

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2574/Del./2016
(ASSESSMENT YEAR : 2010-11)**

DCIT, Circle 10 (1), vs. M/s. Genpact Infrastructure (Hyderabad)
New Delhi. Pvt. Ltd.,
(Now merged with Genpact India),
Delhi Information Technology Park,
Shastri Park,
New Delhi – 110 053.

(PAN : AACCG6568Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Rinku Singh, Senior DR

Date of Hearing : 09.04.2019

Date of Order : 24.04.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, DCIT, Circle 10 (1), New Delhi (hereinafter referred to as “the Revenue”) by filing the present appeal sought to set aside the impugned order dated 01.02.2016 passed by the Commissioner of Income-tax (Appeals)-16, New Delhi, qua the assessment year 2010-11 on the grounds inter alia that :-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in reducing the

telecommunication expenses of Rs.11,48,856/- from the total turnover of the assessee ignoring the fact that the freight, telecom charges etc attributable to the delivery of articles or things, incurred in providing the services are to be excluded from the export turnover and not from the total turnover as laid down by the Hon'ble Apex Court in Commissioner Income tax vs. K. Ravindranathan Nair (295 ITR 228 (SC) and ITAT in the case of ITO vs. sak Soft Ltd. Chennai).

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in reducing the migration/on job training expenses of Rs.4,77,99,177/- from the total turnover of the assessee ignoring the fact that the freight, telecom charges etc attributable to the delivery of articles or things, incurred in providing the services are to be excluded from the export turnover and not from the total turnover as laid down by the Hon'ble Apex Court in Commissioner Income tax vs. K. Ravindranathan Nair (295 ITR 228 (SC) and ITAT in the case of ITO vs. sak Soft Ltd. Chennai)."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer while making the adjustment reduced the amount of Rs.11,48,856/- claimed by the assessee on account of telecommunication expenses from export turnover but allowed to remain included in the total turnover. AO also reduced expenditure of Rs.477,99,177/- on account of job training services as the expenses having been incurred in foreign exchange.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

5. So far as question of reducing the amount of Rs.11,48,856/- incurred on communication expenses from the export turnover by the AO is concerned, the Id. CIT (A) has decided the issue in favour of the assessee by relying upon the decision rendered by the Hon'ble High Court in case of *Genpact India – 203 taxman 632*, the ratio of which is as under :-

“the export turnover in the numerator must have the same meaning as the export turnover which is the constituent element of denominator inasmuch as the export turnover is part of the total turnover and there should be uniformity in the ingredients both the numerator and denominator of the formula for computation of deduction u/s 10A.”

6. Hon'ble High Court further held that :-

“if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing export turnover as a component of the total turnover in the denominator since the total turnover also included export turnover and the component export turnover of the numerator and denominator cannot be different.”

7. The Id. CIT (A) has rightly decided the issue in favour of the assessee and as such, telecommunication expenses amounting to Rs.11,48,856/- cannot be reduced for the purpose of computation of deduction u/s 10AA of the Act. So, ground no.1 is determined against the Revenue.

GROUND NO.2

8. AO has reduced the expenditure of Rs.477,99,177/- on account of job training service on the ground that the expenses have been incurred in foreign exchange.

9. Ld. CIT (A) has also allowed these expenses to be part of the export turnover by following the decision rendered by Hon'ble High Court in *Genpact India* (supra), the ratio of which is, "*the export turnover in the nominator is to be arrived at after excluding certain expenses and the same should not be excluded in computing the export turnover as component of total turnover in the denominator.*"

10. The AO has merely declined to include these expenses in the export turnover while computing the deduction u/s 10A of the Act on the ground that the issue has not yet attained finality as SLP against the order of Hon'ble High Court is pending adjudication before the Hon'ble Supreme Court. However, no such judgment of the Hon'ble Supreme Court has been brought on record by the

Revenue overturning the decision of Hon'ble Delhi High Court rendered in *Genpact India* (supra). So, we are of the considered view that the expenses on account of migration/job training are to be reduced from the total turnover also. So, there is no illegality or perversity in the findings returned by the Id. CIT(A), hence ground no.2 is determined against the Revenue.

11. Resultantly, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 24th day of April, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of April, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**