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% 21.07.2008

Present: Ms.Rashmi Chopra for the appellant.

+ITA Nos.768/2008 & 769/2008

* These appeals pertaining to assessment years 2003-04 and 2004-05 arise out of a common order passed by the Income Tax Appellate Tribunal on 20.3.2006 in ITA Nos. 3657-3658/Del/2006. The issue involved in the present appeals is whether the payments made by the assessee to the franchisee would fall within the meaning of the expression 'Rent' as provided in the explanation to Section 194-I of the Income Tax Act, 1961. The Tribunal, after considering the various submissions made on behalf of the revenue as well as on behalf of the assessee, came to the conclusion that the assessee company made payments to the franchisee not for the use of premises but for various services provided by the franchisee. Consequently, the Tribunal held that such payments cannot be said to be rent coming within the purview of Section 194-I of the Income Tax Act. The Tribunal also conclusively found that the payments made by the assessee to the franchisee was for the purpose of



utilization of the services of the franchisee for business purposes and not by way of rent.

Apart from the conclusion arrived at by the Tribunal, we also find that the franchise agreement entered into between the assessee and its franchisee clearly indicates that the property in question was neither owned by nor in the possession or control of the franchisee and, therefore, the franchisee could not have given the same for the use of the assessee and any payment made by the assessee to the franchisee would obviously not be rent. The following four recitals which form part of the franchise agreement dated 2.7.2004 make this position absolutely clear:-

C. The Company has entered into a Leave and License Agreement (referred to as 'Master Agreement') dated 02/07/2004 entered into between Shradha Restaurants (referred to as 'Licensor') through Mr. Sharad Gulyani on the one hand and the Company (referred to as 'Licensee') on the other hand for Shop Number 10, Ansal Plaza, 29th km Stone, Delhi Mathura Road, Faridabad.

D. The Franchisee after surveying the Shop Number 10, Ansal Plaza, 29th km Stone, Delhi Mathura Road, Faridabad, admeasuring 710 sq.ft. super area or thereabouts (hereinafter collectively referred to as "the Showroom") has approached the Company for a Franchisee Agreement for the purpose of displaying, marketing, selling and storage of the Stocks.

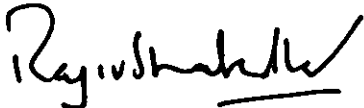


E. The Company vide its letter dated July 2, 2004 has sought the permission of the Licensor in the Master Agreement to Franchisee the Showroom, to the Franchisee (Obgenix Software Private Limited) under clause 3(c) of the Master Agreement entered into between Total Care Limited and Shradha Restaurants Private Limited.

F. The Licensor has agreed to grant to the Company the permission to Franchise the Showroom to Obgenix Software Private Limited, subject to the terms and conditions of the Master Agreement. The Sub-License Agreement has been entered into dated 2nd July, 2004, among Shradha Restaurants Private Limited. Total Care Ltd. And Obgenix Software Private Limited.”

No substantial question of law arises for our consideration. These appeals are dismissed.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

July 21, 2008
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