

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.10/M/2024
Assessment Year: 2008-09**

M/s. C.B. Salon 124, Udyog Kshetra, Mulund Goregaon Link Road, Mulund (W), Mumbai - 400080 PAN: AADFC9274B	Vs.	Income Tax Officer, Ward 41(1)(1), Kautilya Bhavan, G Block, BKC, Bandra East, Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Sh. Gaurav Bansal, Ld. A.R.
Revenue by : Shri V.K. Chaturvedi, Ld. Sr. D.R

Date of Hearing : 12-12-2024
Date of Pronouncement : 12-12-2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 03.11.2023, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2008-09.

2. In the instant case, the Assessee being a master franchisee, has entered into sub franchisee agreements with three persons owning premises in three locations. During the AY under consideration, the Assessee has received the amount of Rs.22,49,400/- towards franchisee commission from Hindustan Lever Limited (in short "HLL") and in turn paid the same to the sub franchisees for the use of premises, who facilitates the running of the salon. The income received as franchisee commission from HLL, was set off against the expenses paid to sub franchisee as franchisee commission, renting etc. thereby resulting "Nil" income and consequently the Assessee has not declared the commission income in any of the disclosure in the profit & loss account, as net effect was "Nil".

2.1 However, the Assessing Officer (AO) vide original assessment order dated 13.10.2010 u/s. 143(3) of the Act made certain disallowances. Thereafter, notice dated 17.12.2012 u/s 154 of the Act was issued to the Assessee, which was responded to vide letter dated 31.12.2012 by the Assessee. Thereafter, no communication was received with regard to the outcome of the proceeding's u/s 154 of the Act till 04.04.2015 when the notice dated 31.03.2015 u/s 148 of the Act was received by the Assessee.

2.2 The Assessee in response to the notice u/s 148 of the Act though specifically submitted before the AO that proceedings u/s 154 of the Act have not been concluded and therefore the proceedings u/s 147 of the Act cannot be reopened. However, the AO proceeded with the re-assessment proceedings and ultimately concluded the same and vide assessment order dated 30.03.2016 u/s 143(3) of the Act r.w.s. 147 of the Act, made the addition of Rs.22,49,400/- on account of commission received by the Assessee.

3. The Assessee though challenged the reopening of the proceeding's u/s 147/148 of the Act as well as the addition on merits before the Ld. Commissioner, however, of no avail, as the Ld. Commissioner not only affirmed the reopening of the proceedings but also the addition on merits.

4. The Assessee, being aggrieved, is in appeal before this Court and at the outset has submitted that as per the judgment of the Hon'ble Apex Court in the case of S.M. Overseas Pvt. Ltd. vs. Commissioner of Income Tax (2022) 145 taxmann.com 375 (SC) "once the proceedings u/s 154 of the Act with regard to the original assessments are pending, the proceedings u/s 147 of the Act are not permissible". And therefore the assessment order is liable to quashed.

5. On the contrary, the Ld. D.R. refuted the claim of the Assessee by submitting that proceedings u/s 154 of the Act and u/s 147 of the Act are independent and there is no such bar as claimed by the Assessee.

6. Heard the parties and perused the material available on record. Admittedly, the notice u/s 154/155 of the Act was issued on 17.12.2012 which relates to the assessment order dated 30.10.2010 u/s 143(3) of the Act. The Assessee duly replied the said notice vide reply dated 31.12.2012. Admittedly the issue involved in proceedings u/s 154 of the Act was same as involved in the reopening proceeding's u/s 147 of the Act. However, still the AO reopened the case by recording the reasons u/s 147 of the Act and in spite of raising of the objection qua maintainability of the proceeding's u/s 147 of the Act, specifically in the live proceeding's u/s 154 of the Act, the AO continued with the re-assessment proceedings and ultimately concluded the reassessment

proceedings and made the addition of Rs.22,49,400/- on account of commission brokerage received from HLL.

6.1 As per report submitted by the AO vide email dated 12.05.2024 through Ld. D.R., proceedings u/s 154 of the Act were initiated on the audit objection raised that on going through the copies of ledger account and rent paid account, no such amount was shown as income in the profit & loss account. The Assessee in proceedings u/s 154 reiterated its claim that the income received as franchisee commission from HLL, was set off against the expenses paid to sub franchisee as franchisee commission, renting etc. thereby resulting "Nil" income and consequently the Assessee has not declared the commission income in any of the disclosure in the profit & loss account as net effect was "Nil". Considering and accepting the claim of the Assessee, the audit objection was treated as settled vide order sheet dated 13.02.2015, however as on the date of recording of the reasons u/s 147 of the Act and reopening of the case by issuing notice dated 31.03.2015 u/s 148 of the Act on dated 04-04-2015, neither any final order u/s 154 of the ACT was either passed or served on the Assessee, nor the same was filed in the assessment and the appellate proceedings despite of raising specific objection. And therefore, the instant case is hit by the dictum laid down by the Hon'ble Apex Court in the case referred to above. Hence, the proceedings-initiated u/s 147 of the Act by issuing notice dated 31.03.2015 u/s 148 of the Act and in pursuance thereof the assessment order dated 30.03.2016, are liable to be quashed being void ab-initio. Thus, the same stands quashed accordingly.

6.2 As this Court has quashed the assessment order itself, hence not delving into the merits of the case, as adjudication of the same would prove futile exercise.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 12.12.2024.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.