In the High Court of Judicature at Madras

Dated : 10.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.880 & 881 of 2018 & CMP.No.21478 of 2018

M/s.Dun & Bradstreet Technologies & Data Services Pvt. Ltd. (formerly D & B TransUnion Analytic & Decision Services Pvt. Ltd.), Chennai-96 ...Appellant

Vs

The Deputy Commissioner of Income Tax, Corporate Circle 1(1), No.121, Mahatma Gandhi Road, Chennai-34. ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 25.11.2016 made in ITA Nos.1257 & 1258/Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'C' Bench respectively for the assessment years 2007-08 and 2010-11 against separate orders of the Commissioner of Income Tax(Appeals 1) Chennai dated 03.02.2016 for assessment years 2007-2008 & 2010-2011 in I.T.A. No. 607/13-14/A1(New No.I.T.A. 157/CIT(A)-1/2013-2014 against order dated 27.01.2014 of Assistant Commissioner of Income Tax, Company Circle I, (4) (i/c) Chennai for PA/GIR No. AACCD5293M.

For Appellant : Mr.SP.Chdambaram
For Respondent : Mrs.R.Hemalatha, SSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter called the Act) are directed against the common order passed by the Income Tax Appellate Tribunal (for short, the Tribunal), Chennai in ITA.Nos.1257 and 1258/Mds/2016 dated 25.11.2016 for the assessment years 2007-08 and 2010-11.

2. The assessee has filed these appeals by raising the following substantial questions of law:

"TCA.No.880 of 2018 :

i. Whether in law, the Tribunal was right in remanding the issue of deduction under Section 10A of the Act back to the files of the respondent to once again examine the issue in the light of CBDT Circular No.1 of 2013 without appreciating that the said exercise has already been undertaken by the respondent vide order passed under Section 143(3) read with Section 254 dated 27.1.2014 pursuant to the order passed by the Tribunal in ITA.No.907/Mds/2013 ? And

ii. Whether, in law, the order of the Tribunal suffers from perversity as it has ignored the factual finding of the Appellate Authority in ITA.No.157/ 2013-14 dated 03.2.2016 wherein it is specifically held that there is no splitting up and reconstruction as contemplated in CBDT circular No.1 of 2013 and as such, the impugned order of the Tribunal once again remanding the issue to re-examine the very same aspect is unwarranted and unsustainable?

TCA.No.881 of 2018 :

i. Whether in law, the Tribunal was right in remanding the issue of deduction under Section 10A of the Act back to the files of the respondent to examine the issue in the light of CBDT Circular No.1 of 2013 without appreciating that the said exercise has already been undertaken by the respondent vide order passed under Section 143(3) read with Section 92CA dated 10.3.2014 ? and

ii. Whether, in law, the order of the Tribunal suffers from perversity as it has ignored the factual finding of the Appellate Authority in New ITA.No. 43/CIT(A)-1/2014-15 dated 03.2.2016 wherein it is specifically held that there is no splitting up and reconstruction as contemplated in CBDT circular No.1 of 2013 and as such, the impugned order of the Tribunal once again remanding the issue to re-examine the very same aspect is unwarranted and unsustainable?"

3. We have heard Mr.SP.Chidambaram, learned counsel appearing for the appellant/assessee and Mrs.R.Hemalatha, learned Senior Standing Counsel accepting notice for the Revenue.

4. The Tribunal, by the impugned common order, remanded the matters back to the Assessing Officer to examine the case of the assessee in the light of Circular No.1 of 2013 issued by the Central Board of Direct Taxes (CBDT) and decide the same after giving due opportunity to the assessee.

TCA.No.880 of 2018 :

5. This is the second round of litigation before the Tribunal. In the earlier round, the Revenue was aggrieved by the order passed by the Commissioner of Income Tax (Appeals) deleting the disallowance of deduction under Section 10A of the Act. The Tribunal, by order dated 31.7.2013, remanded the matter back to the Assessing Officer to re-examine the claim, as the Revenue placed reliance on the said Circular. The operative portion of the order dated 31.7.2013 reads as follows :

"We have examined the rival contentions and gone through the case file. In our view, the Commissioner of Income Tax (Appeals) has not granted opportunity to the Assessing Officer before allowing the assessee's claim in view of the circular, which stipulates that factual issue requiring verification of facts have to be examined i.e. details of slump sale, its nature, etc. In our opinion, the Commissioner of Income Tax (Appeals) should have opted for an open remand to the Assessing Officer regarding the issue before us. Therefore, by modifying the order of the Commissioner of Income Tax (Appeals) to this extent, we direct the Assessing Officer to re-examine the claim in view of the 'circular' in accordance with law after affording adequate opportunity of hearing to the assessee."

6. In fact, in the above referred to order, the Tribunal recorded that the CIT(A) had not granted an opportunity to the Assessing Officer before allowing the assessee's claim in view of the said Circular, which stipulated that the factual issue requiring verification of facts had to be examined i.e. details of slump sale, its nature, etc. The Assessing Officer heard the assessee and passed the giving effect to order dated 27.1.2014. In paragraph 3 of the order, the Assessing Officer mentioned about the direction issued by the Tribunal. In paragraph 5.2 of the order, there had been a reference to the said Circular of the CBDT. The Assessing Officer directed the assessee to produce certain documents, which were enumerated in paragraph 5.3 and ultimately found that the transaction was construed as a mere splitting up and reconstruction of business.

7. Aggrieved over the same, the assessee preferred an appeal before the CIT(A), who recorded in paragraph 4 of his order dated 03.2.2016 about the directions issued by the Tribunal while remanding the matter to the Assessing Officer and in particular, with reference to the said Circular of the CBDT. The discussion starts from paragraph 14 of the order. Ultimately, the CIT(A) concluded that there was no discrepancy in the value of the assets transferred through slump sale by the transferor company to the assessee and since the entire assets of the undertaking were found to have been transferred to the assessee on lock, stock and barrel basis, there was no case for splitting up or reconstruction as mentioned by the Assessing Officer. Therefore, the Assessing Officer was directed to delete the disallowance made under Section 10A of the Act. On the above grounds, the appeal filed by the assessee was allowed.

8. Aggrieved by that, the Revenue filed an appeal before the Tribunal and on perusal of the grounds of appeal, we find that once again, the Revenue contended that the said Circular of the CBDT was not taken into consideration. The Tribunal, by the impugned order, took note of the submissions made earlier on behalf of the Department for the assessment year 2009-10 and remanded the matter to the Assessing Officer to take note of the said Circular of the CBDT.

9. In our considered view, in the earlier remand, the Assessing Officer, while passing the giving effect to order, noted the said Circular and assigned certain reasons as to why the disallowance has to be made. The correctness of that order, while being tested by the CIT(A), he had noted the said Circular and given independent reasons as to how the assessee's case is acceptable. Thus, in our considered view, the Tribunal should have considered the correctness of the order passed by the CIT (A), as already the effect of the said Circular was considered by both the Assessing Officer and the CIT(A).

10. It may be true that the operative portions of the orders passed by both the Assessing Officer and the CIT(A) do not contain any mention about the said Circular. In effect, the parameters required to be examined by the Assessing Officer under the said Circular were examined and in the opinion of the Assessing Officer, the case of the assessee cannot be accepted. This was reversed by the CIT(A). Therefore, the Tribunal can very well decide the correctness of the order passed by the CIT (A) instead of remanding the matter to the Assessing Officer for a fresh consideration, as, already, such an exercise was done by the Assessing Officer. Furthermore, the order of remand passed for the assessment year 2009-10 is now pending before the Dispute Resolution Panel. Therefore, in the fitness of things, it is for the Tribunal to decide the matters, since this issue arises in the first year, which is the assessment year under

consideration namely 2007-08.

11. For the above reasons, TCA.No.880 of 2018 filed by the assessee is allowed and the order passed by the Tribunal is set aside. The Tribunal is directed to decide the matter on merits and in accordance with law. The substantial questions of law are left open. No costs.

TCA.No.881 of 2018 :

12. In so far as TCA.No.881 of 2018 is concerned, it is for the assessment year 2010-11 and an identical order has been passed as impugned in TCA.No.880 of 2018. Therefore, TCA.No.881 of 2018 is also allowed on the same lines and the Tribunal is directed to take a decision on merits. The substantial questions of law are left open. No costs. Consequently, the connected CMP is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai 'C' Bench.
2.The Deputy Commissioner of Income Tax, Corporate Circle 1(1), No.121,
Mahatma Gandhi Road, Chennai-34.
3. The Assistant Commissioner of Income Tax
Company Circle 1(4)(i/c) Chennai.

+2 Ccs to Mr.T.Ravi Kumar, Advocate sr 84883.

TCA.Nos.880 & 881 of 2018
And CMP.No.21478 of 2018

KAN(CO)
SP(09/05/2019)