IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA No. 4060/DEL/2016
Assessment Year: 2011-12

M/s Genpact India Private Limited (Successor to Genpact India), **Delhi Information Technology Park, Shastri Park,** **New Delhi-110053.** **PAN- AAACG9163H**	Vs	**DCIT, Circle-10(1), New Delhi.**
APPELLANT		**RESPONDENT**

AND

ITA No. 4251/DEL/2016
Assessment Year: 2011-12

DCIT, Circle-10(1), New Delhi.	Vs	**M/s Genpact India Private Limited (Successor to Genpact India),** **Delhi Information Technology Park, Shastri Park, New Delhi-110053.** **PAN- AAACG9163H**
APPELLANT		**RESPONDENT**

Assessee represented by	Shri Tarandeep Singh, Adv.
Department represented by	Shri Waseem Arshad, CIT(DR)
Date of hearing	31.01.2024
Date of pronouncement	29.04.2024

O R D E R

PER M. BALAGANESH, AM:

The captioned cross-appeals, preferred by the assessee as well as the Revenue, are directed against the order of learned Commissioner of Income Tax (Appeals)-4, New Delhi, dated 16.05.2016, arising out of order dated 31.03.2015, passed by the Assessing Officer u/s 143(3) of the Income-tax Act, 1961, pertaining to the assessment year 2011-12. Both the appeals are taken up together and disposed of by this common order for the sake of convenience.

2. The assessee has raised following grounds of appeal.

"*1. That on facts and in law the CIT(A) erred in upholding that while computing deduction u/s 10A of the Act following receipts are to be excluded within the ambit of "export turnover" as defined in Explanation 2 (iv) to section 10A of the Income Tax Act:*

(a) Freight & Telecommunication expenses	*Rs 6,20,38,757/-*
(b) Recovery of expenses in respect of migration/ on-the-job-training services	*Rs 42,61,89,516/-*

2. That on facts and in law the CIT(A) erred in upholding that while computing deduction u/s 10AA of the Act following receipts are to be excluded within the ambit of "export turnover" as defined in Explanation 1 (i) to section 10AA of the Income Tax Act:

(a) Freight & Telecommunication expenses	*Rs 3,24,95,309/-*
(b) Recovery of expenses in respect of migration/ on-the-job-training services	*Rs 60,25,09,242/-*

3. That on facts and in law the CIT(A) erred in not appreciating that recovery of expenses in respect of migration/on-the-job-training services and freight and telecommunication expenses were not included in the figure of "export turnover" considered by the appellant while computing deduction u/s 10A and 10AA of the Act.

4. That on facts and in law the CIT(A) erred in upholding that recoveries from group companies to the extent of Rs.3,84,746/- (i.e 5% of Rs. 76 ,94,926/-) are not eligible for claiming benefit of deduction u/s 10A of the Income Tax Act 1961.

5. That on facts and in law the CIT(A) erred in upholding levy of interest u / s 234B, 234C and 234D of the Income Tax Act.

6. That on facts and in law to the Commissioner of Income Tax (Appeals) (herein above referred to as " CIT(A) "| erred in upholding the order of AO partly and not allowing complete relief as claimed.

7. That on facts and in law the order passed by Assessing Officer (herein above referred to as "AO" is void ab initio and bad in law."

2.1 Revenue has raised following grounds of appeal:

1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs. 7,88,79,143/- & Rs. 45,71,778/- from interest on fixed deposits as eligible for deduction u/s 10A & 10AA of the I.T. Act, 1961.

2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs 1,65,52,116/- & Rs. 85,65,919/- from interest on inter corporate deposits as eligible for deduction u/s 10A & 10AA of the L.T. Act 1961.

3. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs.5,27,296/- & Rs. 2,36,282/- from interest on employee loans as eligible for deduction u/s 10A & 10AA of the 1.T. Act 1961.

4. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs. 21,95,92,830/- from Foreign Exchange Gain & Forward Contract Gain as eligible for deduction u/s 10A & 10AA of the I.T. Act, 1961 ignoring the fact, that the gain is arises due to hedging activity and is not derived by the specified business activity.

5. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in reducing the Freight & telecommunication charges of Rs.6,20,38,757/- and Rs. 3,24,95,309/- from total turnover also for the purpose of computation of deduction u/s 10A & 10AA of the I.T. Act, 1961..

6. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in reducing the Expenses in respect of migration / on the job training amounting to Rs. 42,61,89,516/- and Rs. 60,25,09,242/- from total turnover also for the purpose of computation of deduction u/s 10A & 10AA of the I.T. Act, 1961.

7. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in allowing the 95% of cost recoveries of Rs. 76,94,926/- to be set off against the expenses & 5% of Rs. 76,94,926/- taken as a non-10A profit.

8. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the provision for customer discount of Rs.28,04,22,899/- ignoring the facts that the expenses were not crystallized during the year under consideration.

9. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 39,89,616/- made by the AO on account of excess depreciation on computer peripherals.

10. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."

2.2. Assessee has also raised additional ground before us on 24.02.2020 stating that assessee declared and paid dividend of Rs. 5,68,34,000/- to its parent share-holders Genpact India Investments. The assessee paid dividend distribution tax (DDT) of Rs. 94,39,416/- @ 16.6087% u/s 115-O of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). Genpact India Investments was a tax resident of Mauritius and was entitled to the benefits of Indo Mauritius Double Taxation Avoidance Agreement (DTAA). Under Article 10 of the said Treaty, dividends paid by a company, which is a resident of India may be taxed in India @ 5% of the gross amounts of the dividends if the beneficial owner is a company, which holds directly at least 10% of the capital of the company paying the dividends. Accordingly, the assessee submitted that the DDT paid by it u/s 115-O of the Act is in excess of the rate of 5% provided under Article 10 of the Indo Mauritius DTAA. Accordingly, the assessee by way of additional grounds seeks refund of the excess DDT paid. For the sake of convenience, the additional ground is reproduced hereunder:

"The Appellant prays that the Dividend Distribution Tax ('DDT') of Rs. 94,39,416 paid under section 115-0 of the Income-tax Act, 1961 ('the Act') at the rate of 16.6087 percent on dividends declared and paid by the Appellant to its parent foreign shareholder Genpact India Investments, a tax resident of Mauritius, is in excess of the rate of 5 percent provided under Article 10 of the Double Taxation Avoidance Agreement between India and Mauritius.

The Appellant prays for a grant of refund of the excess DDT paid by it under section 115-0 of the Act."

2.3 The aforesaid additional ground, in our considered opinion, is a pure legal issue and does not require verification of any facts. Hence the same is admitted and taken up for adjudication.

3. We find that the issue raised in the additional ground has been recently decided by the Special Bench of Mumbai Tribunal in the case of Total Oil India Pvt. Ltd. reported in 149 taxmann.com 332, wherein very same issue has been decided against the assessee. Accordingly, the additional ground raised by the assessee is hereby dismissed.

4. With regard to the regular grounds raised by the assessee and Revenue, some of them are identical and hence we proceed to dispose of the relevant issues involved therein with corresponding reference to the ground numbers of assessee as well as Revenue.

5. **Reduction of freight & Telecommunication charges and recovery of expenses in respect of migration/ on-the-job training services from 'total turnover' while computing deduction u/s 10A and 10AA of the Act**.

[Ground nos. 1 to 3 of assessee's appeal and Ground nos. 5 & 6 of Revenue's appeal]

5.1 We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of providing Information Technology Enabled Services such as data entry, data processing services, data conversion, business support and billing services to its customers. During the year under consideration, the assessee company had claimed deduction u/s 10A/10AA of the Act amounting to Rs. 378,22,79,469/-. During the year under consideration, the assessee incurred telecommunication expenses in foreign currency amounting to Rs. 23,19,55,704/-. Out of this, the amount pertaining to undertakings eligible for claiming deduction under Section 10A and 10AA of the Act was Rs. 6,20,38,757/- and Rs. 3,24,95,309/- respectively. The above amount included expenses paid to various service providers for landline, mobile connectivity, dial com connectivity, payments made for mail server and various other charges. During the year under consideration, assessee has been reimbursed a sum of Rs 42,61,89,516/- and Rs 60,25,09,242/- on account of migration / on-the-job-training activities relating to undertakings claiming deduction under Section 10A and 10AA of the Act respectively. It is submitted that under the overall ambit of IT/IT Enabled Services, assessee also provides business process outsourcing services to customers located outside India as well as customers located in India. Provision of business process outsourcing services involve carrying out certain back office operations of the customers through employees employed and operating out of the STPI and SEZ units of the assessee in India. For carrying out back office

operations of the customers from India, adequate on-the-job training is required to be provided to the assessee's employees in order to enable them to understand the operations of the customers and help in migrating those operations from overseas customer locations to STPI and SEZ units located in India. In order to effect the migration of customer operations from overseas locations to India, some of the employees of the assessee having requisite experience and skill are selected to undergo on-the-job training at overseas customer locations. The expenses incurred by the assessee on such on-the-job training or migration activities are reimbursed by the assessee's customers which, are netted-off against the respective expense items.

5.2 The learned AO by referring to the definition of export turnover as provided in Section 2(iv) of Section 10A of the Act, reduced the telecommunication expenses incurred in foreign currency relating to – reimbursement received by the assessee on account of migration/ on-the-job training activities from the export turnover and correspondingly did not reduce the same from the ambit of total turnover, thereby reducing the claim of deduction u/s 10A/10AA of the Act. This issue is no longer res-integra in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. HCL Technologies Ltd reported in 404 ITR 719 (SC), wherein it was held that the items that are subject matter of reduction from export turnover in the numerator need to be reduced in the denominator from the ambit of total turnover also as admittedly total turnover is nothing but the sum total of export turnover and domestic turnover. Hence, the export turnover reflected in the numerator cannot be different from the export turnover figure reflected in the denominator. Hence, for the purpose of computing the

deduction u/s 10A/10AA/10B/80HHC/80HHE etc. all items that were sought to be excluded from export turnover need to be excluded from total turnover also in order to bring parity. Respectfully following the said decision, ground nos. 1 to 3 raised by the assessee are allowed and ground nos. 5 and 6 raised by the Revenue are dismissed.

6. Next issue to be decided is 95% of cost recovered of shared costs to be set off against the expenses of 5% of recovery to be taken as non-eligible profit.[**Ground no. 4 of assessee's appeal & ground no. 7 in Revenue's appeal**]

6.1 We have heard rival submissions and perused the material available on record. During the year under consideration, the assessee recovered a sum of Rs. 76,94,926/- towards reimbursement of expenses borne by the assessee for its sister concerns. The ld. AO held that amount of Rs.76,94,926/- is income of the assessee not eligible for deduction under section 10A of the Act. In this regard, it is submitted that the above amount represents pure cost recovery which only reduces the relevant costs incurred by the assessee and there is no income element involved therein, or any income earning activity carried on by the assessee in this respect. The recoveries are inter-alia made towards travelling expenses, rental charges, transport cost incurred by the assessee on behalf of its sister concerns. The accounting treatment undertaken by the assessee in relation to above recoveries from other companies has been duly certified by the auditors in Audited Financial Statements for the year ended 31.03.2011 vide note 2(vi) of Schedule 13 of audited financial statements as under:

"Expenses incurred on behalf of other companies for sharing common services and facilities like premises, telecom etc. are reduced from the respective expense classifications. Expense allocation received from other companies for sharing common services and facilities are included in respective expense classification."

6.2 The learned AR submitted that this is a legacy issue and has its origin from A.Y. 2002-03 onwards. He fairly submitted that all litigations that arose from A.Y. 2002-03 to A.Y. 2010-11 had been settled by the assessee under Direct Tax Vivad Se Vishwas Scheme, 2020. He drew the attention of the Bench to Explanation given in Section 5(3) of Vivad Se Vishwas Act, 2020 to drive home the point that making a declaration under Vivad Se Vishwas Act, 2020 shall not amount to conceding the tax position on a particular issue. With regard to this issue, it would be relevant to reproduce the observations of the ld. CIT(A) in A.Y. 2002-03 as under:

"3 In ground No V it has been stated that the AO. has erred in considering rent and other recoveries from sister concerns amounting to Rs 27,31,23,488/- as taxable income of the appellant. With prejudice, it has been stated that the A O her erred in not allowing the expenses incurred for earning such income while taxing the same as income from other sources

3.1 The AO refers to Note No 9 of Schedule 14 (Notes to Accounts) of the balance sheet It was ascertained by the A O that the assessee had recovered an amount of Rs 3,43,86,505/- on account of rent and an amount of Rs.23,87,36,983/- on account of other expenses from its sister concerns It was stated before the A O that the expenses recovered from the sister concerns have been netted off in individual accounts of expenses. That recoveries are in the nature of reimbursement It was contended before the A O., without prejudice, that if the reimbursements are treated as income from other sources, the same then should be taxed only after allowing the expenditure incurred for the same.

The A.O states that whether or not the recoveries are pure reimbursement is not borne out by any documentary evidence. That the assessee has not produced any agreement to show that the exact amounts of expenditure are recovered by way of reimbursement. That the basis of recovery has not been

explained except stating that it is a recovery from a related concern. That the details of the places and expenses for which recovery had been made has not been submitted. In short the claim that the receipts were only full recoveries, is unproved

The A.O states that the major part of the recovery is on account of rent. which is netted off from the individual account of expenditure. Since it has received the approval of STPI for all its units and offices, and in the absence of details and agreements, the assessee's contention that it had given space on rent to related parties on full recovery basis is said to be unacceptable and unverifiable

The AO states that there is no provision under the Act to net off ecerpts against expenses That receipts of the assessee are to be treated as s income and the outgoings are to be treated as expenditure. That since the eceipts (by way of recoveries) were on account of activities which are not entitled to deduction u/s 10-A it has been argued by the A.O. that the assessee has effectively claimed higher deduction under this section. That Fent and other recoveries are not income derived from manufacturing or production of an article or thing and therefore, it does not qualify for deduction uls 10 A The A O states that by showing lower rent and other expenses in the P&L account by netting off recoveries, the assessee has claimed higher deduction u/s 10-A for an income which was not derived by the undertaking in the STP area In that view the amount of recovery of Rs. 27,31,23,488/- has been assessed as income

3.2 The appellant states that it recovered Rs 3,43,86,505/- towards sharing of premises and Rs.23,87,36,983/- towards sharing other expenses from its related concerns. That the amounts recovered appear as cost, recovery, which reduce the rental and other cost incurred by the appellant and that there is no income element embedded in the recovery. Recovery has arisen, because the parties had agreed for sharing of property and asset and only for the sake of convenience that one of the parties pays the cost and recovers the proportionate payment from the other party. Since a reduction of cost by way of reimbursement of expense, recovery in the facts of the case is not income. The appellant relies on Tejaji Farasram Kharawalla Ltd. 67 ITR 95 (SC), Industrial Engineering Projects Pvt. Ltd. 202 ITR 1014(Del) and Dunlop Rubber Co. Ltd 142 ITR 493 (Cal). It has been submitted that by reducing its cost by recoveries made the appellant has claimed only the expenses relatable to its income and is not netting off any income from expenses

Without prejudice, it has been stated that if at all rental income and others are to be taxed under the head of income from other sources, the expenses incurred towards earning of such income should have been allowed in terms of the provisions contained in section 57 That the reimbursement of expense, if at all to be taxed should be taxed only after apportioning the expenses incurred for earning such income Accordingly, total cost recovery MRs 26:31 23.488 even receipts are taken as income from other sources, should be allowed as an expense against such income. That by applying the provisions of section 57 (1) expenditure in full corresponding to the receipt of income would neutralize the said receipt leaving no surplus to be taxed under any head of income

3.3(a) I nave considered tre submissions of the appellant, the findings, of the A. O and the facts on record As regards the narration of factual details on the matter of recovery at para 5 to 5 5 of the assessment order, there were contradictions in the narration itself, in so far as at para 5.1, the AO. notes that from out of a gross recovery of Rs 27,31,23,488/-, an amount of Rs 3,43,86 505/- was on account of rent (or in other words 12.5%), whereas at para 5.3 it has been stated that the major part of recovery is on account of rent In fact a broad detail of cost sharing with sister concerns including the auditor's certificate with regard to reimbursement of expenses to the appellant had been provided to the AO in course of the assessment proceedings vide letter dated 15.3.2005 Since the details of other recoveries (other than rent) amounting to Rs.23,87,36,983/- have not been examined in course of assessment proceedings, that recourse to presumption was taken in order to hold that receipt of rent was the only substantial entry of recovery within the claims of receipts by way of reimbursement

In view of the assessee's letter dated 15.3.2005 to the A.O. for explaining the modality of cost sharing with its sister concerns, and the auditor's certificate attached therewith confirming the reimbursement to the appellant totaling Rs 26,58,84,196/-, and the fact that the A.O. without obtaining the break up of the expenses other than rent appearing within recovery, proceeding to hold that rent recovery is the principal amount of recovery within the figure of reimbursement, an enquiry was made u/s 250 (4) of the Act in order to ascertain the factual details of such reimbursement of expenses

3.3(b) Pursuant to the enquiry u/s 250(4), the appellant provides the details of recovery as under.

S. No.	Oracle Codes Particulars	GECT FS	GEIOC	GE-II	GECSI	Cost sharing details		I Process	Country wide	Total
						SBICPS:				
1	Rent					3332999	6638682	23714179		33685860
2	Repairs & maintenance		4966		502010	451416	897143	11166		1666701
3	Electricity & water charges				6000	2041252	40201950	3981777	-	10049134
4	Travelling & Conveyance				1544578	425852	425855	120829277	125762	123406292
5	Insurance expenses	-	-	-	26689	-	34874	-	-	61563
6	Printing & stationery	-	-	-	61366	-	102035	842491	212182	1218074
7	Management meeting expenses	-	-	-	204545	-	-	-	-	204545
8	Legal & professional services	-	-	-	55849	-	-	1750	-	57599
9	Lease rental & Hire charges	-	-	-	11883	-	-	3891	-	15774
10	Communication charges	-	-	70272	57165	538249	807373	66674787	-	63147846
11	Postage & courier	-	-	-	9312	-	15152	3506	29621	89791
12	Recruitment & training expenses	-	-	-	25466	2175	2903	72692	145857	249093
13	Staff welfare expenses	-	42065	63523	1781584	264788	371738	313248	90672	2927618
14	Salaries bonus & other allowances	-	-	-	7186826	-	3930079	13307588	3305311	27729804
15	Interest & depreciation Recovery	-	-	-	-	500209	1414388	-	-	1914597
16	Other expenses	-	-	-	998552	-	-	-	-	998552
	Total	54868	47031	133795	12271925	7556940	18660327	229788552	3909405	27242284

It has also provided letters confirming an understanding between the appellant and I process Pvt. Ltd. for sharing certain common facilities and costs thereof. Vide letter dated 31.8 2007, the appellant required I process Pvt. Ltd. to confirm the reimbursement of expenses for F.Y. 01-02, in respect of expenses such as rent, traveling, conveyance, communication expenses and the facilities cost etc amounting to Rs 22.97 crores (approx). I process Pvt Ltd vide letter dated 31 8 2007 has confirmed to the appellant that in terms of understanding between the appellant and I process Pvt. Ltd. for sharing certain common

facilities, I Process Pvt. Ltd has reimbursed to the appellant on actual basis certain expenses incurred by the appellant on behalf of I process Pvt Ltd The appellant has also placed on record copy of the financial statements and copy of scrutiny assessment order of I Process Pvt. Ltd for AY 02-03

Letters confirming certain understanding between the appellant and SBI Cards and Payment Service Pvt Ltd (SBIC.P.SL).G.E. Capital Business Process Management Services Pvt Ltd (GECBPMSL), G.E. Money Financial Services Ltd (GEMFSL) GE Capital Services India (GECSI) towards sharing of common facilities have been submitted in course of the appeal proceedings. The scrutiny assessment orders for A.Y. 02-03 in case of GE Capital Services India and SBI Cards & Payment Services Pvt. Ltd. have also been enclosed in support of a contention that the recovery by the appellant from the counter parties was nothing more than reimbursement of Cost

3.3(c) The AO in his report dated 16.1.2008 contended the despite opportunities in course of assessment proceedings to produce evidence in support of claim of deduction u/s 10-A of the Act, the assessee failed to avail of such opportunity Moreover the perusal of shared premises and reimbursement agreement now submitted by the assessee would reveal that the agreement was in force only for the period 19.6.1998 to 18.6.2001. In that view, for most of the period under consideration, there was no agreement to share the premises and for the reimbursement of cost. That confirmation letters from sister concerns are an after thought, since no such confirmations were submitted during the assessment proceedings. Even otherwise confirmation letters do not mention the amount of expenditure claimed to have been reimbursed but are general letters obtained from sister concerns to bail the assessee out of difficult situation. Moreover the audit reports of the sister concerns do not give any break up of the expenses so claimed to have been reimbursed. Finally the assessment orders in the cases of sister concerns do not contain anything on the issue of reimbursement and so those orders do not have much relevance to the case of the assessee. According to the A.O.. there was no valid agreement for the reimbursement of cost as claimed by the assessee for most of the period under consideration and in the absence of any such agreement and also the absence of the actual party –wise reimbursement figures the claim of the assessee should not be accepted.

The Addl. Commissioner of Income tax alludes to the conditions in Rule 46-A Accordingly it has been stated that in the absence of any cogent reason to

explain as to what prevented the assessee from submitting the evidences in course of assessment proceedings such evidences should not be accepted since violative of Rule 46-A

3.3(d) The evidences forwarded to the AO for his report thereon (including letters of understanding between the appellant and S.B.I.CPSF GECBPMSL, GEMFS and GECSI with regard to sharing of cost and common facilities, copies of audited accounts for AY 02-03 in the case of SBICPSF GE Capital Business Process Management Services Pvt. Ltd. GE. Capital Services India, copies of scrutiny assessment orders for A.Y. 02- 03 in cases of G E. Capital Services India, SBI Card Payment Service Pvt. Ltd, and I Process Pvt. Ltd) was pursuant to an enquiry conducted u/s 250(4) of the Act. According to the provision contained in Sec. 250(4), the C.L.T.(A) aw appeal n her enquiry as he thinks fit or may direct the A.O to make further enquiry and to report the result of the same Rule 46-A(4) contranly clarifies that nothing contained in Rule 46-A shall affect the CIT(A)'s power to direct the production of any document or the examination of any witness to enable him to dispose of the appeal. Therefore, additional evidences produced before the CIT(A) pursuant to CIT(A)'s directions would not be on a similar footing as in the case of new evidence produced before him suo moto by the appellant In case of evidences collected u/s 250(4) as in this case, Rule 46-A is not applicable and the technical objection of the Addl CIT for not admitting the additional evidence invoking the provisions of Rule 46-A is found unacceptable. On merits, therefore, the contention of the appellant on the given issue and the findings of the A. O in the assessment order and as per his report vis-a-vis the relevance of the additional evidences is required to be examined

3.3(e) Now in so far as the reimbursement of cost sharing expenses credited to the appellant's accounts amounted to Rs 27,24,22,843/-, and it involved 8 (eight) related parties it is necessary to ascertain the quantum of eimbursement under individual heads of accounts vis-à-vis the gross expenses under that head and to assess as to whether the said eimbursement of expenses was a significant of a miniscule proportion of the gross expenses under that head The details are as under -

a) In respect of rent the appellant has recovered on cost sharing basis. Rs 33 crores, whereas the expenses debited under that head is 26.76 crores (In other words the reimbursement of 11.11% of gross expense)

b) In respect of repairs and maintenance, reimbursement is Rs. 16.66 lacs, whereas the gross expenses debited under that head is Rs 14 12 crores (or in other words 1% of the gross expenses)

c) In respect of electricity and water charges, reimbursement is of Rs. 1crore whereas the gross expense debited under that head is Rs. 12 63 crores(or in other words 7% of the gross expenses)

d) In respect of traveling and conveyance charges, reimbursement is of Rs 12 34 crore, whereas the gross expense debited under that head is Rs 85.37 crores(or in other words 12.5% of the gross expenses)

e) In respect of insurance expenses, reimbursement is of Rs.61.563. whereas the gross expense debited under that head is Rs.2.92 crores(or in other words 0.2% of the gross expenses)

f) In respect of printing and stationery, reimbursement is of Rs.12.18 lacs, whereas the gross expense debited under that head is Rs 5 19 crores(or in other words 23% of the gross expenses)

g) In respect of management meeting expenses, reimbursement is of Rs 2 04 lacs, whereas the gross expense debited under that head is Rs 4.78 crores (or in other words 04% of the gross expenses)

h) In respect of legal and professional charges, reimbursement is of Rs 57,599/- whereas the gross expense debited under that head is Rs 21 54 crores or in other words 0.02% of the gross expense)

i) In respect of lease rental and fire chargers reimbursement is of Rs 15:774/- whereas the gross expense debited under that head is Rs 4 10 crores, or in other words 35% of the gross expenses)

j) In respect of communication expenses, reimbursement is of Rsatorore whereas the gross expense debited under that head is Rs 103.64 crores(or in other words 6.1% of the gross expenses)

k) In respect of postage and courier charges, reimbursement is of Rs 89 791/- whereas the gross expense debited under that head is Rs. 58.55 lacs (or in other words 1 3% of the gross expense)

l) In respect of recruitment and training expenses, reimbursement is of Rs.2.49 lacs, whereas the gross experise debited under that head is Rs 121 71 crores(or in other words 0.1% of the gross expenses)

m) In respect of staff welfare expenses reimbursement is of Rs29 27 lacs, whereas the gross expense debited under that head is Rs 16 62 crorest or in other words 1 70% of the gross expenses)

n) In respect of salary, bonus and other expenses, reimbursement is of Rs.277 crores, whereas the gross expense debited under that head is Rs 248 crores(or in other words 11% of the gross expenses)

o) In respect of other expenses charges, reimbursement is of Rs.9.98 lacs, whereas the gross expense debited under that head is Rs.64.72 lacs(or in other words 15% of the gross expenses)

The appellant's expenses in schedule 11under salaries /allowances, PF and staff welfare amounted to Rs 275 crores, and within administrative and finance charges in schedule 12, the expenses amounted to Rs. 351.22 crores In toto, expenses under personnel and administrative and other expenses amounted to Rs.626 crores, and taking into account recoveries of such expenses to an extent of Rs.27 24 crores, it would mean that roughly 4% of the expenses are said to have been incurred for the related parties, and recovery thereof reported in the accounts The quantum of reimbursement is a minor percentage of the gross expenses of the appellant It is not a major source of the appellant's receipts

3.3(f) The tabulated bifurcation of the expenses includes among others reimbursement from specific parties of whom I process Pvt. Ltd. was the party which reimbursed the largest amount of all amounting to Rs 22.97 88 552/- As per audited accounts for AY 02-03 in the case of 1. Process Pvt Ltd, reimbursement made to fellow subsidiaries for expenses incurred on behalf of the company was Rs 33.61,76,015/-. In other words expenses debited to the P & L a/c of 1 Process Pvt. Ltd. for A.Y. 02-03 amounting to Rs. 59.80 19.008/- (comprising personnel cost and adınınistrative and other expenses) included reimbursement of such expenses to a tune of Rs 33,61.76,015/- reimbursed by the company to other subsidiaries. This is as per the audit report in respect of I. Process Pvt. Ltd. for AY 02-03 Within the amount of reimbursement to fellow subsidiaries amounting to Rs 33 61,76,015/- made by I Process Pvt. Ltd, is included the amount of reimbursement of Rs 22,97 88 552/- by I Process Pvt. Ltd. to the appellant

As per P & L a/c of! Process Pvt Ltd for A.Y. 02-03, net profit as per account is Rs 33,54,47,306/- This company is engaged in the business of providing IT. enabled services to the G. E. group Companies. I. Process Pvt. Ltd. is otherwise entitled to deduction u/s 10B of the Act. A scrutiny assessment u/s 143(3) in this case as per order dated 28.02.05 by DCIT Cir.- 11(1) reveals that this company was allowed deduction u/s 10B of an amount of Rs. 34,54,08,057/- on the basis of its export turnover of Rs.80,74,78,473/- against a total turnover of Rs 94,81,10,040/- In the scrutiny assessment order in the case of I Process Pvt. Ltd for A.Y. 02-03, neither the provisions of section 40A(2) or section 37 have been invoked in order to disallow any part of the expenditure either directly paid or reimbursed to the appellant. Meaning thereby that the amounts reimbursed to the appellant have not been found excessive or unreasonable in the context of the business needs of the I. Process Pvt Ltd. and the fair market value of the goods and services and (acility towards which reimbursement has been made by I. Process Pvt. Ltd.

3.3(g) In so far as the so called reimbursements from L. Processes Pvt. Ltd are concerned in the light of the factual detail above, my findings are as under:

(i) A receipt can partake the character of income, only if there is an element of income embedded in the said receipt, whether in full or in part A recovery as well can be taxed only if it is proved that the amount recovered represents either full or partly receipts in the nature of income Reimbursement of expenses of actual cost is not income as per CIT Vs Indi Engg Product 202 ITR 1014 (Delhi) and followed in the order of Coca Cola India Inc. Vs ACIT (2006) 7.SOT. 224 (Delhi)

(ii) The auditors in the case of the appellant in their report for A.Y. 02- 03 state that the company was "reimbursed" by fellow subsidiaries for expenses incurred on their behalf The auditors in the case of I. Process Pvt. Ltd in their report for AY 02-03 confirm that it made reimbursement to fellow subsidiaries for expenses incurred on behalf of that company Reimbursement connotes money given or received as payment or reparations for damages or losses or money already spent etc. There is nothing in the audit reports in the case of I Process Pvt Ltd, and the appellant for A.Y. 02-03 to suggest, indicate or connote that the reimbursement to the appellant was excessive and unreasonable with reference to the costs incurred by the appellant.

(iii) The AO in the case of I. Process Pvt. Ltd. for A.Y. 02-03 did not find anything in the accounts to suggest that the expenses by way of reimbursement to the appellant were unreasonable or excessive with reference to the fair market value of goods, services or facilities for which payments have been made or the legitimate business needs of I Process (P) Ltd

(iv) In order that the so called reimbursement is taxed as income, it has to be proved that there was an element of profit in such reimbursement and that profit is at the expense of the fellow subsidiary i.e I Process Pvt Ltd That there is diversion of profit from I. Process Pvt Ltd to the appellant in order that the income by way of reimbursement in the hands of the appellant is rendered tax exempt in view of applicability of section 10A to the appellant's Income The view would have been justified on a broader scale, had there been two concerns, one entitled to deduction u/s 10A etc. and the other not so entitled The case of the appellant and I. Process Pvt Ltd is different in so far as both the concerns are entitled to deduction u/s 10A/108 In that view, what has been arranged by way of cost sharing arrangement between 1. Process Pvt Ltd and the appellant both eligible concerns entitled to deduction u/s 10A 10B does not have an element of tax avoidance in such arrangement

Considering the evidences on record including the results of the enquiry conducted u/s 250(4) of the Act the audited accounts of the appellant and I

Process Pvt. Ltd including the audit note on reimbursement of expenses in both cases, relevant for AY 02-03, the finding of the AO in the case of I. Process Pvt. Ltd. for AY 02-03, I hold that there is no factual basis for treating the entire recoveries made by the appellant from I. Process Pvt. Ltd. as income not eligible to deduction u/s 10A of the Act. The AO in the case of I. Process Pvt Ltd has not found the payments to the appellant by I.Process Pvt. Ltd. for services rendered by the appellant as excessive or unreasonable vis-à-vis the fair market value of the goods and services and facilities provided by the appellant or with regard to the legitimate business needs of I. Process Pvt. Ltd. Meaning thereby that I. Process Pvt. Ltd. has paid market determined rates for the services rendered by the appellant While I agree that the independent audit note or the auditor's certificate or the management certificate of the appellant or I. Process Pvt. Ltd. do not by themselves or in tandem with other evidences support a conclusion that there is nil income within the figure of reimbursement from I. Process Pvt. Ltd., I equally hold on the basis of the scrutiny assessment order in the case of I Process Pvt. Ltd for AY 02-03 that the appellant has not been paid unreasonably or excessively in respect of the services rendered by it to I. Process Pvt Ltd and in that manner that the appellant has been paid market determined rates for the services rendered I hold also that there is no concept of free tunch in the commercial world at that the appellant would not have stood up for its sister concern in respect of expenses, by blocking its investible funds without any return Taking into account similar ratios of cases judicially decided in respect of reimbursement of expenses, and particularly that of Glaxo Smith kline Asia (P) Ltd Vs ACIT 6 SOT 113 (Delhi), and in the absence of any technical evaluation or report of similar nature for determining the market related cost of the services rendered by the appellant I hold that 5% of the expenses reimbursed by I Process Pvt. Ltd. to the appellant should fairly constitute profits of the appellant. In view of the decisions quoted in the above mentioned paragraph, the appellant would not be entitled to any deduction u/s 10A in respect of an amount of Rs. 1. 14.89.927 constituting profit from out of the reimbursement from I. Process Pvt Ltd

3.3(h) SBICP.S.L has paid an amount of Rs. 75,56,940/-under rent, repair and maintenance, electricity and water charges, traveling and conveyance, communication expenses, staff welfare expenses etc. The A.O. in the case of SBICPSL in a scrutiny assessment order dated 28.2.2005 has not found any such payment to the appellant as excessive or unreasonable with regard to the fair market value of the services rendered and the business needs of the counter party Similarly, the A.O. in the case of G.E.C.S.I. in his scrutiny assessment order for A.Y 02-03 dated 30.3.2005 has not found any of the payments to the appellant under repair and maintenance, salaries and other allowances, staff welfare expenses, traveling and conveyance etc. comprising a total amount of Rs. 1,22,71,925/- as excessive or unreasonable with regard to the fair market value of the services rendered or the business needs of the concerned assessee.

In line with the decision to consider 5% of the reimbursement as profits of the appellant in the case of I Process Pvt. Ltd. I hold that profits of the appellant at 5% of the reimbursement from SBIC.PSL and GECSI amounting to Rs. 9,91,443/- is not entitled to any deduction u/s 10-A of the Act

3.3(i) In so far as reimbursement of expenses and user fees for facilities etc received by the appellant from other sister concerns namely GECTFS (Rs 54868/-) GEIOC (Rs 47 031/-), GEII (Rs. 133795/-), GECBMPSL (Rs 18660327/-) & Countryande (Rs 3909405/-), no authoritative evidence or tending of any statutory authority has been submitted in the course of appellate proceedings and also in terms of the enquiry uls 250(4) to supstantiate the claim that the payment received from the sister concerns are pure recoveries without an element of income embedded therein. In absence of detail and supporting evidence, I hold that the amounts received from the above related concerns amounting to Rs 2.28.05 426/- has been rightly taxed as income Support for taxing the amounts is in terms of Tocheungles Stationery Mfg Co. Pvt. Ltd. Vs ITO (2006) 5 SOT 428 (Chennai), Picric Ltd. Vs JCIT (2004) 90 ITD 301 (Delhi) Srinivasa Cystine Ltd Vs JCIT 92 ITD 462 (Hyd)

The AO is directed to consider an amount of Rs. 3,52,86,796/- as income not eligible to deduction u/s 10A stands deleted. The ground is partly allowed The remainder of the addition stands deleted. The ground is partly allowed."

6.3 This is not in dispute that similar findings were given by the ld. CIT(A) in A.Ys. 2003-04 to 2009-10. The ld. AO while framing the assessment for the year under consideration has again reiterated the similar findings given by him in earlier assessment years by observing as under:-

"The assessee, vide letter dated 23.03.2015, stated that it had recovered Rs.7,694,926/- the assessee has explained that it has netted off the costs with recoveries. The assessee has further claimed vide the aforesaid submission that such recoveries are reimbursement in nature relying on various judgments. The assessee has further contended that without prejudice to the recoveries being treated as reimbursement, if the same are treated as income from other sources then the amount that should be taxed only after allowing the expenditure incurred for the same.

I have considered the submissions of the assessee. From the facts as are available, merely because there is expenditure or receipt of same nature they are not required to be netted off unless and until it is established that particular

expenditure have been incurred wholly and exclusively for the purpose of earning the income against which set off is claimed. The receipts of the assessee are to be treated as its income and the outgoings are to be treated as expenditure. Since these receipts are not on account of activities which are entitled to deduction u/s 10A, the assessee has effectively claimed higher deduction under this section. Amount recovered in respect of costs is not income derived from manufacture or production of an article or thing and, therefore, cannot qualify for exemption u/s 10A. By showing lower costs in the P&L account by netting off recoveries, the M/s Genpact India (formerly known as 'GE Capital International Services) AY 2011-12 assessee has sought to claim higher deduction u/s 10a for an income which was not derived by the undertaking in the STP area. These receipts are liable to be taxed as non-10A income and only those expenditure which are wholly and exclusively incurred for earning this income are to be excluded. Perusal of P&L A/c does not show any such expense. Therefore, these receipts of rs.7,694,926/- are excluded from 10A business profits and taxed as other income. Since, I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) are being initiated separately.")

6.4 The ld. CIT(A) by following the orders passed by his predecessors pointed out that 5% of cost recovery to be not eligible for deduction u/s 10A of the Act and remaining 95% to be eligible for deduction u/s 10A of the Act. Aggrieved by this, both the assessee as well as the Revenue, are in appeal before us.

6.5 The ld. CIT(DR) before us vehemently submitted that order of the ld. CIT(A) in A.Y. 2002-03 is perverse inasmuch as ld. CIT(A) had not given adequate opportunity to the ld. AO. Ld. CIT(DR) submitted that assessee has shown significant amount of expenses reimbursement from related party but the details of the same had not been furnished to the ld. AO. Further, ld. CIT(DR) argued that assessee had not demonstrated that entire amount shown as reimbursement is actually cost to cost reimbursement and that there was no profit element involved therein. The ld. CIT(DR) made further argument by stating that assessee ought to have deducted tax at source

of expenses incurred by it which were subject matter of reimbursement and, therefore, disallowance u/s 40(a)(ia) of the Act would also come into operation in the instant case.

6.6 At the outset, we find that the ld. AO had not disputed the basic fact that recovery of expenses is nothing but reimbursement of expenses on actual cost to cost. Non deduction of tax at source on the expenses incurred was never the case of the ld. AO. Hence the ld. CIT DR cannot make out a fresh case before this Tribunal. This matter is very well settled by the decision of the Special Bench of Mumbai Tribunal in the case of Mahindra & Mahindra Ltd. reported in 122 ITD 216 (Mum.)(SB), wherein it was categorically held that ld. DR while arguing the case before Tribunal can only support the order of ld. AO and cannot make out a new case by pointing out flaws, if any, in the order of ld. AO. Hence, the argument advanced by the ld. CIT(DR) on the aspect of applicability of provisions of section 40(a)(ia) of the Act stands dismissed.

6.7 We find from the order of the ld. CIT(A) for A.Y. 2002-03, reproduced supra, which has been followed by the ld. CIT(A) in successive years and which, in turn, has been followed by the ld. CIT(A) for the year under consideration, that the cost recoveries made by the assessee represent pure cost recovery only without any element of profit in it. We find that ld. CIT(DR) before us had sought to argue that the order of the ld. CIT(A) for A.Y. 2002-03 is perverse. This, in our considered opinion, is completely an absurd argument in view of the fact that if there is any grievance for the Revenue against the observations made by the ld. CIT(A) for A.Y. 2002-03, the Revenue should have contested before the appropriate forum for A.Y. 2002-03. We find that the observations of ld. CIT(A) for A.Y. 2002-03 had been followed successively by

all the ld. CIT(A) in assessee's own case up to A.Y. 2011-12, which is the year under consideration before us. If that be the case, then entire order of ld. CIT(A) for A.Y. 2011-12 also would become perverse, according to the ld. CIT(DR), which situation cannot be entertained by this Tribunal. It would also be relevant to note that both assessee as well as the revenue are in appeal before us against the very same order of the ld. CIT(A). In fact on perusal of the details of ld. CIT(A) for A.Y. 2002-03, reproduced supra, we find that wherever details were filed by the assessee, the ld. CIT(A) had resorted to estimate 5% of the cost recovery as not attributable to Section 10A unit and consequently denied deduction u/s 10A thereon. Wherever details were not filed, no relief has been granted by the ld. CIT(A) for A.Y. 2002-03. While this is so, how the order of ld. CIT(A) could be termed as perverse for A.Y. 2002-03. In this regard, it would be relevant to ascertain, whether details of cost recoveries in the sum of Rs. 76,94,926/- were filed by the assessee before the ld. AO or not for the year under consideration. The ld. AR rightly drew our attention to the letter dated 23.03.2015 which are enclosed in pages 161-164 of the factual paper book. The assessee has given complete basis and workings of recovery of expenses to the tune of Rs. 76,94,926/- in this letter dated 23.03.2015, filed before the ld. AO, as under:

"Cost sharing details for the financial year 2010-11

Entity name	*Services LLC*	*NgEN*	*Axis*	*GMS*	*Grand Total*
Expense Head					
Travelling	*2,200,189*	*-*	*106,176*	*3,108,504*	*5,414,869*
Rental Charges	*-*	*1,669,529*	*-*	*-*	*1,669,529*
Transport	*-*	*610,528*	*-*	*-*	*610,528*
Grand Total (in Rs.)	*2,200,189*	*2,280,057*	*106,176*	*3,108,504*	*7,694,926*

"

6.8. We further find that the said recovery of Rs. 76,94,926/- constitute only 0.04% of the total personnel and administrative expenses and other expenses (Rs. 1788.51 crores) of the assessee. Hence, it is very clear that the details of cost recoveries were indeed filed before the ld. AO itself for the year under consideration together with the accounting practice followed by the assessee thereon. Hence, fairly the order of ld. CIT(A) for A.Y. 2002-03 needed to be followed even for the year under consideration i.e. to say where details are filed by the assessee estimate of 5% of cost recovery is to be construed as not eligible for deduction u/s 10A of the Act. When this was put to ld. AR, the ld. AR fairly agreed for the same.

6.9. In view of the aforesaid observations, we hold that order of ld. CIT(A), in holding 5% of cost recoveries as not eligible for deduction u/s 10A of the Act, is to be sustained. Accordingly, ground no. 7 raised by the Revenue is dismissed and ground no. 4 raised by the assessee is partly allowed.

7. The next issue to be decided is with regard to eligibility of interest income from fixed deposits, inter-corporate deposits and the employees loans for claim of deduction u/s 10A and 10AA of the Act.**[Ground nos. 1 to 3 of Revenue's appeal]**

7.1. We have heard rival submissions and perused the materials available on record. In the return of income, assessee had included following interest income in the profits eligible for claiming deduction u/s 10A and 10AA of the Act:-

Particulars	Amount included in profits eligible for deduction u/s 10A	Amount included in profits eligible for deduction u/s 10AA
Interest on loans given to employees	Rs. 5,27,926/-	Rs. 2,36,282/-
Interest on Fixed Deposit	Rs. 7,88,79,143/-	Rs. 45,71,778/-
Interest on inter corporate loans	Rs. 1,65,52,116/-	Rs. 85,65,919/-

7.2. The ld. AO held that the above items of income are not eligible for claiming benefit of deduction u/s 10A & 10AA of the Act as the same are not derived or attributable to the export activity of the assessee company. According to ld. AO, these incomes have only incidental nexus with the export activity of the assessee and they do not have first degree nexus with the export activity which is eligible for deduction u/s 10A & 10AA of the Act.

7.3 The ld. CIT(A) granted relief to the assessee by placing reliance on the decision of the Hon'ble Karnataka High Court in the case of Motorola India Electronics Pvt. Ltd. reported in 225 Taxman 11 (Kar) and the provisions of Section 10A(4)/ 10B(4) of the Act.

7.4 The ld. CIT(DR) before us vehemently argued that there is no business compulsion for the assessee to deploy funds in the deposits as well as by giving loans to employees and earn interest income thereon. He argued that the entities to whom funds are advanced by the assessee are having running accounts with the assessee and thus funds are advanced to benefit global operations and not Indian business. Hence, no nexus has been proved by the assessee on the deployment of the funds, which had fetched interest income for the assessee vis a vis eligible undertaking u/s 10A & 10AA

of the act. Ld. CIT(DR) observed that the ld. CIT(A) had only adjudicated the legal aspect without addressing the factual foundation of these incomes having any business nexus with the eligible undertaking. He vehemently prayed for reversal of the order of ld. CIT(A) in this regard.

7.5 At the outset, the entire argument of the ld. CIT(DR) need not be gone into at all in view of the fact that the ld. AO himself had treated the said mentioned receipts as only 'business income' and not 'income from other sources', which is evident from the computation of total income, enclosed in page 20 of the assessment order. Once it is treated as 'business income', the assessee would be automatically eligible for deduction u/s 10A & 10AA of the Act. Even otherwise, the provisions of Section 10A(4) are very clear to state that the entire 'profits of the business of the undertaking' in proportion of export turnover to total turnover would be eligible for deduction u/s 10A of the Act. Hence, subject mentioned receipts constitute business receipts would fall within the ambit of Section 10A(4) of the Act, thereby making the assessee eligible for deduction thereon. Similar is the provision in Section 10AA(7) of the Act with the same words. Hence, in view of the explicit provisions of Section 10A(4) and 10AA(7) of the Act, the arguments advanced by the ld. CIT(DR) deserve to be dismissed and we do not find any infirmity in the order of the ld. CIT(A) in this regard. Accordingly, ground nos. 1 to 3 raised by the Revenue are dismissed.

8. Next issue to be decided in this appeal is as to whether foreign exchange gain and forward contract gain earned by the assessee are eligible for deduction u/s 10A & 10AA of the Act.[**Ground no. 4 of Revenue's appeal**]

8.1 We have heard rival submissions and perused the materials available on record. During the year under consideration, assessee earned a net Foreign Exchange Gain of Rs 45,24,43,455/- details of which are as under:-

Foreign Exchange and Forward Contract Gain	Rs 48,58,49,914/-
AS-11 restatement	Rs (3,34,04,958/-)
Exchange Gain (net)	Rs 45,24,43,455/-

Out of the above, the exchange gain (net) relating to the undertaking claiming deduction u/s 10A and 10AA is as under:-

Particulars	Undertaking eligible for deduction u/s 10A	Undertaking eligible for deduction u/s 10AA
Foreign Exchange and Forward Contract Gain	Rs 14,48,82,149/-	Rs 7,47,10,681/-
AS-11 restatement	Rs (99,61,476)/-	Rs (51,36,786)/-
Exchange Gain (net)	Rs 13,49,20,673/-	Rs 6,95,73,895/-

8.2 Ld. AO had held that foreign exchange and forward contract gain of Rs. 14.48 crores and Rs. 7.44 crores were derived by the assessee due to hedging activity and the same is not derived by the specified business activity of the undertaking in the Software Technology Park (STP) or Special Economic Zone (SEZ). With these observations, the ld. AO denied deduction u/s 10A & 10AA of the Act to the assessee on the said foreign exchange and forward contract gain.

8.3 The ld. CIT(A) granted relief to the assessee by placing reliance on various decisions and giving a categorical finding that foreign exchange gain is directly relatable to the export of services and sale proceeds thereof and consequently would be eligible for deduction u/s 10A and 10AA of the Act. It was also observed by the ld. CIT(A) that similar issue was decided in assessee's favour by the orders of his predecessors for A.Ys. 2000-01, 2002-03, 2005-06 to 2009-10.

8.4 The ld. CIT(DR) before us by referring to page 24 para 4 of the paper book, containing audited financial statements for the year ending 31.03.2011, submitted that assessee has an exposure of USD 105,000,000 foreign exchange forward contracts outstanding as on 31.03.2011. Ld. CIT(DR) argued that the forward contracts outstanding at the end of the year exceeded the entire export receivables itself and hence gain derived thereon cannot be construed as business income of the assessee and the same would have to be considered as speculative income of the assessee and consequently not eligible for deduction u/s 10A & 10AA of the Act.

8.5 At the outset, we find that assessee had furnished complete details of income from foreign exchange/forward contract gains before the ld. AO vide letter dated 27.02.2015, which is enclosed in pages 154 to 160 of the paper book. The assessee had explained that it had entered into forward contracts with certain banks during the year for hedging its foreign exchange risks on the receivables of export sales. Forward foreign exchange contracts are taken to protect profit margins when receiving or making a foreign currency payment at some point in the future, usually as a result of foreign sales or purchases. A forward contract that lock-in the foreign exchange rate for

a future date eliminates the effect that a change in the foreign exchange rate would have on profits. The assessee further explained that there can be two types of gains/losses on account of foreign exchange fluctuations on export transactions:-

- one, arising on account of difference of 'locked-in' foreign exchange rate under forward contract vis-à-vis the rate at which the transaction was recorded in books and

- the other difference being of actual rate at the time of receipt from the customer (which are not hedged) vis-à-vis the rate at which the transaction is recorded in the books.

8.6. The gain / loss arises because of the fact that at the time of booking the sales in the accounts, the exchange rate on the date of raising the invoice is taken into account. Whereas when the actual payment is received from the customer, directly or through bank under a forward contract, the exchange rate may be different. Thus the impact of the difference of the two rates is recorded in the books separately as an exchange gain/ (loss). Hence the nature of receipt has been completely explained by the assessee. The ld. AR submitted that forward contract outstanding at the end of the year exceeding export receivables at the end of the year is of no consequence or relevance as to that extent, the sales would happen in next year. We find that the Hon'ble Madras High Court in the case of Commissioner of Income Tax v. Pentasoft Technologies Ltd. reported in 347 ITR 578 (Mad) had categorically held that gains arising out of foreign exchange fluctuations are having direct nexus over the export sales of the assessee and would be eligible for deduction u/s 10A of the Act.

8.7. Similar view was taken by the Hon'ble Bombay High Court in the case of Commissioner of Income Tax v. Gem Plus Jewellery India Ltd. Reported in 330 ITR 175 (Bom).

8.8. In view of the aforesaid observations and respectfully following the judicial precedence relied upon hereinabove, ground no. 4 raised by the Revenue is dismissed.

9. Next issue to decided in this appeal is as to whether ld. CIT(A) was justified in deleting the disallowance made on account of customer discount of Rs. 28,04,22,899/- in the facts and circumstances of the instant case [**Ground no. 8 of Revenue's appeal**]

9.1 We have heard rival submissions and perused the materials available on record.

During the year under consideration, assessee and its customers mutually agreed that a discount is to be provided by the assessee (being the service provider) to the customers (being the service recipients). The basis of provisions of such discount was agreed to be the revenues earned by the assessee from the respective customers in the current period. Accordingly, during the year under consideration, amount of Rs. 28,04,22,899/- was provided by the assessee towards discount to its customers as per the prevailing industry practice on revenues earned during the current year and the same was claimed as deductible expenditure. In the notes to accounts (Schedule 13) it is stated as under:-

"13. During the year ended 31 March 2011, the Company has made provision for discounts amounting to Rs 280422899/- (previous year Rs 57732259/-) which is computed based on revenue earned from respective customer's upto 31 March 2011. Provision for discount has been reduced from revenue"

9.2 The ld. AO disallowed the said provision made for discount stating that the assessee has not provided any details to the effect that the said discounts get crystallized in the current year whereas these discounts are passed on to the customers in subsequent years by adjustments from future collections. Hence, in line with the stand taken by the ld. AO in earlier years, the said amount was disallowed by the ld. AO.

9.3 The ld. CIT(A) observed that assessee's case is squarely covered by the decision of the Hon'ble Apex Court in the case of Bharat Earth Movers Ltd. reported in 245 ITR 428 (SC) and in the case of Rotork Controls India (P) Ltd. reported in 314 ITR 62 (SC). Further, the ld. CIT(A) observed that similar issue was decided in assessee's favour by his predecessor for A.Ys. 2007-08, 2008-09 and 2009-10.

9.4 The ld. CIT(DR) argued that assessee by claiming a deduction had merely made a provision for discount which clearly falls under the ambit of 'base erosion'. These discounts have been provided to group companies which are related parties to the assessee and thereby assessee is deliberately shifting its profits to its group companies. The ld. CIT(DR) also argued that the discounts have been provided by the assessee in ad hoc manner and that the basis of determination of discount has not been provided by the assessee. Ld. CIT(DR) argued that the entire provision made herein is nothing

but provision made for unascertained liabilities and hence the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases, relied upon by the ld. CIT(A) in his order, would not be applicable herein.

9.5 We find that the ld. AO in page 2 para 3 of the assessment order has stated that the ld. TPO had accepted the entire export price of the assessee to be at Arm's Length Price (ALP) and had not suggested any adjustments thereon. Hence, the entire revenue shown by the assessee (which comprises gross revenue minus discount of Rs. 28,04,22,899/-) has been accepted to at arm's length. Further, the ld. CIT(A) in A.Y. 2007-08 vide his order dated 16.04.2014 has categorically held that a provision for customer discount has been made by the assessee on a scientific basis and as per the prevailing industry practice revenue earned during the year. It was observed that the said discounts were not provided on ad hoc or universal basis. Instead, specific end customers were identified based on various criterions like customer relationship, brand recognition, contract longevity, contract revenue etc. and only thereafter the discount purchases were agreed to be provided to these end customers based on commercial negotiations and the agreed discount purchases were applied to the current year revenues to these identified end customers. Hence, the liability had duly crystallized during the year. This categorical finding has been followed by the ld. CIT(A) for the year under consideration also. Hence, assessee's case squarely falls within the ratio decidendi of Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. reported in 245 ITR 428 (SC) and the Hon'ble Jurisdictional High Court in the case of Insilco Ltd. reported in 320 ITR 322 (Del.)

9.6 The ld. AR before us relied on the CBDT Circular no. 12 of 2022 dated 16.06.2022 wherein vide question no. 4 in response to a specific query raised, the CBDT had replied that discounts allowed to customers would only represent lesser realization of sale price. Though the Circular has been issued in the context of applicability of deduction of TDS u/s 194R of the Act pursuant to the amendment brought in by the Finance Act, 2022 w.e.f. 01.07.2022, the analogy that discount is only a lesser realization of sale price has been accepted and agreed by the CBDT. Drawing support from this Circular and considering the fact that the export sale price declared by the assessee has been accepted to be at arm's length price (ALP) by the ld. TPO in the order passed by him u/s 92CA(3) of the Act dated 27.01.2015 and also considering the fact that the provision of discount has been made on a rational basis as detailed supra, we do not find any infirmity in the order of ld. CIT(A) deleting the disallowance made thereof by the ld. AO. Accordingly, ground no. 8 raised by the Revenue is dismissed.

10. The next issue to be decided is with regard to disallowance made on account of excess depreciation on computer peripherals (**Ground no. 9 of Revenue's appeal**).

10.1 We have heard rival submissions and perused the materials on record. The assets like printers, routers along with other accessories/ peripherals form one integrated system and would be of no use independently of each other. Therefore, all such facilities from part of computers and hence eligible for depreciation at the rate

applicable for computers. This issue is duly covered by the decision of the Hon'ble Jurisdictional High Court in the case of BSES Yamuna Powers in ITA no. 1267 of 2010 dated 31.08.2010 and in the case of Orient Ceramics reported in 200 Taxman 64 (Del). In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, ground no. 9 raised by the Revenue is dismissed.

11. To sum up, the appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

Order pronounced in open court on 29/04/2024.

Sd/-	**Sd/-**
(YOGESH KUMAR US)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29/04/2024

MP
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI