

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**  
**BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)**

आयकर अपील सं./I.T.A. No.2146/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2009-10)

Dy. Commissioner of Income Tax 9(3)(1), 418, Aayakar Bhavan, M K Road, Mumbai-400020	<b>बनाम/</b> Vs.	M/s DHL Lemuir Logistics Pvt Ltd, 8 <sup>th</sup> floor, The Leela Galleria, Andheri Kurla,Road, Andheri (E), Mumbai-400059.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACM6824H

अपीलार्थी ओर से / Appellant by:	M/s Anupama Shukla
प्रत्यर्थी की ओर से/Respondent by	None

सुनवाई की तारीख / Date of Hearing : 19.7.2016

घोषणा की तारीख /Date of Pronouncement : 25.7.2016

**आदेश / O R D E R**

**Per RAJESH KUMAR, Accountant Member:**

This is an appeal filed by the revenue and is directed against the order of the Ld. CIT(A)-16, Mumbai dt.31.12.2014 pertaining to A.Y. 2009-10. Despite of service of notice, none appeared on behalf of the assessee, therefore, we proceed to decide the appeal ex-parte without presence of assessee on the basis of material available before us and after hearing the Id.DR.

2. Only issue raised in all the grounds of appeal is against the direction by the Id. CIT(A) relying on the decision of the Apex Court in the case of CIT V/s Smifs Securities Ltd reported in 348 ITR 302 (SC) by ignoring the fact that the facts of the said case are distinguishable from the facts of the assessee's case and also in-complete disregarding the CBDT circular No.549 dated 31.10.1989.

3. Facts of the case are that he assessee filed its return of income for the assessment year 2009-10 on 30.9.2009 declaring total income of Rs.63,71,94,610/- which was revised on 30.3.2011 at an income of Rs.33,90,50,860/- by claiming depreciation of Rs.29.81 crores at the rate of 20% on written down value (WDV) of block of intangible assets of Rs.119.25 crores. In the revised return, the assessee declared the profit u/s 115JB of the Act at an amount of Rs.42,00,26,456/-. The case of the assessee was selected for scrutiny and statutory notices u/s 143(2) dated 19.8.2010 and 142(1) dated 21.12.2010 were issued and served upon the assessee.

4. During the course of assessment proceedings, the AO asked the assessee to explain and justify the allowability of depreciation of Rs.29,81,43,750/- in respect of intangible assets (goodwill) which was claimed by the assessee in his revised return of income filed on 30.3.2011. The assessee replied that it had incurred cost towards goodwill at Rs.159.01 crores during the financial year 2007-08. The assessee also claimed depreciation on the said intangible assets to the tune of

Rs.39,75,26,000/- for the year ending on 31.3.2008 and accordingly, WDV of the said intangible block of assets as on 1.4.2008 arrived at Rs.119,25,75,000/- and thus, rightly claimed depreciation on the said WDV at the rate of 25% amounting to Rs.29,81,43,750/- as per the provisions of section 32 (1)(iii) of the Act by filing revised return on 30.3.2011. In defence of his submissions, the assessee relied on the series of decisions as incorporated in para 4.2 of the assessment order. The AO ultimately rejected the submissions of the assessee and disallowed the depreciation of Rs.29,81,43,750/- on goodwill and added the same to the total income of the assessee and framed the assessment at Rs.63,71,94,610/- under the normal provisions of Act and Rs.42,00,26,450/- under section 115JB of the Act, vide order dated 13.3.2013 passed under section 143(3) r.w.s. 92CA(4) of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A). The Id. CIT(A) after considering the submissions of Id.AR, which has been incorporated in para 2.2 of the appeal order allowed the appeal of the assessee by observing and holding as under :

### "3. Decision

*After careful perusal of the assessment order and the written submissions filed by the A/R of the appellant it has been observed that the case of the appellant company is covered by the order of my predecessor in Appeal No. CIT(A)-16/ Addl.CIT-8(1)/IT-190/2011-12 vide order dated 23.08.2013. Hence the AO is directed to allow the depreciation on intangible assets as" appearing "in the audited books of account of the appellant filed with the return of income as directed by my predecessor. Hence the ground"*

5. We have carefully considered the material available before us and submissions of the Id. DR. The Id. DR submitted before us that the FAA has wrongly allowed the appeal of the assessee by directing the AO to allow depreciation on intangible assets on the goodwill by following the decision in the case of Smifs Securities Ltd (supra), whereas the facts of the present case and relied upon by the Id.CIT(A) are distinguishable. The Id. DR submitted that in the case of Smifs Securities Ltd (supra) the claim of goodwill was made in the return of income, whereas in the present case, the assessee claimed depreciation by mere filing a letter during the course of assessment proceedings. Further the direction of the Id.CIT(A) to AO was against the spirit of CBDT circular mentioned above.

6. We find from the record that the assessee has rightly claimed depreciation on goodwill being intangible assets. We also find from the record that similar issue was raised by the assessee in the assessment year 2008-09, which was decided in favour of the assessee vide order dated 23.8.2013 in Appeal No. CIT(A)-16/ Addl.CIT-8(1)/IT-190/2011-12 and thus, the issue is squarely covered in favour of the assessee by its own case in the earlier years. After considering the relevant records, orders of authorities below, we find that the similar issue has been decided by the FAA for the assessment year 2008-09 in favour of the assessee holding that the assessee was entitled to depreciation on goodwill by following the decision of Apex Court in the case of Smifs Securities Ltd (supra). We, therefore, are of the considered opinion that the case of the

assessee stands covered by the earlier decision by the order of FAA. Therefore, we do not find any infirmity in the order of Id. CIT(A). Accordingly, we dismiss the appeal of the revenue.

7. In the result, the appeal of the revenue stands dismissed.

The above order was pronounced in the open court on 25th July, 2016.

घोषणा खुले न्यायालय में दिनांक: 25th July, 2016 को की गई ।

Sd

**(JOGINDER SINGH)**  
**Judicial Member**

sd

**( RAJESH KUMAR)**  
**Accountant Member**

मुंबई Mumbai: 25th July, 2016.

व.नि.स./ SRL , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai