

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 1834/Del/2022		
A.YR. : 2018-19		
M/s Genpact Services LLC Plot No. 22A & B, Sector-18, Udyog Vihar, Gurgaon, Haryana-122002 (PAN: AACCG3353P)	VS.	Assistant Commissioner of Income Tax, Circle – Int. Tax 1(3)(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by : Shri Vishal Kalra, Adv. & Ms. Reema Malik, Adv.

Respondent by : Shri Zafrul Haque Tanweer, CIT(DR)

Date of hearing : 10.07.2024

Date of pronouncement : 09.08.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed this Appeal against the Order of the Assessing Officer dated 27.06.2022 passed u/s. 143(3) read with section 144C(13) of the Income Tax Act, 1961 (hereinafter referred as Act), pursuant to the directions of the Dispute Resolution Panel-I, New Delhi dated 05.05.2022, pertaining to assessment year 2018-19 on the following grounds:-

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 26,42,00,016 as against the returned income of*

*INR 12,88,04,240, making an adjustment of INR 13,53,95,776, in pursuance to the DRP directions.*

- 2 That on facts and circumstances of the case and in law. the directions issued by the Dispute Resolution Panel ("DRP") are bad in law, void ab initio and liable to be quashed as the same have been passed in violation of the provisions of sub-section (8) to section 144C of the Act.*
- 3. That on facts and circumstances of the case and in law, the AO/ TPO erred in making transfer pricing adjustment amounting to Rs. 1,48,30,634 to the income of the Appellant and holding that the international transaction pertaining to provision of Business Process Outsourcing ('BPO') services do not satisfy the arm's length principle ('ALP'); and in doing so have grossly erred in modifying comparability analysis by:
  - 3.1 including Inductis India Private Limited and Mentor Graphics India Private Limited as comparable companies disregarding the fact apparent from the annual report that these companies fail the related party filter applied by the TPO and also, not appreciating that these companies are not functionally comparable to the Appellant;*
  - 3.2 arbitrarily selecting functionally non-comparable companies, namely, Nihilent limited, Infobeans Technologies Limited, Manipal Digital Systems Private Limited, L&T Technology Services Ltd, R Systems International Ltd, Power Weave Software Services Pvt Ltd and Mindtree Ltd, for benchmarking the international transaction pertaining to provision of BPO services;*
  - 3.3 arbitrarily rejecting functionally comparable companies, namely, Allsec Technologies Ltd, 24/7 Customer Pvt Ltd, Wipro Ltd, CES Ltd, Excel Realty N Infra Ltd. (formerly known as Excel Infoways Ltd), Cosmic Global Ltd, IKF Technologies Ltd, Cameo Corporate Services Ltd, Jindal Intellicom Ltd and Capgemini Solutions Private Limited, for benchmarking the international transaction pertaining to provision of BPO services.**
- 4. 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.*

- 4.1 *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.*
- 4.2 *Not appreciating that the same have been incurred wholly and exclusively for the purposes of business and hence, an allowable business expenditure.*
5. *That on the facts and circumstances of the case and in law. the AO/ DRP have grossly erred in pay disallowing the support services cost amounting to Rs. 12.05,65,142 paid by the Appellant to the associated enterprise, and while doing so, have erred in:*
- 5.1 *changing the cost allocation methodology from headcount ratio to salary expense ratio, thereby partly disallowing support services cost;*
- 5.2 *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;*
6. *That on facts and circumstances of the case and in law, the assessment completed by the AO is a nullity inasmuch as the AO defied the specific directions of the DRP and thereby contradicting the provisions of section 144C(10) of the Act.*
7. *That on facts and circumstances of the case, the AO has erred in not granting the credit of taxes deducted at source (TDS'), advance tax and self-assessment tax while computing the amount of demand payable by the Appellant.*
8. *That on facts and in circumstances of the case, the AO has erred in computing excess interest under section 234B and 234C of the Act while computing the amount of demand payable by the Appellant.*

*That the above grounds and sub grounds of objections are without prejudice to each other.*

*The Appellant craves leave to alter, amend or withdraw all or any of the Grounds of objections herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the hearing.”*

2. The assessee has also filed the Additional Ground of Appeal which reads as 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. 55,46,262/- towards the intangible assets (being customer contracts as well as assembled workforce).”*

3. Briefly stated facts, are that assessee i.e. Genpact was incorporated in the year 1997, under the name of GE Capital International Services. It was established as an independent business unit of GE Capital. The organization was chartered to provide Business Process Management (BPM) capabilities that would deliver efficiencies to all business across GE. Genpact services LLC (India Branch) is the Indian branch of Genpact Services LLC, a US Corporation, GSL India Branch is a service provider rendering off-shore Business Process management services including collections / call centre services and other back-office support services to its AE. India branch is responsible for rendering the designated BPM/collections services from the facility in India.

3.1 In the collections area, India branch follows processes that greatly enhanced customer's performance and productivity in relation to recovery of their debts. In the collect area, India Branch delivers both voice and non-voice (emails, letters, faxes, etc) based on processes. The collections services are supported by analytics activities, which help the clients to make fact-based decisions for superior results and customer care activities, which provide 24 x 7 hours support. While dealing with International Transactions, the AO observed

that the TP report and the other relevant documents that assessee have submitted show that the following international transactions have been entered into:

<b>Sl.No.</b>	<b>Nature of international transaction</b>	<b>Method Selected</b>	<b>Amount (In INR)</b>
1.	Provision of ITeS Services	TNMM	1,010,382,324
2.	Receipt of Services		51,087,676
3.	Receipt of Support Services		248,853,359
4.	Payment of License Fee		17,699,279
5.	Recharge for sub-lease rent		46,358,744
6.	Reimbursement of expenses (paid)	Other Method	17,799,733
7.	Reimbursements (received)		9,462,817
8.	Reimbursements (paid)		2,580,873

4. After discussing the issues at length, the TPO concluded as under :-

*“In light of discussion made above, the comparables that shall be finally selected for benchmarking the international transaction relating to provision of ITES support services are as follows:-*

<b>Sl. No.</b>	<b>Company Name</b>	<b>OP/TC(%)</b>
1.	<i>R Systems International Ltd.</i>	<i>15.84%</i>
2.	<i>Power Weave Software Services Pvt. Ltd.</i>	<i>16.60%</i>
3.	<i>Mindtree Ltd.</i>	<i>16.73%</i>
4.	<i>Tech Mahindra Business Services Ltd.</i>	<i>19.00%</i>
5.	<i>Inductis India Pvt. Ltd.</i>	<i>19.07%</i>
6.	<i>Nihilent Ltd.</i>	<i>20.04%</i>
7.	<i>L &amp; T Technology Services Ltd.</i>	<i>20.61%</i>

8.	<i>Manipal Digital Systems Pvt. Ltd. (Merged)</i>	23.03%
9.	<i>Infobeans Technologies Ltd.</i>	25.52%
10.	<i>Mentor Graphics (India) Pvt. Ltd.</i>	26.17%
	<b>35<sup>TH</sup> PERCENTILE</b>	<b>19.00%</b>
	<b>65<sup>TH</sup> PERCENTILE</b>	<b>20.61%</b>
	<b>MEDIAN</b>	<b>19.55%</b>

*Accordingly, the arm's length price of the international transaction related to provision of services and receipt of services is computed as below:*

<b>Particulars</b>	<b>Amount</b>
<i>Operating Cost</i>	859,713,378
<i>OP/OC(%)</i>	19.55%
<i>Arm's Length Margin</i>	16,80,73,965
<i>Arm's Length Price</i>	1,02,77,87,343
<i>Price shown by assessee</i>	1,01,29,56,709
<i>Proposed Adjustment</i>	1,48,30,634

*Based on above, an adjustment of Rs. 1,48,30,634/- is proposed in respect of provision of ITES support services.*

5. Against the above order, assessee filed the objections before the DRP and DRP upheld the order of the TPO and the AO retained the same.
6. Against the aforesaid action of the AO, assessee is in appeal before us.
7. We have heard both the parties and perused the records. At the time of hearing, Ld. AR for the assessee submitted that the issues involved are squarely covered in favour of the assessee by the decision dated 19.4.2024 of the ITAT, Delhi Coordinate Bench passed in assessee's own case passed in ITA No. 1833/Del/2022 (AY 2017-18).

7.1 As regards Ground No 3 with regard to comparables, Ld. AR for the assessee submitted that assessee has pressed exclusion of two comparable companies, viz. Inductis India Pvt. Ltd and Mentor Graphics India Pvt. Ltd, only. He further submitted that if these two comparables are excluded as they fail Related Party Transaction (RPT) Filter, assessee would be satisfied and other comparables may be treated as academic for the present appeal.

7.2 Per contra, Ld. DR did not dispute the aforesaid proposition of the Ld. AR.

7.3 Upon careful consideration, we note that both the above comparables for Related Party Transaction as submitted at Page No. 41 & 407 of the Paper Book Volume-II . It is noted that as per Page No. 41 of Paper Book which is a copy of Annual Report of Inductis India Pvt. Ltd., for financial years 2017-18, 2018-19 out of the revenue of the Company 99% of the revenue is generated from inter co transaction. It is further noted that as per Page No. 407 of Paper Book which is a copy of Annual Report of Mentor Graphics India Pvt. Ltd., for financial years 2017-18, 2018-19 out of the revenue of the Company 100% of the revenue is generated from inter co transaction. The above is excessive related party transaction rendering these two entities, un-comparable. Accordingly, we hold that these two comparables may be removed and other comparables be taken into account for computation of arm's length price.

8. As regards Ground Nos. 4 & 5 are concerned, Ld. Counsel for the assessee submitted that these grounds are covered vide Para Nos. 7 to 15 of the aforesaid order of the ITAT.

8.1 Per contra, Ld. DR relied upon the orders of the AO and DRP.

8.2 In so far as Ground Nos. 4 & 5 are concerned, we note that these grounds are squarely covered in favour of the assessee by the decision dated 19.4.2024 of the ITAT, Delhi Coordinate Bench in assessee's own case passed

in ITA No. 1833/Del/2022 (AY 2017-18), wherein the Tribunal has held as under:-

*“7. Assessee’s case raised a legal issue as to whether once transaction has been accepted to be at ALP by the ld TPO, can the same be questioned by the ld AO while passing an order. Admittedly, the ld 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 ld AR before us argued that the ld. 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 ld 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 ld AR also placed reliance on the CBDT Instruction No.3/2016 dated 10.03.2016.*

*8. Further, ld 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 ld 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 ld. AO had observed that the assessee had not provided the copy of cost sharing agreement either to ld 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 ld 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 ld 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 ld 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 ld AO and affirmed by the ld DRP are based on incorrect assumption of facts.*

9. With regard to plea taken by the ld DR that though the basis of allocation of expenses on the basis of 'headcount' has been accepted by the revenue in assessee's own on 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 ld AO to take a divergent stand. The ld 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 ld 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:-

1.

<b>S.no.</b>	<b>Nature of support services</b>	<b>Allocation Key</b>	<b>Reasons for adopting the said allocation key</b>
1.	Technical facilities maintenance	Headcount	Consists of annual maintenance charges of hardware and software, which is primarily based on the number of users.
2.	Communication/ Telecommunication cost	Headcount	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.
3.	HR, training, finance, legal etc.	Headcount	Support provided to the business of the Appellant is not represented by the employee cost, but by the number of employees employed.
4.	Staff welfare cost	Headcount	Primarily consists of transportation cost of the employees (cab, buses etc.) which is standard for all

			<i>employees.</i>
<i>5.</i>	<i>Rent</i>	<i>Area usage</i>	<i>Charged on the basis of total area usage which is irrespective of the revenue earned.</i>
<i>6.</i>	<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>
<i>7.</i>	<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 ld AO and ld 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 ld 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 ld 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 ld DR before us. No doubt, the scope of ld 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 ld 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 ld TPO and the same was accepted to be at ALP*

by the ld TPO. It is also pertinent to note that the reference u/s 92CA(1) of the Act to the ld TPO was made by the ld AO after the survey proceedings. Hence, even the findings of the survey team were very much available before the ld 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	458	460	468	472	487	496	491	486	492	489	489
Cable and Wireless Networks India Private Limited	98	101	94	104	104	104	104	103	104	103	104	105

Actual Cost Booked	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Finance	9,91,601	9,91,651	9,91,651	9,45,414	9,45,414	9,45,414	11,49,581	11,49,581	11,49,581	9,41,973	9,41,973	11,94,846
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	21,03,976	21,03,976	21,03,976	18,96,969	18,96,969	18,96,969
Allocation to CWL	15,93,289.34	15,94,917	16,15,080	15,54,144	15,56,542	15,65,247	17,39,009	17,32,897	17,32,859	17,32,859	15,93,537	17,59,080

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 Wirless (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 which 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."*

8.3 Since it is not a case where facts are different, hence, respectfully following the aforesaid precedent, we direct the Assessing Officer to grant the relief, consequent to the aforesaid earlier decision of the Tribunal and accordingly, we allow the Grounds No. 4 & 5 raised by the Assessee.

9. As regards the Additional Ground is concerned, it was submitted by the Ld. AR that the said Additional Ground does not involve any fresh investigation into the facts of the case. Hence, he requested that on the anvil of decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 and also the decision in the case of Jute Corporation of India vs. CIT (1990) 187 ITR 688, the Additional Ground may kindly be admitted and adjudicated on merits, as the same is covered vide Para Nos. 16 to 18 of the aforesaid order of the ITAT.

9.1 In view of the aforesaid discussions, we admit the aforesaid Additional Ground.

9.2 We note that this Additional Ground is squarely covered in favour of the assessee by the decision dated 19.4.2024 of the ITAT, Delhi Coordinate Bench

in assessee's own case passed in ITA No. 1833/Del/2022 (AY 2017-18), wherein the Tribunal has held as under:-

*"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 A by the AO. Further, the old, 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."*

9.3 Since it is not a case where facts are different, hence, respectfully following the aforesaid precedent, we direct the Assessing Officer to grant the relief, consequent to the aforesaid earlier decision of the Tribunal and accordingly, we allow the Additional Ground raised by the Assessee.

10. Ld. AR for the assessee submitted that Ground No. 7 is relating to directions required to be given to the Assessing Officer in not granting the credit of taxes deducted at source (TDS), advance tax and self-assessment tax while computing the amount of demand payable by the assessee.

10.1 Upon careful consideration, we direct the AO to examine the issue in dispute and grant the credit of taxes deducted at source (TDS), advance tax and self-assessment tax while computing the amount of demand payable by the assessee, in accordance with law.

11. In the result, the Assessee's appeal is allowed.

Order pronounced in the Open Court on 09/08/2024.

Sd/-

**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

SRB

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar