$~74 to 85

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

\+ ITA 131/2021

CONVERGYS CUSTOMER MANAGMENT .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

versus

COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Sunil Aggarwal, Sr.SC with Mr. Shivansh B. Pandya and Mr. Viplav Acharya, Ms. Priya Sarkar, JSCs and Mr. Utkarsh Tiwari, Adv.

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\+ ITA 246/2023

THE COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION-1 NEW DELHI .....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Mr. Nikhil Jain, Ms. Srishti, Advs.

versus

CONVERGYS CUSTOMER MANAGEMENT GROUP INC. (NOW KNOWN AS CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC.) .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

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\+ ITA 290/2023

CONVERGYS CUSTOMER MANAGEMENT GROUP INC. (NOW KNOWN AS CONCENTRIX CVG CUSTOMER

MANAGEMENT GROUP INC.) .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 1(2)(1) INTERNATIONAL TAXATION
NEW DELHI .....Respondent

Through: Mr. Sunil Aggarwal, Sr.SC with Mr. Shivansh B. Pandya and Mr. Viplav Acharya, Ms. Priya Sarkar, JSCs and Mr. Utkarsh Tiwari, Adv.

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\+ ITA 390/2023

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

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Mr. Nikhil Jain, Ms. Srishti, Advs.

versus

CONVERGYS CUSTOMER MANAGEMENT GROUP INC (NOW KNOWN AS CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC.) .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

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\+ ITA 436/2023

CONVERGYS CUSTOMER MANAGEMENT GROUP INC. (NOW KNOWN AS CONCENTRIX CVG CUSTOMER

MANAGEMENT GROUP INC) .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(2)(1) INTERNATIONAL TAXATION,
NEW DELHI .....Respondent

Through: Mr. Sunil Aggarwal, Sr.SC with Mr. Shivansh B. Pandya and Mr. Viplav Acharya, Ms. Priya Sarkar, JSCs and Mr. Utkarsh Tiwari, Adv.

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\+ ITA 506/2023

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

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Mr. Nikhil Jain, Ms. Srishti, Advs.

versus

CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC. .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

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\+ ITA 57/2024

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

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Mr. Nikhil Jain, Ms. Srishti, Advs.

versus

CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC. .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

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\+ ITA 58/2024

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

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Mr. Nikhil Jain, Ms. Srishti, Advs.

versus

CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC. .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

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\+ ITA 115/2024

CONVERGYS CUSTOMER MANAGEMENT GROUP INC. (NOW KNOWN AS CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC.) .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION, CIRCLE- 1 (2) (1) NEW DELHI .....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann and Mr. Pratyaksh Gupta, JSCs.

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\+ ITA 116/2024

CONVERGYS CUSTOMER MANAGEMENT GROUP INC. (NOW KNOWN ASCONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC.) .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION, CIRCLE- 1 (2) (1) NEW DELHI .....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann and Mr. Pratyaksh Gupta, JSCs.

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\+ ITA 438/2024 & CM APPL. 46641/2024 (EX. LIST OF DATES & SYNOPSIS)

CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP INC .....Appellant

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

versus

ACIT (INT. TAXATION), CIRCLE 1 (2) 1,
NEW DELHI .....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann and Mr. Pratyaksh Gupta, JSCs.

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+ ITA 539/2024

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

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Mr. Nikhil Jain, Ms. Srishti, Advs.

versus

CONCENTRIX CVG CUSTOMER MANAGEMENT GROUP
INC. .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Dr. Shashwat Bajpai, Mr. Ravi Sharma, Mr. Sarthak Tripathi and Ms. Simran Madhyan, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

<u>O R D E R</u>

% **06.03.2025**

1. The appellant assessee seeks to impugn the order dated 27 November 2020 and which forms the subject matter of lead appeal number 131 of 2021. The present batch of appeals are concerned with the following **Assessment Years**[1], particulars of which appear in the table which we extract hereinbelow: -

[1] AYs

Item No.	Case No.	Title	AY
74	ITA-131/2021	Convergya Customer Management v/s CIT	2013-14
75	ITA-246/2023	CIT V/s Convergys Customer Management Group Inc	2013-14
76	ITA-290/2023	Convergys Customer Management Group Inc V/s DCIT	2014-15
77	ITA-390/2023	CIT V/s Convergys Customer Management Group Inc	2014-15
78	ITA-436/2023	Convergys Customer Management Group Inc. V/s DCIT	2017-18
79	ITA-506/2023	CIT V/s ConcentriX CVG Customer Management Group Inc	2017-18
80	ITA-57/2024	CIT V/s ConcentriX CVG Customer Management Group Inc.	2019-20
81	ITA-58/2024	CIT V/s ConcentriX CVG Customer Management Group Inc.	2018-19
82	ITA-115/2024	Convergys Customer Management Group Inc V/s ACIT	2018-19
83	ITA-116/2024	Convergys Customer Management Group Inc V/s ACIT	2019-20
84	ITA-438/2023	Concentrix Cvg Customer Management Group Inc V/s ACIT	
85	ITA-539/2023	CIT V/s ConcentriX CVG Customer Management Group Inc.	

2. The principal question which appears to have faced the **Income Tax Appellate Tribunal**[2] was whether a **Permanent Establishment**[3] of the appellant assessee had come into being in the AYs in question. Before us, it is not disputed that the Tribunal has essentially followed the view that it had expressed for AYs 2006-07 and 2008-09.

[2] Tribunal
[3] PE

3. We are however apprised of a **Mutual Agreement Procedure**[4] determination which was subsequently commenced and which culminated in the passing of a resolution which stands embodied the communication dated 01 February 2018. The aforesaid communication as well as the MAP determination is extracted hereinbelow: -

> **"Office of the**
> **Deputy Commissioner of Income Tax**
> **Circle- 1(1)(1), International Taxation**
> **Wing E-2, 4th Floor, Room No. 409, Civic Centre, New Delhi – 110002**
>
> ---
>
> F. No . DCIT/lnt.Tax/Cir 1(1)(1)/2017-18/731 Dated : 01.02.2018
>
> To
> The Principal Officer
> M/s Convergys Customer Management Group Inc
> C/o PricewaterhouseCoopers, Sucheta Bhawan
> Gate No 2, 11-A, Vishnu Digamber Marg
> New Delhi - 110 002.
>
> **Sub** : **Resolution under section 90 of the Income Tax Act, 1961 r.w Article 27 of the India-USA Double Taxation Avoidance Convention - reg.**
>
> Please refer to the subject cited above.
>
> 2. In this regard, please find enclosed herewith copy of letter F.No.480/7/2013-FTD.I dated 11.12.2017 (received in this office on 25.01.2018) on the subject cited above received from the Joint Secretary (Ft& TR-1) and Competent Authority of India conveying resolution of Mutual Agreement Procedure (MAP) in the case of M/s Convergys Customer Management Group Inc for the Assessment Years 2002-03 to 2004-05 and 2006-07 to 2012-13.
>
> 3. As per the provisions of sub rule (4) of Rule 44(H) of the Income Tax Rules, 1962, effect to the resolution so arrived at under MAP is to be given within ninety days of receipt of the same, if the assessee :-
>
> (i) gives its acceptance to the resolution arrived at under MAP ; and
> (ii) withdraws its appeal, if any, pending on the issue which was the subject matter for adjudication under MAP

[4] MAP

4. In view of the above, you are required to submit your acceptance to the resolution under MAP done by the Competent Authority as is mentioned in the enclosed letter and submit confirmation of withdrawal of pending appeals, if any, along with documentary proof to the undersigned at the earliest.

(Indu Bala)
Deputy Commissioner of Income-Tax
Circle -1(1)(1), International Taxation,
New Delhi"

F.No. 480/7 /2013-FTD.I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Office of the Competent Authority of India

………

<table>
<tr><td>Name of the US Competent Authority</td><td colspan="2">Mr. Douglas W. O'Donnell
United States Competent Authority
Department of the Treasury,
Internal Revenue Service,
1111 Constitution Avenue, NW
Washington DC 20224, USA</td></tr>
<tr><td>Name of the Taxpayer</td><td colspan="2">Convergys US</td></tr>
<tr><td></td><td>Convergys India Services Private Limited (CIS)</td><td>Convergys Customer Management Group Inc. (CCMG)</td></tr>
<tr><td>PAN</td><td>AABCC5056G</td><td>AACCC8989M</td></tr>
<tr><td>Assessing Officer</td><td>Addl/JCIT Special Range-2, Delhi</td><td>DCIT (Int. Tax), Circle-1(1)(1), Delhi</td></tr>
<tr><td>Chief Commissioner</td><td colspan="2">Pr. CCIT(International Taxation), Delhi</td></tr>
<tr><td>Assessment Years</td><td colspan="2">2002-03 to 2004-05 and 2006-07 to 2012-13</td></tr>
<tr><td>Date of Issue</td><td colspan="2">11.12.2017</td></tr>
</table>

Resolution under Section 90 of the Income-tax Act, 1961 read with Article 27 of the India-USA Double Taxation Avoidance Convention

The Competent Authority of USA under the India-USA Double Taxation Avoidance Convention invoked Mutual Agreement Procedure in the case of **Convergys US** for Assessment Years (A Ys) 2002-03, 2003-04, 2004-05, 2006-07, 2007-08, 2008 -09, 2009-10, 2010-11, 2011-12 and 2012 - 13.

2. The Competent Authorities of both the countries after

having examined the facts of the case and issues involved, have arrived at the following resolution with respect to the assessment of the income of **Convergys US** in terms of Section 90 of the Income-tax Act, 1961 read with Article 27 of the India-USA Double Taxation Avoidance Convention and Rule 44H of the income-tax rules, 1962.

Permanent Establishment (Article 5)

The Competent Authorities of both the countries have made no determination on whether Convergys US has established an Indian permanent establishment (PE) as per Article 5 of the India-US Double Taxation Avoidance Convention. Convergys US has not agreed or admitted that it, or its US subsidiaries, has a PE in India either. Solely for the purposes of settling multiple years of disputes, the competent authorities of both the countries agree with the following attribution of profits as shown in table below:-

Profit Attribution

Assessment Year	Income of Convergys US taxable in India (amount in ₹)
2002-03	₹846,595
2003-04	₹17,809,392
2004-05	₹24,654,150
2006-07	₹8,380,836
2007-08	₹17,901,805
2008-09	(₹86,625,846)
2009-10	(₹205,978,325)
2010-11	(₹73,594,067
2011-12	(₹106,479,780)
2012-13	(₹140,556,407)

In addition, for AY 2006-07, ₹6,817,878 will be included in the taxable income of Convergys US in India and taxed at the rate of 15%.

3. To the extent not covered herein, all other matters shall be governed as per provisions of the Income-tax Act, 1961.

4. The Assessing Officer will give effect to this resolution in terms of Sub Rules (4) and (5) of Rule 44H of the Income-tax Rules, 1962.

(Pragya S. Saksena)
Joint Secretary (FT&TR-1) and
Competent Authority of India"

4. As is manifest from the above, the communication records that

the competent authorities of both countries had desisted from making any determination on whether Convergence US had established an Indian PE as per Article 5 of the India-US **Double Taxation Avoidance Agreements**[5]**.** However, and solely with the objective of settling that dispute which straddled multiple years, the parties appear to have agreed to an exercise of attribution. It is thus apparent that the issue of PE remained untouched.

5. However, and although the MAP determination had concluded in 2017 itself, this fact clearly does not appear to have been brought to the attention of the Tribunal and which has evidently proceeded on the basis that its determination for AYs 2006-07 and 2008-09 had survived. In view of the aforesaid and in our considered opinion, this alone would merit the orders impugned herein being set aside so as to enable the Tribunal to examine the matters afresh.

6. We accordingly allow these appeals and set aside the following orders of the Tribunal as tabulated herein below:

ITA Number	**Date of Impugned Order**
ITA 131 of 2021	27th November 2020
ITA 246 of 2023	27th November 2020
ITA 290 of 2023	11th January 2023
ITA 390 of 2023	11th January 2023
ITA 436 of 2023	06th March 2023
ITA 506 of 2023	06th March 2023
ITA 57 of 2024	23rd August 2023
ITA 58 of 2024	23rd August 2023
ITA 115 of 2024	23rd August 2023
ITA 115 of 2024	23rd August 2023

[5] DTAA

ITA 438 of 2024	14^{th} March 2024
ITA 539 of 2024	14^{th} March 2024

7. All appeals shall stand revived on the board of the concerned Tribunal to be considered and examined afresh. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 06, 2025/*neha*