

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.2546/Mum/2018
(Assessment Year :2012-13)**

Aramark India Pvt.Ltd. (Now Known as Aravon Services Pvt.Ltd.) Steel House Building, Plot NO.27 'B' Wing, Ground Floor Near Paper Box, Mahakali Caves Road, Andher(East) Mumbai-400 093	Vs.	DCIT-9(1)(2) Mumbai
PAN/GIR No.AAGCA4383F		
Appellant)	..	Respondent)

Assessee by	Aarati Visanji
Revenue by	V.K.Chaturvedi
Date of Hearing	24/06/2019
Date of Pronouncement	28/08/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-16, Mumbai dated 25/01/2018 and it pertains to the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. *The Commissioner of Income Tax (Appeals)- (CIT (A)) erred in upholding the disallowance of depreciation on Goodwill amounting to Rs. 3,03,70,514/-made by the Deputy Commissioner of Income Tax- 9(1)(2),Mumbai (hereinafter known as Assessing Officer (AO))*

1.2 The CIT (A) should have allowed depreciation on Goodwill amounting to Rs.3,03,70,514/- as the same is allowable U/s 32(1) when the intangible assets were acquired and paid in past years and Honorable ITAT Mumbai has allowed depreciation on Goodwill in the assessment year 2009-10 .

1.3 The AO has erred in disallowing depreciation on Goodwill only on the pretext that the asset is impaired in the books of accounts as per Accounting Standards issued by Institute of Chartered Accountants of India and the Petitioner Company has not sold the asset but continues to enjoy the Goodwill.

2. The Assessee reserves its right to add, alter or amend any of the aforesaid grounds.

3. The brief facts of the case are that, the assessee company is engaged in the business of Faculty management services, including food services and housekeeping services and guest house management services etc., filed its return of income for AY 2012-13 on 29/11/2012, declaring total income at Rs. 'Nil', after claiming current year loss of Rs. 7,91,58,527/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 17/03/2015, determining the total loss at Rs. 3,88,08,709/- by making additions towards disallowance of delay in payment of employee's contribution towards Provident Fund u/s 36(1)(va), difference in AIR information, TDS written off, cessation of liability u/s 41(1) and disallowances of depreciation on goodwill of Rs. 3,03,70,415/-. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has challenged additions made by the AO

towards delay in payment of Employees contribution to Provident Fund (PF), discrepancy in AIR, TDS written off, cessation of liability u/s 41(1) and depreciation on goodwill. The Ld. CIT(A) for the detailed reasons recorded in its appellate order, allowed relief, in respect of additions made by the AO towards disallowances of delayed payment of employees contribution to provident fund, additions towards TDS written off, and cessation of liability u/s 41(1), however confirmed additions made by the AO towards disallowances of depreciation on goodwill, on the ground that when, the asset ceased to continue in books of accounts and also, the assessee is not getting any enduring benefit out of goodwill, the question of deprecation on such non existing asset is incorrect and accordingly, there is no error in the findings of the AO, while disallowing depreciation on goodwill . The relevant findings of the Ld.CIT(A) are as under:

6.4.1 Vide these grounds appellant has agitated against disallowance of depreciation amounting to Rs3,03,70,514/- on goodwill. In para 8 of the assessment order, the Id. A.O. had mentioned that we appellant company had claimed an amount of Rs.3,03,70,514/- as depreciation u/s.32 of the Act on goodwill. The appellant had Further pointed out-that the appellant company had revalued its goodwill and recorded an impairment loss in respect of goodwill as on 31.03.2011 in its books. In view of these facts the Id.AO, issued a show cause and after considering tile reply of the show cause, the Id.AO held that depreciation is calculated on the written down value (WDV) of the block of assets. If the WDV of assets is reduced to zero or the block of assets is empty or ceases to exist on the last day of the previous year then no depreciation is allowable. In the case of the appellant, the appellant had impaired die cost of goodwill and reduced its value in the books of accounts in A.Y.2011-12. As per the concept of block of assets, if the block of assets

ceases to exist It, no depreciation is allowable. In view of these facts. The Ld. AO disallowed the depreciation on goodwill claimed by the appellant and added it to the total income.

6.4.2 During the course of appellate proceedings a written submission was filed which find place in para 5 of this order. The appellant submitted that in appellant's own case for A.Y.2009-10 same issue was involved which has been decided by Hon'ble IT AT in ITA Mo.3839/Mum/2013 dated 01.05.2015. The ground raised by the appellant was as under:

"Petitioner Company prays that depreciation on goodwill be allowed for the A.Y.2009-10. Goodwill of Rs.28,79,57,469/- was written off during the Assessment Year in question. The deprecation at 25% on WDV basis was not claimed in the nature filed. Thus a plea is filed to allow such amount of depreciation to the Petitioner Company."

In para 9 of the order, the Hon'ble ITAT has held as under:

"As regard the issue raised in additional ground, we find that the same is purely a legal ground, arising out of the facts available on record and accordingly, the same is admitted. The issue, whether the depreciation on goodwill is allowable or not, the same stands concluded by the decision of Hon'ble Apex Court in the case of Smiff Securities Ltd. (supra), wherein the Hon'ble Supreme Court held that goodwill is an asset under the expression used in Explanation 3(b) to section 32(a) and therefore, depreciation is allowable on such an asset. Thus, the depreciation on the goodwill should be allowed. However, the facts regarding computation of WDV and the amount of depreciation, which is to be allowed in the A.Y. 2009-10, needs verification at the end of the A.O, therefore, this matter is restored back to the file of the AO to examine the contention of the assessee and allow the claim of depreciation in accordance with the Supreme Court decision. Accordingly, additional ground raised by the assessee is partly allowed for statistical purposes."

6.4.3 I have considered the submissions made by t upon the judgment of Hon'ble ITAT in appellant's own case for A.Y .2009-10.The Hon'ble ITAT has decided the allowability of depreciation on goodwill when goodwill was reflected as an asset in its Balance Sheet During the year under consideration, facts of the appellant are different from A.Y 2009-10. For the year under consideration, the appellant had revalued its goodwill and recorded an impairment loss in respect of goodwill as on 31.03.2012. Since goodwill is not Heated as an asset in its books of account and appellant is not enduring, any benefit out of goodwill, therefore depreciation cannot be allowed on a non existing asset from which appellant is not deriving any benefit or utilizing for the business¹ j of the

appellant. Therefore, disallowance of Rs. 3,03,70,514/- made by the A.O is confirmed and ground raised by the appellant is dismissed.

4. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in upholding the disallowances of depreciation on goodwill amounting to Rs. 3,03,70,514/- without appreciating the fact that depreciation on goodwill is allowable u/s 32(1) as an intangible asset of any other business or commercial rights of similar nature. The Ld. AR, further submitted that although, the assessee has written off goodwill in books of accounts by impairment of asset, as per the accounting standard issued by the ICAI, but the written down value of such goodwill is continued to be remain in the books of accounts and also, as long as, the block of asset is continued in the books of accounts, the assessee is entitled to claim depreciation on WDV of such block of assets.

5. The Ld. DR, on the other hand, strongly supported order of the Ld.CIT(A).

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. There is no doubt with regard to the allowability of depreciation on goodwill

being, any other business or commercial rights of similar nature u/s. 32(1) of the I.T.Act, 1961. The Hon'ble Supreme Court in the case of CIT vs Smifs Securities Limited (2012) 348 ITR 302 (SC) held that goodwill is an asset under the expression used in Explanation 3(b)(ii) to section 32(1) and therefore, depreciation is allowable on such an asset as any other business or commercial rights of similar nature. The question before the AO was whether, depreciation on goodwill claimed by the assessee is allowable or not, when such goodwill is ceased to exist in the books of accounts, during the relevant financial year. The provision of section 32 of the I.T.Act, 1961 provides for grant of depreciation. Section 2 (11) defines, the term of block of assets, which includes intangible assets being know-how, patent, copy rights, trade marks, licences, franchise or any other business or commercial right similar nature. In order to claim depreciation, the assessee should fulfill three conditions, as per which, the assessee should be owner of the asset, the asset should be used for the purpose of business and the block of assets should exist to claim depreciation. In this case, the assessee has impaired, the value of goodwill recorded in the books of accounts and the excess value as determined, in accordance with accounting standard issue by the ICAI has been written off in AY 2011-12. Further, it was noticed from the assessment order that the assessee

has shown "Nil" value for goodwill as on 31/03/2012 in its books of accounts. Thus, as per books of accounts, the goodwill ceased to exist. Accordingly, the assessee has not claimed any depreciation in the books of account on value of goodwill. Further, depreciation is calculated on written down value of the block of assets. If, the written down value of asset is reduced to zero or, the block of asset is empty or ceased to exist on the last date of the previous year, then no depreciation is allowable, even though the written down value of the asset is not reduced to zero. In this case, there is no doubts of whatever with regard to exists of assets in the books of accounts for the relevant financial year. As claimed by the assessee itself, it has fully written off goodwill in the books of accounts on the asset ceased to exist in the books of accounts and the last date of the previous year. Therefore we are of the considered view that once, a particular asset is ceased to exist in the books of account and also, the assessee is not getting any enduring benefit from such assets, then the question of depreciation on such non existing asset does not arise. Further, the Ld. AR for the assessee relied upon by the judgment of the ITAT, in assessee's own case for AY 2009-10 to argue that the Tribunal has allowed depreciation on goodwill. We find that the Tribunal has allowed depreciation on goodwill by following the decision of Hon'ble Supreme Court in the case of Smifs

Securities Limited vs CIT (supra), on the ground that goodwill is an asset under the expression used in explanation 3(b) to section 32(1) and therefore, depreciation is allowable on such asset as intangible assets being any other business or commercial rights of similar nature. As we have already stated earlier, there is no dispute with regard to allowability of depreciation on goodwill, but when you compare the facts of the current year, the question of allowability of depreciation has to be examined, in the light of provision of section 32(1), where it mandates the block of assets should exist to claim depreciation. Since, goodwill is not treated as an asset in its books of accounts and also, the assessee is not getting any enduring benefit out of such goodwill, the question of allowing depreciation on such non-existing asset does not arise. The Ld.AO as well the Ld.CIT(A), after considering relevant facts has rightly disallowed depreciation claimed on non-existing asset being goodwill. We do not find any error in the order of the Ld.CIT(A). Hence we are inclined to uphold order of the Ld.CIT(A) and dismissed appeal filed by the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 28 /08/2019

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai; Dated 28/08/2019
Thirumalesh Sr.PS

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai