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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 07.05.2025*

\+ **ITA 133/2025 & CM APPL. 27602/2025(Exemption)**

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-1, NEW DELHI .....Appellant

Through: Mr Puneet Rai, SSC, Mr Ashvini Kumar and Mr Rishabh Nangia, SCs and Mr Nikhil Jain, Advocate.

versus

GENPACT SERVICES LLC .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

CM APPL. 27603/2025(for condonation of delay of 196 days in re-filing the appeal)

1. For the reasons stated in the application, the delay in re-filing the above captioned appeal is condoned.

2. The application stands disposed of.

ITA 133/2025

3. The Revenue has filed the present appeal, impugning an order dated 06.06.2024 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No. 899/Del/2018 in respect of Assessment Year [**AY**] 2010-11, whereby the Revenue's appeal against an order dated 01.11.2017 passed by

the Commissioner of Income Tax (Appeals)-42, New Delhi [**CIT(A)**], was rejected.

4. The Assessee had appealed before the CIT(A) against the penalty order dated 27.03.2017 passed by the Assessing Officer [**AO**], imposing a penalty under Section 271(1)(c) of the Income Tax Act, 1961 [**the Act**] holding that the Respondent (Assessee) had wilfully attempted to reduce his income and, therefore, it was a fit case for imposition of penalty.

5. The Assessee had filed its return of income for AY 2010-11, declaring a loss of ₹3,89,17,092/- and subsequently revised the return on 27.12.2011, declaring a total loss of ₹6,78,78,188/-. The return was picked up for scrutiny, and the assessment proceedings culminated in an assessment order whereby the AO made an addition of ₹16,62,00,207/- on account of disallowance of revenue expenditure, which was treated as capital expenditure. The Assessee had acquired a business from a third party, related to debt collection services, as well as a part of the business of analytics from Genpact India for a total consideration of ₹62,12,70,648/-. Out of the aforesaid amount, a sum of ₹22,16,00,276/- was claimed as allowable expenditure. The Assessee claimed that the same was revenue expenditure as it was for certain intangible assets, which did not have any enduring value. However, the AO did not accept the said contention. Thus, the AO allowed twenty-five percent of the said expenditure as depreciation allowance and made an addition of the balance seventy-five percent of the said amount being ₹16,62,00,207/-.

6. The CIT(A) found that the issue involved was debatable and, therefore, no penalty proceedings under Section 271(1)(c) could be imposed. The relevant extract from the CIT(A)'s order dated 01.11.2017 is set out

below:

> "6.13 From the various judicial precedents, it is seen that the facts and circumstances in each case has to be seen in the context and then penalty provision should be applied to see whether there was the concealment of particulars of income or the appellant has furnished inaccurate particulars so as to call for the penal action under Section 271(1)(c).
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> 6.14 In the appellant's case, the AO has held that the appellant has furnished inaccurate particulars of income and for concealing its income. However, I find that as regards the penalty on the issue of nature of expenditure, it is noted that such expenditure was towards acquisition of customer contracts and assembled workforce. It is a fact that such data of customer contracts and assembled work force is an intangible asset and the acquirer benefits from the same in the long term.
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> 6.15 Therefore, claiming deduction as revenue in nature is principally wrong because the benefit is enduring in nature. However, the Supreme Court in the case of Empire Jute Co Ltd vs. CIT (1980) 124 ITR 1 ruled that there may be cases where the expenditure can be such that there could be an enduring benefit but the expenditure can still be classified as revenue expenditure. The test of enduring benefit in therefore is not certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. In case of Empire Jute, Apex Court held that the expenditure incurred for this purpose was primarily and essentially related to the operation or working of the looms which constituted the profit earning apparatus of the assesses. It was expenditure for operating or working the looms for longer working hours with a view to producing a larger quantity of goods and earning more income and was therefore in the nature of revenue expenditure.
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> 6.16 The Court held that if the incurring of the expenditure merely facilitates the assessee's trading operations or enables the management and conduct of the assessee's business to be carried on more efficiently or more profitably whilst leaving the fixed capital untouched, the expenditure would be on revenue account even though the advantage may endure for an indefinite future. In

this case, by incurring the expenditure under reference, the assessee has claimed to have expansion of business already being carried on by the company, based on information about customer contacts etc. Hence, the appellant claimed that the expenditure must be regarded on revenue field.

6.17 ***Such decisions highlight that two views are possible on this issue regarding claiming the expenditure as capital or revenue. Allowability of payments towards acquisition of customer contracts and assembled work force as an eligible revenue expenditure is a subject matter of debate and there are two possible views in this regard. If two views are possible on a particular matter and if an assessee has adopted a view most favorable to it, penalty proceedings are not warranted as held by Courts from time to time.*** The issue in the quantum appeal is debatable one as is evident from the above narration of facts. Moreover, the assessee has stated his position clearly in the Tax Audit Report in Form 3CD filed for the subject year. In this regard, it may be relevant to refer to the decision of Hon'ble Supreme Court in Reliance Petro products wherein it is held as under:

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6.18 It is clear from the above extracts that the legislature does not intend to impose penalty on every assessee whose claim is rejected by the assessing officer. What is sought to be covered under Section 271(l)(c) is concealment of "particulars of income" or furnishing of" inaccurate particulars of income" and not making of an untenable claim. ***The claim made by the assessee has not been demonstrated to be false by the assessing officer***. Even in MAK Data (supra), the Supreme Court held on facts that the assessee in the said case had no intention to declare its true income and no explanation was offered by it for the concealment of income. In the facts of the present case, there is no categorical finding to hold that Explanation 1 to Section 271(l)(c) of the Act was attracted.

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6.20 Keeping in view the above, in my considered view, the appellant's explanation in the matter is held to be bonafide and acceptable. Accordingly the order of penalty is cancelled. It is

worth mentioning that penalty and assessment order are two separate proceedings. Hence, the ground of appeal is allowed"

[emphasis added]

7. We have also perused the decision of the CIT(A) and we find no infirmity with the decision of the CIT(A) holding that the question involved was a debatable one and, therefore, a penalty under Section 271(1)(c) could not be imposed.

8. However, we note that the learned ITAT did not express any opinion as to the CIT(A)'s view; it rejected the Revenue's appeal solely on the ground that the notice issued by the AO under Section 274 of the Act read with Section 271 of the Act did not specifically state as to under which limb of Section 271(1)(c) of the Act, penalty proceedings were intended to be proceeded. Section 271(1)(c) of the Act has two limbs: the first is where the allegation is that the assessee has concealed income; and the second is, that the assessee has furnished incorrect particulars of income.

9. This court has, in a number of decisions, held that the notice, which does not specifically indicate the particular limb of Section 271(1)(c) that is sought to be invoked, would be invalid as being vague.

10. Mr. Rai, the learned counsel for the Revenue, also does not dispute that the issue involved is covered by several decisions of this court including ***Principal Commissioner of Income Tax v. Gragerious Projects Pvt. Ltd: Neutral Citation; 2024:DHC:9019-DB***, ***Pr. Commissioner of Income Tax, Delhi 1 v. M/S Blackroak Securities Pvt. Ltd.: Neutral Citation; 2023:DHC: 8841-DB*** and ***Pr. Commissioner of Income Tax, Delhi 7 v. Unitech Reliable Projects Pvt. Ltd.: Neutral Citation; 2023:DHC: 4258-***

DB.

11. In view of the above, no substantial question of law arises for consideration of this court in the present appeal.

12. The appeal is dismissed. The pending applications also stand disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 07, 2025/sms

Click here to check corrigendum, if any