

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.2524/Del/2016
Assessment Year: 2010-11

| | | |
|--|------------|--|
| M/s. Genpact Services LLC, Genpact Tower, Sector-53, DLF City, Phase-V, Gurgaon | Vs. | DCIT, Circle-1(3)(1), (International Taxation), New Delhi |
| PAN :AACCG3353P | | |
| (Appellant) | | (Respondent) |

| | |
|---------------|---|
| Appellant by | Sh. Tarandeep Singh, Advocate Sh. Tarun Singh, Advocate |
| Respondent by | Sh. Anand Kumar Kedia, CIT (DR) Sh. Mrinal Kumar Das, Sr. DR |

| | |
|-----------------------|------------|
| Date of hearing | 20.01.2023 |
| Date of pronouncement | 31.01.2023 |

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal by the assessee arises out of order dated 15.02.2016 of learned Commissioner of Income Tax (Appeals)-42, New Delhi, pertaining to assessment year 2010-11.

2. As could be seen from the grounds raised, basically, two issues arise for consideration. Firstly, whether the expenditure incurred by the assessee for acquiring customer contracts and assembled workforce from M/s. Genpact India is revenue or capital in nature and secondly, whether learned first appellate

authority was justified in reducing the value of customer related contracts and goodwill by tinkering with the value determined by registered valuer.

3. Briefly the facts relating to these issues are, the assessee is a non-resident corporate entity incorporated under the laws of Delaware, United State of America (USA). As stated by the Assessing Officer, the assessee is engaged in the business of providing Information Technology Enabled Services (ITES), such as, data entry, conversion/processing data, business support, billing services. For the assessment year under dispute, the assessee filed its return originally on 12.10.2010 declaring loss of Rs.3,89,17,092/-. Thereafter, the assessee filed a revised return on 27.12.2011, declaring loss of Rs.6,78,78,188/-. In course of assessment proceeding, while examining the return of income filed by the assessee along with financial statements, Assessing Officer noticed that in the year under consideration, the assessee had acquired third party debt collection services as well as part of analytical business of M/s. Genpact India as slump sale as a going concern on "as is where is basis" for a total consideration of Rs. 62,12,70,648/-. Out of which, an amount of Rs.39,96,70,372/- was paid towards acquisition of tangible

assets. Whereas, the balance amount of Rs.22,16,00,276/- represents payment made towards customer contracts, assembled workforce etc. The Assessing Officer found that in the return of income, the assessee had claimed the amount of Rs.22.16,00,276/- as revenue/business expenditure.

4. Being of the view that such expenditure incurred has given enduring benefits to the assessee, the Assessing Officer called upon the assessee to show-cause, as to why, it should not be treated as capital expenditure. In response to the query raised by the Assessing Officer, the assessee furnished detailed submission stating that by incurring the expenditure, the assessee has not derived any enduring benefit, nor acquired any capital asset. Therefore, it has to be allowed as revenue expenditure. The Assessing Officer, however, was not convinced with the submissions of the assessee. He observed, the assessee has recorded the payments in the books of account as intangible assets in terms of Accounting Standard -26 (AS-26). Thus, he observed that the accounting treatment given by the assessee itself presupposes that the expenditure incurred is capital in nature. In this context, the Assessing Officer also referred to the note appended by the Auditor to the Audit Report.

5. Thus, ultimately, the Assessing Officer concluded that the expenditure incurred of Rs.22,16,00,276/- is in the nature of capital expenditure. Accordingly, he allowed depreciation at the rate of 25% on such expenses. The balance amount of Rs.16,62,00,276/- was added back to the income of the assessee. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). While agreeing with the view of the Assessing Officer that the expenditure incurred is capital in nature, learned Commissioner (Appeals) did not stop there. On verifying the break-up of total consideration paid for acquiring the business from M/s. Genpact India, learned Commissioner (Appeals) found that the said consideration was based on valuation made by an independent valuer, namely, Grant Thornton. On examining the break-up, he found that the valuation of goodwill included value of trained and assembled workforce, amounting to Rs.2,91,63,000/-. He observed, the assessee had acquired the business on a slump sale as a going concerns on "as is where is basis". He observed that business was acquired along with all assets and liabilities for a fixed consideration. Therefore, the consideration paid is for acquiring business as a whole and cannot be assigned to

recruitment/training cost of employees that may have been imparted in the earlier years. He observed, the employees were not bound to work with the assessee, as, no such contract exists with the assessee in that regard. Thus, he was of the view that the amount of Rs.2,91,63,000/- cannot be assigned to employees cost.

6. More so, when the employees have been assured of same terms and conditions of services and emoluments as existed before, the agreement with the assessee and their services were deemed as continued. In the aforesaid premises, he was of the view that the Assessing Officer had granted excess depreciation, thereby, resulting in under assessment of income. Therefore, he issued notice proposing to enhance the income. Though, the assessee filed detailed submission objecting to the proposed enhancement, however, learned Commissioner (Appeals) rejected submissions of the assessee. In this context, he observed that while valuing the intangible assets, which includes customer contracts, the Valuer has valued it for a period of 2 years and 4 months by taking the earnings before interest and taxed for 2010, 2011 and 2012 separately and thereafter discounted at the rate of 19.20%, which resulted in value of customer contract at

Rs.11,53,26,000/-. Further, the remaining life of customer contracts has been further multiplied by amortization tax benefit factor of 1.28% resulting in valuation of customer contract at Rs.14,72,22,000/-. Thus, according to him, assessee is claiming double benefit by first enhancing the present value of customer contract with the amount of likely tax benefit at the rate of 25%, on which further benefit in the form of depreciation allowance is being claimed. Stating that the value of customer contracts has been arbitrarily raised by Rs.3,18,96,000/-, he reduced the value to Rs.11,53,26,000/-. Further, he observed, while valuing the goodwill at Rs.7,43,78,276/-, the independent Valuer has included the value of assembled workforce amounting to Rs.2,91,63,000/-, which, according to learned first appellate authority, cannot be included in the valuation of goodwill. Accordingly, he reduced the value of goodwill to that extent.

7. We have considered rival submissions and perused the materials on record. At the outset, we need to address the nature of expenditure incurred by the assessee, whether capital or revenue. Facts and materials on record clearly reveal that the assessee had incurred the cost of Rs.22.16 crores for acquiring customer collection services business of M/s. Genpact India, on

slump sale as a going concerns on “as is where is basis”. Though, from the stage of assessment proceeding the assessee has made an attempt to justify its claim of revenue expenditure, however, no substantive evidence could be furnished by the assessee to demonstrate that the assessee had identical business activity of debt collection services.

8. In view of concurrent finding of departmental authorities that the assessee could not establish that it was in the same line of business of debt collection services prior to acquisition of the new business, specific query was made to learned counsel appearing for the assessee at the time of hearing to furnish any substantive evidence to demonstrate the aforesaid fact. However, learned counsel for the assessee expressed his inability to furnish any such documentary evidences, except, whatever is available on record.

9. On perusal of materials placed before us, we are convinced that there is nothing therein which could even remotely suggest that the assessee, at any point of time, before acquiring the debt collection services business, was in the same line of business. It is a fact on record that the assessee has made payment for acquiring the customer contracts and assembled workforce,

which are nothing but capital assets and would give enduring benefits to the assessee.

10. In sum and substance, by incurring the expenditure, the assessee has acquired a completely new business set up, which is nothing but an income generation tool. Therefore, in our view, the expenditure incurred is in the nature of capital expenditure. To that extent, we agree with the view expressed by the departmental authorities. However, insofar as, the issue of enhancement of income by learned first appellate authority, we must observe, the assessee has paid the consideration for acquiring the business on the basis of value determined by an independent valuer. It is a fact that the assessee has paid the consideration as determined by the Valuer for acquiring the business. There is nothing on record to suggest that the payment claimed to have been made for acquiring the business is either non-genuine or doubtful. At least, no such view, either express or implied, can be found either in the observations of the Assessing or learned first appellate authority. Thus, when the payment made by the assessee is not disputed and is in terms of an agreement between two parties, learned Commissioner (Appeals) cannot arbitrarily and unitarily reduce a part of the payment made for computing depreciation. In any

case of the matter, the consideration paid by the assessee is supported by valuation report of an independent Valuer, who is an expert in the field. In case, learned first appellate authority had any doubt regarding valuation report, he should have referred the valuation to an expert, instead assuming the role of Valuer himself and tinkering with valuation of certain assets made in the valuation report, viz., customer and contract goodwill. Thus, in our view, the action of learned Commissioner (Appeals) in reducing the value of customer contract and goodwill, as determined by the independent Valuer is wholly inappropriate, hence, unsustainable. Accordingly, we reverse the decision of learned Commissioner (Appeals) on the issue of valuation. Consequently, the computation of the Assessing Officer in allowing depreciation at 25% on the amount of Rs.22,16,276,000/- is upheld. Grounds are partly allowed.

11. In the result, the appeal is partly allowed.

Order pronounced in the open court on 31st January, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 31st January, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi