

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1779/Bang/2018
Assessment year : 2004-05

Deputy Commissioner of Income Tax, Circle – 7(1)(2), Room No.241, 2 <sup>nd</sup> Floor, BMTC Building, 80 Feet Road, Koramangala, Bengaluru – 560 095.	Vs.	M/s. Wipro Spectramind Services Ltd., 239, Okhala Industrial Area, Phase-III, New Delhi – 110 020. <b>PAN : AA ECS 1943 B</b>
APPELLANT		RESPONDENT

Revenue by	:	Shri. Pradeep Kumar, CIT
Assessee by	:	Shri. Srinivasan Pagalthivarthi, CA

Date of hearing	:	14.03.2019
Date of Pronouncement	:	22.03.2019

**ORDER**

**Per Shri Jason P Boaz, A.M. :**

This appeal by the assessee is directed against the order of CIT(A)-7, Bangalore, dated 22.03.2018 for Assessment Year 2004-05.

2. Briefly stated, facts relevant for disposal of this appeal are as under:

2.1 The assessee filed return of income for Assessment Year 2004-05 on 01.11.2014 in the name and style of M/s. Wipro Spectramind Services Ltd.,

declaring an income of Rs.47,81,050/-. Subsequent thereto, Wipro Spectramind Services Ltd., merged with Wipro Ltd., w.e.f. 01.04.2005 consequent to the order of merger dated 05.04.2006 passed by the Hon'ble Karnataka High Court; and this fact was brought to the knowledge of the Assessing Officer (AO) by the assessee vide letter dated 05.09.2006. The case on hand had been taken up for scrutiny and subsequent to the above events, the order of assessment was concluded under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 29.12.2006 on the now non-existent entity M/s. Wipro Spectramind Services Ltd., instead of the name of the merged entity Wipro Ltd.

2.2 Aggrieved by the order of assessment dated 29.12.2006 for Assessment Year 2004-05, the assessee preferred an appeal before the CIT(A)-7, Bangalore, raising various grounds on the merits of the additions / disallowances made. Additional grounds were also raised by the assessee before the CIT(A) vide letter dated 09.11.2013 challenging the validity of the order of assessment for Assessment Year 2004-05 as being bad in law, as the same was passed on a non-existent company. The learned CIT(A), after considering the assessee's submissions on the aforesaid additional ground, the report of the AO in the matter dated 27.12.2017, wherein reliance had been placed on the decision of a Co-ordinate Bench of this Tribunal in the case of GE Medical Systems (India) Pvt. Ltd., in IT(TP)A No.563/Bang/2016 and allowed the assessee's appeal by cancelling the Order of Assessment for Assessment Year 2004-05 dated 29.02.2006, following, *inter alia*, the decision of the Hon'ble Karnataka High Court in the case of GE Medical Systems Pvt. Ltd., in ITA No.702/2017 dated 09.01.2018 and of a Co-ordinate Bench of this Tribunal in the case of Quantech Global Services Ltd., (ITA No.1947/H/2011 dated 19.01.2018).

3.1 Aggrieved by the order of CIT(A)-7, Bengaluru dated 22.03.2018 for Assessment Year 2004-05, Revenue has preferred this appeal wherein it has raised the following grounds:-

1. *The order of the learned CIT(A) is opposed to law and facts of the case.*
2. *"Whether on the facts and in the circumstances of the case, the CIT(A) was justified in law in cancelling the assessment order of the AO"?*
3. *"The CIT(A) erred in not considering that there was no procedural defect in the order since the name of the amalgamated entity has also been mentioned in the notice and also in the assessment order".*
4. *"The CIT(A) erred in law in not considering that the assessee had itself mentioned the name of the company as M/s. Wipro Spectramind Services Ltd., (now merged with Wipro Ltd.,) in many of its communications filed before the Assessing Officer during the assessment proceedings"?*
5. *"The CIT(A) erred in not considering the decision of the Hon 'ble Tribunal in IT(TP)A No. 563/Bang/2016 for AY 2011-12 in the case of M/s. GE Medical Systems (India) Pvt. Ltd., for AY 2011-12 involving similar issue, wherein the Hon 'ble ITAT has held that the AO alone cannot be held responsible and the assessee is equally responsible for it and set aside the issue back to the file of the AO and directed to pass fresh assessment order in the name of the merged entity*
6. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*
7. *The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.*

3.2 The learned DR was heard and filed written submissions reiterating the contentions put forth in the grounds raised (supra), submitting that there was no procedural defect in the impugned order of assessment and that the CIT(A) was not justified in cancelling the same. It is also contended that the CIT(A) erred in not considering the decision of the Co-ordinate Bench in the case of GE Medical Systems (India) Pvt. Ltd., (supra) and set aside the issue back to the file of the AO for passing a fresh order of assessment in the name of the merged entity.

3.3 Per contra, the learned AR for the assessee argued that the impugned order ought to be upheld as the CIT(A) correctly followed the binding decision of the Hon'ble Karnataka High Court in the case of GE Medical Systems (India) Pvt. Ltd., (supra) which upheld cancellation of the order of assessment passed on the amalgamating company and modified the Tribunal order in the said case; placed reliance upon by Revenue; to the extent that the AO was at liberty to pass an order of assessment in the name of the merged company if it is permissible in law. According to the learned AR, there is no merit in the contentions put forth by Revenue in the grounds raised.

3.4.1 We have considered the rival contentions and carefully perused the material on record; including the judicial pronouncements cited (supra). We find that the CIT(A) has elaborately considered the assessee's submissions, the contentions put forth by the AO in the report thereon and the decisions of the Co-ordinate Bench of this Tribunal in the case of GE Medical Systems (India) Pvt. Ltd., (supra), relied upon by Revenue, the decision of the Hon'ble Karnataka High Court in the said case (supra) modifying the decision of the Tribunal in the case of GE Medical Systems (India) Pvt. Ltd. Thereafter, the

CIT(A), following, *inter alia*, the decision of the Hon'ble Karnataka High Court in the case of GE Medical Systems Pvt. Ltd., in ITA No.702/2017 dated 09.01.2018 held that the order of assessment for Assessment Year 2004-05 passed in the name of the amalgamating company; viz., Wipro Spectramind Services Ltd., is not valid and cancelled the said assessment and also held that the AO was free to pass an order of assessment in the name of the merged company, if it is permissible in law to do so.

3.4.2 We find that the Hon'ble Karnataka High Court in its decision in the case of GE Medical Systems (India) Pvt. Ltd., (ITA No.702/2017 dated 09.01.2018) has modified the Tribunal's order in the same case, relied on by Revenue (*supra*); by holding as under at paras 1 to 3 of its order:-

*"1. Heard the learned Counsel for the parties and perused the record. The only grievance made out of by learned counsel appearing for the appellant is with regard to the direction given by the Income Tax Appellate Tribunal to the Assessing Officer to pass an appropriate order in the name of the merged company.*

*2. Learned counsel for the appellant submits that the Appellate Tribunal had erred in law in giving the aforesaid specific directions to the Assessing Officer.*

*3. We, accordingly, direct the Assessing Officer to pass an appropriate order in the matter, in accordance with law. If it is permissible in law to pass an assessment order in the name of the merged company, he is at liberty to do so. The appeal is accordingly disposed of. In view of disposal of the appeal, I.A.No. 1/2017 does not survive for consideration; it stands disposed of accordingly"*

Respectfully following the decision of the Hon'ble Karnataka High Court in the case of GE Medical Systems (India) Pvt. Ltd., (supra), we uphold the order of the CIT(A) in cancelling the impugned order of assessment for Assessment Year 2004-05 passed in the name of the amalgamating company i.e., M/s. Wipro Spectramind Services Ltd., as being not valid and also hold that the AO is at liberty to pass an order of assessment in the name of the merged entity M/s. Wipro Ltd., if it is permissible in law. Consequently, finding no merit in the grounds raised by Revenue (supra), we dismiss them.

4. In the result, Revenue's appeal for Assessment Year 2004-05 is dismissed.

*Order pronounced in the open court on this 22<sup>nd</sup> day of March, 2019.*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 22<sup>nd</sup> March, 2019.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.