



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

**BEFORE SHRI VIMAL KUMAR, JUDICIAL MEMBER AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA Nos. 2237 & 2238/Del/2024
(Assessment Years : 2016-17 & 2017-18)

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| Tungsten Network Ltd. Anil Saraf, No.8-2-350/3/C, Road No.3, Banjara Hills, Hyderabad, Telangana-34 PAN : AAJCT 5973 F (Appellant) | Vs. | Dy. CIT Civic Centre, Minto Road, New Delhi – 110 002 (Respondent) |
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| Assessee by | Shri Anil Saraf, C.A. & Shri Anish Raj Saraf, C.A. |
| Respondent by | Shri Vijay B. Vasanta, CIT-D.R. |

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| Date of Hearing | 25.11.2024 |
| Date of Pronouncement | 18.12.2024 |

O R D E R

PER BENCH :

1. Both the appeals filed by assessee challenging the separate Assessment order under section 147 read with section 144 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 12.03.2024 of the Income Tax Department, Circle Int. Tax 3(1)(1), Delhi [hereinafter referred as (‘Ld. AO’)] in pursuance to the direction of learned Dispute Resolution Panel-2, New Delhi dated 22.02.2024 under section 144C(5) of the Act for the Assessment Years 2016-17 & 2017-18.

2. Both the appeals involve similar facts and issues. For facility of convenience, both were heard together and are being disposed of by a common order. ITA No.2237/Del/2024 is taken as lead case.

3. Brief facts of ITA No.2237/Del/2024 are that assessee M/s. Tungsten Network Ltd., a foreign company recipients for tax purposes in the UK, had received an amount of Rs.1,46,96,822/- and Rs.1,46,95,988/- from Genpact India Pvt. Ltd. During the A.Y. 2016-17 towards “services provided for converting raw data into e-form”. The information indicated that the consideration so received by assessee is chargeable to tax in India in the hands of the assessee. Notice dated 29.07.2022 under section 148 of the Act was issued. In response to notice under section 148 of the Act, assessee did not file return of income even after being allotted a PAN (AAJCT5973F). Notice under section 142(1) dated 10.05.2023 and show-cause notice dated 18.05.2023 were issued. The assessee vide letter dated 24.05.2023 sought adjournment to file reply as information asked in the notice required to be got from multiple sources. Since the assessment proceedings were getting time barred by limitation on 31.05.2023, last opportunity was provided to assessee vide letter dated 27.05.2023 and submit its reply on or before 29.05.2023. The assessee vide letter dated 29.05.2023 submitted reply. After considering the submissions made by assessee and examining the facts, draft assessment order dated 31.05.2023 proposing assessment at total income of

Rs.2,93,92,810/- are being treated as “fee for technical services to be taxed @ 10% was proposed”. Assessee filed objections before Hon’ble DRP on 26.06.2023. Hon’ble DRP vide order dated 22.02.2024 issued directions. In compliance of directions, assessment order dated 12.03.2024 was passed.

4. Being aggrieved, appellant/assessee preferred present appeal.

5. Learned Authorized Representative for the appellant/assessee submitted that grounds of appeal nos. 1 & 2 are general in nature.

5.1 Learned Authorized Representative for the assessee/appellant also submitted that learned AO and Hon’ble DRP without considering the evidence and submissions erred in holding that the business receipts received by assessee is taxable as fees for technical services under Income Tax Act, 1961 as well as India – UK Double Taxation Avoidance Agreement (‘DTAA’) which is against the principle of law and agreements are liable to be quashed.

5.2 Learned Authorized Representative for the assessee/appellant also submitted that learned Assessing Officer and Hon’ble DRP erred in complying provision of section 9(1)(vii) of the Act, ignoring the exclusion clause of section 9(1)(vii)(b) of the Act where the appellant has not carried any business activity in India which is bad in law and liable to be quashed.

5.3 Learned Authorized Representative for the assessee/appellant submitted that ground nos. 5 to 7 are consequential.

5.4 The appellant/assessee had submitted the Tax Residency Certificate, statement of work, statement of invoices, master service agreement, tax return filed in United Kingdom of Great Britain and Northern Ireland, statement of invoices, financial statements for the year 2016 and DTAA between India and UK. The income of assessee from business activities with PE and AE cannot be considered to be in India. The income of assessee from business is protected under DTAA.

6. Learned Departmental Representative for the department of Revenue submitted that Genpact India Pvt. Ltd. is providing services and is making payments to the assessee. As per *Clause (b) of Section 9(1)(vii)*, it becomes clear that it lays down the principle what is basically known as the “source rule”, that is, income of the recipient to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. The clause further mandates and requires that the services should be utilized in India.

7. From examination of record in light of aforesaid rival contentions, it is crystal clear that assessee a UK company, provides e-invoicing software solution and related services which is

cloud based. Basically, the assessee converts physical invoice data into digital invoice using the preprogrammed software. The assessee is granted the right to use this cloud-based services facility to Genpact India who in turn has made payment of Rs.3,31,98,980/- to the assessee. The income in hands of assessee is shown to be receipt of subscription fees. On 13th January, 2009, the assessee's Hungarian PE entered into a Master Services Agreement with Genpact International Inc., an US Company. The Master Service Agreement granted the assessee the authority to assign or sub-contract the powers and obligations of the agreement to any affiliate of Genpact. Consequently, Tungsten entered into a statement of work ("SOW") with Genpact India Pvt. Ltd. to provide an exclusive e-invoicing portal license. This license enables the generation of e-invoices for a specific customer of Genpact India, Glaxo smith Kline Services Unlimited ("GSK"), which operates outside of India. Interestingly, the invoices generated by Genpact India for GSK pertain to several of European countries specified in Point B on the first page of the SOW and clause 4.4 of the Schedule 2C of amendment 6 of SOW, except India.

8. The vital question as to whether the taxability of income in hands of the assessee for providing license for right to use of the cloud based platform i.e. the E-Invoice Portal. Assessee a non-resident having income in India is liable for tax if the source is in

India. Section 5(2) read with section 9 of the Act deals with source rules for non-resident under the provisions of Income-tax Act.

9. In the event and income i.e. sourced in India is not characterized under the heads provided in the DTAA, the income would be taxable under the residual clause provided taxing right is allocated to source country in this case to India under the relevant DTAA. The assessment order discussed the following nature of income under the headings of business income; (a) Business income (b) Fees for technical services (c) Nature of technical services (d) Nature of consultancy services (e) Standard services (f) Services requiring human involvement (g) Taxability of income (h) Taxability under India-UK DTAA and held that the income received by the assessee company from Genpact India Pvt. Ltd. is taxable as fees for technical services in India being the income chargeable to tax both under the provisions of Income-tax Act and under the provisions of India-UK DTAA also. Since, all the objections of DRP were rejected the assessment order was passed.

10. Hon'ble Supreme Court in the case of *Kotak Securities Ltd.* reported in 383 ITR 1 (SC) has observed as under:

"However, it cannot be lost sight of that modern day scientific and technological developments may tend to blur the specific human element in an otherwise fully automated process by which such services may be provided. The search for a more effective basis, therefore, must be made"

11. In *GVK Industries Ltd. [2015] 371 ITR 453 (SC)*, the Apex Court held that terms managerial, technical and consultancy are not defined anywhere in the Income-tax Act, 1961. In the absence of definition under Income tax Act, the common and general meaning of these terms should be taken into consideration. For simplicity, any services that involves technology is a technical service.

12. The source Rule was further explained by the *Apex Court in GVK Industries case (332 ITR 130)* where in the Apex Court has held that the income of receipt to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. Accordingly, the income of the assessee company has arisen in India as the payer i.e. Genpact India is also situated in India. Therefore, under the primary source rule under section 5(2), the income received by the assessee company accrues or arises in India. As a result, further reference to deeming provisions under section 9 of the Act is undesirable for ascertaining of chargeability of income of the assessee under the provisions of Income-tax Act. Alternatively, only when the primary sourcing rule under section 5(2) of Act fails to establish the chargeability, a reference to deeming rules under section 9 of the Act is necessary.

13. In view of above material facts i.e. the process of providing technical services by the assessee and receiving payments having

source in India as per above principles deserves to be held liable to tax. Resultantly, the grounds of appeal nos. 3 to 4 are dismissed.

14. In the result, appeal filed by the assessee is dismissed.

ITA No.2238/Del/2024 for A.Y. 2017-18 :

15. As the facts and circumstances of the above mentioned appeal are admittedly *mutatis mutandis* similar to the discussed and disposed of in ITA No.2237/Del/2024 hereinabove, we hold accordingly and dismiss the appeal of the assessee.

16. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on this day 18th December, 2024

**Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 18.12.2024

Priti Yadav, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI