of the Revenue, the ld. AR argued the amount is treated as income only after providing of the services to the members. The amount received as membership cannot be treated as income in the same year as the period of membership runs over a longer duration. It was submitted that the advances received from customer has been duly offered as and when the services were completely provided to them. It was argued that the contentions of the Revenue cannot be accepted since until the services in reference to the membership amount are completely provided to the customers, the same cannot be

treated as income. The ld. AR relied on the judgments of Hon'ble Delhi High Court in the case of CIT Vs. Dinesh Goyal (331 ITR 16), the Special bench of ITAT in ACIT Vs. Mahindra Resort (131 TTJ 1). Further, the ld. AR submitted that the Revenue itself in the subsequent year i.e. A.Y. 2012-13 and A.Y. 2013-14 has accepted the accounting of membership fee from the assessee. Therefore, the settled position accepted by the Revenue itself cannot be disturbed. The ld. AR also submitted that the assessee has neither forfeited any of the advance received from the customer nor there was any non-completion of providing of services and as and when the services are provided, the entire amount was offered to tax.

14. Heard the arguments of both the parties and perused the material available on record.

15. Generally any membership fee comprises either of amount, the member pays which is non-refundable or it is an advance paid by the member in lieu of the services being provided. It consists of a non-refundable portion of an upfront payment and an amount paid for availing discount for the services offered which are accounted and taxed on deferred basis. Normally, the revenue related to these arrangements should be recognized on a straight line basis unless there is evidence that the revenue is earned any different pattern. In this case, the assessee is providing beauty & health packages and there is an input cost which is variable from year to year whereas the members desirous of availing the services pay the amount in advance.

16. The total receipts received under various years and offered to taxation are as under:

A.Y.	Total receipts received during the year	Offered for taxation	Carried forward
2008-09	3,99,21,153/-	2,04,51,871	1,94,68,282 (offered in AY 2009-10
2009-10	3,93,89,691/-	Amt. of AY 2008-09 = 1,94,68,282/- Amt. of AY 2009-10 = 1,96,07,897/- Total amount offered = 3,90,76,179 in AY 2009-10	1,97,81,794/- (offered in AY 2010-11)
2010-11	6,78,33,456/-	Amt. of AY 2009-10 = 1,97,81,794 Amt. of impugned year = 3,22,77,085 Total amt. offered = 5,20,58,879/- (Asstt. Order page -6) In AY 2010-11	3,55,56,371/- and offered in AY 2011-12
2011-12	9,80,31,544/-	Amt. of AY 2010-11 = 3,55,56,371/- Amt. of Impugned year = 4,90,91,849/- Total Amt. offered = 8,46,48,220	4,89,39,695/- and offered in AY 2012-13
2012-13	9,79,28,137	No dispute between assessee and department.	

17. From the above, it can be observed that the entire amount has been offered to tax. The working of the amounts offered for taxation given by the assessee has not been disputed by the Revenue authorities in the years before us and also accepted the methodology in the A.Y. 2012-13 and A.Y. 2013-14. Hence, keeping in view the entire facts and circumstances peculiar to the instant case, the appeal of the assessee is hereby allowed.

ITA No. 6228/Del/2013 : A.Y. 2010-2011

Ground No. 9 : Disallowance u/s 14A:

18. Both the parties fairly submitted that the assessee has not earned any exempt income. Now, it is a settled matter that no disallowance is called for in the absence of any exempt income u/s 14A resulting in deletion of disallowance.

Interest paid to NOIDA on plot installment:

And also in Ground No. 5 : ITA No. 3548/Del/2018 : A.Y. 2011-2012 (Revenue Appeal)

19. During the year, the assessee paid Rs.1,16,300/- as interest towards the property allotted by NOIDA. The ld. CIT(A) affirmed the decision of the Assessing Officer holding that interest cost should be added to the cost of land allotted by the NOIDA and hence the same cannot be held to be business expenditure. The expenditure incurred on account of interest and acquisition of the capital asset is not allowable as per the proviso to Section 36(1)(iii).

Disallowance of 5%:

20. The AO disallowed a sum of Rs.3,33,617/- being 5% of expenses on business promotion, travelling, telephone expenses. We hold that no ad-hoc disallowance is permissible without bringing any rationale for such disallowance.

21. **Depreciation** : Not pressed.

ITA No. 3548/Del/2018 : A.Y. 2011-2012 (Revenue Appeal)

22. The grounds relating to membership fee, Section 14A, ad-hoc disallowance, depreciation stands covered by the above order.

Non-deduction of TDS on transaction charges levied by the bank on credit card transactions:

Notification No. 56/2012 - CBDT

23. To Mitigate Compliance Burden on Businesses Held by Individuals, Firms or Corporate Etc. who are Using the Financial Services Offered by Banks, the Central Board of Direct Taxes (CBDT) has issued a Notification No. 56/2012, dated 31-12-2012 u/s 197A(1F) granting exemption from tax deduction at source (TDS) on the payments of certain categories. Payment towards bank guarantee commission, cash management service charges, depository charges on maintenance of Demat accounts, charges for warehousing services for commodities and underwriting service charges made to the banks which are listed in the Second Schedule of the Reserve Bank of India Act, 1934 (excluding Foreign Banks) can be made without TDS with effect from 1st January 2013. The notification also facilitates payment without TDS of credit/debit card commission on transaction between the merchant establishment and acquirer banks. The notification obviates the uncertainty about the applicability of specific TDS provisions on payments mentioned above and consequent litigation.

24. Further, the Hon'ble Delhi High Court in JDS Apparels Pvt. Ltd. (53 taxmann.com 139) held that commission to bank on payments received from customers who had made purchases through credit cards is not liable to TDS under Section 194H of the Act.

25. Hence, keeping in view the judgment of Hon'ble jurisdictional High Court and the notification of the CBDT, we hold that no disallowance on credit card transactions for default of TDS is called for.

26. In the result, the appeals of the assessee are partly allowed and the appeal of the Revenue is partly allowed.

Order Pronounced in the Open Court on 29/07/2024.

Sd/-	**Sd/-**
(Sudhir Kumar) **Judicial Member**	**(Dr. B. R. R. Kumar)** **Accountant Member**

Dated: 29/07/2024
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR