



W.P.No.20788 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.20788 of 2022
and W.M.P.No.19859 of 2022

M/s.Dun & Bradstreet Technologies &
Data Services Pvt. Ltd.,
B1-01, First floor, B Block,
IIT Madras Research Park,
Kanagam Road, Taramani,
Chennai-600 0113, Represented by its
Director Shri. Vivek Agarwal.

... Petitioner

-VS-

1.The Principal Commissioner of Income Tax,
Corporate Range – 1, Chennai-600 034.

2.The Centralized Processing Centre ('CPC'),
Income Tax Department, Bangalore-560 500.

3.The Deputy Commissioner of Income Tax,
Corporate Circle – 1(1),
Chennai-600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent and quash the impugned order in DIN & Document No.ITBA/REV/M/REV7/2021-2022/1042289474(1) dated



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31.03.2022 and C.No.217/U/s.264/PCIT-1/2021-2022 dated 28.03.2022 for the Assessment Year 2018-2019 and issue appropriate directions to the 3rd respondent to compute the DDT liability in accordance with Article 10(2) of the DTAA between India and Mauritius and refund the excess tax paid.

For Petitioner : Mr.S.P.Chidambaram

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

The petitioner challenges an order dated 28.03.2022 by which its application for revision under Section 264 of the Income Tax Act, 1961 (the Income Tax Act) was rejected. The petitioner is engaged in the business of providing IT and IT enabled services. It filed its return of income for the assessment year 2018-2019 on 29.11.2018 by admitting the total income of Rs.12,65,47,680/-. During the financial year corresponding to the assessment year mentioned above, the petitioner declared and paid dividend of Rs.59,12,76,400/- to its holding company, M/s.Predictive Analytics Mauritius Holding Limited (PAMHL), which is a company incorporated in Mauritius. In respect of such dividend, the petitioner paid Dividend Distribution



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Tax (DDT) of Rs.12,03,69,962/-. Based on the petitioner's return, by order dated 13.06.2019, DDT was assessed by the 2nd respondent as being payable @ 20.36%. Subsequently, the petitioner became aware that, as per Section 90 of the Income Tax Act, it is entitled to the benefit of the Double Taxation Avoidance Agreement (DTAA) between India and Mauritius. In particular, the petitioner asserts that it is entitled to the concessional rate specified in Article 10(2) of the relevant DTAA.

2. After the intimation was issued pursuant to and based on the return of income filed by the petitioner, the petitioner applied for revision under Section 264 of the Income Tax Act before the Principal Commissioner of Income Tax. The said revision application was rejected on the grounds that the petitioner could have filed a revised return or an appeal under Section 248 of the Income Tax Act. The present writ petition arises in the said facts and circumstances.

3. Learned counsel for the petitioner submitted that the two reasons set out in the impugned order are untenable. As regards the



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filing of a revised return, learned counsel submitted that the time limit to file such revised return had expired by the time the petitioner realised that it could have availed of the benefit under Section 90 of the Income Tax Act. With regard to the conclusion that an appeal could have been filed under Section 248 of the Income Tax Act, learned counsel submitted that Section 248 is inapplicable to a case where DDT was computed at a higher rate. Since the petitioner has no other remedy in respect of the error committed in the return, learned counsel submits that the revision should not have been rejected on the grounds contained therein. In support of this contention, learned counsel relies upon the judgment of the Division Bench of the Bombay High Court in *Hapag Lloyd India (P) Limited v. Principal Commissioner of Income Tax* (2022) 139 *Taxmann.com* 128 (Bombay). By placing reliance on paragraphs 11 and 12 of the said judgment, learned counsel submits that the scope of revisional jurisdiction is wide enough to embrace the petitioner's grievance and that it was wrongly rejected.



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4. Mr.B.Ramana Kumar, learned Senior Standing Counsel, appears on behalf of the respondents. In all fairness, he submits that Section 248 of the Income Tax Act may not be applicable in respect of an alleged error in the return regarding the rate at which DDT should be paid. On the merits of the matter, he submits that no adjudication was undertaken.

5. The rejection is not on the merits of the application but on the grounds that the petitioner could have filed a revised return or presented an appeal under Section 248 of the Income Tax Act. As regards the option of filing a revised return, learned counsel for the petitioner pointed out that the time limit for filing such revised return expired. In any event, when a statute prescribes a remedy, the petitioner cannot be denied the benefit of availing of such remedy merely because an alternative remedy may be available. This can, no doubt, be done if the remedy is discretionary but not if the remedy is statutory. Therefore, the first ground of rejection in the impugned order is untenable.



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6. The second ground of rejection is based on Section 248 of the Income Tax Act and the said provision is set out below:

“248. Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.]”

On examining Section 248 of the Income Tax Act, it is evident that it applies to a case where the tax deducted on payments made under Section 195 of the Income Tax Act to a non-resident, other than by way of interest, is required to be borne by the person by whom the income is payable (i.e. the person making the payment) as per contract or arrangement between the parties and the person making the deduction claims that tax was not payable. The case on hand



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pertains to the declaration and distribution of dividend by the petitioner, a company, to its shareholders and the tax payable thereon. This was not a case where a deduction was made under Section 195 towards tax on payments made to a non-resident and the parties had agreed that the deducting resident entity would bear the tax liability by compensating the non-resident by a proportional top-up. Therefore, Section 248 is clearly inapplicable. The second ground on which the revision petition was rejected is also consequently unsustainable.

7. As a corollary to the above conclusions, the impugned order is quashed and the matter is remanded for reconsideration on merits by the Principal Commissioner of Income Tax. After providing a reasonable opportunity to the petitioner, a fresh order on merits shall be issued within a period of three months from the date of receipt of a copy of this order. W.P.No.20788 of 2022 is disposed of on the above terms without any order as to costs. Consequently, connected Miscellaneous Petition is closed.



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Neutral Citation: Yes / No
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