

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5048/MUM/2024  
(Assessment Year: 2017-2018)**

**Digital Insight India Products Private Limited**

2nd Floor, Block B, Godrej IT Park – P2, Pirojshanagar,  
LBS Marg, Vikhroli (West), Mumbai – 400079.

Maharashtra.

[PAN:AAHCP2882K]

..... **Appellant**  
Vs

**The Assistant Commissioner of Income-tax,  
Circle – 6(2)(2), Mumbai**

5<sup>th</sup> Floor, Aayakar Bhavan,  
Maharishi Karve Road, Mumbai – 400020  
Maharashtra.

..... **Respondent**

**ITA No. 5036/MUM/2024  
(Assessment Year: 2017-2018)**

**The Assistant Commissioner of Income-tax,  
Circle – 6(2)(2), Mumbai**

5<sup>th</sup> Floor, Aayakar Bhavan,  
Maharishi Karve Road, Mumbai – 400020  
Maharashtra.

..... **Appellant**  
Vs

**Digital Insight India Products Private Limited**

2nd Floor, Block B, Godrej IT Park-P2,  
Pirojshanagar, LBS Marg, Vikhroli (West),  
Mumbai-400079. Maharashtra

[PAN:AAHCP2882K]

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Nageswar Rao  
For the Respondent/Department : Smt. Sanyogita Nagpal

**Date**

Conclusion of hearing : 05.02.2025  
Pronouncement of order : 29.04.2025

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. These are Cross-Appeals arising out of Order, dated 31/07/2024,

passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'], whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 23/11/2019, passed under Section 143(3) of the Act for the Assessment Year 2017-2018.

2. The Assessee has raised the following grounds of Appeal in ITA No.5048/Mum/2024:

*"Based on the facts and circumstances of the case and in law, Digital Insight India Products Private Limited ("Digital Insight" or "the Company" or "the Appellant") respectfully craves, leave to prefer an appeal under Section 253(1)(a) of the Income-tax Act, 1961 ("the Act") against the order dated 31 July 2024 ("Impugned Order") passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre ["CIT(A)"] upholding order passed by the Assistant Commissioner of Income-tax, Circle 6(2)(2), Mumbai ('Ld. AO') dated 23 November 2019 issued under Section 143(3) of the Act, on the following grounds:*

- 1. The order of the learned CIT(A)/Ld. AO is based on incorrect application of facts and wrong interpretation of law and therefore, is bad in law.*
- 2. The learned CIT(A)/ Ld. AO has grossly disregarded the facts submitted by the Appellant and erred in law by violating the principles laid down under Section 50B of the Act, in treating the slump sale transaction as income under the head "Profits and gains of business or profession"*
- 3. The learned CIT(A)/ Ld. AO has erred, in law and on facts, in treating the transaction of slump sale of business as "business sale" and not "slump sale" of business and thereby. has erred, in law and on facts, in treating net gain arising on slump sale of business as taxable business income instead of the same being taxable under the head "Capital Gains"*
- 4. The learned CIT(A)/ Ld.AO has erred, in law and on facts, by not appreciating that the "trade receivable" in the books of the Company is nothing but the amount receivable by the Company from the buyer on slump sale of business and that the same does not represent "trade receivable of the business transferred under the slump sale. The learned CIT(A)/Ld. AO has therefore, erred in holding that all the assets of the business are not transferred to the buyer breaching the condition of "slump sale of business provided under Section 2(42C) read with Section 50B of the Act.*

5. *The learned CIT(A) has erred, in law and on facts, in holding that Form 3CEA is the basis of determining the purchase price and hence, values are assigned to individual assets and liabilities of the business without appreciating that Form 3CEA is a certificate issued by a chartered accountant indicating the computation of net worth, as required by Section 50B(3) of the Act, to be submitted by the seller of business before the specified date referred to in Section 44AB of the Act.*

*Levy of Interest under Section 234B and Section 234C of the Act*

6. *The learned AO has erred, in law and on facts, by levying interest under Section 234B of the Act.*
7. *The learned AO has erred, in law and on facts, by levying interest under Section 234C of the Act without appreciating that interest under Section 234C is computed on returned income and not assessed income.*

*The Appellant submits that each of the above grounds is independent and without prejudice to one another."*

- 2.1. The Revenue has raised the following grounds of Appeal in ITA No.5036/Mum/2024:

- "1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in granting relief to the assessee company by restricting the disallowance/addition at Rs.7,99,04,486/- and giving relief of Rs.6,41,91,024/- made by the Assessing Officer on account of treatment of the sale of business as normal sale instead of the slump sale.*
2. *The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

3. The relevant facts in brief are that Assessee, a subsidiary of Digital Insight Corp, USA, is a captive service provider which was engaged in providing software services to Digital Insight Corp, USA. During the relevant previous year, the Assessee entered into a '*Business Sale and Purchase Agreement*', dated 24/03/2017, with NCR Corporation India Pvt. Ltd. [for short '**the Buyer**']. The contention of the Assessee is that the aforesaid transaction was in the nature of 'Slump Sale' for a lumpsum consideration of INR 22.40 Crores. However, the entire sale consideration was not received by the end of the relevant previous

year, therefore, the Trade Receivables of INR.22.40 Crores, and 22.01 Crores were reflected in the Balance Sheet of the Assessee as on 31/03/2017 and 31/03/2018, respectively. The Assessee filed revised return of income for the Assessment Year 2017-2018, on 29/06/2018 declaring gross total income of INR.11,57,39,368/- comprising of business income of INR.3,57,22,844/-, Long term Capital Gains from slump sale amounting to INR.7,99,04,490/- and Income from Other Sources of INR.1,12,034/-. The case of the Assessee was selected for regular scrutiny. During the assessment proceedings vide notice, dated 17/10/2019, the was asked to explain why INR.44,41,91,261/- [*sales consideration receivable amounting to INR.22,40,00,000/- shown in Return of Income for AY 2017-2018 and trade receivable amounting to INR.22,01,91,261/- shown in Return of Income for AY 2018-2019*] should not be treated as taxable business income since the transaction did not qualify as slump sale and provisions of Section 50B of the Act were not applicable. In response, the Assessee filed replies. However, the Assessing Officer was not convinced and proceed to conclude assessment vide Assessment Order, dated 23/11/2011, passed under section 143(3) of the Act. The Assessing Officer treated the slump sale transaction as business transaction and added back the lump sum consideration of INR.22.40 Crores to the business income of the Assessee-Company.

3.1. Being aggrieved, the Assessee preferred appeal before the CIT(A) against the Assessment Order. It was contended on behalf of the Assessee that the Assessee-Company had entered into a slump sale transaction with the Buyer and had transferred all its operations, assets, liabilities, employees and contracts to the Buyer in its entirety. It was submitted that the aforesaid transaction fulfilled all conditions specified under Section 50B of the Act in relation to the slump sale:

(a) By way of Business Sale and Purchase Agreement, Dated

24/03/2017, [for short '**the Agreement**'], the Assessee had transferred entire assets and liabilities to the Buyer on 'as is where is basis' by way of a slump sale in accordance with the section 2(42C) of the Act - no asset/liability except for the amount receivable by the Assessee from the Buyer on account of sale of business was reflected in the financial statements;

- (b) No individual values were assigned to the assets - slump sale agreement clearly provided for a lump sum consideration of INR.22.40 Crores;
- (c) The intention of the parties was clearly to transfer the business on a lock-stock-barrel basis to the Buyer

3.2. However, the CIT(A) did not find merit in the above submission and concurring with the Assessing Officer, the CIT(A) concluded that the transaction under consideration did not qualify as slump sale. However, the CIT(A) granted relief to the Assessee by reducing the consideration of INR.22,40,00,000/- by the value of net assets transferred (computed at INR.14,40,95,514/-) to arrive at net gain of INR.7,99,04,486/-. Thus, the CIT(A) partly allowed the appeal preferred by the Assessee vide order, dated 31/07/2024, and restricted the addition to INR.7,99,04,486/-.

3.3. Now, both, Assessee as well as the Revenue are in appeal before the Tribunal against the order, dated 31/07/2024, passed by the CIT(A). The contention of the Assessee is that the income offered to tax by the Assessee by treating the transaction as slump sale and taking benefit of Section 50B should be accepted, whereas the Revenue contends that the addition made by the Assessing Officer should be restored. The grounds raise by the Assessee and the Revenue are reproduced in paragraph 2 above. All the grounds, being connected, are taken up for

consideration together hereinafter.

4. We have considered the rival submission, have perused the material on record and examined the position in law in view of the submissions advanced.

4.1. It is admitted position that during the relevant previous year, the Assessee sold its business for sum of INR.22.40 Crores. The Assessee treated the transaction as a 'Slump Sale' and availed the benefit of the provisions of Section 50B of the Act.

4.2. The Assessing Officer took a view that the transaction was business sale (and not a slump sale). Therefore, the Assessing Officer added the sale consideration of INR.22.40 Crores to total income of the Assessee by invoking the provisions contained in Section 28(ii) of the Act. While doing so, the Assessing Officer made following observations:

(a) Title of Para 2.1 of the Business Sale and Purchase Agreement, dated 24/03/2017, was "Sale and Purchase of Business" which is self explanatory that it is routine business sale.

(b) Slump Sale Agreement was not a registered agreement and executed on stamp paper. The e-stamp was obtained under the Article-5 which is meant for sale of immovable property.

(c) As per the Income Tax Returns of the Assessee pertaining to Assessment Year 2018-2019 and 2019-2020, the Trade Receivable of INR.22,01,91,261/- and INR.21,94,61,082/-, respectively, were appearing in the Balance Sheet of the Assessee Company. Therefore, entire assets were not transferred by the Assessee.

(d) In response to the notice issued under Section 133(6) of the Act, the Buyer had stated that it had acquired the business of the Assessee-Company and the same has been categorized as 'Acquisition of Business', and considered as 'Common Control Business Combination'.

- 4.3. In appeal the CIT(A) took a view that the Assessee had assigned individual value to assets transferred by placing reliance upon Form 3CEA filed by the Assessee. Further, the CIT(A) concurred with the Assessing Officer while holding that all asset and liabilities were not taken over by the Buyer. In this regard, the CIT(A) placed reliance upon Clause 2.1.4 of the Agreement and receivables reflected in the Balance Sheet. Thus, CIT(A) concluded that the transaction under consideration did not qualify as slump sale in terms of Section 2(42C) of the Act and therefore, the benefit of Section 50B of the Act was rightly denied to the Assessee by the Assessing Officer.
- 4.4. The issue that arises for consideration is whether the transaction undertaken by the Assessee during the relevant previous year falls within the definition of term 'slump sale' as defined in Section 2(42C) of the Act.
- 4.5. The Assessee has placed on record copy of the Agreement the relevant extract of which reads as under:

*"This Agreement is made on 24<sup>th</sup> March, 2017 at Bangalore*

*Between:*

(1) *DIGITAL INSIGHT INDIA PRODUCTS PRIVATE LIMITED (CIN U72900MH2010PTC201437) having registered office at Trilegal, One Indiabulls Centre, 14<sup>th</sup> Floor, Jupiter Mills, Elphinstone, Mumbai – 400013 and principal place of business at Building 3A, 3<sup>rd</sup> Floor, RMZ Eco Space, Bellandur, Outer-Ring Road, Bangalore-560103. (Seller).*

(2) *NCR CORPORATION INDIA PRIVATE LIMITED (CIN*

U28111KA1996PTC020333) having registered office at Niton Building, 11, Palace Road, Bangalore – 560052 (Buyer).

**BACKGROUND:**

- A The Seller owns the Assets and Liabilities and carries on the Business.
- B As part of an internal reorganisation, the Seller wishes to sell, convey, assign, transfer and deliver to Buyer, and the Buyer wishes to purchase, acquire, assume and accept from the Seller, all right, title, interest in and to the Business as conducted within India, together with all its properties, assets, investments, liabilities, rights, benefits, interest and obligations, as a going concern on an "as is where is basis" by way of a Slump Sale in accordance with Section 2(42C) of the Income-tax Act, 1961, on the terms set out in this agreement.

**IT IS AGREED:**

1. DEFINITION AND INTERPRETATION

**1.1 Definition**

In this Agreement the following definitions apply:

**"Purchase Price"** means INR.22,40,00,000/- (Rupees Two Hundred Twenty Four Million Only) and as adjusted in accordance with this Agreement. For the avoidance of doubt the parties acknowledge and agree that this amount takes into account the assumption of debts, Liabilities and obligations referred to in clause 3.1 and the Accrued Employees Entitlements assumed by the Buyer in accordance with clause 3.2.

**"Retained Books and Records"** means all books and records that the Seller is required to retain by/under any law.

**"Transferring Employees"** means the Employees who accept the transfer of their employment to the Buyer under Clause 6.1.

1.2. xx xx

**SALE AND PURCHASE**

2.1 Sale and purchase of Business

- 2.1.1 *The Seller hereby sells, conveys, assigns and transfers to Buyer, and Buyer hereby purchases, acquires and accepts from Seller, all right, title and interest in and to the Business as conducted in India, together with all its properties, assets, investments, liabilities, rights, benefits, interests and obligations, as a going concern on an "as is where is basis" by way of a Slump Sale in accordance with Section 2(42C) of the Income-tax Act, 1961, free and clear of all encumbrances. Upon the transfer of the Business and vesting of the same in the Buyer by way of a Slump Sale, the Buyer shall discharge the lump sum consideration of an amount equal to the Purchase Price, with the consequence that as and from the Completion Date the Business will be owned and carried on by, the Buyer.*
- 2.1.2 *For the purposes of this Agreement, "Slump Sale" means sale of an undertaking on a going concern basis as defined under Section 2(42C) of the Income-tax Act, 1961, for a lump sum consideration without values being assigned to the individual assets and liabilities.*
- 2.1.3 *The Parties acknowledge and agree that the sale of Business will constitute an outright slump sale of the Business of Seller as an inseparable whole as a going concern on an "as is where is basis for a consideration of the Purchase price.*
- 2.1.4. *The Parties agree that all tax liabilities (including all direct tax liabilities and indirect tax liabilities such as VAT, service tax, customs duty, excise duty, etc.) or liabilities under any statute in force in relation to any period prior to the Completion Date (as defined above) including but not limited to any past tax litigations / statutory dues/pending proceedings which relate to the period prior to the Completion Date would be of Seller in all respects and would not be borne by Buyer. The Seller agrees to indemnify the Buyer against any demand raised/recovery proposed on the buyer in relation to such liabilities.*
- 2.1.5 *The Buyer agrees that it shall maintain separate books and records with respect to the Business of the Seller from and after the Completion Date within the same legal entity.*
- 2.1.6 *Until the Completion Date, Seller is entitled to operate its Business and shall be solely liable for all the responsibilities and running expenses including salaries etc. pertaining to its Business including statutory, legal or any other liability. All operating profit or loss from the operations of Seller's Business along with Assets and Liabilities will belong to Seller up to the Completion Date.*

### 3. PURCHASE PRICE AND ASSUMPTION OF LIABILITIES

#### 3.1. Assumption of liabilities by the Buyer

*The Buyer must pay, satisfy and discharge all debts, Liabilities and obligations of the Seller relating to or arising from the conduct of the Business and ownership of the Assets and outstanding on, or accrued up to, the Completion Date (including the liability of the Seller for taxation in respect of profits earned in any period ending before the Completion Date whether or not the Liability to pay that taxation has arisen).*

#### 3.2. xx xx

#### 3.3. xx xx

#### 3.4. Purchase Price

*3.4.1 The Purchase Price (having regard to the assumption of debts, Liabilities and obligations referred to in clause 3.1 and the Accrued Employee Entitlements assumed by the Buyer in accordance with clause 3.2) payable by the Buyer for the Business and the Assets will be the Purchase Price and will be subject to adjustment in accordance with clause 4.*

#### 3.4.2. xx xx

#### 3.5. xx xx

### 4. PURCHASE PRICE ADJUSTMENT

*The Parties agree that, to the extent that the value of the slump sale is determined by audit, third-party valuation or otherwise, to be more or less than the Purchase Price, the Purchase Price shall, to the extent permitted by applicable law, be increased or reduced, as applicable, to an amount equal to such higher or lower value.*

#### 5. xx xx" (Emphasis Supplied)

4.6. On perusal of above agreement, we find that the agreement clearly provides for purchase of INR.22.40 crores as lump sum consideration for sale and purchase of business. Clause 2.1.2 specifically provides that no specific values have been assigned to individual assets and

liabilities. Whereas Clause 2.1.3 specifically states that the transaction shall constitute slump sale of the business of the Seller as an inseparable whole as a going concern on an 'as is where is basis'. Thus, the intention of the parties to undertake transaction of slump sale can be clearly gathered from the terms from the Agreement itself and the same support the stand taken by the Assessee that the transaction was a transaction of slump sale.

4.7. We note that Learned CIT(A) has placed reliance upon Clause 2.1.4 of the Agreement to draw inference that some portion of liabilities was retained by the Assessee and therefore, all liabilities were not taken over by the Buyer. However, we are not agreement with the aforesaid inference drawn by the CIT(A). A perusal of the Clause 2.1.4 of the Agreement shows that same is in the nature of standard clause dealing with tax and statutory liabilities only. The said clause broadly provides that tax and statutory liabilities prior to the completion date would be borne by the Assessee, whereas tax and statutory liabilities after the completion date would be borne by the Buyer. Clause 3.1 of the Agreement clearly provides that buyer shall, inter alia, assume a liability of the Assessee/seller relating to or arising from the conduct of the business and ownership of the assets and outstanding on, or accrued up to, the Completion Date (including the liability of the Assessee/seller for taxation in respect of profits earned in any period ending before the Completion Date whether or not the Liability to pay that taxation has arisen). Therefore, we reject the contention of the Revenue that a portion of the liabilities pertaining to the undertaking were retained by the Assessee.

4.8. As regards, receivables of INR.22.40 Crores as reflected in the Balance Sheet of the Assessee for the relevant previous year is concerned, we find that the same represents the purchase consideration receivable by the Assessee in terms of the Agreement and not the receivables

pertaining to the undertaking transferred by the Assessee by way of slump sale . Therefore, the conclusion drawn by the Assessing Officer and the CIT(A) that the Assessee had retained a part of the assets is factually incorrect.

- 4.9. Further, the reliance placed by the CIT(A) on Form 3CEA is clearly misplaced. In terms of Section 50B(3) of the Act an Assessee undertaking the slump sale transaction is mandated to furnish a report of accountant in Form 3CEA indicating the computation of the 'net worth' of the undertaking. Explanation 1 and Explanation 2 to Section 50B of the Act deal with the manner of computation of 'net worth' and value to be assigned to asset for the purpose of computation of 'net worth'. In our considered view, the statutory requirements of furnishing Form 3CEA giving computation of 'net worth' of undertaking transferred by way of slump sale cannot lead to an adverse inference to the effect that the Assessee has undertaken transaction of itemized sale.
- 4.10. In view of the above, the reasoning given by the authorities below for rejecting the transaction under consideration as a slump sale transaction does not hold good. In our view, the authorities below failed to appreciate true purport of the Agreement and incorrectly concluded that the transaction under consideration was not a slump sale transaction in terms of Section 2(42C) of the Act. Therefore, the addition made by the Assessing Officer in this regard cannot be sustained. Accordingly, the Assessing Officer is directed to grant benefit of Section 50B of the Act to the Assessee and compute the business income accordingly. In terms of the aforesaid, Ground No. 1 to 5 raised by the Assessee are allowed while Ground No.1 & 2 raised by the Revenue are dismissed. Ground No. 6 & 7 raised by the Assessee pertain to the levy of interest under Section 234B/C of the Act and the same are disposed off as being consequential in nature.

5. In result, in terms of paragraph 4 to 4.10 above, the Appeal preferred by the Assessee [ITA No.5048/Mum/2024] is allowed while the appeal preferred by the Revenue [ITA No.5036/Mum/2024] is dismissed.

Order pronounced on 29.04.2025.

*Sd/-*  
**(Girish Agrawal)**  
**Accountant Member**

*Sd/-*  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 29.04.2025  
*Milan, LDC*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai