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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 05.11.2015

+ **ITA 818/2015**

THE PR. COMMISSIONER OF INCOME TAX-06 Appellant
versus

MC DONALD'S INDIA (P) LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Mr Rahul Chaudhary with Mr Ruchir Bhatia,
Advocates.

For the Respondent : Mr Pawan Kumar, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been preferred by the Revenue against the order dated 18.03.2015 passed by the Income Tax Appellate Tribunal in ITA No.960/DEL/2010 pertaining to the Assessment Year 2003-04. The issue sought to be raised by the Revenue is with regard to the franchise fee. The learned counsel for the Revenue pointed out that the assessee was collecting franchise fee from Joint Venture Companies @ USD 45,000 under the Master Licence Agreement with its parent company McDonald's Corporation USA.

2. It was submitted by the learned counsel for the appellant that earlier the assessee was collecting the franchise fee of USD 45,000 and was remitting the same to its parent company. But, in the year in question, the franchise fee that it was collecting from the Joint Venture Companies in India was reduced to USD 22,500 while, at the same time, it was remitting USD 45,000 to the parent Company. This, according to him, meant that the assessee was depressing its

income by showing an expenditure of USD 45,000 as against its income USD 22,500 in respect of each franchisee.

3. The learned counsel for the respondent is present on advance notice. He has pointed out that in the year in the question, no remittances were made to the parent Company because there was an embargo placed by the Government. Therefore, far from claiming expenditure of USD 45,000, it did not claim even expenditure in respect of USD 22,500 that it had received from its Joint Venture Companies. It was also further contended that the Tribunal as also the CIT (A) have returned findings of fact that the assessee/respondent was only receiving USD 22,500 from the Joint Venture Companies and not USD 45,000, as contended by the Revenue.

4. We have examined the impugned order as also the order passed by the CIT (A) and the Assessing Officer. We note that the Tribunal which is the final fact finding authority in the hierarchy of authorities under the Income Tax Act has returned a clear finding as under:-

“7.2 All these agreements read with correspondence clearly show that assessee was entitled to USD 22,500 and not USD 45,000 during FY 2002-03. Ld. Standing Counsel has submitted that there could not be any unilateral amendment to the Franchisee agreement. However, contents of letter dated 8-12-2002, reproduced above, clearly show that the amendment was effective after discussions with reference to licence and location fees. A memorandum was accordingly entered into. There was no novation of contract and it was only a change in the payment of fee to assessee.

7.3 Ld. Standing Counsel has referred to covenant 26 of the Master License Agreement as well as Franchisee agreement to submit that the modification

of the Franchisee agreement could be only as agreed upon. In this regard we find that the term “duly executed” in case of implies that the same is executed by an officer of Franchiser or its Franchiser director and in case of Franchisee executed by the Franchisee. The communication contained at page 68, in our opinion, confirmed to both the conditions because the same has been addressed to Franchisee by Franchiser. We accordingly, do not find any reason to interfere with the order of Id. CIT (A) to the extent that since no real income accrued to assessee, no addition was called for. Ground is dismissed.”

5. Therefore the finding is that the assessee has received only USD 22,500 and not USD 45,000 during the period in question. Apart from this, it is also noted in paragraph 7 of the impugned order that assessee could not remit even this amount of USD 22,500 to the parent Company because of an embargo placed by the Government. Therefore, there is no factual basis for the submission made by the learned counsel for the Revenue that the assessee was, on the one hand, receiving USD 22,500 from the Joint Venture Companies and, on the other hand, was remitting USD 45,000 to its parent Company.

6. No perversity has been pointed out in the findings of fact returned by the CIT (A) as also the Income Tax Appellate Tribunal. In our view, no question of law, what to speak of substantial question of law, arises for our consideration.

7. The appeal is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

NOVEMBER 05, 2015/st