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

\+ ITA 378/2025

\+ ITA 379/2025 & CM APPL. 55684/2025.

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

Through: Mr. Puneet Rai, SSC, Mr. Ashvini Kumar, Mr. Rishabh Nangia, JSCs and Mr. Nikhil Jain, Adv.

versus

GENPACT SERVICES LLC .....Respondent

Through: Mr. Vishal Kalra, Ms. Sugandha Gautam and Mr. Anil Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **20.01.2026**

1. Both the appeals involve common facts and law and, hence, they are being decided conjointly. However, the facts of ITA No. 379/2025 (AY 2017-18) are taken into consideration.

2. The facts are that by draft order dated 30.09.2021, the Assessing Officer (AO) raised a demand of Rs.6,43,00,861/- holding that the difference of shared cost by using head count ratio as adopted by the assessee in the Books account is not correct and the same ought to have been based on weighted average of the salary paid to each of the employees.

3. This issue or addition proposed by the AO in his draft order was affirmed by the DRP vide its order dated 05.05.2022. The order dated 05.05.2022, the assessee preferred an appeal before the Income Tax Appellate Tribunal (ITAT). The final order passed by the AO was also challenged by the assessee before the ITAT in the same appeal that was filed under Section 253 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*). Said appeal came to be allowed by the Tribunal vide its order dated 19.04.2024.

4. While allowing the appeal, the Tribunal observed that the cost allocation on the basis of head count in the transfer pricing proceedings under Section 92CA(3) of the Act is the correct method and the view taken by the AO and DRP was erroneous.

5. The Tribunal relied upon its earlier orders and so also the order of this Court in the case of **CIT v. EHPT India Pvt Ltd.** reported in (2012) 350 ITR 241 (Del), and has allowed the appeal filed by the respondent/assessee.

6. Having heard learned counsel for the parties and upon consideration of the relevant material including the order passed by the AO, DRP and the Tribunal, we are of the view that the view taken by the ITAT is just and proper in the facts of the case and duly supported by the judgment of this Court in case of CIT v. EHPT (*supra*).

7. That apart, we are of the view that there are various components of cost, which cannot be allocated on the basis of the salary as there can be huge variation in the salary of employees. The nature of expenses is the determinative factor for allocation of cost on the basis of head count or on the basis of weighted average of salary.

8. The issue being a finding of fact, does not give rise to any question of

law much less substantial question of law. The appeal therefore fails.

ITA 378/2025

9. Following the reasoning given in our order of even date passed *qua* appeal No.379/2025, the appeal No. 378/2025, which relates to AY 2018-2019, is also rejected.

DINESH MEHTA, J

VINOD KUMAR, J

JANUARY 20, 2026/*cd*