IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIALMEMBER

ITA No.4933/DEL/2019
(Assessment Year : 2015-16)

Genpact India Pvt. Ltd., Genpact Tower, DLF City, Phase – 5, Sector 53, Gurgaon – 122 002 (Haryana). **(PAN: AAACG9163H)**	vs.	DCIT, Circle 10 (1), New Delhi.

ITA No.5186/DEL/2019
(Assessment Year : 2015-16)

DCIT, Circle 10 (1), New Delhi. (APPELLANT)	vs.	Genpact India Pvt. Ltd., Genpact Tower, DLF City, Phase – 5, Sector 53, Gurgaon – 122 002 (Haryana). **(PAN: AAACG9163H)** (RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, Advocate
REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 11.09.2024
Date of Order : 06.11.2024

O R D E R

PER S. RIFAUR RAHMAN, AM :

1. These cross appeals are filed by the assessee and Revenue against the order of ld. Commissioner of Income-tax (Appeals)-4**,** New Delhi (hereinafter

referred to 'Ld. CIT (A)') dated 29.03.2019 for Assessment Year 2015-16.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.

3. Both the assessee and Revenue has raised several grounds of appeal against the order of ld. CIT (A)-4, New Delhi, however at the time of hearing, ld.AR for the assessee submitted that ground no.1 raised by the assessee is a legal issue and the ld. CIT (A) has upheld the assessment order passed by the Assessing Officer disregarding the fact that the same was passed on non-existing entity. Therefore, it is bad in law and *void ab initio*. In this regard, he brought to our notice page 1 of the assessment order wherein the assessment order was passed mentioning the name of the assessee as Genpact India (now merged with Genpact India Private Limited PAN : AABCE4461B). Further he brought to our notice page 164 of the paper book which is notice of demand passed u/s 156 of the Income-tax Act, 1961 (for short 'the Act') raising the demand for AY 2015-16 at Rs.Nil. Further, he brought to our notice page 165 of the paper book which is Income Tax computation form which is part of the assessment order wherein PAN of the erstwhile company was mentioned along with Genpact India with a net tax refund of Rs.17,80,92,467/-. He submitted that even though it is in the knowledge of Assessing Officer about the amalgamation, he has taken note

of the erstwhile name of the company and existing name of the company, still he passed the assessment order in the name of the erstwhile company by raising demand in the name of erstwhile company. He submitted that similar issue came before coordinate Bench in AY 2014-15 and the coordinate Bench decided the exact similar issue in ITA No.583/Del/2020 dated 23.07.2020. He brought to our notice similar facts recorded by the coordinate Bench in the above order at page 151 of the paper book and he also brought to our notice relevant findings at page 155. He prayed that this issue is squarely covered in favour of the assessee. Accordingly, the appeal filed by the assessee may be decided by quashing the assessment order itself as *void ab initio.*

4. On the other hand, ld. DR for the Revenue submitted that the scheme of amalgamation was approved on 30.04.2016 and the assessment order was passed on 27.12.2017. In this regard, he brought to our notice page 11 & 12 of the first appellate order wherein ld. CIT (A) has considered the issue raised by the assessee and held that once the assessment notice was issued, the assessee had represented the case through its duly Authorised Representative and filed various submissions without objecting the issue raised in the current appeal. The case was effectively and actively participated during the course of assessment proceedings. Further, he

brought to our notice that during the course of assessment proceedings, assessee has not even communicated in writing to Assessing Officer the fact that assessee is merged with other company. He further brought to our notice that ld. CIT (A) has observed that the assessee has first time raised this ground that the assessment order passed was invalid since the company is not in existence. Further, ld. CIT (A) also observed that the assessee has filed the appeal in the name of Genpact India i.e. the name of the erstwhile company. In this regard, he relied on the decision of Hon'ble Supreme Court in the case of PCIT vs. Mahagun Realtors (P) Ltd. 433 ITR 194 (SC). Further, he submitted that the issue raised by the assessee is only system lacunae and the Assessing Officer has to follow return of income filed by the assessee and relevant PAN for completion of the assessment in the name of the erstwhile company only. He also submitted that there is no prejudice caused to the assessee. Ld. DR further submitted that the decision of AY 2014-15 cannot be relied upon considering the fact that income-tax proceedings are *res judicata,* since the concept of *res judicata* is not applicable in the income tax.

5. In rejoinder, ld. AR for the assessee brought to our notice facts recorded in the AY 2014-15. He brought to our notice page 155 of the paper book, the ITAT decision and further brought to our notice page 179 of the paper book

which is the decision of Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. 416 ITR 613 (SC). He submitted that Hon'ble Supreme Court has recorded that the participation by the amalgamation company would have no effect since there is no estoppel against law. Further, he brought to our notice page 184 of the paper book to submit that Hon'ble Supreme Court has relied on the decision of previous assessment order to decide similar issue in AY 2012-13. Ld. AR further submitted that the case of Mahagun Realtors (P) Ltd. (supra) relied upon by the ld. DR is distinguishable for the simple reason that in the above case, there was a specific finding that assessee has tried to misguide the authorities below.

6. Considered the rival submissions and material placed on record. The issue raised by the assessee in ground no.1 is exactly similar to the issues considered by the coordinate Bench in assessee's own case in ITA No.583/Del/2020 for AY 2014-15 (supra) and the Bench held as under :-

> "7. We have heard both the parties and perused the records available before us. From the perusal of the records, it can be seen that erstwhile entity Genpact India Private Limited was amalgamated with Genpact India w.e.f. 30.04.2016 as a result of scheme of amalgamation duly approved by the order dated 17.08.2015 by Hon'ble High Court at Telangana and Andhra Pradesh as well as vide order dated 18.03.2016 by Hon'ble Delhi High Court. The Assessing Officer has passed the order by mentioning in title of the order the name of the assessee as Genpact India (now merged with "Genpact India Private Limited PAN: AABCE4461B). Thus, the Assessing Officer was very much aware that the amalgamating company Genpact India is no longer in existence. This also is supported by the

letter dated 18.04.2016 addressed to Member (IT), CBDT and copy to Assessing Officer, DCIT, Circle 10(1), Delhi intimating therein by the assessee that Genpact India (a wholly owned subsidiary of Empower) has, in the 68th meeting of Board of Approval (BoA) for SEZs held on December 30, 2015, obtained the approval of the BoA for change in the entrepreneurship of its SEZ units to Empower. The said letter also mentioned that the aforementioned scheme has been allowed by the Hon'ble High Court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh (vide order dated 17.08.2015 in CP No. 174 of 2015) and the Hon'ble High Court of Delhi at New Delhi (vide order dated March 18, 2016 in CP No. 703 of 2015). The copies of Amalgamation Order as sanctioned by the Hon'ble High Court of Delhi and Hon'ble High Court of Telangana and Andhra Pradesh along with copies of PAN of Genpact India and detail of the jurisdictional Assessing Officers was placed by the assessee before the Revenue authorities. The reliance upon the decision of the Hon'ble Supreme Court in case of Maruti Suzuki India Ltd. (Supra) by the Ld. AR is apt in the present case. The Hon'ble Supreme Court observed in para 19 as follows:

"19. .....

(iii) Thirdly, the consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., the principle has been formulated by this Court in the following observations:

> "5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganization of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more 30 [2019] 260 Taxman 412 (Del.) 31 (2019) 261 Taxman 137 (Guj) existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on

> the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."

(iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed;

(v) Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1);

(vi) Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;

(vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio. ……"

In the present case also the amalgamating company i.e. Genpact India was not in existence at the time of conducting assessment proceedings

as well as on the date of passing Assessment Order. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act. Hence, the Assessment order itself are void ab initio. Therefore, assessment order is set aside. We allow Ground Nos. 1, 2 & 3 of the appeal filed by the assessee. There is no need to give any finding relating to the other issues as the assessment order itself is void ab initio."

7. Respectfully following the above decision, we are inclined to allow ground no.1 raised by the assessee. Based on the above findings, the whole assessment itself becomes *void ab initio*. Accordingly, we quash the assessment order itself. Since we have decided legal issue in favour of the assessee we are keeping other grounds of appeal open.

8. With regard to Department's appeal, since we quash the assessment order itself as *void ab initio* the grounds raised by the Revenue becomes infructuous. Accordingly, the appeal filed by the Revenue is dismissed.

9. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 6th day of November, 2024.

Sd/-	**sd/-**
(SUDHIR KUMAR)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 06.11.2024
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-28, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI