

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA NOS. 4476 & 4477/MUM/2018**

**A.Ys : 2014-15 & 2012-13**

ACIT-14(2)(2),  
Mumbai (Appellant)

vs. M/s. Lafarge Aggregates &  
Concrete India Pvt. Ltd.,  
Equinox Business Park, Tower-3,  
East Wing, 4<sup>th</sup> floor, Off BKC, LBS  
Marg, Kurlaw (W), Mumbai.  
**PAN : AABCL3845L (Respondent)**

**Assessee by : Shri Madhur Agrawal  
Revenue by : Shri Anadi Varma**

**Date of Hearing : 24/09/2019  
Date of Pronouncement : 24/09/2019**

**ORDER**

**PER MAHAVIR SINGH, JUDICIAL MEMBER**

These are two appeals filed by the Revenue against the orders of CIT(A) dated 05.04.2018 for assessment years 2013-14 & 2014-15 which in turn have arisen from orders of Assessing Officer passed under Section 143(3) of the Income Tax Act, 1916 (in short 'the Act') dated 28.03.2016 and 21.12.2016 respectively.

2. The first common issue in these two appeals of the Revenue is against the order of CIT(A) allowing the claim of depreciation on goodwill. For this, Revenue has raised the identically worded grounds in both the appeals. The

grounds as raised in ITA No. 4477/Mum/2018 in assessment year 2013-14 reads as under :-

*“1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the depreciation claim of the assessee amounting to Rs.83,27,29,664/- on account of goodwill without appreciating the fact that no correlation between the amount of excess consideration paid and the benefits accrued to the assessee has been substantiated by the assessee.*

*2. Whether on the facts and in the circumstances of the case and in law, this excess consideration has resulted into an expense which is in the nature of a depreciable asset u/s 32(1)(ii) of the Income Tax Act 1961.”*

3. Since the facts and circumstances are exactly identical in both the years and the grounds are also identically worded, we take the facts and grounds from assessment year 2013-14 and decide the issue.

4. At the outset, the learned counsel for the assessee stated that the very same issue was before the Tribunal in assessee’s own case in earlier years, i.e. assessment years 2009-10 and 2010-11. It was stated that the Tribunal following the decision of Hon’ble Supreme Court in the case of *CIT vs Smifs Securities Ltd., 348 ITR 302 (SC)* and the decision of Hon'ble Bombay High Court in the case of *CIT vs Pruthvi Brokers & Shareholders Pvt. Ltd., 349 ITR 336 (Bom.)* allowed the claim of assessee vide para 4 and 5 of its order as under :-

*“4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee filed copy of Tribunal order in assessee’s own case for AY 2009-10 in ITA No. 2783/Mum/2015 vide order dated 15.11.2017, wherein Tribunal has affirmed the order of CIT(A) by observing in Para 2.3 as under:-*

*“2.3. Before us, the Departmental Representative (DR) stated that assessee had not made the claim in the original return of income. The Authorised Representative (AR) supported the order of the FAA. We find*

*that in the case of Prithvi Brokers and Shareholders Private Ltd.(supra) the Hon'ble Jurisdictional High Court has held that a fresh claim cannot be accepted by the AO otherwise than a revised return and the appellate authorities can accept the new claim made by the assessee. So, in our opinion, the FAA had rightly allowed the depreciation on goodwill, following the judgment of the Hon'ble Supreme Court in the case of Smifs Securities Private Limited (supra). Accordingly, we decide first ground of appeal against the AO."*

5. *As the issue is covered and there is no factual different, respectfully following the Tribunal's decision, we affirm the order of CIT(A) and allowing the claim of the assessee. This issue of Revenue's appeal is dismissed."*

When these facts were confronted to the learned CIT-DR, he only requested that the decisions of the Hon'ble Supreme Court in the case of *CIT vs B.C. Srinivasa Shetty, 128 ITR 294 (SC)* and the Bangalore Bench of the Tribunal in the case of *United Breweries Ltd. vs Addl. CIT, ITA Nos. 722/Bang/2014 and others dated 30.09.2016* be referred to while disposing off the appeal.

5. We noted that this issue is no more *res integra* and is settled by the order of Tribunal in assessee's own case for assessment years 2009-10 and 2010-11 as narrated above. As the issue is squarely covered in favour of the assessee, we find that the CIT(A) has also relied on the Tribunal's order for earlier years. Hence, we find no infirmity in the order of CIT(A), and the same is confirmed. Thus, this issue in Revenue's appeal is dismissed.

6. The next common issue in these two appeals of the Revenue is against the order of CIT(A) allowing depreciation on ready plan network, customer contact and customer relationship, leasehold benefits, assembled workforce and non-compete agreement. For this, Revenue has raised identically worded grounds in both the years and the facts and circumstances are also exactly

identical in both the years. The Revenue has raised the following ground in its appeals :-

*“3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the depreciation claim of the assessee, amounting to Rs.34,68,07,617/- on ready plant network, customer contact and customer relationship, leasehold benefits, assembled workforce and non compete agreement ignoring the fact that goodwill has not existence independent of these intangibles that has been demonstrated and these intangibles have in any case been separately claimed.”*

7. At the outset, the learned counsel for the assessee stated that this issue is also covered by the decision of Tribunal in assessee’s own case for assessment year 2009-10 which has been relied by the CIT(A) in his order allowing relief to the assessee.

8. We find that the facts and circumstances in the instant year are the same as in earlier years. As the issue is squarely covered in favour of the assessee and the CIT(A) has also relied on the order of Tribunal in assessee’s own case for earlier years, we find no infirmity in the order of the CIT(A) and the same is confirmed. Thus, this issue in Revenue’s appeal is dismissed.

9. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 24<sup>th</sup> September, 2019.

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(MAHAVIR SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Date : 24<sup>th</sup> September, 2019

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai