

आयकरअपीलीयअधिकरण'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./ITA Nos. 1257 & 1258/Chny/2016

(निर्धारणवर्ष / **Assessment Years: 2007-08 & 2010-11**)

DCIT Corporate Circle -1(1) Chennai – 600 034.	बनाम/ Vs.	M/s. Dun & Bradstreet Technologies & Data Services (P) Ltd. (Formerly known as D&B TransUnion Analytic and Decision Services P Ltd) Level 9, Prince Infocity Phase -1, 286-11, Kandanchavadi,Rajiv Gandhi Salai, Chennai – 600 096.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCD-5293-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri. S.P. Chidambaram (Advocate) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri G. Johnson (Addl. CIT) – Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	23-12-2021
घोषणाकीतारीख / Date of Pronouncement	:	24-01-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2007-08 & 2010-11 arises out of separate orders of learned first appellate authority. However, the facts as well as issues are identical. The sole issue involved in the appeal is assessee's eligibility to claim deduction u/s 10A. First we take up revenue's appeal for AY 2007-08.

2. From the material on record, it could be seen that for AY 2007-08, the assessee was assessed u/s 143(3) on 21.12.2009. In the said order, deduction u/s 10A for Rs.64.71 Lacs as claimed by the assessee was denied. However, upon further appeal, Ld. CIT(A), vide order dated 18.01.2013, allowed the deduction. The revenue's appeal against the said order was disposed-off by Tribunal vide order dated 31.07.2013 wherein the matter was remanded back to the file of Ld. AO for re-examination of the claim.

3. Pursuant to these directions, Ld. AO reframed the assessment u/s 143(3) r.w.s. 254 on 27.01.2014. In the said order, deduction u/s 10A for Rs.64.71 Lacs was again denied to the assessee. However, upon further appeal, Ld. CIT(A) again allowed the claim vide order dated 03.02.2016. Aggrieved, the revenue assailed the order of Ld. CIT(A) along with first appellate order for AY 2010-11 before this Tribunal vide ITA Nos.1257 & 1258/Mds/2016. The Tribunal, vide common order dated 25/11/2016, again set aside the matter to the file of Ld. AO for re-examination in the light of CBDT Circular No.1 of 2013 and decide the matter on merits after giving due opportunity to the assessee.

4. Aggrieved by the said directions, the assessee assailed this order before Hon'ble High Court of Madras vide TCA Nos. 880 & 881 of 2018 which was disposed-off by Hon'ble Court vide order dated 10.12.2018. In the said order, Hon'ble Court, at para-9, observed that the Tribunal should have considered the correctness of orders passed by the CIT(A) as already the effect of the said circular was considered by both the Assessing Officer and CIT(A). It was further observed at para-10 that the Tribunal could very well decide the correctness of the order instead of remanding the matter to the Assessing Officer for fresh consideration as

already such an exercise was done by Ld. AO. Accordingly, directions were issued to Tribunal to decide the matters on merits in accordance with law. Pursuant to the said order, the appeal has come up for fresh hearing before this bench. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

5. The material facts as culled out from Assessment order dated 27.01.2014 are that the assessee being resident corporate assessee is stated to be engaged in the business of IT development / rendering IT enabled solutions for credit bureau / risk management products offerings, global predictive analytics and data management products. It transpired that the assessee (DBPSAPL) was incorporated on 23.01.2007 and twice changed its name on 05.09.2008 as well as on 12.12.2012. The assessee obtained approval from appropriate authority and obtained registration as 100% EOU. Another group company in the name of M/s DUN Bradstreet Information Services India Ltd. (DBISIL) was having another STPI unit in Chennai. Both the units were providing similar kind of services. During financial year 2007-08, the assessee entered into Business Transfer Agreement (BTA) on 14.02.2007 to purchase the STPI unit of DBISIL on going concern basis by way of slump sale. Accordingly, in the return of income, the assessee claimed deduction u/s 10A for Rs.64.71 Lacs.

6. However, the claim was rejected in the original assessment order on the ground that the slump sale was not eligible business reorganization for a Sec. 10A claim. During second round, Ld. AO noted that though CBDT Circular No. 1/2013 dated 17.01.2013 clarified that slump sale would also be valid business reorganization for claiming

deduction u/s 10A, however, it would still be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business.

7. Before Ld. AO, the assessee explained as to how the slump sale was made and also explained that there was no splitting or reconstruction of the business. It was also demonstrated that the entire undertaking was transferred on lock stock and barrel basis and there was only a change in ownership of the undertaking and all other matters continue to remain the same. It was also submitted that the consideration arising in the hand of transferor company was assessed to capital gains on slump sale basis. However, Ld. AO, finding variation in the value of assets as mentioned in BTA vis-à-vis values as reflected in the financial statements, proceeded to form an opinion that it was a case of splitting / reconstruction of business. The assessee refuted the allegation and submitted that difference was due to the fact that in the BTA, the values were quoted at Book value as appearing in the transferor's books of accounts whereas in Form 3CD, the values were reported on Written down value (WDV) basis. However, not convinced, Ld. AO denied the deduction to the assessee.

8. Upon further appeal, Ld. CIT(A) noted that the main reason due to which the deduction was denied was the observation of Ld. AO that the value of assets as mentioned in BTA vis-à-vis the value was mentioned in tax audit report did not match. The Ld. CIT(A) noted that in case of slump sale, it could not be said that the transferee paid any specific amount for any particular asset since the amount would be paid for the entire business as a whole without assigning cost to respective assets. In such case, a new mechanism to compute depreciation was introduced

by Finance Act, 1999 w.e.f. 01.04.2000 which provide for depreciation allowance on the basis of fair value of the assets. The exercise of apportionment was carried out by assessee by adopting the cost as appearing in the books of the transferor company. These details could be found in the financial statements and tax audit report of the transferor company and the transferee company. The same was further supported by reconciliation statement filed by the assessee. It could be noted that the value of assets as mentioned in BTA was Rs.483.20 Lacs whereas the additions made in the assessee's books of accounts was Rs.494.90 Lacs. The difference of Rs.11.70 Lacs represented addition to fixed assets post agreement date i.e., additions made during the period 14.02.2007 to 31.03.2007. Thus, there was no discrepancy in the value of assets as alleged by Ld. AO and it was not a case of splitting or reconstruction of business. Accordingly, the stand of Ld. AO was reversed against which the revenue is in further appeal before us.

9. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, it is undisputed fact that as per CBDT Circular No.1 of 2013, the transfer of business on slump sale basis was a valid business reorganization for the purpose of claim of deduction u/s 10A. The only reason as to why this claim has been denied by Ld. AO is the fact that Ld. AO noted that the value of assets as mentioned in BTA and values as taken in assessee's books of accounts did not match. However, before Ld. AO as well as before Ld. CIT(A), it was explained that there was no mismatch and the said fact was duly supported by reconciliation statements filed by the assessee. Upon perusal of assessee's submissions, it was noted by Ld. CIT(A) that the exercise of apportionment was carried out by assessee by adopting the cost as

appearing in the books of the transferor company. It was specifically noted that the value of assets as mentioned in BTA was Rs.483.20 Lacs whereas the additions made in the assessee's books of accounts was Rs.494.90 Lacs. The difference of Rs.11.70 Lacs represented addition to fixed assets post agreement date i.e., additions made during the period 14.02.2007 to 31.03.2007. Thus, there was no discrepancy in the value of assets as alleged by Ld. AO and no case of splitting or reconstruction of business could be made out against the assessee. The revenue is unable to controvert these findings in the impugned order. This being the case, we are of the considered opinion that Ld. CIT(A) has clinched the issue in the correct perspective and the adjudication as made in the impugned order would not require any interreference on our part. The revenue's appeal stands dismissed.

10. We find that facts as well as issues are substantially similar in AY 2010-11. The deduction u/s 10A was denied to the assessee while framing assessment on 10.03.2014. The same was denied by relying upon assessment orders for AYs 2007-08 to 2009-10. The Ld. CIT(A), vide order dated 03.02.2016, on similar logic and reasoning, reversed the stand of Ld. AO. Aggrieved, the revenue assailed the same before this Tribunal. The Bench, vide its order dated 25.11.2016, remitted the matter back to the file of Ld. AO for re-examination. However, this order was challenged by the assessee before Hon'ble High Court of Madras wherein Hon'ble Court, vide order dated 10.12.2018, directed Tribunal to decide the issue on merits. Accordingly, this appeal is before us for fresh hearing.

11. Facts of this year, being pari-materia the same as in AY 2007-08, our findings as well as adjudication as contained therein, shall mutatis-

mutandis, apply to this year also. Resultantly, the revenue's appeal stands dismissed.

12. Both the appeal stands dismissed.

Order pronounced on 24th January, 2022.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / Vice President

Sd/-
(Manoj Kumar Aggarwal)
लेखासदस्य / Accountant Member

चेन्नईChennai; दिनांकDated : 24/01/2022
JPV

आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF