

**आयकरअपीलीयअधिकरण, मुंबईन्यायपीठ‘बी’मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL“B” BENCH, MUMBAI**

**श्री जी. एस. पन्नू, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष**  
**BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM**

आयकरअपीलसं/I.T.A. No.7757/Mum/2011  
(निर्धारणवर्ष / Assessment Year: 2006-07)

M/s. BRCM Limited 306/307, Janki Centre, Plot No.2, Off Veera Desai Road, Andheri (E) Mumbai - 400053	<b>बनाम/</b> Vs.	ITO 8(1)(2) & CIT (A) – 16 Mumbai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACB2468G		
(अपीलार्थी/ <b>Appellant</b> )	..	(प्रत्यर्थी/ <b>Respondent</b> )

Assessee by:	Shri M. Subramanian
Department by:	Shri M. Rajan

सुनवाईकीतारीख / Date of Hearing:27.09.2016  
घोषणाकीतारीख /Date of Pronouncement: 29.12.2016  
आदेश / O R D E R

**PER AMARJIT SINGH, JM:**

The assessee has filed the above mentioned appeal against the order dated 20.09.2011 passed by the Commissioner of Income Tax (Appeals)16, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2006-07.

2. The assessee has raised the following grounds:-

“ *The Honourable Commissioner of Income Tax (Appeals) has erred in not accepting commission income earned from business activity of Rs.1,25,520/- and offered for taxation under the head “Income from Business or Profession” as “Income from Business or Profession” without considering the fact and merits of the case.*

*The Honourable Commissioner of Income Tax (Appeals) has also erred in not accepting the lease rent income earned on letting out the Plant and Machinery installed in chemical division of the appellant’s factory premise of Rs.7,20,000/- and offered for taxation under the head “Income from Business or Profession” as “Income from Business or Profession” without considering the fact and merits of the case and has also erred in not accepting the fact that the appellant is entitled to deduction of depreciation and other deductible expenditures under section 57(ii) of the Income tax Act., if the said income is ultimately assessed as “Income from Other Source” under section 56(2)(iii) of the Income Tax Act, without considering the fact and merits of the case.*

*The appellant craves leave to submit at the time of hearing such further facts, information, clarification, documents etc. as may be necessary for the purpose of deciding the issues in the appeal.*

**ADDITIONAL GROUNDS:-**

1. *On the facts and in the circumstances of the case and in law, the proceedings initiated by issuance of notice u/s.148 of the I.T.Act, is invalid and bad in law.*
2. *On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3) r.w.s. 147 of the I.T.Act, is invalid and bad in law.*

3. The brief facts of the case are that the assessee filed its return of income on 22.10.2006, declaring total income to the tune of Rs.2,22,860/-. The return was processed u/s.143(1) of the Income Tax Act, 1961( in short “the Act”). The case was reopened on the following reasons:-

“During the course of assessment proceedings for A.Y.2007-08, it was seen that the assessee had received income from “Commission” of Rs.1,25,520/- from M/s. Symbiosis Advertising Pvt. Ltd. on 31.03.2006. However, the assessee had offered the same in the A.Y.2007-08, as the same was not pertaining to the A.Y.2007-08, it is seen that the assessee had not offered the said commission income of Rs.1,25,520/-. Hence, I have reason to believe that the commission income of the assessee i.e. ‘Income from Other Sources’ to the extent of Rs.1,25,520/- has escaped assessment within the meaning of Section 147 of the I.T.Act, 1961”.

4. Thereafter, the notice u/s.148 of the Act was issued on 08.03.2010 which was duly served upon the assessee on 10.03.2010. Thereafter, an another notice was also issued which was also served upon the assessee on 09.04.2010, reasons for reopening the assessment for A.Y.2006-07 was conveyed to the assessee. Thereafter, a show cause notice dated 20.04.2010 was sent to the

assessee proposing addition of Rs.1,25,520/- and treating rental income which assessee offered as “business income” as income from “other sources” by disallowing expenses as there is no business activity during the year. The assessee was engaged in the manufacturing activities and the assessee company is having factory of manufacturing in fabrics in earlier years and had shut down manufacturing activity. After giving an opportunity of being heard to the assessee, the commission to the tune of Rs.1,25,520/- and income from letting out the premises to the tune of Rs.7,20,000/- after taking the rent and maintenance was added to the income of the assessee. The income of the assessee was assessed to the tune of Rs.8,07,320/-. Feeling aggrieved the assessee filed an appeal before the CIT(A) who uphold the order of the Assessing Officer, therefore the assessee has filed the present appeal before us.

**ADDITIONAL GROUNDS:-**

5. The learned representative of the assessee has argued that the assessee has received the commission of Rs.1,25,520/- from M/s. Symbiosis Advertising Pvt. Ltd. on 31.03.2006 and offered the same in the assessment year of 2007-08. hence he had reason to believe that the commission of Rs.1,25,520/- of the assessee is an escaped assessment within the meaning of section 147 of the Act and is not reasonable ground to invoked the provision u/s.147 of the Act. Therefore, the proceeding u/s.147/148 of the Act is wrong against law

and facts, hence the assessment order is liable to be set aside on this ground alone. On the other hand, the learned representative of the department has placed reliance on the order passed by the CIT(A) in question. Keeping in view of the argument advanced by the parties and perused the record it came into the notice that the case of the assessee was reopened u/s.147 / 148 of the Act on the following grounds:-

“During the course of assessment proceedings for A.Y.2007-08, it was seen that the assessee had received income from “Commission” of Rs.1,25,520/- from M/s. Symbiosis Advertising Pvt. Ltd. on 31.03.2006. However, the assessee had offered the same in the A.Y.2007-08, as the same was not pertaining to the A.Y.2007-08, it is seen that the assessee had not offered the said commission income of Rs.1,25,520/-. Hence, I have reason to believe that the commission income of the assessee i.e. ‘Income from Other Sources’ to the extent of Rs.1,25,520/- has escaped assessment within the meaning of Section 147 of the I.T.Act, 1961”.

6. It is required to be seen that whether the CIT(A) has reopened the assessment of the assessee u/s.147 / 148 of the Act on the reasonable ground or not. It is not in dispute that the assessee received the commission for Rs.1,25,520/- from M/s. Symbiosis Advertising Pvt. Ltd. on 31.03.2006 immediately after this date the

next assessment year i.e.2007-08 came into existence. In view of the page 18 of the paper book, it is quite clear that the assessee received the commission to the tune of Rs.1,25,520/- on 31.03.2006 by way of cheque. Unless the cash realizes, the assessee cannot be said that the assessee received the payment on 31.03.2006. Since the cheque was realized in the assessment year i.e.2007-08 and in the said year he has shown his income in accordance with law and offered to tax therefore the said income is not required to be added in the income of the assessment year of 2006- 2007. In the present case, the income stands disclosed in A.Y.2007-08 and even if the Assessing Officer is held to be technically correct that the income should be assessed in the A.Y.2006-07, yet the reopening of assessment by issuance of notice u/s.148 of the Act is an empty formality as it does not make any difference to the ultimate tax liability as the tax rate remain same in both the assessment years. Thus, the invoking of section 147 / 148 of the Act in this case is a fruitless exercise as the tax rate is the same. In view of the said circumstances, we are of the view that the assessment u/s.147 / 148 of the Act is not maintainable, therefore, the said assessment is ordered to be set aside.

**OTHER GROUNDS:-**

7. Since the assessment u/s.147 / 148 has been ordered to be set aside, therefore, there is no need to decide the other issues because the said would become academic in nature.

8. In the result appeal filed by the assessee is hereby Allowed.

Order pronounced in the open court on 29<sup>th</sup> December, 2016

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER न्यायिकसदस्य/JUDICIAL MEMBER  
मुंबई Mumbai; दिनांक Dated : 29<sup>th</sup> December, 2016

*MP*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील)/ The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai