

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6588/Del./2016
(ASSESSMENT YEAR : 2008-09)**

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

(PAN : AACCG6568Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Reema Malik, Advocate
REVENUE BY : Shri Dheeraj Jain, Senior DR

**Date of Hearing : 10.12.2020
Date of Order : 21.01.2021**

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Genpact Infrastructure (Hyderabad) Private Limited (hereinafter referred to as 'the assessee'), by filing the present appeal, sought to set aside the impugned order dated 25.10.2016 passed by the Commissioner of Income-tax (Appeals)-37, New Delhi affirming the penalty order dated

27.06.2012 passed under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment year 2008-09 on the grounds inter alia that :-

“1. That on the facts and the circumstances of the case and in law, the order passed by the Hon'ble Commissioner of Income Tax (Appeals) CCIT(A)'/Ld. AO is bad in law.

2. That on the facts and circumstances of the case and in law, while acknowledging that the assessment proceedings undertaken by the Ld. AO were not in accordance' with the scheme of Section 144C of the Act and considering that the assessment order giving effect to DRP directions was not passed within the permitted time period, the Hon'ble CIT(A) erred in not explicitly quashing the 'impugned assessment proceedings and penalty proceedings, being void ab initio.

3. That on the peculiar facts and circumstances of the case and in law, the order passed by the Ld. AO under section 271(1)(c) of the Act levying penalty of INR 3,15,00,000/- for alleged furnishing of inaccurate particulars of income is arbitrary, based on incorrect appreciation of facts and the legal position, without considering the submissions/ directions of Hon'ble DRP and without giving adequate opportunity of being heard to the appellant, and consequently deserves to be quashed.

4. That the order passed by the Ld. AO under section 271(1)(c) of the Act does not satisfy the essential constituent of being a speaking order and on this ground alone deserves to be quashed.

a) That the Ld. AO grossly erred in sending the notice of hearing of initiation of penalty proceedings dated December 28, 2012 at the previous registered office address of the appellant, even after being communicated about the new registered office address.

b) That the Ld. AO failed to appreciate the fact that the notice of hearing dated June 20, 2012 was received by the appellant in the evening of June 26, 2012 i.e. the date of hearing and thus, the appellant was not provided sufficient time to file its submission to the show cause notice.

5. That the Ld. AO grossly erred in law in levying penalty since the constituents of Explanation 7 to section 271(1) of the Act were satisfied in the present case and does not justify a levy of penalty.

a) That the Ld. AO was grossly in error in not appreciating that all the necessary constituents of Section 92C of the Act were satisfied in the present case and no grounds existed for levy of penalty.

6. That the Ld. AO grossly erred on facts and in law in concluding that the appellant had furnished inaccurate particulars of its income.

a) That the Ld. AO grossly failed to bring any material on record, which could establish that the appellant has furnished inaccurate particulars of its income except reiterating the adjustment recommended by the Transfer Pricing Officer (TPO).

7. That on the facts and circumstances of the case and in law, the Ld. AO has erred in levying penalty of INR 315,00,000 under section 271(1)(c) of the Act in respect of the following additions and disallowances without appreciating the facts of the case and adequate disclosures made by the appellant in its return of income, Transfer Pricing Report and /or during the course of assessment proceedings for the subject year:

a) Additions on account of determination of Arm's length price in respect of provision of IT enabled services amounting to INR 8,38,57,011/-; and

b) Addition on account of determination of Arm's length price in respect of interest on outstanding receivables amounting to INR 85,51,748/-.

8. That on the facts and circumstances of the case and in law, the Ld AO has erred in holding that the appellant has not provided any explanation, and that the onus as per Explanation 1 of section 271(1)(c) of the Act has not been discharged by the appellant.

9. That on the facts and in the circumstances of the case and in law, the Ld. AO failed to appreciate that penalty proceedings are separate and distinct from the assessment proceedings, and any additions / enhancements made in the assessment could not mechanically lead to levy of penalty, unless it is proved that the appellant has deliberately furnished any inaccurate particulars of its income.

10. That the Ld. AO erred in levying penalty under section 271(1)(c) of the Act on account of mere difference in opinion between the Ld. TPO and the appellant relating to the determination of the arms' length price of the international transaction.

11. That the Ld. AO grossly erred on facts and in law in levying penalty under section 271 (l)(c) of the Act without establishing any mens rea on the part of the appellant without which penalty could not have been levied.

12. The Ld. AO have grossly erred by disregarding judicial pronouncements in India in levying penalty.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment order framed u/s

143(3) on 28.12.2011 at an income of Rs.9,29,74,270/-/- for Assessment Year 2008-09 by making additions of Rs.8,38,57,011/- & Rs.85,51,748/- on account of arm's length adjustment on account of IT Enabled Services and arm's length adjustment on account of interest on outstanding receivables respectively, the penalty proceedings were initiated u/s 271(1)(c) of the Act by way of issuance of notices dated 28.12.2011 & 20.06.2012. Nobody attended on behalf of the assessee nor any reply was filed to the notices. Assessing Officer (AO) proceeded to initiate the penalty proceedings and levied the penalty of Rs.3,15,00,000/- u/s 271(1)(c) of the Act.

3. Assessee challenged the penalty order by way of an appeal before the Id. CIT (A) who has affirmed the penalty order by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the penalty order passed u/s 271(1)(c) of the Act.

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.

5. At the very outset, it is brought to our notice by the Id. AR for the assessee that additions made in the quantum has since been deleted by

the Tribunal in *assessee's own case in ITA No.6587/Del/2016 for AY 2008-09 vide order dated 03.11.2020* and as such, penalty levied is not sustainable and brought on record the copy of the order of the Tribunal dated 03.11.2020 (supra).

6. Undisputedly, coordinate Bench of the Tribunal vide **order dated 03.11.2020** (supra) deleted the additions. In these circumstances, the penalty levied by the AO and confirmed by Id. CIT (A) is not sustainable in view of the law laid down by the Hon'ble Apex Court in case cited as *K.C. Builders & Anr vs. ACIT – 265 ITR 562 (SC)* by holding that *“when the addition made in the assessment order on the basis of which penalty for concealment is levied have been deleted there remains no basis at all for levying the penalty for concealment and in such case, no penalty can survive and the penalty is liable to be cancelled.”* So, in view of the matter, penalties levied by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, the appeal filed by the assessee stands allowed.

Order pronounced in open court on this 21st day of January, 2021.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 21st day of January, 2021
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-37, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.