

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No.106/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2011-12)

Convergys India Services Pvt. Ltd. (formerly known as Convergys Infowavz P.Ltd/Infowavz International Ltd), 7 <sup>th</sup> , 11 <sup>th</sup> , 14 <sup>th</sup> & 15 <sup>th</sup> Fl., G CORP TECH Park, Kasarvadavali, Ghodbhunder Road, Thane (W), Pin-400 061 (Maharashtra)	<b>बनाम/ Vs.</b>	I.T.O 10(1)(erstwhile ITO 8(2)(1), Aaykar Bhavan, Room No. 25, M.K. Road, Mumbai-400020.
स्थायीलेखासं./जी आइ आरसं./PAN No. AABCC5056G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Dhanesh Bafna & Ms. Chandni Shah, ARs
प्रत्यर्थीकीओरसे/Respondentby	:	Kumar Padmapani Bora, DR
सुनवाईकीतारीख/ Date of Hearing	:	17.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	24.12.2019

आदेश / ORDER

**Per S. Rifaur Rahman, Accountant Member:**

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) -17 in

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short referred as 'Ld. CIT(A)', Mumbai, dated 20/09/2017 for Assessment Year (in short AY) 2011-12 on the following grounds of appeal:-

1. Disallowance on account of rent

1.1 On the facts and in the circumstances of the case and in Law, the Learned Commissioner Income-tax (Appeals) erred in confirming the action of the Learned Assessing Officer in disallowing proportionate rent of Rs.1,44,53,392.

2. Brief facts of the case are that the assessee company is engaged in the business of providing technical support and outsourcing services to its various customers. The assessee had filed its return of income for AY 2011-12 on 25-11-2011 declaring total income at Rs. Nil. Subsequently, the assessee had filed its revised return on 29-03-2012 declaring total income at Rs. Nil. Under normal provisions of the Act by disallowing the deferred rent. However, the same was processed u/s. 143(1) of the Act. The case of the assessee was selected for scrutiny and notices u/s. 143(2)/142(1) dt. 13-09-2012 were issued and duly served on the assessee. In response to said notices issued by the AO, the A/R of the

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assessee appeared before the AO and filed the various details. On perusal of return, the AO observed that the assessee has claimed the expenses towards rent payment of Rs. 3,10,47,923/- in its P & L account. The AO found that the assessee company has shared the premises with M/s. Stream International Services P.Ltd in AY 2009-10 by disallowing proportionate rent @50%. . Being similar facts involved for this year (AY) also, the AO asked the assessee why the proportionate rent should not be disallowed in this AY also. In response, the assessee submitted before the AO in detail, which are recorded by the AO in his order at pages 4-5, which are as under:-

1.1 " *The company submits that it has shifted its premises to seventh floor, Maxus Mall, Bhayander - West ('Bhoyander premises') in the month of May 2010 (copy of 'Form 18'- /or the change of address of the company, filed with the Registrar of Companies, Mumbai is attached as Annexure 4). The leave and license agreement ( 'agreement') dated 20 May 2008 for Bhyander premises has been entered into by Stream International Pvt. Ltd ("Stream') on behalf of Infowavz at the specific request of Shreeji Enterprises ('landlord'), A copy of the agreement is enclosed as Annexure 5 for your ready reference.*

1.2 *The company would like to mention that the reason /or execution of the agreement in the name of Stream was on account of the insistence of landlord. Given that the company was a loss making entity in earlier years, the landlord insisted in having Stream (L e, financially sound company with a positive net worth) to be a contracting entity on behalf of Infowavz.*



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1.6 The above aspect is also evident from the nomination agree: between Stream and the landlord, wherein it is explicitly brought out that the financial obligations (such as payment of license fee, amenities charges etc) would he paid by Infowavz, In fact, the same was a prerequisite for Infowavz,, in order to occupy the said premises,

17 Further, the company would like to mention that PAN and TANO/ company had been obtained on the aforesaid premises. Accordingly, the re of income reflecting the aforesaid premises, for the year under consideration was filed. This also suggests that the premises were occupied by the company.

1.8 In view of the above submissions, the company submits that it has rightly claimed the entire rent as a deduction for the year under consideration', as the said premises were fully occupied by the company itself for the said year. The company submits that Stream has not claimed any deduction in respect of rent paid by infowavz to the landlord. If your goodself require, the company is witting to provide an affidavit from Stream certifying the above. Further, the company submits that disallowance of rent in its hands would amount to natural injustice to the group and would result double non deduction of the amount sought to be disallowed.

The company would like to reiterate that the contentions raised out in this submission for Bhayander premises should mutatis mutandis also apply to the earlier Andheri premises where it was operating for a limited period of 50 days during the year.

1.9 Without prejudice to above submissions, the company would like to bring to your attention (he nomination agreement as well as the Leave and License agreement for the earlier Andheri premises ( copy enclosed as Annexure 7). The said agreements provided right to use the premises to Infowavz jointly with Stream (refer clause 5(b) of the leave and license agreement), 4s against this, in the year under consideration the nomination agreement provides only sole rights to tnfowavz for occupying the premises (refer clause 9(xy) of the leave and license agreement),

1.10 Considering the above, the company respectfully submits that the proportionate disallowance on account of rent should not be warranted in the year under consideration. The company would like to reiterate that the above

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*is without prejudice to its rightful contention that in the past years, the agreement which provided right for joint occupation, factoring in those years, also the premises in question was solely occupied by Infowavz. The company would be glad to provide any additional information (such as rent reconciliation with TDS certificate, etc,) as your goodself may require, demonstrating its aforesaid claim."*

3. Before the AO in support of its claim furnished the details of actual rent paid, which are as under:-

Particulars	Amount (Rs.)
Andheri Office Rent	2,54,42,999
Actual Maxus Mall rent	34,63,515
Deferred Maxus mall Rent	3,48,774 (already disallowed in the computation)
50% provision for service tax	17,92,635 (already disallowed in the computation)
Total	3,10,47,922

4. But the above submission/estimation of assessee was not found acceptable by the AO. He was of the view since last year the assessee was shifting the premises with its parent company, M/s. Stream International Services P.Ltd. ( in short, ' SISPL' ) .The Leave & License agreement was also in the name of M/s. Stream International Services P.Ltd . Vide resolution dt. 18-06-2008 passed by M/s. Stream International Services P.Ltd ( in short, ' SISPL' )and the

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assessee company that the said premises is to be used either by M/s. Stream International Services P.Ltd or its subsidiary, M/s. Infowavz International Ltd, i.e. the assessee. The AO was of the view that the claim of rent was not correct and proportionate rent was not disallowed and since the Id. CIT(A) has confirmed the disallowance of rent for Andheri premises in the earlier years, the AO disallowed of Rs. 1,44,53,392/- and added the same to the total income of the assessee by an order passed u/s. 143(3) of the Act dt 25-03-2014.

5. Aggrieved with the order of the A.O the assessee preferred an appeal before the CIT(A). The Id. CIT(A) considering the detailed submissions of assessee has confirmed the impugned disallowance made on account of proportionate rent of Rs. 1,44,53,392/- by observing as under:-

**4 Decision**

*I have carefully considered the submissions and contentions of the AR of the assessee company and also carefully gone through the facts and explanation given by the AR of the assessee as well as the AO and the order of proceeding*

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years has also been considered. The relevant case laws have also been perused and considered.

**Ground 1- Disallowance on account of Rent-**

The assessee company had claimed rental expense of Rs. 3,10.47.923 in the profit and loss account. The assessee company shared the premises with "M/s Stream" the parent company from A.Y. 2009-10 wherein the proportionate rent of 50% was disallowed.

The assessee conducted its business operations from Bhayender from May ,2010 onwards. Prior to that the business was being carried on from Andheri premises.

The rental agreement for Bhayender premises was executed between the landlord and "M/s.Stream" on 20.05.2008. Since then "M/s Stream" was using these premises for its own business. The assessee submitted that May, 2010 onwards, only the business of the assessee was conducted from this premises. Accordingly, the rental expense was debited by the assessee for the use of premises.

The assessee also stated that the execution of the agreement in the name of "M/s Stream" was on account of the insistence of the landlord. Given that the assessee was a loss making entity, the landlord insisted that the agreement be executed by "M/s Stream" a financial sound entity then. "M/s.Stream" has neither debited nor claimed the rental expenses in its return of income filed.

The AO observed that the rental agreement executed in the name of "M/s Stream" clearly mentioned that the Licensee " M/s Stream" had approached the licensor, and lord to allow the licensee to use and occupy the said premises. The agreement also rly mentions that the licensee "M/s Stream" shall make the rental payment. The e 9(xv) of the agreement stated that the licensor shall allow the licensee or its g or subsidiary or sister company to use the premises. **This clearly reflected Licensor had granted a general permission to the Licensee that if the Licensee desires, the same may be used by Its subsidiaries. All the covenants mentioned in the agreement are binding on "M/s. Stream" and not on assesses company. If the assessee company fails to pay rent it would be the responsibility . M/s Stream" to pay the rent even if the premises are not occupied.**

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*The nomination agreement dated 19.02.2010 was an intimation to the Licensor that the Licensee "M/s Stream" has nominated the appellant company to occupy and use the premises w.e.f. 19,02.2010. Even as per this nomination letter, all the primary covenants as per Leave & License\* agreement are binding upon "M/s Stream" The nomination letter specifically confirms that in the event of breach or failure, "M/s. Stream' will be responsible for paying entire leave and license charges including compensation and other charges.*

*Having considered the facts of the case, I also refer to the decision of the Hon'ble Mumbai STAT in the assessee own case for AY 2009-10. The Hon'ble ITAT has observed that the agreement alone cannot prove certain facts. The appellant is a loss making company and allowed exemption u/s.10A of the Act as against the parent company that is making profits. The matter was remanded to the AO to verify whether "M/s Stream" was actually using the premises or was operating from other location and thereafter disallow the rent. The AO passed order u/s 143(3) rws 154 of the Act. The appellant has filed appeal against this order for A.Y 2009-10. I have dismissed this appeal against A.Y 2009-10 observing that*

*"This appeal has to be decided in the background of instruction specifically given by the Hon'ble ITAT, Mumbai. Precisely, the AO was directed to verify whether the Parent Company had claimed payment of rent paid to PSPL and the Assessee Company was directed to prove with the help of documentary evidences that the Parent Company was not working in the same premises. The AO has examined as per the directions of the Hon'ble tribunal. It is seen that, the Parent Company i.e. M/s Stream international has not claimed rent. From the Board's Resolution of M/s. Pankaj Shawls Pvt. Ltd. i.e. Landlord Company dated 26.06.2008 and subsequent Board's Resolution of the Parent Company dated 28.06.2008, it is very clear that the Assessee Company was entitled to use the leased premises **along with the parent company.** In fact, from the correspondence attached at page no. 11 of the submission filed during the appellate proceeding, it is very clear that the Leased Premises were used by the Parent Company as well as the Assessee Company. This correspondence is from Parent Company to the landlord company i.e. M/s. PSPL. The relevant port/on which Is quoted below:.*

*"In Accordance with Clause 5(b) of the said Leave & Licence Agreement dated 22.03.2006 we hereby inform you that we have nominated our Group*

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Company in which we have more than 75% share holding i.e. Infowavz International Pvt. Ltd. to use the above mentioned **premises together with us.** The said nominee company i.e. Infowavz International Pvt Ltd. shall be responsible to pay you the security deposit amount and Licence fees in respect of the said Leave & Licence Agreement, We shall be responsible for and shall ensure that our nominee company vacates the said premises on the expiry or earlier termination of the said Leave & Licence Agreement dated 22.03.2006 together with ourselves and all employees and agent and all belongings in the said premises.

We specifically confirm to you, that in the event of any failure or breach on our part or on the part of our nominee, or any person claim in. through us, we shall be liable to pay the entire leave and licence compensation, costs, charges, expense: including legal expenses, damages etc. without prejudice to your right to remove us of our nominee and all belongings from the said premises."

From the above, it is explicitly clear that the Lease premises was used bot by the Parent Company and the Assessee Company. The word 'premises together with us' is very important for the issue under reference. Address on the return < income is not a conclusive proof for exclusive location of a company. The various arguments and case laws quoted by the Assessee is not relevant to the specific, context of this case. The AO has carried out the scrutiny of the case as per the instruction of Hon'ble ITAT and no fault can be pointed out with his findings. Thus, have no reasons to differ from the finding of the AO. Thus, the disallowance of claim of rent of Rs. 2,35,74,5207- made by the AO is confirmed.

In view of the above, I agree with the AOs observation that all the covenants in the agreement are with "M/s Stream". The leave and license agreement was o existence since 2008. Entire control over the functioning of the assessee company lies with "M/s Stream". "M/s Stream", is not authorized to assign or transfer the benefits to any other person on any basis whatsoever nature. The claim of the assessee about the exclusive use of premises was contrary to the terms and conditions of the lease agreement as the name of the assessee company did not appear and that by virtue of the documents clearly specify that "M/s Stream" would not be using the leased premises. Thus the addition made by the AO is sustained."

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6. Aggrieved with the above order of the ld. CIT(A) the assessee is in appeal before us and raised the aforementioned ground(s) of appeal.

7. At the time of hearing the ld. AR brought to our notice that the rental agreement was entered between the sister concern, 'SISPL' and the landlord. Subsequently, the said sister concern allowed the assessee as a nominee to use/utilise the rented property. In such letter of nomination it is mentioned in turn used along with the assessee by its sister concern, 'SISPL'. That led the AO to disallow @ 50% of the rent, even though the assessee has brought on record that the assessee has utilized the complete rented property and paid rent thereon. He submitted that this issue is covered in favour of assessee by the order dt.07-03-2018 in ITA No.2799/Mum/2017 for the AY 2009-10 ( in assessee's own case). But, he brought to our notice that assessee has utilized the above said property for few months and subsequently, shifted its office to Bhyander-West and similar arrangement was made by the assessee's sister concern,

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‘SISPL’ and the new landlord. In the nomination agreement the sister concern, ‘SISPL’ has clearly nominated the assessee as a sole user of the said rented property and as such the assessee has paid relevant rent as per agreement there on for utilization of said rented property. In support of his arguments, he brought to our notice to page-68-69 of the paper book, which contends the nomination agreement entered by the assessee’s sister concern, ‘SISPL’. Further, he submitted that said sister concern has not claimed any rental expenditure on this premises in their books of a/c.

8. On the other hand, the ld. DR relied on the orders of the revenue authorities.

9. After considering the rival submissions and perusing the material available on record including the details as available in the assessee’s paper book, we find that the issue involved in this appeal is squarely in favour of assessee, has utilized the rented properties new/old for the purpose of its business. Assessee has occupied the rented property based on the nomination agreement with ‘SISPL’ and rental

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agreement with ‘ SISPL ’ and the respective landlords. All the relevant rents were paid by assessee and AO has not brought on record anything to prove that the sister concern, ‘ SISPL ’ has utilized the property except entering the rental agreement. Moreover, the sister concern, ‘ SISPL ’ has not charged any rent expenditure to its P & L a/c. It clearly indicates that assessee has utilized the rented property for its business purpose. This is in line with the findings of Coordinate bench of this Tribunal, which is reproduced below:-

*Order dt. 07-03-2018 in ITA No. 2799/Mum/ 17*

“ 8. It is also noted that the matter in the first round was remitted back by the coordinate bench to verify two things viz. whether the parent company i.e. *SISPL* was operating from any other premises and secondly, whether the parent company had claimed any part of stated expenditure in his books of accounts. On the basis of above facts as enumerated by us in *para-6* above, we find that both the requirements have successfully been demonstrated by the assessee before the lower authorities and there is nothing contrary on record against the assessee. Therefore, in principal, while agreeing with the claim of the assessee, we find that the expenditure claimed by the assessee require reconciliation and explanation as per observation in *para-7*. It is also observed that the assessee was in possession of 25008 Square Feet of space during first three month of the impugned AY whereas it was occupying 17448 Square Feet during the balance period, against which no plausible explanation is available on record. It is noted that the assessee was a corporate

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entity registered with *Service Tax Authorities / STPI Authority/ other statutory bodies* and was required to get appropriate endorsement as to change in premises / addresses under those laws.

9. Therefore, on facts and circumstances of the case while primarily concurring with the stand of Ld. AR, the matter stands remitted back to Ld. AO with a direction to the assessee to reconcile the figures as well furnish a plausible explanation as to the space occupied by it during the impugned AY and submit adequate documentary evidences in support of the same. After considering the same, the Ld. AO is directed to recompute the total income of the assessee as per law. As a logical consequence, *MAT computations* as well as adjustment of brought forward losses etc. may suitably be carried out, if required.

10. Resultantly, the assessee's appeal stands allowed for statistical purposes in terms of our above order.

Respectfully following the above, we remit this issue to the file of 'AO' to reconcile the figures of Gross rental income declared in P/L a/c and other figures declared no TDS and service tax. After verification of these figures, AO is directed to assess the total income as per law, after being heard to the assessee.

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10. In the result the appeal filed by the assessee is allowed for statistical purpose.

This Order pronounced in Open Court on 24/12/2019.

Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER

Sd/-  
S RIFAUR RAHMAN  
ACCOUNTANT MEMBER

Mumbai, Dated 24/12/2019

\*\*PP,SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai