

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I', NEW DELHI**

**Before Sh. Saktijit Dey, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 782/Del/2021 : Asstt. Year : 2016-17**

**&**

**SA No. 132/Del/2021 : Asstt. Year : 2016-17**

Convergys India Services Pvt. Ltd., Industrial Plot No. 243, Tower-A, 1st, 3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> & Tower-B, Ground, 2 <sup>nd</sup> & 5 <sup>th</sup> Floors, SP Infocity, Udyog Vihar, Gurgaon, Haryana-122001	Vs	DCIT, Circle-4(2), New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AABCC5056G</b>		

**Assessee by : Sh. K. M. Gupta, Adv. &  
Ms. Shruti Khimta, AR**

**Revenue by : Sh. Mahesh Shah, CIT DR &  
Sh. Mrinal Kumar Das, Sr. DR**

**Date of Hearing: 20.07.2022**

**Date of Pronouncement: 01.08.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal as well as the Stay Application has been filed by the assessee against the order passed by the AO dated 30.03.2021 u/s 14(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

*"1. That on the facts and circumstances of the case & in law, the order dated March 30, 2021 framed under Section 1440(13) read with Sections 143(3), 143(3A) and 143(3B) of the Income Tax Act, 1961 ("the Act") ("assessment order") passed by the Additional/ Joint/ Deputy/ Assistant Commissioner of Income-tax/*

*Income Tax Officer, National E-Assessment Centre, Delhi ('Ld. AO') pursuant to the directions of the Learned Dispute Resolution Panel ('Ld. DRP') is bad in law and void ab initio.*

*2. The Ld. AO/Ld. DRP have erred, in law and on the facts and circumstances of the case, in making an upward adjustment of INR 16,24,323 to the total income of the Appellant pertaining to the international transaction of notional interest on outstanding receivables.*

*3. The Ld. AO/Ld. DRP have erred, in law and on facts and circumstances of the case, by:*

*a. Treating outstanding receivables from Associated Enterprises ('AEs') as a separate international transaction;*

*b. Re- characterizing outstanding receivables from AE as a deemed loan advanced to AE; and*

*c. Inappropriately applying a mark-up of 400 basis points on LIBOR on an ad-hoc basis (Without prejudice to other arguments)*

*d. Not considering 90 days as credit period allowed to AEs while computing notional interest on receivables by disregarding the credit period mentioned in the inter-company agreement. In doing so, the Ld. DRP also failed to acknowledge that the 90 days credit period has been accepted by the Ld. TPO in the TP order as well as the by the Ld. DRP in Appellant's own case for AY 2015-16 (Without prejudice to other arguments).*

*4. That on the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. DRP has erred in disallowing the deduction under Section 43B of the Act amounting to INR 1,49,07,493 in relation to discharge of liabilities taken over by the Appellant (with effect from April, 2015) from Convergys Stream Private Limited ('Convergys Stream') and Convergys Infowavz Private Limited ('Convergys Infowavz') pursuant to their amalgamation with the Appellant.*

5. *That on the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. DRP has erred in disallowing the claim of credit under section 115JAA of the Act (MAT Credit) amounting to INR 99,61,130 that was taken over by the Appellant from Convergys Infowavz pursuant to its amalgamation with the Appellant.*

6. *That on the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. DRP has erred in disregarding the valuation report issued by an independent chartered accountant and making an addition of INR 31,00,122 under section 56(2)(viiia) of the Act in relation to the purchase of equity shares of Digital Think (India) Private Limited.*

6.1. *That on the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. DRP has erred in considering the face value of the shares for the purpose of section 56(2)(viiia) of the Act which by no stretch of imagination can be equated to the fair market value of the shares.*

7. *That on the facts and in the circumstances of the case and in law, the Ld. DRP erred in not granting the deduction of 'education cess' and 'secondary and higher education cess' ('education cess' or 'cess') paid, while computing the Appellant's income under the head 'Profits and Gains from Business and Profession' for the year under consideration.*

8. *That on the facts and in the circumstances of the case and in law, the Ld. AO has grossly erred in considering the assessed total income of the Appellant as INR 239,89,56,360 instead of INR 160,34,72,468 while computing the tax liability of the Appellant and thereby, raising an incorrect demand of INR 49,31,51,710 on the Appellant.*

9. *That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in not granting TDS and Advance tax credit of INR 18,55,717 and INR 18,65,74,000 respectively pertaining to Convergys Stream and Convergys Infowavz, which were taken over by the Appellant pursuant to their amalgamation with the Appellant.*

*10. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in computing and levying interest under Section 234A of the Act amounting to INR 60,74,452.*

*11. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in computing and levying interest under Section 234B of the Act amounting to INR 18,22,33,560 which is consequential in nature.*

*12. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in computing and levying interest under Section 234C of the Act amounting to INR 11,21,037.*

*13. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under 271(1)(c) of the Act mechanically and without appreciating that the Appellant has neither concealed any income nor has it furnished inaccurate particulars relating to any income."*

3. Delay of 25 days condoned owing to reasonable cause – Covid.

4. The assessee, Convergys India, is a wholly owned subsidiary of Concentrix CVG Customer Management Group Inc., USA (hereinafter referred to as "CMG USA") and was incorporated in January 2001. It is primarily engaged in the provision of IT enabled customer care back-office support services. CIS operates remote customer interaction call centres for providing services to its Group Companies like outbound call services, web-based support, technical help desk, e-mail customer care support services, in bound call services and other miscellaneous back office services like transaction processing.

5. Ground Nos. 7, 8, 10 & 11 not pressed.

**Notional Interest – Outstanding receivables:**

6. The Id. DRP directed to allow the credit of 60 days resulting which an amount of Rs.16.24 lacs has been added on account of interest on outstanding receivables by taking 6 months LIBOR + 400 basic points. The similar issue has been a matter of adjudication by this Tribunal in assessee's own case for the A.Y. 2015-16. For the sake of ready reference the relevant portion of the said order is reproduced as under:

*"15. It is settled principle that there is no need to benchmark the interest on receivables wherein the interest has not been charged from either of the parties i.e. payables and receivables.*

*In the instant case, period of 90 days has been allowed and the amounts have been received within the range of 90 to 95 days. In the absence of any fact to prove that the assessee is liable to payment of interest, no adjustment is warranted. There cannot be one straight jacketed formula to allege that the assessee has received interest or the delay was allowed to confer an undue advantage to the other party. Reliance is being placed in the case of Pr. CIT vs. Kusum Health Care Pvt. Ltd. (ITA No.765/2016) wherein the Hon'ble Delhi High Court held that the inclusion in the Explanation to Section 92B of the Act of the expression 'receivables' does not mean that de hors the context, every item of 'receivables' appearing in the accounts of an entity which may have dealings with the foreign AEs, would automatically be characterized as an international transaction.*

*It further went on to hold that there can be a delay in the collection of monies for the supplies made, even beyond the*

*agreed limit, due to various factors which would be investigated on a case to case basis and also the case of Gillette India Limited (ITA No. 40/2017) wherein the Hon'ble Rajasthan High Court has affirmed the order of the Tribunal wherein it was held that the transaction of allowing credit period to the AE for realization of its sale proceeds is not an independent international transaction but is closely linked with the sale transactions of the AE.*

*16. Hence, we hereby allow the appeal of the assessee on this ground is allowed."*

7. In the absence of any change in the material facts and the legal proposition, we decline to deviate from the earlier order of the Tribunal. The appeal of the assessee on this ground is allowed.

**Deduction u/s 43B:**

8. The assessee being the legal successor claimed deduction amounting to Rs.1,49,07,493/- under section 43B of the Act in its return of income in respect to discharge of liabilities that were taken over from Convergys Stream and Convergys Infowavz pursuant to their amalgamation with the Assessee. The liabilities that were taken over were in the nature of Leave Encashment, Bonus, Gratuity and Professional Tax liabilities.

9. The aforesaid claim under section 43B of the Act was duly certified by the Tax Auditor in Tax Audit Report (TAR) in Clause 26(i)(A)(a) of TAR read with computation of income filed before the revenue. In the course of assessment, the Assessing Officer disallowed the claim of the assessee u/s 43B of the Act holding,

- that section 43B of the Act is qua 'an assessee'

- that the Act contains specific provisions in other sections to entitle the amalgamated company to claim the deductions to which the amalgamating company was entitled to and such language is missing in section 43B of the Act.

10. The Ld. DRP concurred with the view of the AO and confirmed the addition proposed by the AO.

11. From April 1, 2015 onwards, all assets, rights, powers, liabilities and duties of the Amalgamating companies were transferred to the Appellant and the Appellant stepped into the shoes as the legal successor of Convergys Stream and Convergys Infowavz from such date. The Scheme of Amalgamation provided that all debts, liabilities, contingent liabilities, duties, obligations and guarantees of the Amalgamating companies shall be taken over by the Appellant with effect from April 01, 2015.

12. It is a settled law that an order of a High Court approving a scheme of arrangement and amalgamation under Section 391 of the Companies Act does not operate as a mere arrangement, but it becomes a statutory force and thus, becomes statutorily binding on everyone including statutory authorities. Reliance is being placed on the following judicial precedents:

- J.K. Bombay (P) Ltd., Vs. New Kaiser-I Hind Spinning & Weaving Co. AIR 1970 1041 (SC)
- Pentamedia Graphics Ltd. Vs. ITO (2010) 236 CTR 204 (Mad HC)
- Telesound India Ltd., [Company Petition N0.54 of 1980 dated 05.12.1980, Delhi High Court

➤ Marshall Sons & Co. (India) Ltd. Vs. ITO (1997) 223 ITR 809 (SC)

13. The Hon'ble Supreme Court in the case of T. Veerabhadra Rao, K. Koteswara Rao & Co. 155 ITR 152 held as follows:

*"If a business, along with its assets and liabilities, is transferred by one owner to another, a debt so transferred would be entitled to the same treatment in the hands of the successor. The recovery of the debt is a right transferred along with the numerous other rights comprising the subject of the transfer. If the law permits the transferor to treat the whole or part of the debt as irrecoverable and to claim a deduction on that account, the same right should be recognized in the transferee. It is merely an incident flowing from the transfer of the business, together with its assets and liabilities, from the previous owner to the transferee. It is a right which should, on a proper appreciation of all that is implied in the transfer of a business, be regarded as belonging to the new owner.*

*It is not imperative that the assessee referred to in sub-clause (a) must necessarily mean the identical assessee referred to in sub-clause (b). A successor to the pertinent interest of a previous assessee would be covered within the terms of sub-clause (b). The successor assessee, in effect, steps into the shoes of his predecessor.*

*Unless the language of the statute plainly and clearly compels a construction to the contrary, the normal rule of the law should be given its proper play.*

14. We cannot concur with the observation by the Id. DRP. The liabilities that were taken over by the assessee were in the nature of Leave Encashment, Bonus, Gratuity and Professional Tax and thus, fall within the ambit of section 43B of the Act. Accordingly, we hold that the assessee is eligible to claim

deduction u/s 43B of the Act in respect to discharge of such liabilities taken over by the Appellant from Convergys Stream and Convergys Infowavz pursuant to their amalgamation with the assessee.

**Credit u/s 115JAA:**

15. The assessee, being the legal successor, claimed in its return of income, the MAT credit amounting to Rs.99,61,130/- taken over from Convergys Infowavz pursuant to the amalgamation while computing its tax liability.

16. The AO contended that only the company which paid tax under section 115JB of the Act is entitled to carry forward and set-off the MAT Credit. The AO held that there is no express provision in Section 115JAA which allows an amalgamated company to carry forward and claim the MAT credit which was available to the amalgamating company. The AO held that the Act contains specific provisions in other sections to entitle the amalgamated company to claim the deductions to which the amalgamating company was entitled to and such language is missing in section 115JAA of the Act.

17. The Id. DRP unfortunately concurred with the view of the AO and confirmed that non-allowance MAT credit. When all assets and liabilities, rights and obligation of Convergys Infowavz stood transferred to the assessee with effect from April 01, 2015, the MAT credit being an asset of the earlier company would be available to the assessee at its disposal for utilization. There cannot be any dispute on the utilization of the assets of the amalgamated company by the amalgamating company. No doubt MAT credit is one of such assets. Hence, the appeal of the assessee on this ground is allowed.

**Applicability of Section 56(2)(viiia):**

18. During the year under consideration, the assessee acquired the entire shareholding of Digital Think, which was purchased from Convergys Learning Solutions LLC for a purchase consideration of INR 9,41,43,377 for 3,88,974 shares. The share purchase agreement was entered into by the Appellant with Convergys Learning Solutions LLC as on October 9, 2015. The valuation of the equity shares was carried out by an independent chartered accountant at INR 242.03 per share. The aforesaid valuation carried out based upon the trial balance drawn on 31.07.2015 as no Balance Sheet was drawn on the date of sale of such shares. After the purchase of such shares, Digital Think passed a resolution in its Extraordinary General Meeting dated February 29, 2016, wherein the face / par value of each equity share of Digital Think stood altered at INR 250 per share from INR 10 per share and consequently, the number of issued and paid-up equity shares of Digital Think reduced to 15,565 shares.

19. During the course of assessment, the assessee submitted all the above information to the AO with explanation and justification that the above shares on October 9, 2015 were acquired at a share price which was at fair market value (FMV) at Rs.242.30, therefore, no addition was warranted under section 56(2)(viiia) of the Act.

20. The AO observed that no audited financial statements were prepared at the time of valuation of shares on July 31, 2015 and thus, contended that the veracity of the valuation report could not be established. Further, it was held that soon after the purchase of shares of Digital Think, the face value of the shares was increased from INR 10 per share to INR 250 per

share. Hence, the AO proposed an addition of Rs.31,00,122/- [(Rs.250 - Rs.242.03) 3,88,974 shares] to the total income of the Appellant under section 56(2)(viia) of the Act.

21. The Id. DRP has concurred with the view of the AO and observed that the entire valuation was a make-believe exercise. Accordingly, the DRP confirmed the addition proposed by the AO.

22. Before us, it was submitted that the valuation has been carried out by an Independent chartered accountant after duly considering the relevant information / documents which included the Trial Balance upto July 31, 2015, the audited financial statements of Digital Think as on March 31, 2014, the unaudited financial statements as on March 31, 2015 and necessary explanation and information while carrying out the valuation and the report has been duly stamped and signed by him. Further, only after analysis of such information / documents, the independent chartered accountant arrived at a valuation of INR 242.03 per share on the basis of Net Asset Value (NAV) Method. Accordingly, it was argued that the valuation report remains verified and rejecting such valuation carried out by an independent chartered accountant will be incorrect.

23. It was argued that the increase in face value was carried out pursuant to the approval of shareholders at their Extraordinary general meeting dated February 29, 2016. This fact is evident from point (b) of Note 4 to the audited financial statements of Digital Think for FY 2015-16.

24. It was submitted that the provisions of section 56(2)(viia) of the Act is applicable in cases where the consideration for the

acquisition of shares of another company is below the fair market value of the shares.

25. It was submitted that the provisions of section 56(2)(viii) of the Act will apply if the consideration is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees; and the deemed income in the hands of the transferee shall be the aggregate fair market value of such property as exceeds such consideration. In order to arrive at FMV of such property i.e., unquoted shares, the valuation is to be done in accordance with the method prescribed under Rule 11UA of the Income Tax Rules. It is settled law that where the Act prescribes a rule, it has to be strictly and mandatorily followed and further, if the statute has conferred a power to do an act and has laid down the method in which that power is to be exercised, it necessarily prohibits the doing of the act in any other manner than that has been prescribed.

26. The adoption of the face value at INR 250 by the AO/DRP with respect to the above transaction is not in conformity with Rule 11UA which prescribes that in order to arrive at FMV of the unquoted shares.

28. The fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:

fair market value of unquoted equity shares  $= (A-L)/(PE) * (PV)$

29. Reliance is being placed on the following decisions:

- Dr. Shashi Kant Garg v. CIT [2006] 285ITR 158/152 Taxman 308 ACIT v. Morarji Textiles Ltd., [IT Appeal No. 1979 (Mum.) 0/2009, dated 10-05-2014]
- Bharat Hari Singhania v. CWT [1994] 207 ITR 1/73 Taxman 3 (SC) Mrs. Prem Shamsheer Singh v. CWT [1994] 210 ITR 233/75 Taxman 580 (Delhi)
- Chandra Kishore Jha v. Mahavir Prasad [1999] 8 SCC 266 State of Uttar Pradesh v. Singhara Singh AIR 1963 358 (SC)
- Danish Aarthi v. M. Abdul Kapoor [C.R.P. (NPD) (MD) Nos. 475 & 476 0/2004, dated 28-1-2009]
- Medplus Health Services vs ITO, 68 Taxmann.com 29 (Hyd. Tribunal)

30. The adoption of the value at Rs.250/- per share by the Id. DRP is not in accordance with prescribed Rule 11UA of the Rules, hence, we hold that the addition made is liable to be deleted.

**Granting of TDS and Advance Tax Credit:**

31. As discussed above, the paras pertaining to adjudication on the issues of Section 43B and MAT credit u/s 115JAA, we hereby direct that the credit for TDS and credit for advance tax pertaining to Convergys Stream and Convergys Infowavz, which were taken over by the assessee pursuant to their amalgamation with the assessee be allowed.

32. Since, the appeal of the assessee stands decided, the Stay Application No.132/Del/2021 filed by the assessee is dismissed as infructuous.

33. In the result, the appeal of the assessee is allowed and the Stay Application of the assessee is dismissed.

Order Pronounced in the Open Court on 01/08/2022.

Sd/-

**(Saktijit Dey)**  
**Judicial Member**

**Dated: 01/08/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**