

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.563/LKW/2013
Assessment year:2009-2010

A.C.I.T.-5, Kanpur.	Vs	M/s IBN Media & Software Limited, 15 K. G. Marg, New Delhi. PAN:AABCJ4394A
(Appellant)		(Respondent)

Appellant by	Shri Tarandeep Singh
Respondent by	Dr. Anand Kumar Agarwal, C.I.T., D. R.
Date of hearing	13/04/2015
Date of pronouncement	12/06/2015

ORDER

PER A. K. GARODIA, A.M.

This is Revenue's appeal directed against the order passed by learned CIT(A)-II, Kanpur dated 08/03/2013 for the assessment year 2009-2010.

2. The grounds raised by the Revenue are as under:

- "1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.13,51,17,561/- made by the AO without appreciating the facts brought on record by the Assessing Officer during the course of assessment proceedings.
2. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.13,51,17,561/- made by the AO without appreciating the facts that the TDS were claimed by the assessee but the receipt from the same has not been shown by the assessee in its return of income.
3. The order of the CIT(A), Kanpur being erroneous, unjust and bad in law be vacated and the order of the AO be restored."

3. Learned D.R. of the Revenue supported the assessment order. He also submitted that as per section 199 of the Act, only that TDS can be considered as payment of tax on behalf of the assessee from whose income, the deduction was made of tax. He also drawn our attention to Rule 37BA of the Income Tax Rules as per which also, credit for TDS shall be given to the person to whom the payment has been made or credit has been given on the basis of information relation to deduction of tax furnished by the assessee deductor to the income tax authority or the person authorized by said authority. He also submitted that as per the TDS certificates for which credit has been claimed by the assessee, the amount of TDS is Rs.27,37,175/- with the corresponding income is Rs.13,51,17,561/-. He submitted that since the assessee has claimed credit of TDS and as per TDS certificate also, which are in the name of J.TV/IBN, it is clear that the entire business was transacted in the name of the assessee and the assessee is owner of this income and therefore, this was rightly added by the Assessing Officer as income of the assessee.

4. As against this, Learned A.R. of the assessee supported the order of learned CIT(A).

5. We have considered the rival submissions. We find that even the Assessing Officer has made this addition in the hands of this assessee on protective basis only. The issue was decided by CIT(A) in favour of the assessee as per para No. 6 to 8 of his order, which are reproduced below for the sake of ready reference:-

"6. I have carefully considered the facts of the case, submissions and arguments of the appellant and the remand report dated 11-03-2013 of the Assessing Officer. The Ld Assessing Officer has not properly appreciated the facts of the case. The cut-off date of the scheme of arrangement has been approved by the Hon'ble Jurisdictional High Court as 01st October 2007 i.e. relevant to AY 2008-09. It will first be relevant to see as to what is the locus standi of the income tax department when a Scheme of Arrangement is pending approval

by the High Court. In this regard it will be relevant to note the observations of the Hon'ble Gujarat High Court in a recent case of Vodafone Essar Gujarat Ltd reported in (2012) 24 taxmann.com 323(Guj) as under:

"In our view, if any amount is required to be payable to the Income-tax Department by the transferor company, the Income-tax department can be said to be a creditor so far as its claim against the transferor company is concerned. Considering the same, it cannot be said that the Income-tax Department has no locus to put forward its objections in this behalf. In other words, even if there are no objections, which are received against the Scheme pursuant to the public advertisement, yet the Court is required to examine the Scheme while giving its approval. In our view, the learned Company Judge has rightly allowed the Income-tax Department to have its say by raising objections in connection with the Scheme in question. Even a similar objection had been raised by the Income-tax Department before Delhi High Court and the Delhi High Court has considered the objections raised by the Income-tax Department on its own merits. Considering the same, in our view, it cannot be said that the Income-tax Department has no right to lodge its objections as the Income-tax Department raised a substantial demand towards tax from the transferor company. The aforesaid point raised by Mr. Joshi is therefore negative by holding that the Income-tax Department has the right to place its objections against sanctioning of the Scheme in question. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the scheme."

7. In the instant case no such objection was put forward by the department when the scheme of Arrangement was being approved by the Hon'ble Allahabad High Court. If that be so then today the Ld Assessing Officer cannot doubt the said Scheme or refuse to abide by the terms of the Scheme of Arrangement so approved. This ratio is also now well settled by the series of judicial pronouncements some of them are as under:

- Marshall Sons & Co. (India) Ltd, reported in 223 ITR 809 (5C)

- Sadanand S. Verde vs. State of Maharashtra reported in 247 ITR 609(Bom)
- CIT vs J.K Corporation reported in 331 ITR 330(Cal)

8. The terms and conditions upon which the current Scheme or Arrangement was Approved by the Hon'ble jurisdictional High Court were that post cut-off date of 01st October 2007 the News Business Undertaking of the appellant would be demerged from it and would be merged into another domestic company M/s IBN 18 Broadcast Ltd. Although the Scheme of Arrangement was approved by the Hon'ble Allahabad High Court vide order dated 23rd September, 2008, however during the intervening period, the appellant was held deemed to have been carrying on all business and activities relating to the merged undertaking for and on behalf of M/s IBN 18 Broadcast Ltd. During the course of appellant proceedings the appellant was directed to file the assessment status of M/s IBN 18 Broadcast Ltd for AY 08-09 and AY 09-10. The documents produced by the appellant in this regard i.e. the Income Tax Returns, Annual Accounts and Assessment Orders of M/s IBN 18 Broadcast clearly show that for AY 08-09 and AY 09-10 the income from demerged News Undertaking Business has been assessed to tax in the hands of M/s IBN 18 Broadcast in New Delhi by the Deputy Commissioner of Income Tax, Circle 11(1), New Delhi. Facts on record further show that the Scheme of Arrangement was accepted by the predecessor of the Assessing Officer in his order of assessment dated 21st December 2010 passed under section 143(3) of the Act in appellant's case for AY 2007-08. In AY 2007-08 the predecessor Assessing Officer has accepted that post cut of date of 01st October 2007/ all incomes and expenses, assets and liabilities of the demerged undertaking are to be assessed to tax in the hands of M/s IBN 18 Broadcast in New Delhi. Considering the above facts the impugned action of Assessing Officer in again making addition of the income pertaining to the demerged undertaking for AY 2009-10 in hands of the appellant is not sustainable. As such the Assessing Officer is directed to assess the total income of the appellant after excluding the income of Rs.13,51,17,561/- pertaining to the demerged undertaking. The Assessing Officer is directed to assess the taxable income in accordance Scheme of Arrangement as approved by the Hon'ble Allahabad High Court."

5.1 From the above paras from the order of CIT(A), we find that a clear finding has been given by CIT(A) in para 8 of his order that from the

documents produced by the assessee in this regard i.e. income tax returns, annual accounts and assessment orders of M/s IBN 18 Broadcast, it is clear that for assessment year 2008-09 and 2009-10, the income from demerged news undertaking business has been assessed to tax in the hands of M/s IBN 18 Broadcast in New Delhi by the Dy. CIT, Circle-11(1), New Delhi. This finding of CIT(A) could not be controverted by learned D.R. Hence, the protective assessment made by the Assessing Officer in the present case cannot be sustained because substantive addition has been made in the hands of IBN-18 Broadcast and therefore, if any addition is made in the present case, it will amount to double addition. Whether credit in TDS is allowable or not in the hands of this assessee is not the dispute before us and therefore, we do not make any observation on that aspect but merely because the assessee has claimed TDS credit in the present case, it cannot be concluded that the income is also assessable in the hands of the assessee particularly when the same income is already taxed on substantive basis in the case of IBN-18 Broadcast Limited. In view of these facts, we are of the considered opinion that there is no infirmity in the order of CIT(A), and therefore, we decline to interfere in the same.

6. In the result, the appeal of the Revenue stands dismissed.

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/.
(SUNIL KUMAR YADAV)
Judicial Member

Sd/.
(A. K. GARODIA)
Accountant Member

Dated:12/06/2015

*C.L.Singh

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Lucknow

Asstt. Registrar