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IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA

Before Shri P.M. Jagtap, Accountant Member
and Smt. Madhumita Roy, Judicial Member

I.T.A. No. 2038/KOL/2014
Assessment Year: 2009-2010

Income Tax Officer,……Appellant
Ward-2(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069
-Vs.-

M/s. Datex Ohmeda (India) Pvt. Limited,……Respondent
3, Pretoria Street, 3rd Floor,
Kolkata-700 020
[PAN: AABCD 1182 E]

Appearances by:
Shri P.K. Srihari, CIT, D.R., for the Appellant
Shri Kanchan Kaushal, AR, for the Respondent

Date of concluding the hearing : May 24, 2018
Date of pronouncing the order : June 20, 2018

O R D E R

Per Shri P.M. Jagtap, A.M. :-

This appeal is preferred by the Revenue against the order of ld. Commissioner of Income Tax (Appeals)-I, Kolkata dated 22.07.2014, whereby he deleted the addition of Rs.28,45,92,456/- made by the Assessing Officer on account of long-term capital gain.

2. The assessee in the present case is a Company, which is a wholly owned subsidiary of GE Healthcare OY, Finland. It was carrying on the business of trading and servicing of medical equipments through its three separate Divisions namely, Trading and Distribution ("T&D") Division, Medical Engineering and Corporate Headquarters till 31.03.2018. Thereafter it was decided by the Board of Directors of the assessee-company to transfer its "T&D" Division to Wipro GE Healthcare Private Limited and accordingly an application was moved by the assessee-company in January, 2009 before the Hon'ble Calcutta High Court for

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transfer of its "T&D" Division to Wipro GE Healthcare Private Limited with retrospective effect from 1st April, 2008 through a scheme of demerger. Simultaneously Wipro-GE also moved an application to the Hon'ble Karnataka High Court. Hon'ble Calcutta High Court sanctioned the demerger vide order dated 30th October, 2009 with retrospective effect from 1st April, 2008 while the Hon'ble Karnataka High Court approved the scheme of demerger vide order dated 16.09.2009. Thereafter the scheme of arrangement was approved by the shareholders of both the Companies on 13.03.2009. In the return of income filed for the year under consideration on 30.09.2009, no capital gain arising from the transfer of its T&D Division by way of demerger was offered to tax by the assessee-company, inter alia, on the ground that the same was exempt under section 47(vib). During the course of assessment proceedings, it was noticed by the Assessing Officer that the total unsecured loans of the T&D Division of the assessee-company before the date of demerger were to the tune of Rs.60,12,98,144/-, out of which only Rs.9.5 crores of unsecured loans had been transferred, while the balance amount of loan taken from the holding company had not been transferred. In this regard, it was explained by the assessee that there was demerger as per Hon'ble High Court's order and all the assets and liabilities of the T&D Division having been transferred, the conditions stipulated in section 2(19AA) were duly satisfied. This explanation of the assessee was not found acceptable by the Assessing Officer. According to him, the orders of the Hon'ble High Courts were passed as per the requirements of the Companies Act and since the conditions stipulated in section 2(19AA) dealing specifically with the demerger were not fully satisfied, exemption from the capital gain as per the provisions of section 47(vib) was not available. He accordingly worked out the long-term capital gain arising from the transfer of T&D Division of the assessee-company as a result of demerger at Rs.28,45,92,456/- after deducting the net asset value of the said Division as on 01.04.2008 amounting to Rs.4,54,07,544/- from the consideration of Rs.33,00,00,000/- being the value of shares issued to the shareholders of the assessee-company on demerger and brought the same

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to tax in the hands of the assessee-company vide an order dated 28.03.2014 passed under section 143(3) of the Act.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the ld. CIT(Appeals) challenging the addition of Rs.28,45,92,456/- made by the Assessing Officer on account of long-term capital gain. During the course of appellate proceedings before the ld. CIT(Appeals), the following submission was made by the assessee in writing in support of its claim that the conditions stipulated in section 2(19AA) were duly satisfied in case of transfer of its T&D Division by way of demerger:-

> *"The contention of the AO that appellant has not complied with the provisions of section 2(19AA) and thus eligibility for exemption from capital gain tax is erroneous. At this juncture, it is pertinent to refer to the provision of Sec. 2(19AA) of the Act wherein the definition of demerger has been given. Relevant extracts of the same is reproduced herein below:-*
> *(19AA) "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that-*
> *(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;*
> *(ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;*
> *(iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;*
> *....."*
>
> *(Emphasis Added)*
>
> *2.1. On perusal of the aforementioned section it is may be noted that the words 'transfer pursuant to the scheme of arrangements in such a manner that all the assets and liabilities are transferred' imply that the demerger should be pursuant to the Scheme of arrangements u/s 391 to 394 of the Companies Act, 1956, which mandates transfer of all the assets and liabilities of the undertaking. In this regard, it IS humbly submitted that the said clause is an integral part of the scheme of arrangements (as discussed above in Para 1.1) vide which the appellant has demerged its "T&O" division. Since, the demerger scheme includes the clause to transfer all the assets and*

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liabilities and it has been approved by the Hon'ble Calcutta High Court vide order dated so: October 2009, questioning the order of demerger on the ground that the appellant has not transferred all the liabilities is bad in law and it tantamount to challenging the orders of Calcutta and Karnataka High Court.

2.2. Furthermore, it is humbly submitted that the said loan amounting to Rs.50,62,98,144/- was an interest-free loan granted by the appellant's holding company since it was suffering huge losses over a number of years. In other words, it may be appreciated that the instant loan was in the nature of capital infusion by the holding company to keep the company afloat, which was in any case converted to equity shares in the name of the holding company.

2.3. It may please be noted that such a loan was paid to the CHQ division of the appellant company to revive the company's health and hence was a liability of the CHQ and never could such loan be considered as a liability of the T&O or the ME division. The T&O division of the appellant was a profitable undertaking and had a positive net worth as well, which was specifically acquired by Wipro-GE.

2.4. It is humbly submitted that the AO has erred in coming to the conclusion that all the assets and liabilities of the "T&O" division has not been transferred by the appellant. Reference in this regard is made to the balance sheet of the "T&O" division which has been drawn in the valuation report. On perusal of the same it is seen that the unsecured loan of Rs.50,62,98,144/- which is under consideration did not form part of "T&D" division. The requisite of Sec. 2(19AA) is that assets and liabilities pertaining to the demerged undertaking should be transferred and not of the whole company. Since the unsecured loan under consideration did not pertain to-the "T&D" division, the appellant was not bound to transfer the same to the transferee.

2.5. In the instant case, your kindself would appreciate that all the assets and liabilities belonging to the T&D Division were duly transferred to Wipro GE. The impugned loan of Rs.50,12,98,144/- was never a liability of the T&D division, it was not required to be transferred to Wipro-GE as a part of the demerger arrangement. Your Kindself would appreciate that the entire facts were furnished before the Hon'ble Calcutta and Karnataka High Courts and the scheme mentioning all assets and liabilities of the division being transferred was duly approved by Hon'b!e courts".

4. The above submissions made by the assessee were forwarded by the ld. CIT(Appeals) to the Assessing Officer for the later's comments. Accordingly, a remand report dated 25.02.2014 was submitted by the

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Assessing Officer to the ld. CIT(Appeals), in which, the Assessing Officer, as noted by the ld. CIT(Appeals) in his impugned order, reiterated the observations made in the assessment order on the issue under consideration. When the said remand report was confronted by the ld. CIT(Appeals) to the assessee, the later filed its rejoinder making the following submission:-

> *"The arrangement was approved vide the orders passed by the Hon'ble Calcutta High Court and the Hon'bie Karnataka High Court and can thus, reasonably be held to be in compliance with section 391 to 394 of the Companies' Act, 1956 (which has similar requirements to those mentioned in sec. 2(19AA) of the Act).*
> *i) The loan of Rs.50,62,98,144/- was an interest free capital infusion by the holding company in the appellant company since it faced huge losses over a number of years resulting in erosion of its capital. The loan was paid to the Corporate Head Quarter division of the appellant company to make a revival. Thus, it was never a liability of the trading and distribution division of the appellant and was not required to be transferred to Wipro-GE as a part of compliance of Section 2(19AA).*
>
> *ii) Without prejudice to the above contentions, it was also submitted that the loan never existed when the demerger process was being carried out since the loan had been converted before the filing of the petition for demerger. The fact of conversion of loan was already a part of the scheme documents filed before the Hon'ble High Courts. It was further submitted that the law cannot possibly compel a person to do something which is impossible to perform i.e., "lex non cogit ad impossiblia" (the legal maxim). Since the loan had been converted before the orders of the High Court approving the scheme of arrangement w.e.f. 01.04.2008, there was no possibility for the appellant company to transfer such loan to Wipro-GE.*
>
> *iii) It was also highlighted that the valuation report issued by a Chartered Accountant assessing the Net Asset value of the trading and distribution division for the purpose of determining the consideration for the transfer, did not consider the loan as a part of its financial statement thus, further evidencing the fact that the loan is not a liability of the division so as to be transferred to Wipro-GE in compliance with section 2(19AA) of the Act".*

5. Without prejudice to its main claim of having fulfilled the conditions stipulated in section 2(19AA) and as an alternative, it was also contended on behalf of the assessee-company before the ld. CIT(Appeals) that the consideration for transfer of its T&D Division by way of demerger was received in the form of shares of Wipro-GE by the

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shareholders of the assessee-company and not by the assessee-company and in the absence of any monetary consideration involved in the transaction, there was no capital gain chargeable to tax in the hands of the assessee-company, which could be computed.

6. After considering the submissions made by the assessee, the remand report submitted by the Assessing Officer, rejoinder filed by the assessee as well as the other material available on record, the ld. CIT(Appeals) accepted the claim of the assessee of having fulfilled the conditions of demerger as laid down in section 2(19AA) for the following reasons given in paragraph no. 5 of his impugned order:-

> *"5. The submissions of the Appellant have been considered. It is seen that the issue is regarding demerger of the Appellant Company consequential to the order of the Calcutta High Court w.e.f. 01.04.2008, subsequent to the approval of the Demerger Scheme of the Appellant Company with Wipro-GE Health Care (P) Ltd. The AO has rejected the Demerger Scheme and held that the Appellant was liable to Long Term Capital Gain as Slump Sale ujs.50B in view of the fact that the appellant did not qualify for the exemption from Capital Gains ujs.47(vib) of the Income Tax Act as the demerger did not fulfil the conditions u/s.2(19AA). In this case, the A.O. has held that provisions of section 47(vib) on transfer resulting out of demerger, (where the demerger is defined in section 2(19AA) of the Income Tax Act) holding that all the liabilities being held by the demerged company immediately before the demerger have not become the liabilities of the resulting company. The relevant provisions of section 2(19AA) Income Tax Act are reproduced as under:*
> *"2(19AA) 'demerger' in relation to companies, means the transfer, pursuant to a scheme of arrangement u/s.391 to 394 of the companies Act, 1956 (1 of 1956), by a demerger company of its one or more undertakings to any resulting company in such a manner that-*
> *(i) all the property of the undertaking, being transferred by the demerger company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;*
> *(ii) all the liabilities relatable to the undertaking, being transferred by the demerged company immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger; "*
>
> *It is however seen from the facts and circumstances as explained in Appeal that the amount of Rs.50,62,98,144/- shown as unsecured loan in the accounts of the Appellant prior to the "demerger" was an interest free capital infusion which had already been converted to Equity Shares prior to filing of scheme*

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> *of demerger, & application for increase in Authorized Share Capital had been filed with ROC of Rs.55 crores on 18.07.2008. Therefore, the same was not a liability of the Appellant on the date of demerger and was not required to be transferred as a liability to Wipro-GE Health Care (P) Ltd. in compliance to Section 2(19AA). Furthermore, since the loan had been converted before the orders of the High Court approving the Scheme of demerger (with retrospective effect from 01.04.2008), there was no possibility for the Appellant to transfer such loan to Wipro-GE Health Care (P) Ltd. The Appellant has also filed the Valuation Report of the Chartered Accountant assessing the Net Asset Value of the division for the purpose of determining the consideration for the transfer and the loan was not considered as part of its financial statement, which indicates that the loan was not liability of the division to be transferred to Wipro-GE Health Care (P) Limited. The appellant also filed a copy of the petition submitted before the High Court for demerger, it is seen from this documents, that the conversion of the loan to equity shares took place before the submission of scheme of demerger, therefore, such loan of INR 50,62,98,144/- was not available for transfer and hence not be considered as a liability of the T&D division. The demerger scheme mentions the total issued & subscribed Share Capital of Rs.75,59,92,140/-. Therefore from the above facts and circumstances it is clear that there was no violation or non-fulfilment of the conditions for "demerger" as laid down u/s.2(19AA) of the Income Tax Act".*

7. The ld. CIT(Appeals) also accepted the alternative contention of the assessee by observing that the Assessing Officer's conclusion that the transfer of T&D Division of the assessee-company by way of demerger was a slump-sale and thus taxable under section 50B, was not justified. The ld. CIT(Appeals) accordingly deleted the addition of Rs.28,45,92,456/- made by the Assessing Officer to the total income of the assessee on account of long-term capital gain. Aggrieved by the order of the ld. CIT(Appeals), the revenue has preferred this appeal before the Tribunal on the following grounds:-

> *"1. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in considering that all the conditions as laid down in section 2(19AA) was met in the demerger of the T & D Division of the assessee.*
>
> *2. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in not considering the facts that the demerger scheme between the assessee and Wipro GE was not tax neutral and levying capital gains tax on the transaction.*

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3. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in not considering the facts that the Court approved the demerger scheme which was in line with the conditions of Section 2(19AA) were not met by the assessee.

4. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in allowing the exemption u/s 47(vib) for non-transfer of a loan amounting to Rs.50,62,98,144/- in the course of demerger of the T&D Division, without appreciating the facts that such loan was part of T&D Division but was not part of the CHQ Division which was converted to equity shares prior to the approval of the demerger scheme by the High Courts and there could be no occasion to transfer such loans to Wipro GE.

5. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in holding that the assessee is eligible for exemption from capital gain u/s 47(vib) without considering the fact that the unsecured loan was converted to equity shares after date of demerger effective thereon and also not appreciating the facts that liability in form of unsecured loan of Rs.50,62,98,144/- existed in the books against T&D Division.

6. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in disallowing the addition of LTCG to the tune of Rs.28,45,92,456/- by holding that the assessee was liable to LTCG as slump sale u/s 50B in view of the fact that the appellant is not qualified for exemption u/s 47(vib) of the I.T. Act as the demerger did not fulfil the conditions laid u/s 2(19AA)".

8. The ld. D.R. contended that there was a clear violation of condition as laid down in section 2(19AA) of the Act, inasmuch as, the loan taken by the assessee-company from its holding company was not transferred by the assessee-company to Wipro-GE. He invited our attention to the provision of section 2(19AA) to point out that one of the conditions stipulated therein is that all the liabilities relatable to the Undertaking, being transferred by the demerged company immediately before the demerger should become the liabilities of the resulting company by virtue of the demerger. He contended that the effective date of demerger was 01.04.2008 and since the loan availed by the assessee-company from its

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holding company, which was outstanding as on 31.03.2008 had not been transferred, the condition stipulated in Clause (ii) of section 2(19AA) was not satisfied as rightly held by the Assessing Officer making the assessee-company disentitled for the exemption under section 47(vib). He contended that the said loan taken by the assessee-company from its holding company no doubt was converted into share capital, but such conversion was done subsequently on August 07, 2008. He contended that the said loan thus represented the liability of the T&D Division as on 31.03.2008 i.e. immediately before the date of demerger and the same having not been transferred, the condition stipulated in section 2(19AA) was not satisfied. He contended that this vital aspect, however, was overlooked by the ld. CIT(Appeals) and he accepted the claim of the assessee of having satisfied the conditions of section 2(19AA) on the ground that the loan taken from the holding company was converted into share capital ignoring the vital fact that such conversion and had taken place only after the date of demerger.

9. The ld. Counsel for the assessee, on the other hand, contended that the words "transfer pursuant to the scheme of arrangement in such a manner that all the assets and liabilities are transferred" as envisaged in section 2(19AA) imply that the demerger should be pursuant to the scheme of arrangements under section 391 to 394 of the Companies Act, 1956, which mandates transfer of all the assets and liabilities of the Undertaking on a going concern basis. He contended that the assets and liabilities of the T&D Division of the assessee-company were transferred to Wipro-GE on a going concern basis and since the said transfer by virtue of demerger was duly approved by the Hon'ble High Courts, the conditions of section 2(19AA) were duly fulfilled. He invited our attention to the balance-sheet of the T&D Division given in the valuation report of Deloitte (page 161 of the paper book) and submitted that the unsecured loan of Rs.50,62,98,144/- taken by the assesee-company from its holding company actually did not form part of the T&D Division. He contended that the said loan in any case was converted into share capital

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even before the petition was filed by the assessee-company before the Hon'ble Calcutta High Court for the approval of the scheme of demerger and it was, therefore, not possible for the assessee-company to transfer the same to Wipro-GE as it was not available for such transfer. By relying on the principle of "impossibility of performance", he contended that law cannot possibly compel a person to do something which is impossible to perform. He contended that the fact of conversion of the said loan into equity capital was duly taken note of by the Hon'ble Calcutta High Court while approving the scheme of demerger w.e.f. 1st April, 2008, which further supports the case of the assessee that the scheme of arrangements would fall within demerger as per section 2(19AA).

10. The ld. Counsel for the assessee also contended that an alternative claim was made by the assessee before the ld. CIT(Appeals) that in the absence of any monetary consideration received by it as a result of transfer of its T&D Division by way of demerger, there was no capital gain chargeable to tax in the hands of the assessee, which could be computed as per the provisions of section 2(42C) read with section 50B. He contended that the ld. CIT(Appeals) in the concluding portion of his impugned order has accepted the alternative claim of the assessee, but the Revenue in the present appeal has not raised any ground disputing the decision of the ld. CIT(Appeals) accepting the alternative claim of the assessee. He contended that this issue relating to the assessee's alternative claim is squarely covered by the various judicial pronouncements and cited the following judicial pronouncements:-

(i) CIT –vs.- Motors & General Stores (P) Limited [66 ITR 692 (SC);
(ii) Avaya Global Connect Limited –vs.- ACIT [ITA No. 341/Mum/2014] [26 SOT 397 (Mumbai);
(iii) ITO, Hyderabad –vs.- Zinger Investments (P) Limited [38 ` taxmann.com 388 (Hyderabad-Trib.)].

11. The ld. D.R. submitted in the rejoinder that the alternative claim of the assessee has not been considered and decided by the ld. CIT(Appeals) in detail and only a passing observation is made thereon, which cannot be

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treated as the decision of the ld. CIT(Appeals) on merit. He contended that there is no evidence brought on record by the assessee to establish clearly that the unsecured loan taken by it from the holding company did not relate to its T&D Division. He contended that this is a vital aspect on which the case was made out by the Assessing Officer and if the factual position is contrary as claimed by the assessee, the onus is on the assessee to conclusively establish the same. As regards the alternative claim of the assessee, he contended that slump-sale is defined in Income Tax Act and the definition so given is plain and simple.

12. We have considered the rival submissions and also perused the relevant material available on record. The main issue involved in this appeal is whether the transfer of T&D Division by the assessee-company by way of demerger was in the manner laid down in section 2(19AA) of the Act. According to the Assessing Officer, the unsecured loan taken by the assessee-company from its holding company, which represented one of the liabilities relatable to T&D Division had not been transferred as a result of demerger and, therefore, the said transfer was not a case of demerger as defined in section 2(19AA), which envisages that all the liabilities relatable to the Undertaking, being transferred by the demerged company, immediately before the demerger become the liabilities of the resulting company by virtue of the demerger. The first contention raised by the ld. Counsel for the assessee in this regard is that the relevant liability representing unsecured loan taken by the assessee-company from its holding company did not relate to its T&D Division and there was thus no requirement of transfer of the said liability to fall the demerger within the definition given in section 2(19AA). In support of this contention, he has relied on the balance-sheet of the T&D Division as given in the valuation report prepared by Deloitte as placed at page no. 161 of the paper book. A perusal of the said balance-sheet of T&D Division as on March 31, 2008, however, shows that total unsecured loans were shown at Rs.60,12,98,144/-, which was inclusive of the unsecured loan taken by the assessee-company from its holding company while in

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the provisional balance-sheet as on March 31, 2008 stated to be prepared post conversion of GE loan to equity, the total unsecured loans were shown at Rs.9,50,00,000/-. It is pertinent to note here that GE loan was converted into equity only on August 07, 2008 and it is difficult to comprehend as to how the effect of such conversion taking place subsequently was considered in the provisional balance-sheet prepared as on March 31, 2008. In any case, the audited balance-sheet of the T&D Division as reflected in the valuation report prepared by Deloitte clearly showed the unsecured loans at Rs.60,12,98,144/- and since the same was inclusive of GE loan, which was subsequently converted into equity, we are unable to accept the contention of the ld. Counsel for the assessee that the said loan did not relate to T&D Division.

13. The second contention raised by the ld. Counsel for the assessee is that the GE loan was converted into equity share capital on August 07, 2008 and since the petition for approval of scheme of demerger was filed before the Hon'ble Calcutta High Court in January, 2009, the said loan was not available and it was not possible for the assessee-company to transfer the said liability to Wipro-GE as a part of demerger. He has pressed into service the principle of impossibility of performance as embedded in legal maxim, *"lex non cogit ad impossiblia"* to contend that the law cannot possibly compel a person to do something, which is impossible to perform. We find it difficult to accept this contention of the ld. Counsel for the assessee. First of all, the petition for approval of the scheme of demerger was filed by the assessee before the Hon'ble Calcutta High Court for approval in January, 2009 and the GE loan, which was very much in existence on March 31, 2008 having been converted into equity share capital on August 10, 2010, the assessee-company was well aware that the same was not available for transfer to Wipro-GE as on April 01, 2008, which was chosen by the assessee-company itself as the effective date of demerger. Moreover, the demerger as defined in section 2(19AA) of the Income Tax Act envisages transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 by a

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demerged Company of its one or more Undertakings to any resulting company in a particular manner as specified therein. If such transfer is not in a manner as envisaged in section 2(19AA), as is the position in the present case, the same cannot be regarded as a demerger for the purpose of Income Tax Act and the benefit available under section 47(vib) cannot be availed. As per the specific provision contained in clause (ii) of section 2(19AA), all the liabilities relatable to the undertaking, being transferred by the demerger company, immediately before the demerger, should become the liabilities of the resulting company by virtue of the demerger. In the present case, the liability representing GE loan was the liability relatable to T&D Division of the assessee-company as on March 31, 2008, i.e. immediately before the demerger and since the same had not been transferred to Wipro GE, we are of the view that the transfer of T&D Division of the assessee-company was not in a manner prescribed in section 2(19AA) so as to treat the same as demerger for the purpose of Income Tax Act and the benefit of section 47(viia) was not available to the assessee-company as rightly held by the Assessing Officer. The issue as to whether it was possible for the assessee or not to effect such transfer in the manner prescribed under section 2(19AA) is not relevant, inasmuch as, if such transfer is in that manner, it would be treated as demerger within the meaning of section 2(19AA) or otherwise not.

14. As regards the alternative contention raised on behalf of the assessee before the ld. CIT(Appeals) as well as before us that the T&D Division having been transferred to Wipro-GE against shares received by its shareholders, there was no monetary consideration and there was no transfer within the purview of section 2(42C) of the Act and the transaction did not fall under the definition of slump-sale under section 50B, it is observed that the same was accepted by the ld. CIT(Appeals) by observing that the Assessing Officer's conclusion that there was a slump-sale and thus taxable under section 50B was not justified. Although a passing observation in one line was recorded by the ld. CIT(Appeals) while deciding this issue as rightly submitted by the ld. D.R., it appears

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that this issue related to the alternative claim of the assessee was not discussed elaborately by the ld. CIT(Appeals) keeping in view his decision holding that the transfer of T&D Division of the assessee constituted demerger within the meaning of section 2(19AA). However, the fact that remains to be seen is that the alternative contention of the assessee was accepted by the ld. CIT(Appeals). It is also observed that this issue is covered in favour of the assessee by the various judicial pronouncements cited by the ld. Counsel for the assessee. In one of such decisions rendered by the Hon'ble Bombay High Court in the case of Bharat Bijlee Limited (supra), the assessee had transferred its Lift Division to M/s. Tiger Elevators Pvt. Limited under a Scheme of Arrangement by invoking section 391 read with section 394 of the Companies Act, 1956. The Assessing Officer held that transfer of Lift Division was a slump-sale under section 2(42C) of the Act, which was taxable in terms of section 50B of the Act. The Tribunal, however, found that the consideration for transfer of its Lift Division by the assessee was not determined by the parties in terms of money but the disbursement was in terms of allotment or issue of bonds/preference shares. It was, therefore, held by the Tribunal that it was a case of exchange and not a sale and accordingly section 2(42C) was inapplicable. The addition made by the Assessing Officer by invoking section 2(42C) read with section 50B accordingly was held to be unsustainable by the Tribunal and the decision of the Tribunal was upheld by the Hon'ble Bombay High Court. In the case of Benenett Coleman & Co. Limited (supra) cited by the ld. Counsel for the assessee, the assessee had transferred its business division consisting of leisure and retail products on a going concern basis to its subsidiary against shares and debentures. It was claimed by the assessee that the said transfer by way of exchange and not sale was outside the purview of section 2(42C). The Assessing Officer, however, held that the transaction fell under the definition of "slump-sale" and was taxable as per the provision of section 50B. The Tribunal, however, decided this issue in favour of the assessee by holding that since transfer of undertaking was not for money but for equity shares and debentures, transaction was not

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a sale but an exchange and consequently provisions of section 50B were not applicable. To the similar effect is the decision of Hyderabad Bench of this Tribunal in the case of Zinger Investments (P) Limited (supra), wherein the assessee-company had transferred its Manufacturing Division with all its assets and liabilities under the scheme of amalgamation. The assessee in return for transfer of assets had received certain investments besides allotment of equity shares of the resulting company to its shareholders. The Assessing Officer held that the said transfer was a slump sale attracting provision of section 50B. The Tribunal, however, reversed the decision of the Assessing Officer holding that since no monetary consideration was involved in transferring Manufacturing Division, the same could not be considered as a slump sale within the meaning prescribed under section 2(42C) so as to attract the liability of capital gain under section 50B. It is observed that the material facts involved in the present case are similar to all these judicial pronouncements cited by the ld. Counsel for the assessee, inasmuch as, its T&D Division was transferred by the assessee-company as a going concern by way of demerger against shares issued by Wipro-GE to its shareholders and there was no monetary consideration involved. We, therefore, respectfully follow the ratio of the various judicial pronouncements discussed above and hold that there being no transfer within the meaning of section 2(42C), there was no capital gain chargeable to tax under section 50B of the Act. In that view of the matter, we uphold the impugned order of the ld. CIT(Appeals) deleting the addition made by the Assessing Officer on account of long-term capital gain.

15. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on June 20, 2018.

Sd/-	**Sd/-**
(Madhumita Roy)	**(P.M. Jagtap)**
Judicial Member	**Accountant Member**

Kolkata, the 20th day of June, 2018

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Order pronounced by

Sd/-	***Sd/-***
(S.S.V. Ravi)	***(P.M.J.)***
J.M.	***A.M.***

Copies to : *(1)* ***Income Tax Officer,***
Ward-2(2), Kolkata,
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P-7, Chowringhee Square,
Kolkata-700 069

(2) ***M/s. Datex Ohmeda (India) Pvt. Limited,***
3, Pretoria Street, 3rd Floor,
Kolkata-700 020

(3) *Commissioner of Income Tax (Appeals)-I,*
(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

By order

Senior Private Secretary,
Head of Office/D.D.O.
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.