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

+ ITA 103/2023

**COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION)-2**

.....Appellant

Through: Mr. Sanjay Kumar, SSC with
Ms. Monica Benjamin and Ms.
Easha Kadian, JSCs.

versus

**GENPACT CONSULTING (SINGAPORE) PTE
LTD**

.....Respondent

Through: Ms. Disha Jham and Mr.
Devansh Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

% **31.01.2025**

CM APPL. 5943/2025 (Ex.)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

CM APPL. 5942/2025 (Modification of O. D. 11-12-2024)

1. The instant application is filed for the modification of certain typographical errors appearing in the decision of **Commissioner of Income Tax (International Taxation)-2 vs. Genpact Consulting Singapore Pte. Ltd¹**.

2. The modifications to be made as proposed by the applicant has been captured in a tabular format in paragraph 3 of the instant application and is reproduced hereinbelow:-

¹ 2024 SCC OnLine Del 8912



Sr. No.	Description of the inadvertent errors in the Judgment dated 11.12.2024	Para Reference of the inadvertent errors in the Judgment dated 11.12.2024	Proposed corrections
1.	"3. The Tribunal also refers to the present respondent-assessee namely, Headstrong Consulting Pte. Ltd. "	Para 3 @ Page 3	"Headstrong Consulting Pte. Ltd." to be replaced with "Headstrong Consulting (Singapore) Pte. Ltd."
2.	"3.It has proceeded to observe that the transfer byas contemplated under Section 247 of the Income Tax Act, 1961".	Para 3 @ Page 3	"Section 247" to be replaced with "Section 2(47)" which is the relevant provision
3.	"3.However, it was its case that in view of the exemption embodied in Section 47(o) of the Act....."	Para 3 @ Page 3	"Section 47(o)" may be replaced with "Section 47(iv)" which is the relevant provision
4.	"7. As is manifest from the above, the Commissioner appears to have taken the view that the transfer of shares was clearly a sham and a colourable device and that it was Genpact India's motive to avoid the payment of a Dividend Distribution Tax under Section 115-O of the Act....."	Para 7 @ Page 8	"Genpact India's" to be replaced with "Genpact India Pvt. Ltd.'s" as Genpact India got merged with Genpact India Pvt. Ltd.
5.	"9. Quite apart from the view which the Tribunal has come to express, we find that the order of the Commissioner is clearly rendered unsustainable on a more fundamental plane. As is evident from the extracts of the order passed in revision, the principal allegation appears to	Para 9 @ Pages 11 and 12	"Genpact India's" to be replaced with "Genpact India Pvt. Ltd." as Genpact India got merged with Genpact India Pvt. Ltd.



	have been that the device adopted by Genpact India was intended to avoid the payment of DDT as contemplated under Section 115-O. Undisputedly, that dividend would have to be one which would have been declared by Genpact India. We are, however, and in the present case, concerned with an assessment proposed to be made in the hands of Headstrong HCS, now known as Genpact Consulting Pte. We thus find ourselves unable to appreciate how a perceived liability in the hands of Genpact India could be viewed or considered as being relevant for the purposes of formation of opinion that the assessment of Genpact Consulting was erroneous and prejudicial to the Revenue.”		“Headstrong HCS” to read as “HCS” as the same has been defined earlier “Genpact Consulting Pte” to be replaced with “Genpact Consulting (Singapore) Pte. Ltd.” which is the correct name of the entity
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3. Bearing in mind the disclosures so made in the application, we are of the considered opinion that the modifications as proposed are to be accepted. Accordingly, paragraph nos. 3, 7 and 9 of the decision in *Genpact Consulting* stand modified and shall be now read as follows:-

“3. The Tribunal also refers to the present respondent-assessee at different places by the name with which it was earlier known, namely, Headstrong Consulting (Singapore) Pte. Ltd. It has proceeded to observe that the transfer by **Headstrong Consulting (Singapore) Pte. Limited** of the shares held in Genpact India was asserted by the assessee to amount to the transfer of a capital asset as contemplated under Section 2(47) of the Income Tax Act, 1961. However, it was its case that in view of the exemption embodied in Section 47(iv) of the Act, the aforesaid was not liable to be considered as a transfer for the purposes of computation of capital gains, since Empower India was a wholly owned Indian subsidiary of HCS. It is this position as struck by the assessee which came to be accepted by the Assessing Officer.



7. As is manifest from the above, the Commissioner appears to have taken the view that the transfer of shares was clearly a sham and a colourable device and that it was Genpact India Pvt. Ltd.'s motive to avoid the payment of a **Dividend Distribution Tax** under Section 115-O of the Act. On the basis of the aforementioned significant conclusions, the Commissioner came to form the opinion that the view rendered by the AO would merit correction under Section 263.

9. Quite apart from the view which the Tribunal has come to express, we find that the order of the Commissioner is clearly rendered unsustainable on a more fundamental plane. As is evident from the extracts of the order passed in revision, the principal allegation appears to have been that the device adopted by Genpact India Pvt. Ltd. was intended to avoid the payment of DDT as contemplated under Section 115-O. Undisputedly, that dividend would have to be one which would have been declared by Genpact India Pvt. Ltd. We are, however, and in the present case, concerned with an assessment proposed to be made in the hands of HCS, now known as Genpact Consulting (Singapore) Pte. Ltd. We thus find ourselves unable to appreciate how a perceived liability in the hands of Genpact India Pvt. Ltd. could be viewed or considered as being relevant for the purposes of formation of opinion that the assessment of Genpact Consulting was erroneous and prejudicial to the Revenue.”

4. The application shall stand disposed of in the aforesaid terms. Rest of the observations/directions contained in the judgment of *Genpact Consulting* shall remain unaltered.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 31, 2025/DR