

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1833/Del/2022
(Assessment Year: 2017-18)**

Genpact Services LLC, Plot No. 22A and B, Sector-18, Udyog Vihar, Gurgaon, Haryana (Appellant) PAN: AACCG3353P	Vs. ACIT, Circle-1(3)(1), International Taxation, New Delhi (Respondent)
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Assessee by :	Shri Vishal Kalra, Adv Ms. Reema Malik, Adv Ms. Snigdha Gautam, Adv
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Revenue by:	Shri Rajesh Kumar, CIT DR
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Date of Hearing	23/01/2024
Date of pronouncement	19/04/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1833/Del/2022 for AY 2017-18, arises out of the order of the Id Assessing Officer [hereinafter referred to as 'Id. AO'], in short] in Appeal No. ITBA/AST/S/143(2)/2022-23/1043584793(1) dated 27.06.2022.

2. The assessee has raised the following grounds of appeal before us:-

"1. That on the facts and circumstances of the case and in law, the Ld. AO has erred in assessing the total income of the Appellant for the relevant AY at INR 11,27,73,460 as against the returned income of INR 4,84,72,600, making an adjustment of INR 6,43,00,860, in pursuance to the DRP directions.

2. That on facts and in the circumstances of the case and in law, the AO erred in assuming jurisdiction over the international transaction of expenditure incurred towards support services, without appreciating that the same has been considered to be at arm's length by the TPO.

2.1 The AO/ DRP have further erred in disallowing the expenditure incurred towards support services without appreciating the fact that the impugned transaction has been accepted by the

TPO over the years, including the year under consideration, and hence, the same should not have been disturbed, arbitrarily alleging that the cost allocation policy is incorrect and ignoring the documentary evidence/ submissions made by the Appellant.

2.2 Not appreciating that the same have been incurred wholly and exclusively for the purposes of business and hence, an allowable business expenditure.

3. That on the facts and circumstances of the case and in law, the AO/ DRP have grossly erred in partly disallowing the support services cost amounting to Rs. 6,43,00,860 paid by Appellant to the associated enterprise, and while doing so, have erred in:

3.1 changing the cost allocation methodology from headcount ratio to salary expense ratio, thereby partly disallowing support services cost;

3.2 not appreciating the fact that headcount represents an appropriate allocation key for allocating such costs, since the employees represent key resources utilized in the industry and overheads are planned/ incurred considering the number of employees in the organization."

3. We have heard the rival submissions and perused the material available on record. The ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.

4. The ground Nos. 2 and 3 raised by the assessee are challenging the disallowances of cost of support services amounting to ₹6,43,00,860/-.

5. We have heard the rival submissions and perused the material available on record. The assessee is the Indian branch office of Genpact LLC, a USA Company. The assessee is a service provider rendering off-shore support services akin to BPO services, including collections/analytics, call centre services and other back-office support services to its Associated Enterprises (AEs). The assessee is responsible for rendering the designated BPO collections services from its facility/ infrastructure in India. For the AY 2017-18, the assessee filed its return of income declaring an income of Rs 4,84,72,600/- on 29.11.2017. The assessee's case was referred to the Learned Transfer Pricing Officer ("Id. TPO") for the relevant assessment year by the Id. AO. Thereafter, the assessee received show cause notice dated 16.4.2021 from the Id. TPO u/s 92CA of the Act. During the course of proceedings, the assessee

submitted relevant information/documents as called upon by the Id. TPO from time to time. The assessee's business operations are primarily focused on customer collection activity and like any other business, it requires various support services in the nature of technology, communication and facility, management and support (such as finance, human resource) etc. to function efficiently. It has availed such services from Genpact India Pvt Ltd("AE") for which it paid support services fee to its AE. The assessee had furnished support services agreement to the Id.AO / Id. DRP. In relation to the provision of such support services, the AE had incurred expenses under various heads, which were subsequently allocated to the various group companies availing/ benefitting from these services, including the assessee, based on appropriate allocation keys.

6. The Id. AO made reference to the Id. TPO with respect to the international transactions undertaken by the assessee. During the course of assessment, the assessee provided all the details such as Form 3CEB, audited financials, TP Study along with cost sharing agreement dated 19.11.2009. The Id. TPO, after analyzing the arm's length price (ALP) of the international transaction related to provision and receipt of services, made adjustment basis revised arm's length range after exclusion / inclusion of comparable companies vide order dated 27.7.2021 and had accepted the 'headcount' allocation key for provision of support services. However, the Id. AO assumed jurisdiction over the international transaction and went ahead to make an addition of Rs 6,43,00,860/- in respect of provision of support services. The Id. AO erred in arbitrarily changing the cost allocation methodology from 'headcount ratio' to 'salary expense ratio', thereby partly disallowing support services cost.

7. Assessee's case raised a legal issue as to whether once transaction has been accepted to be at ALP by the Id TPO, can the same be questioned by the Id AO while passing an order. Admittedly, the Id TPO in the instant case was satisfied with the mark up of 5% provided in the cost sharing agreement and had not disputed the allocation of expenses

in respect of services rendered to the assessee from its AEs. The Id AR before us argued that the Id. AO had proceeded to retest the ALP of the international transaction pertaining to support services. It is not in dispute that cost allocation key followed by the assessee was accepted by the revenue over the years. However, during the year under consideration, the Id AO had sought to disturb the cost allocation methodology in the form of 'headcount basis' which has been accepted from AY 2012-13 onwards, and proposing a disallowance of Rs 6,43,00,860/-. The Id AR also placed reliance on the CBDT Instruction No.3/2016 dated 10.03.2016.

8. Further, Id AO in his order had observed that management, administration, human resource, legal, finance and accounting functions are independently performed by Genpact Services Ltd India branch by itself. To buttress this, the Id AR submitted that the assessee was responsible for performance of these functions, the execution of the same was outsourced by the assessee to its AE, for which cost of support services are to be incurred. Further, the Id. AO had observed that the assessee had not provided the copy of cost sharing agreement either to Id TPO or before him. This is factually incorrect in view of the fact that the assessee had indeed provided the cost sharing agreement before the Id TPO for receipt of support services during the year under consideration which is evident from pages 183 to 190 of the paper book. In fact, the Id TPO had duly examined the said agreement together with the supporting evidences submitted by the assessee and had accepted the mark up of 5% in respect of cost of support services to be at ALP. We also find that the very same cost sharing agreement was also filed before the Id AO by the assessee in response to reply to Question No.7, vide letter dated 30.03.2021. Hence, it could be safely concluded that the findings recorded by the Id AO and affirmed by the Id DRP are based on incorrect assumption of facts.

9. With regard to plea taken by the Id DR that though the basis of allocation of expenses on the basis of 'headcount' has been accepted by the revenue in assessee's own case from AY 2012-13 onwards, there is a distinction during the year under consideration, due to the survey proceedings, which brought certain fresh development triggering the Id AO to take a divergent stand. The Id AR before us submitted that the entire set of documents in support of the workings of the cost allocations were duly furnished before the survey team itself at the time of survey. No defect whatsoever was pointed out in the said workings either by the survey team or by the Id AO. It would also be relevant to understand the entire basis of expenditure based on the cost sharing agreement together with its allocations keys and the same are tabulated hereunder:-

S.no.	Nature of support services	Allocation Key	Reasons for adopting the said allocation key
1.	<i>Technical facilities maintenance</i>	<i>Headcount</i>	<i>Consists of annual maintenance charges of hardware and software, which is primarily based on the number of users.</i>
2.	<i>Communication/ Telecommunication cost</i>	<i>Headcount</i>	<i>Charged on the basis the number of users irrespective of the revenue earned/ hierarchy. Thus, headcount method is more appropriate as compared to salary expenses ratio, which due to level of position/ pay-out ratio might lead to an abrupt allocation.</i>
3.	<i>HR, training, finance, legal etc.</i>	<i>Headcount</i>	<i>Support provided to the business of the Appellant is not represented by the employee cost, but by the number of employees employed.</i>
4.	<i>Staff welfare cost</i>	<i>Headcount</i>	<i>Primarily consists of transportation</i>

			<i>cost of the employees (cab, buses etc.) which is standard for all employees.</i>
5.	<i>Rent</i>	<i>Area usage</i>	<i>Charged on the basis of total area usage which is irrespective of the revenue earned.</i>
6.	<i>Electricity and water</i>	<i>Area usage</i>	<i>Charged on the basis of total area usage which is irrespective of the revenue earned.</i>
7.	<i>Repair and maintenance</i>	<i>Area usage</i>	<i>Charged on the basis of total area usage which is irrespective of the revenue earned.</i>

10. It is pertinent to note that the allocations made by the assessee with regard to rent, electricity, water and repair and maintenance above were duly accepted by the AO. Only allocation of expenditure on the basis of "headcount" was sought to be disturbed by the Id AO. It was submitted that the very fact that different expenses were allocated on different basis, considering the nature of expenses, itself, demonstrate that such allocation was based on proper analysis by the assessee. We find that the assessee had explained before the lower authorities that it had considered "headcount" as an appropriate allocation key since the level of support required is dependent on the headcount in each entity. Key costs incurred such as electric facility, management, staff welfare, communication costs, human resources costs, etc, are driven by the number of employees using these facilities and accordingly, the headcount represents an appropriate allocation key for allocating costs in line with the basis of incurring such costs. It was also submitted that 'salary cost' would not be an appropriate allocation key in view of the following reasons:-

Salary cost of employees is not an appropriate indicator of the support required by the businesses. It would be unreasonable to expect that the time or communication facilities extended to the employees depend on the salary of the respective employees. Similarly, for other heads as well, headcount was appropriately reflective of the level of support required by the assessee, for instance:

- *Telecommunication cost (voice based, and non-voice based) are charged on the basis the number of users (Headcount) irrespective of the revenue earned/ hierarchy. Thus, Headcount method in this case would be more appropriate as compared to salary expenses ratio, which due to level of position/pay-out ratio might lead to an abrupt allocation.*
- *The amount of support HR department provides to the business of the assessee is not represented by the employee cost, but the number of employees employed by the it.*
- *The technical facilities maintenance primarily consists of annual maintenance charges of hardware and software's, which is primarily based on the number users. Accordingly, salary ratio is not an appropriate methodology for allocation the said cost and headcount is the apt basis of allocation for these support costs. Trainings in the BPOs are of standard nature and are imparted to all the employees (part of the infrastructure support costs). Accordingly, headcount is the appropriate basis of cost allocation.*
- *The staff welfare cost primarily consists of transportation cost of the employees (cab, buses etc.) which is allocation for these services.*
- *The staff welfare cost primarily consists of transportation cost of the employees (cab, buses etc) which is standard for all employees. Accordingly, headcount is the appropriate basis of allocation for these services.*

11. The fact of services being rendered is not disputed by the revenue right from the time of survey. In fact, both the Id AO and Id DRP merely rely on the findings given in AY 2015-16. In our considered opinion, the cost allocation Key on 'headcount basis' has been duly examined and accepted by the Id TPO to be at ALP in the transfer pricing proceedings

u/s 92CA(3) of the Act. The same cannot be subjected to retest by the Id AO in the peculiar facts and circumstances of the instant case , under the garb of examining the same in the context of allowability of deduction u/s 37 of the Act as argued by the Id DR before us. No doubt, the scope of Id TPO is only to ensure whether the pricing of services is at arm's-length or not. But for that purpose, the cost sharing agreement, cost allocation keys used thereon and reasons for such usage of allocation keys are very much material for the Id TPO to examine and conclude whether the pricing thereon is at ALP or not. In the instant case, all these documents were duly placed on record before the Id TPO and the same was accepted to be at ALP by the Id TPO. It is also pertinent to note that the reference u/s 92CA(1) of the Act to the Id TPO was made by the Id AO after the survey proceedings. Hence, even the findings of the survey team were very much available before the Id TPO. We find that the cost allocation on the basis of "headcount" has been affirmed to be an appropriate allocation key by the Hon'ble jurisdictional High Court in the case of CIT Vs. EHPT India Private Limited reported in 350 ITR 41 (Del). Similar was the view taken by the coordinate bench of this tribunal in the case of Orange Business Services India Solution Pvt Ltd Vs. DCIT in ITA No. 6928/Del/2017 for AY 2013-14 dated 15.07.2021. Further, the coordinate bench of Mumbai tribunal in the case of Cable and Wireless India Ltd Vs. DCIT in ITA No. 6075/Mum/2017 for AY 2012-13, 756/Mum/2017 for AY 2013-14, 6074/Del/2017 for AY 2014-15 dated 25.02.2020, also had an occasion to adjudicate the similar issue, as is the case before us in the case of the assessee herein. Relevant observations of the decision of Mumbai Tribunal are as under:-

"2. Briefly stated, the assessee company is a branch of a foreign company incorporated in United Kingdom and has been granted permission by the Reserve Bank of India to set up a branch office in India with effect from 23.03.1995. The assessee company is engaged in the business of providing telecommunication networking services which includes network design and management, project management and implementation, network management, providing lease circuit and trading of equipment and maintenance. The assessee company had filed its

return of income for A.Y. 2012-13 on 30.11.2012, declaring its total income at Rs. 6,71,08,313/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings the A.O made a reference under Sec. 92CA(1) of the Act to the Transfer Pricing Officer-1(3)(1), Mumbai (for short 'TPO') for the purpose of determining the Arm's Length Price (ALP) of the international transactions of the assessee as were detailed in its 'Audit report' in 'Form No. 3CEB'. Further, on a perusal of the financial statements, it was observed by the A.O that the assessee company pursuant to certain related party transactions had received amounts towards reimbursement of expenses. Also, it was noticed by the A.O that the assessee company had reimbursed its share of common pool expenses which were claimed to have been incurred by its related parties for and on its behalf. In order to verify the genuineness of the aforesaid claim of receipt/payment of reimbursement of expenses the A.O called upon the assessee to furnish the requisite details in respect of the same. In reply, it was submitted by the assessee that Cable and Wireless group had two entities operating in India viz. (i) Cable And Wireless India Ltd. (i.e the assessee); and (ii) Cable & Wireless Networks India Pvt. Ltd. (for short 'CWNIPL'). It was stated by the assessee that CWNIPL was engaged in the business of carrying on telecommunication networking services which included providing of National Long Distance (NLD) and International Long Distance (ILD) services. It was submitted by the assessee that administrative functions of finance, human resources for both of the aforesaid entities were managed by common staff which was under the payroll of CWNIPL. On the basis of the aforesaid facts, it was the claim of the assessee that the expenses which were incurred in respect of the aforesaid administrative functions were cross charged to it by CWNIPL on cost to cost basis. As per the details furnished by the assessee, it was noticed by the A.O that the assessee had during the year under consideration claimed to have reimbursed an amount of Rs.2,34,56,929/- to CWNIPL. It was the claim of the assessee that the aforesaid amount of reimbursement was towards support costs consisting of salary, leave encashment and gratuity expenses which were incurred by CWNIPL for and on its behalf on cost to cost basis. In order to fortify its aforesaid claim the assessee had also placed on record sample copies of 'debit notes'. On a perusal of the details furnished in the course of the assessment proceedings, it was noticed by the A.O that the assessee had claimed that the expenses incurred by CWNIPL in respect of rendering of administrative functions were allocated to the assessee by adopting the allocation key of head count basis, as under:

Cross Charge Basis – Details of number of employees												
	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Cable and wireless (India) Limited India	443	459	460	458	472	487	496	491	486	492	489	489
Cable and Wireless Networks India Private Limited	98	101	94	104	104	104	103	104	103	104	105	

Actual Cost Booked	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Finance	9,91,851	9,91,851	9,91,851	9,45,414	9,45,414	9,45,414	11,49,581	11,49,581	11,49,581	9,41,973	9,41,973	11,94,949
Admin	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247	1,90,247
HR	7,63,849	7,63,849	7,63,849	7,64,849	7,64,849	7,64,849	7,64,849	7,64,849	7,64,849	7,64,849	7,64,849	7,64,849
Total cost booked	19,45,747	19,45,747	19,45,747	18,99,509	18,99,509	18,99,509	21,03,676	21,03,676	21,03,676	18,96,069	18,96,069	18,96,069
Allocated on to CWNL	15,93,282.34	15,94,817	16,13,802	15,54,144	15,58,542	15,65,247	17,39,039	17,32,807	17,32,809	17,32,809	15,63,537	17,89,080

However, the A.O was unable to persuade himself to accept the aforesaid claim of allocation of expenses on head count basis. It was observed by the A.O, that though the number of employees had fluctuated during the year under consideration but the administrative and human resource expenses had remained static at an amount of Rs.1,90,247/- and Rs.7,63,849/-, respectively. In the backdrop of the aforesaid facts, the A.O was of the view that in case the allocation key of head count basis was to be accepted, then the amount of administrative and human resource expenses would not had remained constant throughout the year. Accordingly, the A.O backed by his aforesaid conviction was of the view that the logic of adopting the head count basis as the allocation key for the aforesaid expenses could not be accepted and rejected the same. Observing, that as neither any valid methodology for allocation of expenses was submitted by the assessee nor the one submitted was found to be substantiated, therefore, the A.O was of the view that there was no other option but to appropriate on an estimate basis a part of the aforesaid expenses as not covered under Sec. 37(1) of the Act. As such, in the absence of the requisite information the A.O on an ad hoc basis disallowed 30% of such expenses and made a consequential addition/disallowance of Rs. 70,37,078/- under Sec. 37 of the Act.

12. Findings of the tribunal are as under:-

"D(i). As is discernible from the records, the A.O had in the course of the assessment proceedings made a reference to the Transfer Pricing Officer-1(3)(1), Mumbai (for short 'TPO') for the purpose of determining the Arm's Length Price (ALP) of the international transactions of the assessee as were detailed in its 'Audit report' in 'Form No. 3CEB'. On the basis of his order passed under Sec. 92CA(3), dated 25.01.2016, the TPO had held the international transactions of the assessee to be at arm's length. It has been the claim of the assessee before the lower authorities, and also before us, that once the TPO had held the transaction of reimbursement of expenses to be at arm's length, the A.O as per Sec. 92CA(4) was obligated to pass an order in conformity with the ALP determined by the TPO. As such, it was the claim of the Id. A.R, that after the TPO had held the reimbursement of expense by the assessee to its AE viz. CWNIPL to be at arm's length, the A.O was

divested of his jurisdiction to relook into the basis of allocation of such expenses, as he as per Sec. 92CA(4) of the Act remained under a statutory obligation to pass the order in conformity with the ALP determined by the TPO.

(ii). We have given a thoughtful consideration to the aforesaid claim of the assessee, and are persuaded to subscribe to the aforesaid contention so advanced by him. Admittedly, the transaction of reimbursement of expenses by the assessee (a branch of a foreign company) to CWNIPL i.e its Indian AE, is an International transaction within the meaning of Sec.92B of the Act. As per Sec. 92CA(4) of the Act, on receipt of order under sub-section (3) of Sec. 92CA, the A.O shall proceed to compute the total income of the assessee under sub-section (4) of Sec. 92C in conformity with the arm's length price so determined by the TPO. As is discernible from the order of the DRP, it was the claim of the assessee that now when the Asst. Commissioner of Income-tax (Transfer Pricing)-1(3)(1), Mumbai, had during the course of the TP proceedings accepted the reimbursement of expenses to be at arm's length, therefore, as per the provisions of Sec. 92CA(4) of the Act, the A.O was obligated to pass the order and compute the total income of the assessee in conformity with the arm's length price so determined by the TPO. Also, in support of his aforesaid claim the assessee had relied on the order of the ITAT, Bangalore in the case of Herbalife International India (P) Ltd. Vs. ACIT (2016) 65 taxmann.com 143 (Bang). In our considered view, now when the TPO on a reference made to him under Sec. 92CA(1) of the Act for benchmarking the international transactions of the assessee, had accepted the ALP of the reimbursement of expenses by the assessee to its AE viz. CWNIPL, ITA Nos.6074, 6075 & 756/Mum/2017 A.Ys. 2012-13,2013-14 & 2014-15 Cable and Wireless (India) Limited Vs. The DCIT (I.T.), Circle-2(1)(1) thereafter, the A.O as per the mandate of Sec. 92CA(4) of the Act, was statutorily bound to compute the total income of the assessee in conformity with the arm's length price so determined by the TPO. Although, the A.O in the course of the assessment proceedings continues to remain vested with the jurisdiction to verify as to whether or not an expense claimed by the assessee as a deduction was incurred wholly and exclusively for the purpose of its business, however, in the garb of exercise of such jurisdiction he is precluded to redetermine the arm's length price of an international transaction, in any way. In our considered view, now when the TPO while benchmarking the international transactions of the assessee, had not disturbed the arm's length price of the transaction of reimbursement of expenses by the assessee to its AE viz. CWNIPL, therefore, a relooking into the basis of allocation of such expenses inter se the assessee and CWNIPL would clearly militate against the express provisions of Sec. 92CA(4) of the Act. Our aforesaid view, that the A.O as per the mandate of Sec. 92CA(4) is obligated to compute the income of the assessee in conformity with the ALP so determined by the TPO, is fortified by the judgment of the Hon'ble High Court of Bombay in Vodafone India Service (P) Ltd. Vs. Union of India (2013) 359 ITR 133 (Bom) and that of the Hon'ble High Court of Delhi in CIT Vs. Oracle India (P) Ltd. (2011) 243 CTR 103 (Del). Also, support is drawn from the order of the ITAT, Delhi in DCIT vs, YKK India Pvt. Ltd. Accordingly, on the basis of our aforesaid observations, we are of a strong conviction that the rejection of the allocation key of reimbursement of expenses by the assessee to its AE viz. CWNIPL after the arm's length price of the same had been accepted by the TPO, would clearly be contrary to the mandate of law.

13. Further, we find that the allocation key based on 'headcount' was accepted in the past by the revenue as under:-

<u>AY</u>	<u>Order passed u/s</u>	<u>Order dated</u>
2011-12	143(3)	25.05.2015
2012-13	143(3)	16.03.2016
2013-14	143(3)	13.10.2016
2014-15	143(3)	13.10.2016
2015-16	143(1)	12.10.2016
2016-17	143(1)	01.08.2017

14. It is also pertinent to note that no adjustment has been made on the impugned transactions in the hands of Genpact India Private Limited in AYs 2017-18 and 2018-19 in the scrutiny assessments framed u/s 143(3) read with section 144C(13) read with section 144B of the Act dated 30.10.2022, which are enclosed in pages 263 to 624 of the paper book and 625 to 860 of the paper book, respectively.

15. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove and also by following the principle of consistency, we hold that the cost allocation key on the basis of 'headcount' should not be disturbed for the year under consideration. Accordingly, the ground Nos. 2 and 3 raised by the assessee are allowed.

16. The assessee has raised additional Ground vide letter dated 16.08.2023 together with the petition under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963. The additional ground is reproduced here under:-

"That on the facts and circumstances of the case and in law, the Ld. AO has erred in not granting the depreciation allowance of Rs.73,95,017 towards the intangible assets (being customer contracts as well as assembled workforce."

17. We find that in AY 2010-11 this Tribunal in assessee's own case vide its letter dated 31.01.2023 had held that the cost of intangible

assets to be capital expenditure and accordingly granted depreciation at the rate of 25%. This additional Ground is only consequential to the finding given by the tribunal. This would be evident from the narration of the following facts qua this issue :-

"During the FY 2009-10 (relevant to AY 2010-11), the Appellant acquired a business of third- party debt collection services as well as part of the analytics business from Genpact India Pvt Ltd ('the seller entity') for a total sum of Rs.62,12,70,648 vide agreement to sell entered into between the Appellant and Genpact India. Out of the total purchase consideration of Rs.62, 12,70,648, an aggregate sum of Rs.22, 16,00,276 (paid towards acquisition of customer contracts as well as the assembled workforce) was claimed as revenue expenditure by the Appellant on its return of income ('ROI'), filed for AY 2010-11.

Subsequently, the ROI of AY 2010-11 was selected for scrutiny assessment under section 143(3) of the Act. The Ld. AO, vide assessment order, dated May 21, 2014 (enclosed as Appendix 1), inter-alia, took a view that the aforesaid amount of Rs.22, 16,00,276, incurred by the Appellant towards acquisition of customer contracts and assembled workforce, is in the nature of capital expenditure and hence the same should have been capitalised as intangible assets by the Appellant. Accordingly, the sum of Rs.22, 16,00,276 was added back to the returned income of the Appellant and a corresponding depreciation claim of 25% i.e., Rs. 5,54,00,069 was allowed to the Appellant under section 32(1)(ii) of the Act.

Being aggrieved by the aforesaid assessment order passed for AY 2010-11, the Appellant preferred an appeal before the Ld. Commissioner of Income-tax (Appeal) ['CIT(A)']

On appeal, the Ld. CIT(A) vide its order, dated February 15, 2016, passed under section 250 of the Act, had upheld the view taken by dead Further, the Ld. CIT(A), for the limited purpose of allowing depreciation under the Aby the AO. Further, theold, sum of Rs. 22, 16,00,276, only Rs. 16,05,41,276 was to be considheld that out of the of intangible assets for allowing depreciation at the rate of 25%.

Being aggrieved with the aforesaid order passed by the Ld. CIT(A), the Appellant preferred an appeal before the Hon'ble ITAT, in relation to AY 2010-11. In this connection, the Hon'ble ITAT, now, vide its order, dated January 31, 2023 (enclosed as Appendix 2), reversed the decision of Ld. CIT(A) to the extent of change in valuation of intangible assets made by the Ld. CIT(A), and consequently, upheld the assessment order, dated May 21, 2014, passed by your predecessor, whereby INR 22, 16,00,276 incurred by the Appellant was to be treated as capital expenditure and depreciation was to be allowed on the same.

Considering the disallowance of revenue expenditure treating the same as capital expenditure and allowance of depreciation thereon in the assessment order of AY 2010-11, and subsequent upholding of the same by the Hon'ble ITAT for AY 2010-11, the Appellant is eligible to claim depreciation allowance of Rs 73,95,017 (being depreciation at the rate of 25% on the written down value of intangible assets so created in AY 2010-11) for the AY 2017-18. However, the said depreciation of Rs.73,95,017 has not been allowed to the Appellant vide the captioned assessment order, dated June 27, 2022, passed for the AY 2017-18.

Hence, it is submitted that the Appellant should be allowed the depreciation allowance of Rs.73,95,017 on the intangible assets, in line with the assessment order upheld by the Hon'ble ITAT for AY 2010-11."

18. In view of the above, we direct the Id AO to grant depreciation consequent to the order of the tribunal in AY 2010-11 and allow the additional ground raised by the assessee.

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

Order pronounced in the open court on 19 /04/2024.

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 19/04/2024
A K Keot/R.N, Sr. PS

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2. Respondent
3. CIT
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