

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 1274/PUN/2016

निर्धारण वर्ष / Assessment Year : 2006-07

M/s. Johnson Matthey Chemicals India
Private limited,
Plot No. 6, MIDC Industrial Estate,
Taloja, Dist.- Raigad,
Maharashtra-410 208.
PAN : AABCJ1620M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Panvel Circle, Panvel.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1313/PUN/2016

निर्धारण वर्ष / Assessment Year : 2006-07

The Deputy Commissioner of Income Tax,
Panvel Circle, Panvel.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Johnson Matthey Chemicals India
Private limited,
Plot No. 6, MIDC Industrial Estate,
Taloja, Dist.- Raigad,
Maharashtra-410 208.
PAN : AABCJ1620M

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 630/PUN/2014**निर्धारण वर्ष / Assessment Year : 2008-09**

M/s. Johnson Matthey Chemicals India
Private limited,
Plot No. 6, MIDC Industrial Estate,
Taloja, Dist.- Raigad,
Maharashtra-410 208.
PAN : AABCJ1620M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Additional Commissioner of Income Tax,
Panvel Circle, Panvel.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1275/PUN/2016**निर्धारण वर्ष / Assessment Year : 2009-10**

M/s. Johnson Matthey Chemicals India
Private limited,
Plot No. 6, MIDC Industrial Estate,
Taloja, Dist.- Raigad,
Maharashtra-410 208.
PAN : AABCJ1620M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Additional Commissioner of Income Tax,
Panvel Circle, Panvel.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1314/PUN/2016**निर्धारण वर्ष / Assessment Year : 2009-10**

The Deputy Commissioner of Income Tax,
Panvel Circle, Panvel.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Johnson Matthey Chemicals India
Private limited,
Plot No. 6, MIDC Industrial Estate,
Taloja, Dist.- Raigad,
Maharashtra-410 208.
PAN : AABCJ1620M

.....प्रत्यर्था / Respondent

Assessee by : Shri Percy J. Pardiwala
Revenue by : Smt. Nirupama Kotru.

सुनवाई की तारीख / Date of Hearing : 26.04.2018
घोषणा की तारीख / Date of Pronouncement : 31.05.2018

आदेश / ORDER**PER VIKAS AWASTHY, JM**

These bunches of appeals by the assessee and cross appeals by the Department are directed against the orders of Commissioner of Income Tax (Appeals) for assessment years 2006-07, 2008-09 and 2009-10. Since, the issues involved in these appeals are identical and are arising from same set of facts, these appeals are taken up together for adjudication and are decided vide this common order.

2. In ITA No.1274/PUN/2016, the assessee has assailed the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 25.03.2016 for the assessment year 2006-07. The Revenue has filed cross-appeal against the aforesaid order of Commissioner of Income Tax(Appeals) in ITA No.1313/PUN/2016.

In ITA No.630/PUN/2014, the assessee has assailed the order of Commissioner of Income Tax (Appeals)-II, Thane dated 20.01.2014 for the assessment year 2008-09.

ITA No. 1275/PUN/2016 by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 28.03.2016 for the assessment year 2009-10. The Revenue has filed cross appeal against the order of Commissioner of Income Tax (Appeals) for assessment year 2009-10 in ITA No. 1314/PUN/2016.

ITA No. 1274/PUN/2016 (By Assessee)

Assessment Year: 2006-07

3. The grounds raised by assessee in assessment year 2006-07 are as under:

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has:

Ground No. 1: Reassessment proceedings initiated under section 147 of the Act.

I. erred in reopening the assessment under section 147 of the Act and passing an order under section 143(3) read with section 147 of the Act.

II. erred in holding that reassessment is valid despite of the fact that objections filed by the Appellant against the reassessment order are not disposed off by the Assessing Officer.

III. The Appellant prays that the reopening of assessment under section 147 of the Act is bad in law and be quashed.

Ground 2: without prejudice to Ground 1- Not following Rule of Consistency

IV. erred in disallowing depreciation on Know-how, Patents, Trade-marks amounting to Rs.11,58,25,529/-.

V. failed to appreciate the fact that the rule of consistency which states that the legal position accepted in preceding assessment years in case of an Assessee should be followed if there is no change in the facts in the subsequent assessment year; and

VI. erred in disallowing the depreciation claimed on Know-how, Patents, Trade-marks without appreciating that the Assessing Officer had allowed depreciation on the said assets in the Assessment year 2003-04 which was the first year of claim of depreciation and no such allowance was disputed by the Income-tax authorities in Assessment year 2003-04.

Ground 3:- Disallowing depreciation on Know-how, patents and trademarks on incorrect appreciation of facts of Rs.11,58,25,529/-

VII. without prejudice to above, erred in disallowing depreciation amounting to Rs.11,58,25,529/- claimed by the Appellant on the trademarks, patents and know-how, by holding that Appellant had not purchased any knowhow from ICI India Limited and has not used any knowhow for the purpose of its business.

VIII. without prejudice to above erred in concluding that the allocation of Rs.94.35 crores to trade- marks, patents and knowhow out of the purchase consideration of Rs.153.18 crores has not been done in a fair and reasonable manner.

Ground 4 : Without prejudice above-Disallowance of depreciation once the assets has entered the block of assets

IX. erred in holding that for determining the written down value of an asset under Section 43(6) of the Act, the Assessing Officer has to determine the actual cost of the asset every year even when the asset forms part of the block of assets.

X. without prejudice to the above, erred in holding that the actual cost of assets forming part of the block of asset can be changed in subsequent years based on reanalysis and reappraisal of the same facts in the subsequent assessment years.

Ground 5 : Without prejudice to above- Value of land at Taloja and Panki

XI. without prejudice to the above, erred in holding that the value of land at Panki division is Rs.174.36 crores and the value of land at Taloja is Rs.13 crores.

Ground 6 : Without prejudice to above- Value of trade-marks, patents and know-how

XII. erred in ignoring the fact that the valuation of trade-marks, patents and know-how has been undertaken by an independent valuer in a fair and reasonable manner and that the value of trade- marks, patents and know-how would not be affected by the value of land.

Ground 7: without prejudice to above, Initiation of penalty under section 271(1)(c) of the Act.

XIII. erred in not quashing the initiation of penalty proceedings by the Assessing Officer.

The Appellant craves leave to add, alter, omit or substitute any or all the above grounds of appeal, at any time before or at the time of appeal hearing.”

4. Shri Percy J. Pardiwala appearing on behalf of the assessee submitted that assessee is engaged in manufacturing and sale of various types of Catalysts. In the year 2001, assessee acquired manufacturing unit of ICI India Limited situated at Talaja. In October, 2002, the assessee entered into Business Transfer Agreement (in short 'BTA') with ICI India Limited for purchase of business as a going concern for consideration of Rs.153.80 Crore. ICI India Ltd. carried its business from two locations i.e. Talaja and Panki. Schedule 10 to BTA gives the list of assets which were excluded from the agreement. The said schedule inter alia mentions; Panki site, Panki employees and Panki assets. The assessee claimed depreciation on the assets acquired in financial year 2002-03 i.e. the period relevant to assessment year 2003-04. The assessee subsequently allocated the cost to various assets acquired in the following manner:

“Goodwill	10.73 crores
Trademarks, Patents, Know-how	94.35 crores
Building	61.08 lakhs
Non-compete	3.51 crores
Plant	7.60 crores
Computer	21.58 lakhs
Furniture	14.25 lakhs
Option Price	17.08 crores.”

5. The Assessing Officer during assessment for assessment year 2003-04, allowed depreciation on all the assets except goodwill and non-compete fees. The Commissioner of Income Tax (Appeals) upheld the findings of the Assessing Officer in disallowing depreciation on goodwill & non-compete fee. The assessee carried the matter in appeal before the Tribunal in ITA No.7547/PN/2010 for the assessment year 2003-04. The Tribunal granted

relief to the assessee and held that assessee is eligible for claiming depreciation u/s.32(1)(ii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on non-compete fees, as well as goodwill. In assessment years 2004-05 and 2005-06, the Assessing Officer completed the assessments in similar manner by disallowing depreciation on goodwill and non-compete fees. The Commissioner of Income Tax (Appeals) confirmed the findings of Assessing Officer. The assessee carried the matter in second appeal before the Tribunal in ITA No.1507/PUN/2012 for the assessment year 2004-05 and in ITA No.2036/PUN/2012 for the assessment year 2005-06. The Tribunal vide order dated 12.12.2017 common for both the assessment years directed the Assessing Officer to allow depreciation on know-how, goodwill and non-compete fees.

5.1 The assessee continued to claim depreciation on intangible assets in subsequent assessment years i.e. assessment years 2006-07, 2007-08, 2008-09 and 2009-10. The return of the assessee in assessment year 2006-07 was processed u/s. 143(1) of the Act and the claim for depreciation was allowed in its entirety. In assessment year 2007-08 in assessment u/s.143(3), the Assessing Officer disallowed the claim of depreciation on goodwill and non-compete. In assessment year 2008-09, the claim of depreciation on goodwill, non-compete, know-how, patents, trade-marks and other assets was disallowed in entirety.

5.2 The Commissioner of Income Tax initiated revision proceedings u/s. 263 of the Act for assessment year 2007-08. The Commissioner of Income Tax held that the assessee has not acquired any know-how and denied the claim of depreciation on patents, trademarks and goodwill. Thereafter, assessment for assessment year 2006-07 was reopened in an illegal manner vide notice dated 15.07.2011. The reasons recorded for reopening the assessment does not

mention reasons for formation of belief for reopening. The assessee filed objections assailing validity of reassessment on 19.11.2011. The Assessing Officer completed the re-assessment without disposing off the objections separately. In re-assessment order, the Assessing Officer disallowed depreciation on goodwill, non-compete fees, trademarks, patents & knowhow.

5.3 The Assessing Officer for the assessment year 2009-10 in an assessment order passed u/s.143(3) denied the claim of depreciation to the assessee on entire assets acquired from ICI India Ltd.

5.4 The ld. AR further submitted that it is a well settled law that once an asset forms part of block in the first year of claim of depreciation, then the depreciation cannot be disallowed in subsequent year. To support his submissions, the ld. AR placed reliance on the following decisions:

I. Saharanpur Electric Supply Co. Ltd. reported in 60 Taxman 412 (SC)

II. DIT Vs. HSBC Asset Management (I)(P) Ltd. reported as 47 taxmann.com 286 (Bombay)

II. Godrej Agrovet Ltd. Vs. ACIT, in ITA No.1629/Mum/09 decided on 17.09.2010.

III. Kodak Polychrome Graphic (I) Pvt. Ltd. Vs. Addl. CIT in ITA No. 1557/Mum/2009 decided on 26.06.2013

IV. Western Precicast Pvt. Ltd. Vs. JCIT, in ITA No.814/PN/2011 decided on 09.11.2015.

Apart from above, the ld. AR placed reliance on the decision of assessee's own case in ITA No. 1507/PUN/2012 for the assessment year 2004-05 & ITA No.2036/PUN/2012 for the assessment year 2005-06 decided on 12.12.2017.

5.5 The ld.AR asserted that once the depreciation has been allowed in the initial year, the Authorities below have erred in disturbing the same in

subsequent assessment years. The ld. AR contended that the Authorities below should have followed 'Rule of Consistency' in allowing assessee's claim of depreciation on intangible assets.

5.6 The ld. AR pointed that the Authorities below while determining the value of intangible assets have also disturbed the value of land at Panki and Talaja. In the assessment year 2004-05 and 2005-06, the Revenue Authorities have raised similar objection qua the value of land at the above mentioned places. The matter travelled up to the Tribunal. The Tribunal in ITA No. 1507 & 2036/PUN/2016 (supra.) held that land at Panki and Talaja were not part of Business Transfer Agreement. The slump price paid by assessee is to be allocated to tangible assets viz. plant and machinery, furniture etc. and intangible assets such as goodwill.

6. On the other hand, Smt. Nirupama Kotru representing the Department vehemently supported the findings of Assessing Officer in disallowing claim of depreciation on intangible assets viz. goodwill, non-compete fees, trademarks , patents etc. The ld. DR vehemently prayed for dismissing the appeal of the assessee.

6.1 In respect of appeals filed by the Revenue, the ld. DR submitted that the Commissioner of Income Tax (Appeals) has failed to consider the fact that the assessee has deliberately undervalued the plot at Panki and Talaja. The assessee in order to claim benefit of depreciation has allocated substantial part of consideration to intangible assets including non- compete fees, goodwill etc. without actually paying any consideration for acquiring intangible assets. The ld. DR further submitted that the Commissioner of Income Tax (Appeals) has erred in allowing depreciation on goodwill & non compete fees without appreciating the fact that fair value of leasehold rights acquired by the

assessee is Rs.174.36Crores (for the year 2002). Under such situation, no part of consideration received i.e. Rs.153.80 Crores is left to be assigned towards goodwill and non-compete fees. Hence, no depreciation would be allowed on intangible assets.

7. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below.

8. The grounds No. 2, 3 and 4 are taken up together as they are co-related. The assessee had claimed depreciation on intangible assets i.e. know-how, patents and trademark, goodwill and non-compete fee. The assessee had claimed depreciation for the first time in the assessment year 2003-04. The Assessing Officer allowed depreciation on all assets except goodwill, know-how and non-compete fees. The matter travelled up to the Tribunal. The assessee in ITA No. 7547/PN/2010, assailed the action of Department in not granting depreciation on non-compete fee and goodwill u/s. 32(1)(ii) of the Act. The Tribunal after placing reliance on the decisions of Hon'ble Karnataka High Court in the case of CIT Vs. Ingersoll Rand International Ind. Ltd, 227 Taxman 176 (Kar.) held that the assessee is eligible to claim depreciation on non-compete fee. The assessee's claim of depreciation on goodwill was allowed by the Tribunal by following the judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Smifs Securities Ltd. reported as 24 taxmann.com 222.

Similar view in allowing depreciation on intangible assets to the assessee has been taken by the Co-ordinate Bench in the appeal of assessee in ITA No.1507/PUN/2012 for assessment year 2004-05 and ITA No.2036/PUN/2012 for assessment year 2005-06 decided on 12.12.2017. In fact, we observe that similar grounds were raised in appeal for assessments 2004-05 and 2005-06 assailing disallowance of depreciation on trademark and

know-how. The Tribunal by following the decision of Hon'ble Apex Court in the case of CIT Vs. Smifs Securities Ltd. (supra) held that the assessee is eligible for claiming depreciation on know-how, patents and trademarks. Since, this issue has already been dealt in detail by the Co-ordinate Bench in assessee's own appeal for assessment year 2004-05 and 2005-06 allowing the claim of assessee, we apply the same reasoning to allow grounds No. 2, 3 and 4 in the present appeal of the assessee as well. It is an undisputed fact that there is no change in the facts and circumstances in the assessment year 2006-07. The ld. DR has not brought before us any judgment wherein contrary view has been taken. Accordingly, **grounds No. 2, 3 and 4 raised in the appeal by assessee are allowed.**

9. In ground No. 5 of the appeal, the assessee has assailed valuation of land at Taloja and Panki. The ld. AR pointed that identical ground was raised in appeal by assessee for assessment year 2004-05. We find that the Tribunal while deciding the issue observed as under:

“48. Reading the terms of BTA as agreed upon between the parties, ICI India Ltd. agreed to transfer, sell and / or to assign its Indian business as a going concern. As referred to in paras hereinabove, Indian business was defined and understood between the parties, was catalyst business carried on by ICI India Ltd. under the name and style Syntex. The same included business plant & machinery, business properties, employees, debtors, all the rights and liabilities of ICI India Ltd. in or to the business IP, the business goodwill and primary and secondary books and records. However, the term 'Indian business' did not talk about Panki activities and also excluding the 'Excluded assets'. We have already referred to the list of 'Excluded assets', which clearly excludes among others Panki sites, employees and Panki assets along with excluded IP. All these excluded assets are enlisted in Part I of Schedule 10 to the BTA. The Panki activities were the manufacture of items of products which were covered as per Toll Conversion Agreement i.e. in respect of manufacturing activities carried on at Panki site. Another important term which needs to be taken note of is that Panki assets which clearly have not been taken over and it is part of excluded assets i.e. assets which were not been taken over and the terms of BTA talks of leasehold and licensed properties comprising Panki sites together with building thereon. It also talks of plant & machinery, equipment, computer and other assets at Panki. In order to understand the intention of the parties, it is necessary to refer to Toll Conversion Agreement, which was also entered into between ICI India Ltd. and the assessee company on 02.12.2002, wherein it was agreed upon that ICI India Ltd. would manufacture the

products on behalf of assessee for the stipulated term. The said production was to be undertaken exclusively for the assessee in accordance with relevant specifications. It was also agreed upon that the aforesaid plant & machinery, equipment, assets at Panki site were to be exclusively used for manufacturing the said products for and on behalf of the assessee, by ICI India Ltd. Another relevant clause was that ICI India Ltd. shall manufacture the products using technical information licensed to it pursuant to clause 4.2. In other words, as per the terms of BTA, ICI India Ltd. had already transferred business carried on under the name of Syntex including the business IP to the assessee but since Panki activities and Panki assets were excluded from the said takeover of business by the assessee from ICI India Ltd., the said assets i.e. land and building including the plant & machinery remained to be transferred. However, under the Toll Agreement, the said assets and site were to be used by ICI India Ltd. in order to manufacture the products for and on behalf of the assessee i.e. till the date Panki site and the assets were transferred, the manufacturing activities had to be carried on by ICI India Ltd. for and on behalf of assessee. Though under the Toll Agreement, it was decided that the said Panki site would be transferred at the value of Rs.1 lakh, which we shall consider in the paras hereinafter; but the parties did agree to understanding to carry on the business in a particular manner. On analysis of the terms of BTA and Toll agreements, it transpires that the value of land at Panki was not part of slump price since the same was not transferred on the date of signing of BTA and TCA. ICI India Ltd. owned 279.30 acres of land, out of which catalyst business was being carried on part of it i.e. 27.53 acres, which admittedly, was to be transferred to the assessee. The said land was under lease with Kanpur Development Authority, for which necessary permission was required before the land could be transferred. Hence, the conclusion of CIT(A) in this regard that the land at Panki was transferred and its value as per valuation done by KDA works out to Rs.174.36 crores is without any basis. In the absence of any land at Panki being transferred under the BTA, there is no merit in findings of CIT(A) in this regard.

49. Now, coming to the second piece of land on which catalyst business of ICI India Ltd. was being carried on i.e. at Taloja. As per understanding between the parties with special reference to Schedule 4, which defined the business property in Part II, clause 12, it is provided that at completion, ICI India Ltd. and the purchaser i.e. assessee shall enter into Leave and License Novation Agreement in accordance with their respective obligations pursuant to Schedule 5. In part III, while enlisting the business properties in respect of said property at Taloja, the tenure is mentioned to be license – ICI India Ltd. In other words, the business at Taloja site was run by ICI India Ltd. on land which was leased from HLL, ICI India Ltd. was not the owner of said piece of land and hence, was not in position to pass on the ownership of the land. In Schedule 12, the list of agreements and deeds are enlisted. Under Part I, which in addition to the Deed of Restricted Covenants and Toll Conversion Agreement also talks of Novation of Leave and License Agreement in respect of Taloja Manufacturing site between HLL, ICI India Ltd. and Indian purchaser i.e. assessee and it is mentioned 'it is completed'. The copy of said agreement is placed at pages 393 to 397 of the Paper Book, Vol-II. In view of above said facts and circumstances, we hold that the CIT(A) has erred in concluding that the said properties i.e. lands at Taloja and Panki sites had been transferred to the assessee under BTA. There is no merit in the said findings of the CIT(A), in view of the above said facts and circumstances. The land at Taloja was leasehold land, wherein ICI India Ltd. had taken the same on leave and license basis from HLL and was not the owner of said land and has no authority to transfer to the assessee under BTA agreement.

50. *Before parting, we may also refer to Leave and License Agreement between HLL and ICI India Ltd., which is placed at pages 382 to 392 of the Paper Book Vol-2. This is with regard to land at Taloja, under which ICI India Ltd. was given the right to use the said land. On 02.12.2002 Leave and License Novation Agreement was signed between HLL, ICI India Ltd. and the assessee for use of land at Taloja, copy of which is placed at pages 393 to 397 of the Paper Book, Vol-II.*

51. *Another point to be noted in respect of Taloja land is that HLL sold its business to ICI India Ltd. in 2001 and Leave and License was given to ICI India Ltd. for the said land. However, ICI India Ltd. sold its business to the assessee in 2002 and hence, the Novation between HLL, ICI India Ltd. and the assessee. Another document which needs reference is the Memorandum of Understanding dated 02.04.2008, copy of which is placed at pages 332 onwards of the Paper Book between HLL and the assessee, wherein the said land was agreed to be sold by HLL to the assessee for Rs.6.93 crores. The Deed of Assignment is placed at page 399 of the Paper Book, the said Deed of Assignment which was entered after approval from MIDC on 19.01.2009. In view thereof, there is no merit in the stand of CIT(A) that the land at Taloja was transferred by ICI India Ltd. to the assessee under BTA and hence, the value of slump price is first to be attributed to the cost of said land.*

We further observe that the Co-ordinate Bench after holding that land at Taloja was not part of Business Transfer Agreement (BTA) finally concluded as under:

69. Before parting, we may also point out that as per the Toll Conversion Agreement, the value of Panki assets was taken at Rs.1 lakh. However, the CIT(A) had worked out the cost of 279.30 acres i.e. total landholding of ICI India Ltd. at Rs.174 crores; in case the same rate is applied to 27.52 acres, which was the portion of land on which catalyst business was carried on, then the same would work to Rs.17.37 crores. The learned Authorized Representative for the assessee fairly admitted that the value of Rs.17.37 crores be attributed to Panki assets. However, revised allocation value of land at Panki would be Rs.13 crores, out of total slump price of Rs.153 crores. Accordingly, we direct the Assessing Officer to re-compute the value of both tangible and intangible assets, accordingly. Following the same proposition, we hold that the assessee is entitled to claim the depreciation on the value of tangible assets and further on know-how, trademarks and patents and also on the goodwill. The assessee has also claimed depreciation on non-compete fees. The Assessing Officer is also directed to allow depreciation on non-compete fees of Rs.3.51 crores.”

Thus, following the decision of Co-ordinate Bench, we allow, **ground No.**

5 raised in the appeal on similar terms.

10. In ground No. 6 of the appeal, the assessee has assailed the valuation of trademark, patent and know-how acquired by the assessee from ICI India

Limited. We find, identical ground was raised in appeal by assessee in assessment year 2004-05 before the Tribunal. The Tribunal adjudicated this issue by observing as under:

“73. The learned Departmental Representative for the Revenue in this regard placed reliance on the decision of Hon’ble High Court of Kerala in B. Raveendran Pillai Vs. CIT (supra). However, in view of the decision of the jurisdictional High Court on the issue in hand, we find no merit in the reliance placed upon by the learned Departmental Representative for the Revenue. The stand of learned Departmental Representative for the Revenue that there could be instances where WDV can be changed and since in the present case there was allocation which was different from the actual cost, then harmonious construction was to be given to the provisions of said section does not stand. We find no merit in the stand of learned Departmental Representative for the Revenue that actual cost for entire block could be examined in the succeeding year if there were circumstances necessitating such change. We find no merit on the same and the same is rejected. Since we have decided the issue both on merits and also on preliminary issue of whether the WDV of assets could be disturbed in the succeeding year, we hold that the issue of enhancement whether can be made by the CIT(A) or not becomes academic in nature and the same is not adjudicated. Accordingly, we direct Assessing Officer to allow claim of depreciation on tangible assets; know-how, trademark and patents; goodwill and non-compete fee. However, the value of intangible assets would be reduced by Rs.13 crores on account of value of Panki land. The grounds of appeal raised by the assessee are thus, partly allowed.

Following the decision of Co-ordinate Bench of Tribunal, **ground No. 6 raised in appeal by assessee for assessment year 2006-07 is partly allowed in the similar terms.**

11. In ground No. 7, the assessee has assailed initiation of penalty proceedings u/s. 271(1)(c) of the Act. We are of considered view that challenge to penalty proceedings is premature at this stage, accordingly, **ground No. 7 of the appeal is dismissed as premature.**

12. Since appeal of the assessee has been allowed on merits, the legal issue raised by assessee in Ground No. 1, challenging reassessment proceedings u/s. 147 of the Act has become academic. The ld. AR for the assessee has also

not made any submissions in respect of **ground No. 1. Thus, the ground No. 1 is dismissed as academic.**

13. In the result, appeal of the assessee for assessment year 2006-07 is partly allowed.

ITA No.1313/PUN/2016 (By Revenue)
A.Y 2006-07

14. The Revenue in cross appeal for assessment year 2006-07 has raised following grounds:

“1. On the facts & in the circumstances of the case & the Ld. CIT(A) has erred in deciding the issue regarding claim of depreciation on goodwill & non-compete fees in isolated manner i.e. without considering the real intention of the assessee to deliberately undervalue the value of the plot at Panki and shift that value of intangible assets including non-compete fees and goodwill and thereby claimed depreciation on those assets for which actually no consideration was paid.

2. On the facts & in the circumstances of the case & the Ld. CIT(A) has erred in allowing depreciation on goodwill & non-compete fees without appreciating the fact that the value assigned to the individual assets including goodwill & non-compete fees has not been done in fair & reasonable manner.

3. On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in allowing depreciation on goodwill & non-compete fees without appreciating the fact that if fair value of Rs.174.36 crores of the year 2002 is assigned as per letter dated 04/03/2011 of Kanpur Development Authority to the of leasehold rights acquired in 279.30 acres land at Panki (Kanpur) as against Rs.One Lakh assigned by the assessee, then no value out of total consideration of Rs.153 crore is left to be assigned towards goodwill & non-compete fees and accordingly the consequential depreciation on these assets would be nil.

4. On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in allowing depreciation on goodwill & non-compete fees without appreciating the fact that on final transfer of 279.30 acres of land at Panki(Kanpur) in December 2015 no additional consideration above Rs.1 lakh was paid by the assessee & hence the value assigned towards intangible assets including goodwill & non-compete fees and the consequential depreciation is grossly incorrect.”

15. The issue raised by the Revenue in grounds No.1 to 4 of the appeal is analogous to ground No. 5 raised in appeal by the assessee. Since the issue

has been dealt in detail while deciding the issue raised in the appeal by the assessee and has been allowed, the grounds raised by the Department in appeal have to be dismissed. Hence, the grounds of appeal raised by Revenue are dismissed.

16. In the result, appeal of the Revenue for assessment year 2006-07 is dismissed.

ITA No. 630/PUN/2014 (By assessee)
A.Y. 2008-09

17. In ITA No. 630/PUN/2014, the assessee has raised following grounds:

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has:

Depreciation on various assets purchased for lumpsum consideration

1. *Erred in disallowing depreciation amounting to Rs.15,57,41,188/- claimed by the Appellant on the values of following tangible and intangible assets determined as per the valuation report obtained from an independent valuer, by holding that depreciation is not allowable in respect of assets acquired under slump sale arrangement since the Appellant has acquired an undertaking and not individual assets per-se.*

Sr. No.	Nature of Assets	Depreciation (Rs.)
1.	<i>Depreciation on other assets</i>	7,12,04,732
2.	<i>Trade-marks, Patents and know-how</i>	7,34,81,217
3.	<i>Goodwill</i>	83,30,821
4.	<i>Non-compete fees</i>	27,24,418
	Total	15,57,41,188

2. *Erred in disallowing depreciation on all the assets on which depreciation, totaling to Rs 15,57,41,188 has been claimed in the AY 2008-09, despite of the fact that the depreciation claim on other assets, amounting to Rs.7,12,04,732, also included assets acquired in years subsequent to the AY 2003-04 including the current AY i.e. 2008-09.*

Not following Rule of consistency

3. *Erred in disallowing depreciation on intangible and other assets:*

a. Without following the rule of consistency which states that the legal position accepted in preceding assessment years in case of an Assessee should be followed if there is no change in the facts in the subsequent assessment year; and

b. Without appreciating that the Assessing officer had allowed depreciation on the said assets in the A Y 2003-04 which was the first year of claim of depreciation and no such allowance was disputed by the Income-tax authorities in the A Y 2003-04.

Disallowance of depreciation once the assets has entered the block of assets

4. Erred in holding that for determining the written down value of an asset under Section 43(6) of the Act, the Assessing Officer has to determine the actual cost of the asset every year even when the asset forms part of the block of assets.

5. Without prejudice to the above, erred in holding that the actual cost of assets forming part of the block of asset can be changed in subsequent years based on reanalysis and reappraisal of the same facts in the subsequent assessment years.

Disallowance of depreciation on incorrect appreciation of facts

6. Without prejudice to Ground 1, to 5 above, erred in disallowing depreciation on trademark, patents and know-how on the ground that Appellant has not purchased any knowhow from lei India Limited and has not used any knowhow for the purpose of its business.

7. Without prejudice to Ground 1, to 6 above, erred in concluding that the allocation of Rs 94.35 crores in trade marks, patents and know-how out of the purchase consideration of Rs 153.18 crores has not been done in a fair and reasonable manner.

Value of land at Taloja and Panki

8. Without prejudice to the above, erred in holding that the value of land at Panki division is Rs.174.36 crores and the value of land at Taloja is Rs. 13 crores.

Value of trade-marks, patents and know-how

9. Erred in ignoring the fact that the valuation of trade-marks, patents and know-how has been undertaken by an independent valuer in a fair and reasonable manner and that the value of trade-marks, patents and know-how would not be affected by the value of land.

Depreciation on Non compete

10. Without prejudice to Ground 1 above, erred in upholding the disallowance of depreciation amounting to Rs.27,24,418 on non-compete payment on the contention that non-compete payment is not in the nature of "any other business or commercial rights of similar nature" as stated in the definition of intangible assets under Section 32(1)(ii) of the Act.

Depreciation on Goodwill

11. Without prejudice to Ground 1 above, erred in upholding the disallowance of depreciation on goodwill amounting to Rs. 83,30,821 on the contention that goodwill is not in the nature of "any other business or commercial rights of similar nature" as stated in the definition of intangible assets under Section 32(1)(ii) of the Act.

Initiation of penalty under section 271(1)(c) of the Act

12. The learned CIT(A) has erred in holding that the Appellant has submitted wrong particulars of income and hence penalty proceedings are required to be initiated.

The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of the appeal hearing.”

18. Similar issues have been raised by the assessee in appeal for assessment year 2006-07. The findings given by us on the respective grounds in assessment year 2006-07 would *mutatis mutandis* apply to the grounds raised in the present appeal as well. Accordingly, grounds raised by assessee in appeal for assessment year 2008-09 are partly allowed on similar terms.

19. In the result, **appeal of the assessee for assessment year 2008-09 is partly allowed.**

ITA No. 1275/PUN/2016 (By Assessee)**A.Y : 2009-10**

20. In ITA No. 1275/PUN/2016, the assessee has raised following grounds of appeal.

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has:

Ground 1: Depreciation on various assets purchased for lumpsum consideration

I. erred in disallowing depreciation claimed by the Appellant on the values of tangible and intangible assets determined as per the valuation report obtained from an independent valuer, by holding that depreciation is not allowable in respect of assets acquired under slump sale arrangement.

Ground 2: Without prejudice to Ground: 1 - Not following Rule of consistency

II. without prejudice to above, erred in disallowing depreciation on intangible and other assets amounting to Rs 5,71,13,664 (Depreciation on other assets Rs. 38,61,588 and Trade-marks, Patents and Know-how Rs. 5,32,52,076)

III. failed to appreciate the rule of consistency which states that the legal position accepted in preceding assessment years in case of an Assessee

should be followed if there is no change in the facts in the subsequent assessment year; and

IV. erred in disallowing the depreciation claimed on Know-how, Patent, Trade-marks and other assets without appreciating that the Assessing officer had allowed depreciation on the said assets in the A Y 2003-04 which was the first year of claim of depreciation and no such allowance was disputed by the Income-tax authorities in the A Y 2003-04.

Ground 3: Disallowance of depreciation once the assets has entered the block of assets

V. erred in holding that for determining the written down value of an asset under Section 43(6) of the Act, the Assessing Officer has to determine the actual cost of the asset every year even when the asset forms part of the block of assets.

VI. without prejudice to the above, erred in holding that the actual cost of assets forming part of the block of asset can be changed in subsequent years based on reanalysis and reappraisal of the same facts in the subsequent assessment years.

Ground 4: Disallowance of depreciation on incorrect appreciation of facts

VII. without prejudice to above, erred in disallowing depreciation on trademark, patents and know-how on the ground that Appellant has not purchased any knowhow from ICI India Limited and has not used any knowhow for the purpose of its business.

VIII. without prejudice to above, erred in concluding that the allocation of Rs 94.35 crores to trade-marks, patents and know-how out of the purchase consideration of Rs 153.18 crores has not been done in a fair and reasonable manner.

Ground 5: Value of land at Taloja and Panki

IX. without prejudice to the above, erred in holding that the value of land at Panki division is Rs. 174.36 crores and the value of land at Taloja is Rs 13 crores.

Ground 6: Value of trade-marks, patents and know-how

X. erred in ignoring the fact that the valuation of trade-marks, patents and know-how that the value of trade-marks, patents and know-how would not be affected by the value of land.

Ground 7: Initiation of penalty under section 271(1)(c) of the Act

XI. erred in not quashing the initiation of penalty proceedings by the Assessing officer.

The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of the appeal hearing.”

21. The assessee in appeal for assessment year 2006-07 has raised identical grounds. The findings given by us on the respective grounds of appeal for assessment year 2006-07 would *mutatis mutandis* apply to the grounds raised in the present appeal as well. Accordingly, grounds raised by assessee in appeal for assessment year 2009-10 are partly allowed on similar terms.

22. In the result, **appeal of the assessee for assessment year 2009-10 is partly allowed.**

ITA No.1314/PUN/2016 (By Revenue)
A.Y 2009-10

23. The Revenue in cross appeal for assessment year 2009-10 has raised following grounds:

“1. On the facts & in the circumstances of the case & the Ld. CIT(A) has erred in deciding the issue regarding claim of depreciation on goodwill & non-compete fees in isolated manner i.e. without considering the real intention of the assessee to deliberately undervalue the value of the plot at Panki and shift that value of intangible assets including non-compete fees and goodwill and thereby claimed depreciation on those assets for which actually no consideration was paid.

2. On the facts & in the circumstances of the case & the Ld. CIT(A) has erred in allowing depreciation on goodwill & non-compete fees without appreciating the fact that the value assigned to the individual assets including goodwill & non-compete fees has not been done in fair & reasonable manner.

3. On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in allowing depreciation on goodwill & non-compete fees without appreciating the fact that if fair value of Rs.174.36 crores of the year 2002 is assigned as per letter dated 04/03/2011 of Kanpur Development Authority to the of leasehold rights acquired in 279.30 acres land at Panki (Kanpur) as against Rs.One Lakh assigned by the assessee, then no value out of total consideration of Rs.153 crore is left to be assigned towards goodwill & non-compete fees and accordingly the consequential depreciation on these assets would be nil.

4. On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in allowing depreciation on goodwill & non-compete fees without appreciating the fact that on final transfer of 279.30 acres of land at Panki(Kanpur) in December 2015 no additional consideration above Rs.1 lakh was paid by the assessee & hence the value assigned towards intangible assets including goodwill & non-compete fees and the consequential depreciation is grossly incorrect.”

24. The issues raised by the Revenue in grounds of appeal is analogous to ground No. 5 raised in appeal by the assessee. The ground No. 5 of the appeal by assessee has been decided following the findings given by us while adjudicating appeal of the assessee in assessment year 2006-07. The Revenue in assessment year 2006-07 has raised identical grounds of appeal assailing valuation of plot of land at Panki. Since the ground No.5 of the appeal by assessee has been allowed, the grounds raised by the Revenue have to be dismissed. We hold and direct accordingly.

25. In the result, appeal of the Revenue for assessment year 2009-10 is dismissed.

26. To sum up,

Appeal No.	Assessment year	Result
ITA No.1274/PUN/2016	2006-07	Partly allowed
ITA No.1313/PUN/2016	2006-07	Dismissed
ITA No. 630/PUN/2014	2008-09	Partly allowed
ITA No.1275/PUN/2016	2009-10	Partly allowed
ITA No.1314/PUN/2016	2009-10	Dismissed.

Order pronounced on Thursday, the 31st day of May, 2018.

Sd/-
(**डॉ. करुणाकरा राव**/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(**विकास अवस्थी** /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2018.

SB

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Aurangabad.
4. The CIT(Appeals)-II, Thane.
5. The Pr. CIT-2, Thane.
6. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
7. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.