

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. Nos.105 & 106/Bang/2017
(Assessment Years : 2006-07 & 2007-08)

Income Tax Officer,
Ward 3(1)(1), Bangalore.

.... Appellant.

Vs.

M/s. Fibres & Fabrics International Pvt. Ltd.,
No.21, E1, II Phase, Indl. Area,
Peenya, Bangalore-560 058.

..... Respondent.

Appellant By : Dr. P.V. Pradeep Kumar, ACIT (D.R)
Respondent By : Shri Nageshwar Rao, Advocate.

Date of Hearing : 21.12.2017.

Date of Pronouncement : 22.12.2017.

O R D E R

Per Shri Jason P Boaz, A.M. :

These two appeals by Revenue are directed against the separate orders of the Commissioner of Income Tax (Appeals)-3, Bangalore dt.31.10.2016 for the Assessment Years 2006-07 & 2007-08.

2. Briefly stated, the facts of the case relevant for disposal of these appeals are as under :-

2.1 The assessee is a company engaged in the manufacture and export of readymade garments. The present orders of assessment for

Assessment Years 2006-07 & 2007-08 were completed under Section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short 'the Act') vide orders dt.30.08.2013, wherein the only disallowance made was in respect of the assessee's claim for depreciation on goodwill for both assessment years. Aggrieved by the aforesaid orders of assessment for Assessment Years 2006-07 & 2007-08, the assessee filed appeals before the CIT (Appeals)-3, Bangalore, who vide the impugned orders dt.30.10.2016 allowed the assessee's appeal on the sole issue raised i.e. claim of depreciation on goodwill. In doing so, the learned CIT (Appeals) followed the decision of the co-ordinate bench of this Tribunal in the assessee's own case for Assessment Years 2008-09 & 2009-10 in ITA Nos.918 & 919/Bang/2013 which had taken into account and followed, inter alia, the decision of the Hon'ble Apex Court in the case of Smiffs Security Ltd. reported in 348 ITR 362 (SC).

3.1 Revenue, being aggrieved by the orders of the CIT (Appeals) for Assessment Years 2006-07 & 2007-08, has filed these two appeals before the Tribunal wherein it has raised the following identical grounds :

- 1) The order of the learned CIT (A) is opposed to law and facts of the case.
- 2) The CIT(A) appeals has erred in following the decisions of the ITAT in the assessee's own case for AY 2008-09 & 2009-10.
- 3) The CIT(A) appeals has failed to take into cognizance the fact that the assessee has used the change in status as a colourable device to avail the benefits of depreciation.
- 4) The CIT(A) has erred in recognizing the organized workforce and export contracts as commercial rights.

- 5) The CIT(A) has erred in not discerning the facts of the case relied upon by the ITAT in its order are dissimilar to the instant one.
- 6) For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
- 7) The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.

3.2 The learned Departmental Representative for Revenue was heard in support of the grounds raised (supra) and filed submissions.

3.3 Per contra, the learned Authorised Representative of the assessee submitted that the issue of the assessee's claim of depreciation on goodwill has been considered and held in favour of the assessee by a co-ordinate bench of this Tribunal in the assessee's own case for Assessment Years 2008-09 & 2009-10 in ITA Nos.918 & 919/Bang/2013. In view of the above, it was prayed that the impugned orders of the learned CIT (Appeals) on this issue be upheld and Revenue's appeals be dismissed.

3.3.1 We have heard the rival contentions and perused and carefully considered the material on record. The only issue for consideration and adjudication before us in these two appeals for Assessment Years 2006-07 & 2007-08 is with regard to the allowability or otherwise of the assessee's claims for depreciation on goodwill. We find that this very issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of this Tribunal in assessee's own case for Assessment Years 2008-09 & 2009-10 in ITA Nos.918 & 919/Bang/2013; by following the decision of the Hon'ble Apex Court in the case of CIT Vs. Smiffs Security Ltd. (supra) and that of the Hon'ble Karnataka High Court in the

case of CIT Vs. Manipal Universal Learning (P) Ltd. in ITA No.61 of 2007 dt.1.4.2013. No contrary decision of the Hon'ble Apex Court on this issue was placed before us by Revenue. In its order in ITA Nos.918 & 919/Bang/2013 in assessee's own case for Assessment Years 2008-09 & 2009-10, the co-ordinate bench of this Tribunal held as under at paras 20 & 26 thereof :

"...20. In the present case, it is an undisputed fact that the sole proprietary concern was acquired by the appellant as a going concern with all assets & liabilities. In the balance sheet of the sole proprietary concern, goodwill of Rs.35 crores was shown on the assets side of balance sheet. The agreement of takeover had clearly mentioned that all assets including the goodwill was taken over by the company. Even accepting the view of the CIT(Appeals) that there were no commercial rights acquired, now the Hon'ble Supreme Court in the case of CIT v. Smifs Securities Ltd., 348 ITR 302 (SC) held that purchase consideration paid over and above the net value of the assets constitutes goodwill. Even the Hon'ble Delhi High Court recently in the case of Triune Energy Services (P.) Ltd. v. DCIT, 65 taxman.com 288 (Delhi) held that the excess of the amount paid over net value of assets constitutes 'goodwill'. In coming to this conclusion, the Hon'ble Delhi High Court relied on

Accounting Standards AS-10 issued by the ICAI. That apart, when the company was taken over as a going concern with all the assets & liabilities for a slump consideration, it is neither permissible nor possible to apportion the consideration paid against different assets as held by the Hon'ble Supreme Court in the case of CIT v. Mugneeram Bangur & Co., 57 ITR 299 (SC). Thus, in our considered view, the view of the CIT(Appeals) that there was no goodwill as no commercial rights were .. acquired, cannot be accepted.

26. The ratio of the Hon'ble Supreme Court was followed by the Hon'ble Delhi High Court in the case of Triune Energy Services (P.) Ltd., Hon'ble Gujarat High Court in the case of Principal CIT v. Swastik Industries, 68 taxman.com 329 (Gujarat), Hon'ble Bombay High Court in the case of CIT v. Birla Global Asset Finance Co. Ltd., 41 taxmann.com 262 (Bombay) and the Hon'ble Karnataka High Court in the case of CIT v. M/s. Manipal Universal Learning Pvt. Ltd., ITA No.61 of 2007 dated 1.4.2013. Respectfully following the decision of the Hon'ble Supreme Court and the decisions of several High Courts, we hold that assessee is entitled for depreciation on goodwill. We hold accordingly and direct the AO to allow the same. Hence, the ground of appeal is allowed."

3.3.2 Respectfully following the decision of the Hon'ble Apex Court in the case of CIT Vs. Smiffs Security Ltd. (supra), the Hon'ble High Courts referred to (supra) and the decision of the co-ordinate bench of this Tribunal in assessee's own case for Assessment Years 2008-09 & 2009-10 (supra), we hold that the assessee in the case on hand is entitled to be allowed depreciation on goodwill. In this view of the matter, we uphold the impugned orders of the CIT (Appeals) for the two concerned Assessment Years and direct the Assessing Officer to allow the assessee's claim of depreciation on goodwill. Consequently, the grounds Nos.1 to 7 raised by revenue are dismissed.

4. In the result, Revenue's appeals for Assessment Years 2008-09 & 2009-10 are dismissed.

Order pronounced in the open court on the 22nd day of Dec.,2017.

Sd/-
(SUNIL KUMAR YADAV)
Accountant Member

Sd/-
(JASON P BOAZ)
Judicial Member

Bangalore,
Dt.22.12.2017.

*Reddy gp