

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.6414/DEL/2016
(Assessment Year: 2012-13)**

DCIT, Circle 10(1),
New Delhi.

vs.

M/s. Genpact India,
Genpact Tower,
Sector Road,
Sector-53, Phase-V,
Gurgaon – 122 002 (Haryana).
(PAN: AAACG9163H)

**ITA No. 6542/Del/2016
(Assessment Year: 2012-13)**

M/s. Genpact India,
Genpact Tower,
Sector Road,
Sector-53, Phase-V,
Gurgaon – 122 002 (Haryana).
(PAN: AAACG9163H)

vs.

DCIT, Circle 10(1),
New Delhi.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, Advocate
Shri Sandeep Yadav, Advocate
REVENUE BY : Ms. Rishpal Bedi, CIT DR

Date of Hearing : 25.09.2024
Date of Order : 18.12.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. These are cross appeals filed by the Assessee and Revenue against the order of Id. Commissioner of Income-tax Appeals-37, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 18.10.2016 for Assessment Year 2012-13.
2. The brief facts of the case are, the assessee engaged in rendering Information Technology enabled services (back office services / data processing services / call centre). The assessee filed its return of income for the assessment year 2012-13 on 30.09.2012, declaring net income of Rs.892,55,17,190/-. Subsequently, assessee filed a revised return of income on 30.03.2014, declaring net income of Rs.888,27,30,850/-, wherein, inter alia, export turnover was increased to include export realization post the filing of original return of income and deduction under section 10AA of the Income-tax Act, 1961 (for short 'the Act') was recomputed accordingly. The Assessing Officer in his order dated 30.03.2016 passed u/s. 143(3) of the Act has assessed the net income of the assessee at Rs.959,94,93,705/- after making certain additions and disallowances.
3. Aggrieved, assessee preferred an appeal before the Id. CIT(A), who vide impugned order dated 18.10.2016 has partly allowed the appeal of the assessee.
4. Aggrieved with the Id. CIT(A)'s order, Revenue as well as Assessee both are in cross appeals before us raising various grounds of appeal.

5. First we take up Revenue's appeal wherein Revenue has taken the following grounds of appeal :-

“Revenue’s Appeal (ITA No. 6414/Del/2016)”

1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of Rs. 12,49,13,689/- 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 1,92,57,781/- from interest on inter corporate deposits as eligible for deduction u/s 10A & 10AA of the I.T. Act 1961.
3. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating income of 6,79,384 from interest on employee loans as eligible for deduction u/s 10A & 10AA of the I.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. 24,72,40,126/- 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.3,59,92,764/- 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. 87,41,92,047/- 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 deleting the provision for customer discount of Rs.2,12,56,93 8/- ignoring the facts that the expenses were not crystallized during the year under consideration.
8. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 51,09,873/- made by the AO on account of excess depreciation on computer peripherals.
9. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the provision for customer related provisions and losses of Rs.2,12,56,938/- ignoring the facts that the expenses were not crystallized during the year under consideration.
6. Apropos ground nos.1 to 3 relating to issue of interest income from Fixed Deposits, Inter Corporate Deposits and Employee Loans are eligible for claim of deduction u/s. 10A and 10AA are concerned. At the time of hearing, Ld. AR for the assessee submitted that Ld. CIT(A) has followed order passed by his predecessor for AY 2011-12 and certain judicial pronouncements cited by the assessee. He further submitted that there is a typing error in the grounds drafted by the AO. During the year under consideration, the issue in dispute is only vis-a-vis deduction claimed u/s. 10AA of the Act. He further submitted that in the assessment order at page 4 vide para no. 4.4, AO recorded that this income *“is being taxed as income from other sources and exemption u/s. 10AA is not allowable on this income”*, however thereafter at pages 22 and 23, the AO further clarified his above conclusions by taxing these

interest income as “Other Business Income”. He further submitted that recently identical issue has been decided in favour of the assessee by the ITAT in assessee’s own case for the assessment year 2011-12 in ITA Nos.4060 & 4251/Del/2016 vide order dated 29.04.2024 and the relevant issue is discussed at para 7 onwards with conclusions in para 7.5. He further submitted that these interest incomes are incidental to the IT / IT Enabled Service business carried on by the assessee. Interest earned on fixed deposits and inter corporate deposits are part of the export business of the undertakings claiming deduction under section 10A/10AA of the Act as the assessee had placed temporary surplus generated out of revenue, earned from export of Information Technology (IT)/IT Enabled Services (ITeS) as deposits with bank and related companies, so as to make an efficient utilization of the surplus generated out of the assessee business. He submitted that the deposits were placed with bank and related companies only for such period for which the surplus generated out of the assessee business could not have been efficiently deployed in the assessee business / expansion plans. As regards interest on employee's loan, it is submitted that employees were engaged in rendering IT/ITeS and hence are part of the day to day running of the business of the assessee and assists in smooth conduct of its business. In view of the above, it is submitted that the interest received are inextricably linked to the conduct of the business of the

eligible undertakings of the assessee and should also be section treated as profit of the business eligible for deduction under section 10A of the Act. In this regard, he referred to pages 134 to 171 of PB (relevant page 140, paras 2.14 to 2.16.). In support of the conclusions recorded by CIT(A), further reliance is placed on the following decisions:-

- (i) Motorola India Electronics reported in 225 Taxman 11 (Kar)(Mag);
- (ii) Hewlett Packard Global Soft Ltd reported in 403 ITR 453 (Kar)(FB);
- (iii) Riviers Home Furnishing reported in 237 Taxman 520 (Del);
- (iv) Camiceria Appareis India (2019) 103 taxman.com 238(Mad); and
- (v) Reliance Energy Lid reported in 441 ITR 346(SC).

7. Per contra, Ld. DR fairly conceded that the issue under consideration are covered hence not controverted the aforesaid contention of the Ld. AR nor placed any contrary decision before us.
8. In the background of the aforesaid discussions and precedents relied upon by the Ld. AR, we do not find any infirmity in the order passed by ld. CIT(A) on these issues, hence, we uphold the same and reject Ground nos.1 to 3 raised by the Revenue.
9. As regards ground no.4 relating to Foreign Exchange Gain and Forward Contract Gain eligible for deduction u/s. 10A and 10AA is concerned, ld. AR for the assessee submitted that AO held that gain is due to hedging activity and ld. CIT(A) followed the order passed by his predecessor for AY 2011-12 and certain judicial pronouncements cited

by the assessee before him. He further submitted that there is a typing error in grounds submitted by the AO. During the year under consideration, the issue in dispute is only vis-a-vis deduction claimed u/s 10AA of the Act. For the year under consideration, foreign exchange gain pertaining to undertaking eligible for deduction under section 10AA was Rs.24,72,40,126/ and deduction us 10AA was claimed on this. It was further submitted that recently identical issue has been decided in favour of the assessee by ITAT in assessee's own case for AY 2011-12 (supra) and the relevant issue was discussed at para 8 onwards with conclusions in paras 8.5 to 8.8. He further relied on the following decisions:

- (i) Pentasoft Technologies reported in 347 ITR 578 (Mad).
- (ii) Gen Plus Jewellery reported in 233 CTR 248(Bom)
- (iii) Cognizant Technology Solutions reported in (2023) 151 taxmann.com 401(Mad) SLP dismissed in 454 ITR 1 (SC).

10. Per contra, Ld. DR neither controverted the aforesaid contention of the Ld. AR nor placed any contrary decision before us.
11. In the background of the aforesaid discussions and precedents relied upon by the ld. AR, we do not find any infirmity in the order Ld. CIT(A) on this issue, hence, we uphold the same and reject Ground no. 4 raised by the Revenue.
12. As regards ground no. 5 relating to reduction of freight and telecommunication charges of Rs. 3,59,92,764/- from the ambit of total

turnover while computing deduction u/s. 10A and 10AA and ground no. 6 relating to reduction of migration / on the job training amounting to Rs.87,41,92,047/- for the ambit of total turnover while computing deduction u/s. 10A and 10AA are concerned, it is submitted by the Ld. AR that there is a typing error in grounds drafted by the AO. During the year under consideration, the issue in dispute is only vis-a-vis deduction claimed u/s 10AA of the Act. On merits, he referred the pleadings made in Ground Nos.1 & 2 of the Appeal filed by assessee in ITA No.6542/Del/2016, wherein, it is submitted that recently identical issue has been decided in as favour of the assessee by ITAT in assessee's own case for AY 2011-12 (supra) and the relevant issues are discussed at para 5 onwards with conclusions in para 5.1 and 5.2. It is further submitted that telecommunication expenses were not invoiced by the assessee to its customers and hence, were not required to be reduced from the export turnover for computing deductions u/e 10AA of the Act. In this regard, the expression 'Export Turnover' has been defined under Explanation 1(i) to section 10AA of the Act, reproduced as under:

- (i) "export turnover means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;

13. He submitted that a perusal of the said definition clearly shows that it is only when such expenses are included in the consideration received in convertible foreign exchange that the same have to be reduced from export turnover and total turnover, however in the instant case, said expenses have not been invoiced by the assessee to the overseas customers/clients and therefore, the same were wrongly excluded by the AO while computing the export turnover u/s 10AA of the Act.
14. As regard, migration the job training expenses, the assessee gets reimbursed from the customers and reimbursements are netted off with the respective expense booked by the assessee and therefore, the quantum of export turnover for deduction u/s 10AA does not include such recovery and hence no exclusion is warranted from the export turnover. Furthermore, the assessee has not provided any technical service outside India as the predominant objective is migration of work to Indian units whereby assessee sends people abroad to customer locations to understand in detail the client's operation, data processing system. etc. to prepare for shift of data processing work from abroad to India. It is therefore submitted that since as per Explanation 1(i) only *"expenses, if any, incurred in foreign exchange in providing the technical services outside India"* is to be excluded, as the same has no applicability in the instant case as the assessee did not incur the said expense for provision of any technical service. In the present case, the

export bills were raised by the assessee to its overseas customers basis the agreed rates/ remuneration methodology in respect of the projects executed. Revenue from the contracts is recognized by the assessee on the basis of billable time spent by the employees working on the project, priced at the contracted rate. Telecommunication expenses incurred in foreign currency were not invoiced by the assessee to its overseas customers and hence these expenses cannot be excluded from export turnover. Therefore, since the assessee itself had not included the recovery of expenses in respect of telecommunication expenses and migration on the job training services in the figure of 'export turnover' while computing deduction u/s 10AA of the Act, the same cannot be excluded. CIT(A) in AY 2011-12 partly allowed the ground of appeal raised by the assessee by holding that the amount by which export turnover is reduced on account of telecommunication expenses should be reduced from the total turnover for the purpose of computing the deduction allowable u/s 10AA.

15. Per contra, Ld. DR neither controverted the aforesaid contention of the Ld. AR nor placed any contrary decision before us.
16. In the background of the aforesaid discussions and precedents relied upon by the Ld. AR, we do not find any infirmity in the order Id. CIT(A) on these issue, hence, we uphold the same and reject the Ground no. 5 & 6 raised by the Revenue.

17. As regards ground no. 7 relating to provision for customer discount of Rs. 2,12,56,938 is concerned, ld. AR for the assessee submitted that AO made the disallowance by following order passed by him for AY 2011-12 and Ld. CIT(A) has followed order passed by his predecessor for AY 2011-12 and certain judicial pronouncements cited by the assessee before him. It is further submitted that recently identical issue has been decided in favour of the assessee by ITAT in case of assessee for AY 2011-12 (supra) and the relevant issue is discussed at para 9 onwards with conclusions in paras 9.5 and 9.6.
18. Per contra, Ld. DR neither controverted the aforesaid contention of the Ld. AR nor placed any contrary decision before us.
19. In the background of the aforesaid discussions and precedents relied upon by the Ld. AR, we do not find any infirmity in the order Ld. CIT(A) on this issue, hence, we uphold the same and reject the Ground no.7 raised by the Revenue.
20. As regards ground no.8 relating to disallowance of Rs. 51,09,873/- on account of excess depreciation on computer peripherals is concerned, it was submitted by the ld.AR that ld. CIT(A) has followed order passed by his predecessor for AY 2011-12 and certain judicial pronouncements cited by the assessee before him.. It was further submitted that recently identical issue has been decided in favour of the assessee by ITAT in assessee's own case for AY 2011-12 (supra) and the relevant issue is

discussed at para 10 onwards with conclusions in para 10.1. He further submitted that 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 form part of computers and are hence eligible for depreciation rate specified for 'Computers'. The issue is now squarely covered by the following decisions :_

- Hotel Excelsior reported in 141 TTJ 248 (Dell)
- Delhi High Court in case of BSES Yamuna Powers ITA No. 1267 of 2010 order dated 31.08.2010
- Orient Ceramics reported in 200 Taxman 64(Del)@ para 13
- Delhi High Court in case of M/s Birlasoft Ltd. ITA No. 1284 of 2011 order dated 15.12.2011

21. Per contra, Ld. DR neither controverted the aforesaid contention of the Ld. AR nor placed any contrary decision before us.
22. In the background of the aforesaid discussions and precedents relied upon by the Ld. AR, we do not find any infirmity in the order Ld. CIT(A) on this issue, hence, we uphold the same and reject the Ground no. 8 raised by the Revenue.
23. As regards ground no.9 relating to provision for customer related provisions and losses of Rs.3,21,39,125/- is concerned, ld. AR for the assessee referred the written submissions dated 23.09.2016 filed before the ld. CIT(A) which is placed on record and relied on paras 9 to 9.3 at page 170 of the paper book.

24. Considered the rival submissions and material placed on record. Since Id. CIT (A) has not adjudicated this issue with the speaking order. Considering the material brought on record by the assessee, we deem it fit and proper to remit back the issue to the file of Assessing Officer to reassess the issue under consideration considering the material placed on record by the assessee after giving proper opportunity of being heard.
25. In the result, the Revenue's appeal is partly allowed in the aforesaid manner for statistical purposes.
26. Now we deal with the Assessee's appeal being ITA No.6542/Del/2016, wherein following grounds have been raised:-

"1. 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) | <i>Freight & Telecommunication expenses</i> | <i>Rs 3,59,92,764/-</i> |
| (b) | <i>Recovery of expenses in respect of migration / on-the-job training services</i> | <i>Rs87,41,92,047/-</i> |

2. That on facts and in law 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 10AA of the Act.

3, That on facts and in law the CIT(A) erred in not adjudicating upon ground no. 9 of the appeal filed before it.

3.1 That on facts and in law the AO erred in adding back an amount of Rs 51,86,899/, being provision for customer discount pertaining to units claiming deduction u/s 10AA, to total

turnover and export turnover while computing deduction u/s 10AA of the Act.

4. *That on facts and in law the AO/CIT(A) erred in not granting credit for Tax Deducted at Source amounting to Rs.98,44,965/-.*

5. *That on facts and in law 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.*

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

27. Assessee has also raised the Additional Ground which is relating to restricting rate of DDT to 5% as per DTAA as against a rate of 16.2225% as per section 115-O. Ld. AR submitted that this additional ground of appeal is purely a legal issue and should be allowed to be raised even at the appellate stage. To support his contention, he relied upon the various citations including NTPC vs. CIT (1998) 229 ITR 383 (SC) etc.. In view of the aforesaid settled law, we deem it appropriate to admit the aforesaid additional ground and deal in the following manner.
28. Ld. AR for the assessee himself admitted that on merits the issue presently stands decided against the assessee by the ITAT, Special Bench decision in the case of Total Oil India (P) Ltd. reported in [2023] 149 taxmaan.com 332 (Mumbai- Trib) (SB). Ld. DR agreed that this

issue is against the assessee and prayed that this may be dismissed. In view of the aforesaid Special Bench decision, we dismiss this additional ground raised by the assessee.

29. As regards ground no. 1 and 2 relating to including of freight and communication expenses and recovery of expenses in respect of migration / on the job training services within the ambit of export turnover while computing deduction u/s. 10AA of the Act is concerned, these issues have already been dealt by us in Grounds No.5 & 6 of the Revenue's appeal in paras 12 to 16 above, wherein we upheld the action of the Ld. CIT(A) and reject the grounds of appeal raised by the revenue. Resultantly, the Ground No. 1 & 2 raised by the assessee in the cross appeals are allowed.
30. As regards ground no. 3 and 3.1 relating to non-adjudication of ground no. 9 in form 35 / adding back an amount of Rs. 51,86,899/- being provision for customer discount while computing deduction u/s. 10AA is concerned, it is submitted that considering the submission made in regard to ground no. 7 in appeal of the Revenue which we have dealt as aforesaid, and confirmed the ld. CIT(A) action by rejecting the ground raised by the Revenue. Resultantly, the ground Nos. 3 and 3.1 in the cross appeal are allowed.
31. As regards ground no. 4 which is relating to not granting relief for Tax Deducted at sources amounting to Rs. 98,44,965/- is concerned, it is

submitted by the Ld. AR that AO be directed to allow credit for TDS as per law. Ld. DR did not have any objection to this proposition. In this view of the matter, we direct the AO to allow credit for TDS, if any, in accordance with law.

32. In the result, assessee's appeal is allowed for statistical purposes.
33. To sum up : the Revenue's appeal is partly allowed for statistical purposes as per above directions and assessee's appeal is allowed for statistical purposes as per above directions.

Order pronounced in the open court on this 18th day of December, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 18.12.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-37, New Delhi.
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**