

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 379/DEL/2018 [A.Y 2014-15]**

The Dy. C.I.T  
Circle 10(1)  
New Delhi

Vs.

Genpact India, Delhi Information  
Technologies Park, Shastri Park  
New Delhi

PAN : AAACG 9163 H

**ITA No. 472/DEL/2018 [A.Y 2014-15]**

Genpact India, Delhi Information  
Technologies Park, Shastri Park  
New Delhi

Vs.

The Dy. C.I.T  
Circle 10(1)  
New Delhi

PAN : AAACG 9163 H

[Appellant]

[Respondent]

**Date of Hearing : 01.09.2021**

**Date of Pronouncement : 01.09.2021**

Assessee by : Shri Sachit Jolly, Adv

Revenue by : Ms Sunita Singh, CIT- DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above cross appeals by the assessee and revenue are preferred against the order of the Commissioner of Income Tax [Appeals] - 35, New Delhi dated 25.10.2017 pertaining to Assessment Year 2014-15. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

3. At the very outset, let us understand the clear facts of the case which would be clear from the following order of the Hon'ble High Court of Delhi in WPC 686/2017 and CM No 29390/2019. The most relevant part of the said judgment reads as under:

"1. Aggrieved by one portion of the assessment order concerning the alleged liability of the Petitioner (hereafter the „Assessee“) under Sections 115-QA and 115-QB of the Income Tax Act, 1961 („Act“) in the impugned assessment order dated 31st December, 2016 passed by the Assessing Officer („AO“) (Respondent No. 1), the Assessee has approached this Court with the present petition under Article 226 of the Constitution of India. Along with the petition, an application being CM No.3141/2017 was filed seeking

interim directions to restrain the Respondents from enforcing the demand in terms of the impugned order.

2. By the impugned assessment order, *inter alia*, a demand was sought to be created under Section 115-QA of the Act in relation to the Assessee buying back 10 lakhs equity shares out of opening share capital of 25,68,700 shares from M/s. Genpact India Investment, Mauritius („GII“) in two phases in May and October, 2013. The case of the Revenue was that the scheme adopted to buyback such shares was a colourable device to evade „buyback distribution tax liability“ under the Act. The case of the Assessee on the other hand was that the buyback of shares was pursuant to a scheme of arrangement under Section 391 of the Companies Act, 1956 („CA“) approved by the High Court of Delhi. This would, therefore, not be a „buyback“ under Section 77-A CA for the purposes of Section 115QA of the Act, as it stood at the relevant time.

3. At the outset, it requires to be noticed that the impugned order of assessment was passed under Section 143 (3) of the Act for the Assessment Year („AY“) 2014-15. The said impugned assessment order deals with certain other issues, apart from the issue concerning the demand under Section 115 QA of the Act. As regards the other issues, the Assessee preferred a statutory appeal under Section 246-A of the Act before the Commissioner of Income Tax (Appeals) [„CIT (A)“]. The Court is informed that the Assessee succeeded in the said appeal and against the order of the

CIT (A), the Revenue has filed an appeal, which is stated to be pending before the Income Tax Appellate Tribunal ("ITAT").

4. After considering the impugned grievance, the Hon'ble High Court held as under:

"27. Accordingly, the writ petition is disposed of with the following directions:

(i) The court declines to entertain this writ petition under Article 226 of the Constitution against the impugned demand raised by the Revenue by way of the impugned assessment order under Section 115-QA of the Act against the Assessee.

(ii) The Assessee is granted an opportunity to file an appeal under Section 246-A of the Act before the CIT (A) to challenge the impugned assessment order only insofar as it creates a demand under Section 115 QA of the Act.

(iii) If such an appeal is filed within ten days from today, it will be considered on its own merits and a reasoned order disposing of the appeal will be passed by the CIT (A) on all issues raised by the Assessee, not limited to the issues raised in the present petition as well as on the response thereto by the Revenue in accordance with law.

(iv) The reasoned order shall be passed by the CIT (A) not later than 31st October, 2019. It will be communicated to the Petitioner within ten days thereafter. For a period of two weeks after the date of such communication of order, the demand under the impugned assessment order, if it is affirmed by the CIT (A) in appeal, will not be enforced against the Assessee.

(v) The Court places on record the statement of the Revenue that it will not raise any objection before the CIT (A) as to the maintainability of such an appeal and as to the appeal being barred by limitation. The Court also takes on record the statement of the Revenue that it will not enforce the demand in terms of the impugned assessment order till the disposal of the above appeal. All of the above is subject to the Assessee filing the appeal before the CIT (A) within ten days from today.

(vi) It is made clear that this Court has not expressed any view whatsoever on the contentions of either party on the merits of the case.

28. The writ petition and pending application are disposed of with above directions. No costs"

5. With the above factual background, the Revenue has raised the following grounds of appeal:

1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs. 19,21,88,611/- from interest on fixed deposits as eligible for deduction u/s 10A & 10AA of the I.T. Act, 1961.
2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs.6,97,54,470/- from interest on inter corporate deposits as eligible for deduction u/s 10A & 10A A of the I.T. Act 1961.
3. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs.23,04,032/- from interest on employee loans as eligible for deduction u/s 10A & 10AA of the I.T. Act 1961.
4. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs.34,54,55,81 1/- from Foreign Exchange Gain & Forward Contract Gain as eligible for deduction u/s 10A & 10AA of the I.T. Act, 1961 ignoring the fact, that the gain is arises due to hedging activity and is not derived by the specified business activity.
5. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in reducing the telecommunication charges of Rs.8,53,88,879/- from total turnover also for the purpose of computation of deduction u/s 10A& 10AA of the I.T. Act, 1961.
6. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in reducing the Expenses in respect of migration / on the job training amounting to Rs. 1,95,93,29,278/- from total

turnover also for the purpose of computation of deduction u/s 10A & 10AA of the I.T. Act, 1961.

7. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.64,18,782/- made by the AO on account of excess depreciation on computer peripherals.
  8. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.30,11,346/- u/s 14A of the Act, ignoring the provision of section 14A read with rule 8D of IT Rules, 1962.
6. The assessee has raised the following grounds of appeal:

1. That on the facts and in the circumstances of the case and in law, the Assessing Officer hereinafter referred to as "AO"} has erred in completing the assessment on the Appellant for the assessment Year 2014-15 disregarding the fact that the Appellant has merged with Genpact India Private Limited and hence, the order passed u/s 143(3) is without jurisdiction, bad in law, void-ab-tio and is liable to be quashed.

2. That on facts and in law the Commissioner of Income Tax (Appeals) {herein above referred as "CIT(A)"} erred in upholding that while computing deduction u/s 10AA of the Act following :receipts are to be excluded within the ambit of "export turnover" as defined in explanation 1 (i) to sec 10AA of the Act:

(a) Telecommunication Expenses	Rs.8,53,88,879/-
(b) Recovery of expenses in respect of migration on-the-job training expenses	Rs. 195,93,29,278/-

3. That on facts and in law CIT(A) erred in not appreciating that recovery of expenses in respect migration/ on-the-job training services and telecommunication expenses were not included in the figure of "export turnover" considered by the Appellant while computing deduction u/s 10AA of the :t.

4. That on facts and in law the CIT(A) erred in upholding the order of AO partly and not owing complete relief as claimed.

5. That on facts and in law the order passed by the AO is void ab initio and bad in law.

That the Appellant prays for leave to add, alter, amend and/or vary the ground(s) of appeal at or fore the time of hearing

7. As mentioned at the very beginning, the impugned assessment order dealt with other issues [other than the demand u/s 115QA of the Act]. The matter travelled upto the Tribunal and the Tribunal in ITA No. 583/DEL/2020 order dated 23.07.2020 has quashed the assessment order. The relevant findings of the Tribunal read as under:

"7. We have heard both the parties and perused the records available before us. From the perusal of the records, it can be seen

that erstwhile entity Genpact India Private Limited was amalgamated with Genpact India w.e.f. 30.04.2016 as a result of scheme of amalgamation duly approved by the order dated 17.08.2015 by Hon'ble High Court at Telangana and Andhra Pradesh as well as vide order dated 18.03.2016 by Hon'ble Delhi High Court. The Assessing Officer has passed the order by mentioning in title of the order the name of the assessee as Genpact India (now merged with "Genpact India Private Limited PAN: AABCE4461B). Thus, the Assessing Officer was very much aware that the amalgamating company Genpact India is no longer in existence. This also is supported by the letter dated 18.04.2016 addressed to Member (IT), CBDT and copy to Assessing Officer, DCIT, Circle 10(1), Delhi intimating therein by the assessee that Genpact India (a wholly owned subsidiary of Empower) has, in the 68th meeting of Board of Approval (BoA) for SEZs held on December 30, 2015, obtained the approval of the BoA for change in the entrepreneurship of its SEZ units to Empower. The said letter also mentioned that the aforementioned scheme has been allowed by the Hon'ble High Court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh (vide order dated 17.08.2015 in CP No. 174 of 2015) and the Hon'ble High Court of

Delhi at New Delhi (vide order dated March 18, 2016 in CP No. 703 of 2015). The copies of Amalgamation Order as sanctioned by the Hon'ble High Court of Delhi and Hon'ble High Court of Telangana and Andhra Pradesh along with copies of PAN of Genpact India and detail of the jurisdictional Assessing Officers was placed by the assessee before the Revenue authorities. The reliance upon the decision of the Hon'ble Supreme Court in case of Maruti Suzuki India Ltd. (Supra) by the Ld. AR is apt in the present case. The Hon'ble Supreme Court observed in para 19 as follows:

"19. ....

*(iii) Thirdly, the consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., the principle has been formulated by this Court in the following observations:*

*"5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger*

*or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more 30 [2019] 260 Taxman 412 (Del.) 31 (2019) 261 Taxman 137 (Guj) existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."*

*(iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed;*

*(v) Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1);*

*(vi) Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;*

*(vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of*

*the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio....."*

In the present case also the amalgamating company i.e. Genpact India was not in existence at the time of conducting assessment proceedings as well as on the date of passing Assessment Order. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act. Hence, the Assessment proceedings as well as the Assessment order itself are void ab initio. Therefore, assessment order is set aside. We allow Ground Nos. 1, 2 & 3 of the appeal filed by the assessee. There is no need to give any finding relating to the other issues as the assessment order itself is void ab initio."

08. In light of the aforesaid findings of the Tribunal, the assessment order is set aside. Appeal of the Revenue is set aside and that of the assessee becomes non est

9. In the result, both, the appeal filed by the Revenue in ITA No. 379/DEL/2018 is dismissed and the appeal of the assessee in ITA No. 472/DEL/2018 becomes non est.

The order is pronounced in the open court on 01.09.2021 in the presence of both the rival representatives.

Sd/-

**[KULDIP SINGH]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 01<sup>st</sup> September, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	