

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 583/DEL/2020 (A.Y 2014-15)

Genpact India Pvt. Ltd. 12A, Ground Floor, Prakash Deep Building, 7 Tolstoy Marg, New Delhi AABCE4461B (APPELLANT)	Vs	DCIT Circle-10(1) C. R. Building, IP Estate, New Delhi PIN: 110002 (RESPONDENT)
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Appellant by	Sh. Percy Pardiwala, Sr. Adv and Sh. Sachit Jolly, Adv.
Respondent by	Ms. Sunita Singh, CIT DR

Date of Hearing	17.06.2020
Date of Pronouncement	23.07.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 15/01/2020 passed by CIT(A)-4, New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

1. *“That on the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-4, Delhi [“CIT (A)”] erred in upholding the action of the Assessing Officer (“AO”) in framing an assessment on a non-existent entity, i.e., Genpact India, bearing PAN AAACG9163H.*

2. *That on the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in framing assessment in the name of the amalgamating company, by holding the same to be a curable defect as*

per Section 292B of the Income-tax Act, 1961 (the "Act").

3. *That on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that by virtue of section 124 of the Act, the Appellant could not raise a challenge to the validity of the order framed on a non-existing person.*

4. *That on the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in bringing to tax, an amount of Rs.26,25,00,00,000/-, being consideration paid by the Appellant for buy-back of shares under section 391 of Companies Act, 1956 (the "Companies Act") as income chargeable to tax under section 115QA of the Act.*

5. *That on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in applying section 115QA of the Act to a share buyback effected pursuant to a scheme of arrangement under section 391 of the Companies Act, without appreciating that the said section 115QA of the Act, as it then stood, applied only to a share buyback effected in terms of section 77A of the Companies Act.*

6. *That on the facts and in the circumstances of the case and in law, the CIT(A) erred in summarily dismissing the ground of appeal raised by the Appellant challenging the action of the AO in treating the buyback done scheme of arrangement approved by Hon'ble High Courts under the Companies Act, as a colourable device.*

7. *That on the facts and in the circumstances of the case and in law, the CIT(A), in contumacious disregard of the order passed by the Hon'ble Delhi High Court, sanctioning the scheme under section 391 of the Companies Act, held that the scheme envisaged by the Appellant is effectively a buyback under section 77A of the Companies Act on the erroneous basis that save and except section 77A of the Companies Act, there was no other provision giving*

a power to a company to buy back its own shares.

8. That on the facts and in the circumstances and in law the CIT(A) erred in holding that section 115QA of the IT Act, as it stood at the relevant time, applies to any form of buy- back of shares, whether effected under section 77A of the Companies Act or any other provision, which finding is contrary to the express provision of section 115QA of the Act.

9. That on the facts and circumstances of the case and in law, the CIT(A) erred in treating Genpact India as assessee in default under section 115QC of the Act and raising a demand under section 115QA of the IT Act and corresponding interest under section 115QB of the IT Act.”

3. The assessee is engaged in IT Enabled services such as Data Entry and conversion/processing business support and billing services. Assessee company filed its return of income under Section 130(1) of the Act for A.Y. 2014-15 electronically on 29.11.2014 declaring income of Rs. 602,43,14,910/- . The case was selected for scrutiny under CASS and notice under Section 143(2) of the Income Tax Act dated 03.09.2015 was issued to the assessee company and duly served upon the assessee. Assessee company thereafter filed a revised return of income under Section 139(5) of the Income Tax Act, 1961 electronically on 31.03.2016 declaring income of Rs. 599,94,81,170/- under normal provisions of the Act wherein, inter-alia, unrealized export proceeds which were excluded from export turnover and deduction under Section 10AA of the Act was recomputed. Thereafter, fresh notice under Section 142(1) was issued on 29.07.2016 and served upon the assessee. In response to the notices, CAs/ARs appeared from time to time and filed the requisite details before the Assessing Officer. Genpact India merged into another company, now named as Genpact India Private Limited i.e. assessee herein with effect from 30.04.2016 (with the appointed date being 01.04.2015) vide 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. This fact of merger/amalgamation was mentioned by the Assessing Officer in para 2 of the Assessment order. The Assessment was completed on 31.12.2016 u/s 143(3) of the Act by the Assessing Officer in the name of Genpact India (now merged with Genpact India Private Limited PAN: AABCE4461B) and the said assessment order mentioned the Genpact India's PAN: AAACG9163H. The Assessing Officer assessed total income of Rs. 714,76,03,867/- as per normal provisions of the Act and book profits of Rs. 1366,87,30,839/- as per the MAT provisions of the Act and distributed income of Rs. 26,25,00,00,000/- was charged to tax @ 20% as per Section 115QA of the Act.

4. Being aggrieved by the Assessment Order, the Assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the impugned assessment proceedings were continued in the name of non-existent merge entity i.e. "Genpact India" and final assessment order was also passed in the name of non-existent entity. Thus, the grievance of the assessee is related to the validity of the assessment order framed u/s 143(3) read with Section 144C(1). Assessee company thereafter filed a revised return of income under Section 139(5) of the Income Tax Act, 1961 electronically on 31.03.2016 declaring income of Rs. 599,94,81,170/- under normal provisions of the Act. The 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. This facts of amalgamation/merger of Genpact India with Genpact India Private Limited was informed to the Assessing Officer. The Ld. AR placed on record letter dated 18.04.2016 addressed to Member (IT), CBDT and copy to Assessing Officer, DCIT, Circle 10(1), Delhi intimating therein 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 Ld. AR submitted that the assessment framed by the Assessing Officer on the amalgamating company is void ab initio. The Ld. AR relied upon the following decisions of the various High Court and the Apex Court as well as the Tribunal:

- i) Maruti Suzuki India Ltd. vs. DCIT ITA No. 902/Del/2017 dated 06.04.2017
- ii) PCIT vs. Maruti Suzuki India Limited (2019) 416 ITR 613 (SC)
- iii) Genpact Infrastructure (Bhopal) Pvt. Ltd. (Now merged with Genpact India) v. DCIT (ITA No. 199/Del/2015 dated 27.04.2018 Tri.
- iv) Genpact Infrastructure (Kolkata) Pvt. Ltd. (Now merged with Genpact India) v. DCIT (ITA No. 198/Del/2015 dated 27.04.2018 Tri.
- v) PCIT v. Genpact India (previously known as Genpact Infrastructure (Bhopal) Private Limited)(ITA 168/2019, CM Appl. 40543/2019 order dated 17.09.2019) Delhi High Court
- vi) PCIT v. Genpact India (previously known as Genpact Infrastructure (Kolkata) Private Limited)(ITA 172/2019, CM Appl. 40541/2019 order dated 17.09.2019) Delhi High Court

- vii) PCIT v. Transcend MT Services (P.) Ltd. (2019) 109 taxmann.com 421 (Del.)
- viii) DCIT vs. Mapsa Logistics (P.) Ltd. ITA Nos. 2666, 2667 & 2669/Del/2017 Tri.
- ix) V3S Infratech Ltd. vs. DCIT ITA Nos. 6514 & 6515/Del/2016
- x) Spice Entertainment Ltd. vs. CIT 280 ELT 43 (Del)
- xi) CIT vs. Spice Infotainment Ltd. Civil Appeal 285 of 2014, Judgment dated November 2, 2017 (SC)
- xii) CIT vs. Dimension Apparels (P) Ltd. (2014) 370 ITR 288
- xiii) PCIT vs. Maruti Suzuki India Limited (2017) 397 ITR 681 (Del)
- xiv) PCIT vs. Maruti Suzuki India Limited (SLP(C) Diary No. 14106 of 2018)
- xv) CIT vs. Micra India (P.) Ltd. (2015) 231 Taxman 809
- xvi) PCIT vs. Nokia Solutions and Networks India Pvt. Ltd. 402 ITR 21 (Del. HC)
- xvii) CIT vs. Micron Steel (P.) Ltd. (2015) 372 ITR 386
- xix) BDR Builders and Developers Pvt. Ltd. vs. ACIT (2017) 397 ITR 529 (Del. HC)

6. The Ld. DR submitted that the assessee at any point of time never informed the Assessing Officer as regards to amalgamation. The letter dated 18.04.2016 is addressed to Member (IT), CBDT and not to the Assessing Officer. In fact the subject of the said letter is related to submission of full financial details pertaining to amalgamation of Genpact India into its holding company. Therefore, the assessment is valid assessment. The Ld. DR submitted that the case laws referred by the Ld. AR are not applicable in the present case.

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 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.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 23rd July, 2020

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 23/07/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

CORRIGENDUM

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 583/DEL/2020 (A.Y 2014-15)

Genpact India Pvt. Ltd. 12A, Ground Floor, Prakash Deep Building, 7 Tolstoy Marg, New Delhi AABCE4461B (APPELLANT)	Vs	DCIT Circle-10(1) C. R. Building, IP Estate, New Delhi PIN: 110002 (RESPONDENT)
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Date of Hearing: 17.06.2020

Date of pronouncement of Order: 23.07.2020

Date of pronouncement of Corrigendum: 31/07/2020

SUCHITRA KAMBLE , JM

On going through the record it was noticed by us that the date of dictation was wrongly typed as 16.06.2020 instead of 18.06.2020 and the same is corrected herewith by this corrigendum.

Corrigendum dated this 31st day of July, 2020.

Sd/-

**(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

Dated: 31.07.2020

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

CORRIGENDUM

CORRECTED DATES AND EVETNS TABLE

Date of dictation	18.06.2020 (As per dictation sheet attached to the file) Sd/- Sr. PS
Date on which the typed draft is placed before the dictating Member	22.06.2020 Sd/- Sr. PS
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	24.07.2020
Date on which the final order is uploaded on the website of ITAT	24.07.2020
Date on which the file goes to the Bench Clerk	24.07.2020
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	

