IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.7.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.411 OF 2019

M/s.Tata Teleservices Ltd.,
Chennai-96. ...Appellant

Vs

The Income Tax Officer, TDS Ward
II(5), Wanaparthy Block III Floor,
121, M.G.Road, Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 to set aside the order dated 07.2.2019 made in ITA.No.339/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2007-08. against the order of the Commissioner of Income Tax (Appeals)-17, Nungambakkam, Chennai-34, dated 21.11.2017 made in ITA.No.347/2013-14/CIT(A)-17, and against the order of the Income Tax Officer, TDS Ward-II(5), Chennai-34, dated 05.04.2007 for the Assessment Year 2007-2008, made in TNN Number, CHET 02745B.

For Appellant :Mr.Tarun Gulati, SC for
Ms.Deepika Murali & Mr.Karthik Sundaram

For Respondent :Mr.Karthik Ranganathan, SSC
assisted by Mr.S.Rajesh

Judgment was delivered by T.S.Sivagnanam,J

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This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 07.2.2019 in ITA.No.339/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2007-08. The Tribunal, by the impugned order, set aside the order passed by the Assessing Officer dated 05.4.2007 and the order passed by the Commissioner of Income Tax (Appeals)-17, Chennai-34 [for short, the CIT(A)] dated 21.11.2017 and remanded the matter to the Assessing Officer.

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2. The assessee has filed this appeal by raising the following substantial questions of law :

> "i. Whether the Tribunal's order is grossly erroneous for not adjudicating the grounds and contentions specifically raised in the memorandum of appeal filed by the appellant in a manner contrary to the law laid down by this Court in CIT Vs. Ramdas Pharmacy [reported in (1970) 77 ITR 276]?
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> ii. Whether the Tribunal's order is grossly erroneous for not following the decision of the Coordinate Bench in Vodafone East Ltd. Vs. Additional CIT [reported in (2015) 61 Taxmann. Com 263] (Kolkatta Tribunal), which is in accordance with the law laid down by this Court in the case of Madras Bar Association Vs. Central Board of Direct Taxes [reported in (1995) 216 ITR 240] and not adjudicating that the appellant is not liable to deduct tax at source under Section 194C of the Act on IUC payments made to other telecom operators ?
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> iii. Whether the Tribunal erred in failing to consider that the appellant is not an assessee in default in the light of the nil deduction certificates issued under Section 197 of the Act to the payees being other telecom operators ? And
>
> iv. Whether the Tribunal erred in remitting the file back to the Assessing Officer by neither adjudicating on the grounds raised nor giving the appellant the liberty to raise the said grounds at a later stage ? "

3. We have heard Mr.Tarun Gulati, learned Senior Counsel appearing on behalf of Ms.Deepika Murali and Mr.Karthik Sundaram, learned counsel on record for the appellant and Mr.Karthik Ranganathan, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Standing Counsel appearing for the respondent. With consent, the main appeal itself is taken up for final disposal.

4. It is submitted by Mr.Tarun Gulati, learned Senior Counsel appearing on behalf of the appellant that the Tribunal, though, in paragraph 3 of the impugned order, noted the submission of

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the assessee that they assailed application of Section 194C of the Act on interconnection usage charges (IUC) paid to other telecom operators, in the operative portion of the order, the Tribunal did not discuss the said issue nor rendered any finding. According to the learned Senior Counsel, on the contrary, the Tribunal proceeded to consider the alternate submission of the assessee and to a certain extent, accepted the submissions of the assessee and ultimately, without expressing any opinion on the ground of the assessee that they were not liable to pay tax at source in respect IUC payments to various telecom providers, set aside the orders passed by the Lower Authorities and remanded the matter to the file of the Assessing Officer.

5. Mr.Tarun Gulati, learned Senior Counsel further submits that the assessee was not aggrieved by the direction of the Tribunal remanding the matter to the Assessing Officer, but they are concerned about the further direction issued by the Tribunal for verifying as to whether the payees included the amounts received from the assessee in their returns of income and paid due taxes thereon with a further direction to the assessee to produce records in support of their plea before the Assessing Officer. This, according to the learned Senior Counsel, is a restricted remand and not an open remand and all that the Assessing Officer is expected to do is to verify as to whether the payees included the amounts received from the assessee in their returns of income and paid due taxes thereon. It is also submitted that if this Court upholds the order of remand, it should be an open remand enabling the assessee to raise all the points. The learned Senior Counsel has drawn the attention of this Court to the written submissions filed by the assessee before the Tribunal on 03.12.2018 wherein all the points were canvassed and more particularly with regard to application of Section 194C of the Act.

6. It is further submitted by the learned Senior Counsel appearing on behalf of the assessee that even on merits, the issue is covered in favour of the assessee in the light of the decision of the Kolkatta Bench of the Tribunal in the case of Vodafone East Ltd. Vs. Additional CIT [reported in (2015) 61 Taxmann. Com 263]. It is also submitted that this decision was noted by the Tribunal when it heard the stay petition and passed orders on 16.3.2018 granting stay of 50% of the demand on the ground that a similar issue was decided in favour of the assessee by the Kolkatta Bench of the Tribunal in the decision in the case of Vodafone East Ltd.

7. Per contra, Mr.Karthik Ranganathan, learned Senior Standing Counsel for the Revenue submits that a detailed order has been passed by the CIT(A) wherein all the contentions of the

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assessee were taken into consideration including the decision of the Kolkatta Bench of the Tribunal in the case of Vodafone East Ltd. It is his further submission that if at all this Court is of the view that a verification is required to be done, the matter may be sent back to the Tribunal for considering the miscellaneous application filed by the assessee on 27.5.2019.

8. After elaborately hearing the learned counsel on either side, we find that the Tribunal has not taken into consideration the first submission made by the assessee with regard to the applicability of Section 194C of the Act on the IUC paid to the other telecom operators. It is true that in paragraph 4 of the impugned order, the Tribunal considered the alternate submission of the assessee and made an observation that the argument of the assessee was correct and it could not be considered as an assessee in default. However, the Tribunal further qualified this finding stating that the assessee's liability for interest would also be limited period ending on the date, on which, the deductees/payees had paid taxes.

9. In our considered view, if a litigant raises a legal issue before a court or a tribunal as a principal ground of challenge and without prejudice and not in derogation with the said plea, the litigant is also entitled to raise alternate submissions. So far as the taxation matters are concerned, the grounds raised by the assessee can, at times, be contradictory and there is no reason to reject the grounds. In any event, the Tribunal ought to have rendered a finding on the grounds raised by the assessee with regard to the applicability of Section 194C of the Act on the IUC paid to the other telecom operators. Had the Tribunal considered and rendered a finding that it was not convinced with the submissions made, then, it would have been well justified to proceed to consider the alternate submissions. We find from the impugned order that the Tribunal has not rendered any finding with regard to the contentions advanced by the assessee relating to the applicability of Section 194C of the Act.

10. On a reading of the paragraph 4 of the impugned order, one gets an opinion that the Tribunal remanded the matter to the Assessing Officer. The Tribunal set aside the orders of the Lower Authorities in their entirety. Thus, if the remand is for a limited purpose, the Tribunal ought to have very well indicated in its order. In our understanding, the remand order passed by the Tribunal is after setting aside the orders passed by the Lower Authorities and necessarily, the Assessing Officer has to consider the matter afresh in its entirety.

11. It may be true that the Tribunal added a rider after setting aside the orders passed by the Lower Authorities stating that a verification has to be done as to whether the payees

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included the amounts received from the assessee in their return of income and paid due taxes thereon. In our considered view, the further direction issued by the Tribunal cannot be construed to be restrictive in nature thereby preventing the Assessing Officer to consider all grounds and more particularly, when the Tribunal has not rendered any finding on the applicability of Section 194C of the Act. Hence, we are of the considered view that the order passed by the Tribunal should be and shall be read as an open remand to the Assessing Officer to consider all the issues that were pleaded by the assessee before the Tribunal.

12. In the light of the above, the above tax case appeal is disposed of by clarifying that the Assessing Officer shall consider all the issues that may be raised by the assessee and take a fresh decision on merits and in accordance with law uninfluenced by any observations made in his order dated 05.4.2007 or the order passed by the CIT(A) dated 21.11.2017. The substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal, Chennai 'B' Bench, Chennai.

2. The Income Tax Officer, TDS Ward II(5), Wanaparthy Block III Floor, 121, M.G.Road, Chennai-34.

3. The Commissioner of Income Tax Appeal-17, Nungambakkam, Chennai-34.

+1cc to Ms.Deepika Murali, Advocate, S.R.No.55034

TCA.No.411 of 2019

BR(CO)
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