IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "B" BENCH, JAIPUR

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
&
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1190/JPR/2025
(Assessment Year:2016-17)

ITO TDS Alwar	Vs.	Alwar Malt and Agro Foods Manufacturers Company Limited 17 Mehta and Company CA, Manu Marg, Alwar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAECA 0815C		
Appellant	..	Respondent

Assessee by :	Sh. Kranti Mahta, CA (Thru. V.C.)
Departmentby :	Ms. Namita Patel, JCIT

Date of Hearing	30.07.2026
Date of Pronouncement	29.10.2026

O R D E R

Per Annapurna Gupta, AM:-

The present appeal has been filed by the Revenueagainst the order passed by the Office of the Commissioner of Income Tax, Appeal CIT(A) Jaipur 04(hereinafter referred to as "Ld. CIT(A)"), dated 23.07.2025

under Section 250of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The grounds raised by the Revenue read as under:-

> *1. "Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 1,30,43,753/- made u/s 201(1) along with interest u/s 201(1A) of Rs. 1,17,39,378/- in respect of payments of Rs. 13,04,37,540/-made to three concerns namely M/s Saraya Distilleries Ltd., May Fair Enterprises and United Spirits Ltd under the head "Franchise Expenses" holding that the impugned payments made by the assessee company does not come in the ambit of section 194J of the Income Tax Act, 1961."*

3. Brief facts of the case are that a TDS survey u/s 133A(2A) of the Act was conducted on 26.02.2016 at the business premises of the assessee. The assessee had made payment of Rs.5,92,170.44/- to M/s Saraya Distilleries Ltd. and Rs.3,46,308.51/- to May Fair Enterprises and Rs.13,01,91,677.69/- to United Spirits Ltd. during the FY 2015-16 on which as per the AO, TDS was to be deducted at the rate of 10% as per the provisions of Section 194J of the Act but no TDS on the payments were made. Therefore order u/s 201/201(1A) of the Act dated 14.03.2023 was passed creating a demand of Rs.2,47,83,130/-, being TDS liability of Rs.1,30,43,753/- and interest thereon of Rs.1,17,39,378/-.

4. The Ld. CIT(A) set aside the order passed by the AO noting that identical issue had arisen in the case of the assessee in the preceding years i.e. AY 2009-10 to AY 2015-16 andthe Ld. CIT(A) had allowed the appeal of the assessee in all the years. His findings in this regard are contained at page 10-12 of the order as under:-

> *....*
> *The brief facts on the issue as per the Id. AO are that in the Financial Year under consideration i.e. F.Y, 2015-16, the assesseedeductor M/s Alwar Malt and Agro Foods Manufacturers Company Ltd has made payments under the head 'Franchisee Expenses' amounting to 13,04,37,540/-. Assesseedeductor has made payment of Rs. 5,92,170.44/- to M/s Saraya Distilleries Ltd. (-) Rs. 3,46,308.51/- to May Fair Enterprises &Rs.*

13,01,91,677.79/- to United Spirits Ltd. totaling to Rs. 13,04,37,540 during the FY 2015-16. Assesseedeductor has executed an agreement on 6.3.2009, 31.3.2011 & 1.7.2011 with the above mentioned parties manufacturing and bottling of IMFL. Assessee has furnished separate Trading and Profit & Loss account of M/s Saraya Distilleries Ltd, May Fair Enterprises and United Spirits Ltd On perusal of the same, it is found that assessee has transferred the profit of Rs.13,04,37,540/- to these concerns whereas in the Audited financial statements, the assessee has shown as Franchise Expenses' and auditor has not given any comments /qualifications on this account. Ld. AO has given a finding that these parties have entered into an agreement with the assessee to share their know how and technical assistance not for profit sharing. Ld. AO has held in his order that payments made to these parties are nothing but fixed franchise fee for bottling their brand as per dispatch/ volume/ pack and has further held that the assessee was required to deduct TDS @ 10% as per the provision of section 194J of the IT Act.

The appellant has contended that no TDS was deductible on Franchisee Expenses since as per the Manufacturing A/c, the business profit of Rs. 5,92,170.44/- was payable to Saraya Distillery, a Unit of Saraya Industries Ltd., the business profit of (-) Rs. 3,46,308.51/- was payable to May Fair Enterprises and the business profit of Rs. 13,01,91,677.79/- was payable to United Spirits Ltd., totaling Rs. 13,04,37,540/-.

The appellant has also contended that company was not allowed to use any brand name of IMFL of these three companies for manufacturing their product. From the perusal of the agreements, the use of brand name has been allowed only for the units allowed to be manufactured by the franchiser. Appellant has contended that the trade mark or brand name of the above three franchisers were allowed to be used for manufacturing their goods.

Appellant has also submitted that it was manufacturing their products as per specifications and requirements of these franchisers and they were using our unit to manufacture their products. Under the supervision and direction of the franchisers, our company was giving the operating facilities and support.

Appellant has contended that the purchases of Raw Materials, sales, production, quality control, etc. were as per the directions of these three franchisers and underthe terms of agreements the appellant company was not allowed to take any decision with regard to purchasing of raw materials, producing the goods and selling the goods. Only the appellant's company's manufacturing unit was used for manufacturing their products for which it was getting bottling charges at fixed rates as per the agreement and the franchisers had deducted TDS on the bottling charges paid to the appellant company. After deducting all expenses relevant to the production from the sale proceeds of a particular franchiser, the remaining profit was to be transferred to the franchiser as per the tie up Profit & Loss A/c. Appellant has referred to the clauses of the agreement in this regard.

Appellant has submitted that as per the agreements, the franchiser would exercise all rights with regard to manufacturing, blending and bottling of IMFL, identifying the buyers to

whom the franchiser's brands to be sold, to approve quality of raw material and finished goods, to supervise blending operations, to approve quality of all blending and packaging materials to be used for IMFL etc. It is an undisputed fact that during the year under appeal, the appellant company did not carry on any activity of purchasing, manufacturing and selling of goods of its own and these activities were done only for manufacturing and selling the brands of franchisers, the profit of which was transferred to them.

In the appeal, the appellant company has also made contention that there was no liability on its part to deduct TDS on the profit transferred to the franchisers as per the terms of agreements. Further appellant company has made contention that that on the same facts, CIT(A), Alwar have allowed its Appeal No. 74/2016-17 for AY 2009-10 (FY 2008-09) vide appeal order dated 06-10-2017, Appeal No. 453/2016-17 for AY 2010-11 (FY 2009-10) vide appeal order dated 11-09-2017, Appeal No. 16/2018-19 for AY 2011-12 (FY 2010-11) vide appeal order dated 20-08-2019. The appellant further contended that the CIT(A), Jaipur-4 has allowed the appeal of appellant for A.Y. 2012-13 (F.Y. 2011-12), AY 2013-14(FY 2012-13), AY 2014-15 (FY 2013-14) and AY 2015-16 (FY 2014-15).

In this regard the learned AO has observed in the order under appeal that assessee has also contended that Ld CIT(A) has allowed relief on similar issue (or FY 2008-09, 2009-10 & 2010-11 wherein the Ld.CIT(A) has held that provisions of Section 194J of the IT Act are not applicable in this case as assessee has transferred only realization to these parties and no payments have been made for any technical services. No further appeal has been filed against the above orders, as the tax effect is below the monetary limit.

Since, the facts of the case in the present appeal are similar or pari-materia to the facts of the issue in the appeals of assessment years 2009-10 to 2015-16 which already stand adjudicated, respectfully following the decision made therein will apply mutatis mutandis in this case that the payment made by the appellant company does not come in the ambit of section 194J of the Act. Accordingly, the tax demand of Rs. 1,30,43,753 u/s 201 of the Act and of Rs. 1,17,39,378 u/s 201(1A) of the Act is hereby directed to be deleted.

Therefore these grounds of appeal are hereby allowed.

.....

5. Before us, ld. Counsel for the assessee pointed out that the order passed by the Ld. CIT(A) in the preceding years i.e. AY 2013-14 to 2015-16 ,had been confirmed by the ITAT in its order passed in ITA No.79-81/JPR/2025 order dated 06.08.2025. Copy of which was placed before us and our attention as drawn to the relevant findings of the ITAT at para 7 and 8 of its order as under:-

.....

We have considered the rival contentions, perused the material available on record. The bench noted that the solitary issue raised by the revenue is to challenge the finding of the Id. CIT(A) while deleting the liability of TDS of Rs. 59,11,080/- made u/s 201(1) along with interest u/s 201(1A) of Rs 42,55,977/- inrespect of payments of Rs. 5,91,10,794/- made to three concerns namely M/s Saraya Distilleries Ltd., Pay Fair Enterprise and United Spirits Ltd., under the head "Franchise Expenses" holding that the impugned payments made by the assessee company does not come in the ambit of section 194J of the Act and thereby the present appeal.

The brief fact of the case is that for the year under consideration i.e. financial year 2012-13, the assesseedeductor M/s Alwar Malt and Agro Foods Manufacturers Company Ltd has made payments under the head 'Franchisee Expenses' amounting to Rs. 5,91,10,794/-. The assesseedeductor vide letter No. 1323 dated 4.12.2019 was asked to produce the details of TDS/TCS deposited/collected on such payment and give reasons for non-deduction/collection of TDS/TCS on the same. The assesseedeductor submitted its reply on 26.12.2019. From that reply which was submitted by the assessee, Id. AO, noted that the assesseedeductor has made payment of Rs. 32,65,406/- to M/s Saraya Distilleries Ltd., Rs 51,81,557/- to May Fair Enterprises & Rs 5,06,63,831/- to United Spirits Ltd., totaling to Rs. 5,91,10,794/- on which TDS was to be deducted @ 10% as per the provision ofsection 194J of the Act but no TDS on the above payments were made. Therefore, the TDS liability was determined at Rs.59,11,080/-. That order was challenged before the Id. CIT(A) and Id. CIT(A) considering his decision for the assessment year 2009-10 to 2012-13 taken a view that the payment made does not fall in the ambit of the provision of section 194J of the Act and thereby the assessee was not considered assessee in default and directed to delete the demand raised even for the year under consideration. The revenue challenged that finding of the Id. CIT(A) before this tribunal wherein the contention of the revenue is that the assessee has paid the franchise fees and thus as per the detailed discussion so recorded by the Id. AO the assessee should be considered as the assessee in default and thereby the demand raised is required to be sustained.

As the dispute is related to the coverage of payment as per provision of section 194J of the Act it would be appropriate to go through that provision which reads as under:

Fees for professional or technical services.

194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

(*a*) fees for professional services, or

(*b*) fees for technical services, or

(*ba*) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

(*c*) royalty, or

(*d*) any sum referred to in clause (*va*) of section 28,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to two per cent of such sum in case of fees for technical services (not being a professional services), or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent of such sum in other cases, as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

(*A*) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(*B*) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(*i*) [43][fifty] thousand rupees, in the case of fees for professional services referred to in clause (*a*), or

(*ii*) [43][fifty] thousand rupees, in the case of fees for technical services referred to in clause (*b*), or

(*iii*) [43][fifty] thousand rupees, in the case of royalty referred to in clause (*c*), or

(*iv*) [43][fifty] thousand rupees, in the case of sum referred to in clause (*d*) :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :

Providedalsothat no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family:

Provided also that the provisions of this section shall have effect, as if for the words "ten per cent", the words "two per cent" had been substituted in the case of a payee, engaged only in the business of operation of call centre.

(2) [***]

(3) [***]

Explanation.—For the purposes of this section,—

(*a*) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;

(*b*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*ba*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;

(*c*) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

Further a reference is made for Explanation 2 to clause (vii) ofsub-section (1) of section 9 which reads as follows;

vii) income by way of fees for technical services payable by-

(a) the Government; or

(b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

Provided that nothing contained in this clause shall apply inrelation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April,1976, and approved by the Central Government.

Explanation 1.-For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.

Explanation 2.-For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries";

On conjoint reading of the provision of the law and considering the material placed on record the assessee prepare separate profit and loss account and as per the agreement profit is transferred though debited under the head fees for Franchisee fees is not the fees for technical services for the rendering of any managerial, technical or consultancy services but are of the business transaction as per the extensive agreement.

Not only that the bench has noted that the similar query was raised while conducting the extensive scrutiny of the case of theassessee assessing officer who assessed the income for the A. Y 2013-14 has raised a specific query on the issue of non-deduction of TDS on the franchisee expenses and having gone through those contention has no disallowed that claim debited in the profit and loss account. In support he filed the assessment order dated 30.03.2016 wherein the vide page 4 the same is discussed Similarly, assessment for A. Y. 2014-15 was also completed u/s 143(3) of the Act on 13.12.2016 accepting the claim of the assessee. Both these orders have been passed by the Id. AO after the TDS demand generated by the revenue. The Id DR did not dispute or placed on record anything to the contrary from the Id. AO in support of the alleged TDS default when argued that the claim has been examined and accepted. Thus, in the litigation there must be a certainty and the settled issue should not be raised again and again when the revenue has already accepted the decision of the Id. CIT(A) for A. Y. 2009-10. We get support on this matter the view of the apex court in the case of Parashuram Pottery Works Co Ltd Vs ITO [1977] 106 ITR 1 wherein the apex court held that,

"It has been said that the taxes are the price that we pay for civilization.If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subjectAny remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. So far as the income-tax assessment orders are concerned, they cannot be reopened on the score of income escaping assessment under section 147 of the Act of 1961 after the expiry of four years from the end of the assessment year unless there be omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment As already mentioned, this cannot be said in the present case. The appeal is consequently allowed, the judgment of the High Court is set aside and the impugned notices are quashed"

Thus, we are of the considered view that considering the discussion recorded herein above we are of the considered view that there is no infirmity in the finding so recorded in the order of the Id. CIT(A) and the view taken by the Id. CIT(A) is sustained and thereby the appeal of the revenue stands dismissed.

In the result the appeal of the revenue in ITA no.

79/JPR/2025 stands dismissed

8 The facts of the case in ITA No. 80 & 81/JPR/2025 are similar to the case in ITA No. 79/JPR/2025 and we have heard both the parties and persuaded the materials placed on record.

The bench has noticed that the issues raised by the assessee in these appeals No. 80 & 81/JPR/2025 are equally similar on set offacts and grounds. Therefore, it is not imperative to repeat the facts and arguments of the parties and findingof the case again having similar facts. Hence, the bench feels that the decision taken by us in ITA No. 79/JPR/2025 for the Assessment Year 2016-17 shall apply mutatis mutandis in the case of Alwar Malt and Agro foods Manufactures Co. Ltd. in ITA No. 80 & 81/JPR/2025 for the Assessment Year 2014-15 & 2015-16. Based on these observations the appeal of the revenue in ITA No. 80 & 81/JPR/2025 stands dismissed.

...

6. Ld. DR before us was unable to controvert the fact that identical issue arose in the case of the assessee in the preceding years, right from AY 2009-10 to AY 2015-16 wherein the order passed by the AO was set aside by the Ld. CIT(A) and even the ITAT confirmed the order of the Ld. CIT(A) for AY 2013-14 to 2015-16. She was also unable to distinguish the decision of the ITAT in the preceding year before us.

7. In the light of the same, we see no reason to interfere in the order of the Ld. CIT(A), who has allowed the assessee's appeal noting the issue to be squarely covered by the decision of the ITAT in the preceding year in identical facts and circumstances. In the light of the same, all the grounds raised by the assessee are dismissed.

8. In effect, appeal of the revenue is **dismissed.**

Order pronounced in the Open Court on 29.10.2026

Sd/-	Sd/-
(T.R. Senthil Kumar)	(Annapurna Gupta)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated 29.10.2026
Mittali, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

By Order,

Asst. Registrar
ITAT, Jaipur

Mittali

Digitally signed by: Mittali
DN: CN = Mittali email = mittaligupta34671@gmail.com C = IN O = Personal
Date: 2026.10.30 12:52:21 +05'30'