

आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य एवं श्री पवन सिंह, न्यायिक सदस्य के समक्ष।

BEFORE SRI SHAMIM YAHYA, AM AND SRI PAWAN SINGH, JM

आयकर अपील सं./ ITA No. 767/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

DHL Logistics Private Limited 201A, Silver Utopia, Cardinal Gracias Road, Chakala, Andheri (East), Mumbai-400 099	बनाम/ Vs.	Deputy Commissioner of Income Tax, Circle 9(3)(1), Aayakar Bhavan, M.K. road, Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AAACM6824H		

अपीलार्थी की ओर से / Appellant by	:	Shri Bipin B. Shah, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Anand Mohan, CIT DR

सुनवाई की तारीख / Date of hearing:	06.11.2019
घोषणा की तारीख / Date of pronouncement :	07.01.2020

आदेश / ORDER

**शमीम याहया, लेखा सदस्य/
PER SHAMIM YAHYA, AM:**

This appeal is arising out of the order of Dispute Resolution Panel-I, Mumbai [in short 'DRP'], in objection No. 67 vide direction dated 25.09.2017. The Assessment was framed by the Dy. Commissioner of Income Tax circle 9(3)(1), Mumbai (in short 'ACIT/AO') for the assessment years 2013-14 vide order of



dated 30.11.2017, under section 143(3) read with section 144C(13) of the Income Tax Act, 1961(hereinafter 'the Act).

2. The only issue in this appeal of assessee is against the order of DRP and AO in disallowing the depreciation of goodwill. For this assessee has raised the following ground: -

"1. Depreciation On Goodwill Resulting From Acquisition Of Business Unit Of Lee & Muirhead Pvt. Ltd. In A.Y. 2008-09.

1.1 On the facts and in the circumstances of the case and in law, the learned A.O. erred in not allowing Depreciation of Rs. 9,43,34,545/- claimed @ 25% under applicable provisions of Section 32 of IT Act on the Brought Forward Balance of Written Down Value of the Block of Assets of Rs. 37,73,38,183/- under the Head Intangible Assets- Goodwill consisting of various intangible Assets arising out of the acquisition of business unit of Lee & Muirhead Pvt. Ltd in the F.Y 2007-08

1.2 On the facts and in the circumstances of the case and in law, the DRP erred in rejecting the valuation report taken from an independent expert valuer



without properly appreciating facts of the present case.

1.3 Without prejudice, and in any case DRP erred is not apportioning purchase consideration (I.e. Rs. 1.59,01.00,000) towards various Intangible Assets acquired on the acquisition of business unit of Lee & Muirhead Pvt. Ltd. in A.Y. 2008-09 and granting depreciation on the same.

1.4 On the facts and in the circumstances of the case and in law, the learned A.O. has erred in holding that the ratio laid by the Hon'ble Supreme Court in case of Smifs Securities Ltd. (348 ITR 302) is not applicable in the present case and consequently erred in disallowing depreciation on intangible assets including goodwill.

1.5 On the facts and in the circumstances of the case and in law, the learned A.O. has erred in not considering the facts that the appellant Company's own case the Hon'ble ITAT has allowed the depreciation under section 32 of IT



Act on goodwill consisting of various intangible assets arising out of the acquisition of business unit of Lee & Muirhead Pvt. Ltd for A.Y. 2008-09 and allowing Depreciation claimed @ 25% under applicable provisions of Section 32 of IT Act on Brought Forward Balance of Written Down Value of the Block of Assets under the Head Intangible Assets-Goodwill consisting of various Intangible Assets arising out of the acquisition of business unit of Lee & Muirhead Pvt. Ltd for AY. 2009-10.

It is prayed that the learned A.O. be directed to allow depreciation of Rs. 9,43,34,545/- on Intangible Assets including goodwill claimed @ 25% under applicable provisions of Section 32 of IT Act on the Brought Forward Balance of Written Down Value of the Block of Assets of Rs. 37,73,38,183/- under the Head Intangible Assets-Goodwill consisting of various Intangible Assets arising out of the acquisition of business unit of Lee & Muirhead Pvt. Ltd.”



3. Briefly stated facts are that the AO disallowed the depreciation of ₹9,43,34,545/- claimed at the rate of 25% under section 32 of the Act on the brought forward balances and written down value of block of assets of ₹ 37,73,38,183/- under the heard intangible assets i.e. goodwill consisting of various intangible assets arising out of the acquisition of business unit of Lee and Muirhead Pvt. Ltd. in the FY 2007-08 relevant to AY 2008-09.

4. At the outset, the learned Counsel for the assessee stated that this issue is fully covered by several Tribunal decisions in assessee's own case, wherein Tribunal following the decision of Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd. 348 ITR 302 (SC) deleted the disallowance of depreciation. We may refer to ITAT order for AY 2012-13 in ITA No.1775/Mum/2017 for following observations in Para 4 to 6 as under: -

"4. At the outset, the learned Counsel for the assessee stated that this issue is fully covered by Tribunal's decision in assessee's own case for AY 2009-10 in ITA No. 2146/Mum/2015 vide order dated 25.07.2016, wherein Tribunal following the decision of Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd. 348 ITR 302 (SC) deleted the disallowance



of depreciation by observing in Para 6 as under: -

"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.

5. *Similarly, the tribunal in assessee's own case for AY 2008-09 in ITA No. 6272/Mum/2013 vide order dated 24.08.2016 also allowed the claim of the assessee by observing in Para 11 to 12 as under: -*

11. We have considered the submissions of the parties and perused the material available on record in the light of the decisions relied upon. Undisputed facts are, the assessee during the relevant previous year, had purchased the business of Lee and Muirhead P. Ltd. for a total consideration of ` 181,50,05,880. The purchase consideration has been apportioned between movable asset and net current asset. The difference



between the purchase consideration and the value apportioned to fixed assets and net current asset has been recognised as goodwill in the nature of intangible asset and the assessee had claimed depreciation both on tangible and intangible assets. As it appears, in the original return of income the assessee claimed depreciation on all other fixed assets except the intangible asset viz. goodwill. In the course of assessment proceedings, the assessee filed a revised computation of income claiming depreciation @ 25% amounting to ` 39,75,25,000 on intangible asset of ` 159.01 crore. On a perusal of assessment order, it is observed, the only reason for which the Assessing Officer disallowed assessee's claim of depreciation on goodwill is the claim has not been made through revised return of income. Undisputedly, the Assessing Officer has not disputed assessee's claim of depreciation on other fixed assets which were



acquired under the business transfer agreement. The dispute is only confined to claim of depreciation on intangible asset. The Hon'ble Jurisdictional High Court in Prithvi Brokers and Shareholders Pvt. Ltd. (supra) after taking note of the ratio laid down by the Hon'ble Supreme Court in Goetze India Ltd. (supra) has held that even assuming that the Assessing Officer is not entitled to grant a deduction on the basis of a letter requesting an amendment to the return filed, the appellate authority is entitled to consider the claim and to adjudicate the same. The Hon'ble Court referring to a number of decision of the Hon'ble Supreme Court including the decision of Goetze India Ltd. (supra) ultimately held that the appellate authority has jurisdiction to deal not merely with additional ground which become available on account of change of circumstances or law but with additional grounds which were available when the return of income



was filed. The Hon'ble Jurisdictional High Court ultimately concluded that in Goetze India Ltd. (supra), the Hon'ble Supreme Court did not restrict the jurisdiction of appellate authority to entertain a claim not made by way of revised return of income. Thus, if we read the aforesaid decision of the Hon'ble Jurisdictional High Court in conjunction with ratio laid down by the Hon'ble Supreme Court in Goetze India Ltd., it becomes clear that the appellate authority can entertain a fresh claim of deduction by assessee, if the facts relating to such claim are available on record. If we examine the facts relating to assessee's claim of depreciation on intangible asset, it is apparent that all facts relating to the payment made towards goodwill are available in the annual report of the assessee submitted along with the original return of income. In fact, goodwill appears in the schedule of fixed assets. Thus, it is obvious that due



to inadvertent mistake, the assessee could not claim depreciation on goodwill. Therefore, in the course of assessment proceedings, the assessee filed a revised computation claiming depreciation on goodwill. In our view, the depreciation claimed by the assessee on goodwill cannot be rejected merely for the reason that it is not made through a revised return of income. Further, the contention of the Department that by virtue of CBDT circular no.549 dated 31st October 1989, the assessed income cannot be less than the returned of income is also not acceptable in view of the decision of the Hon'ble Andhra Pradesh High Court in Bakelite Hylam Ltd. (supra) and the decision of Hon'ble Gujarat High Court in Gujarat Gas Co. (supra).

12. Having held so, now we have to consider whether goodwill is an intangible asset under section 32, hence, eligible for claim of



depreciation. In our view, this issue is no more res integra in view of the decision of Hon'ble Supreme Court in Smifs Securities Ltd. (supra) where the Hon'ble Supreme Court has held that goodwill is in the nature of any other business or commercial rights as provided under Explanation-3(b) of section 32(i) r/w section 32(1)(ii). The other decisions of the Tribunal relied upon by learned Authorised Representative also express similar view. Therefore, respectfully following the ratio laid down in the decision referred to above, we uphold the order of the learned Commissioner (Appeals) on the issue. Accordingly, grounds raised by the Department are dismissed.

6. *As the issue is squarely covered in favour of assessee and against the Revenue by Tribunal's decision cited (supra), respectfully following the same and taking a consistent view, we allow the claim of the assessee and delete the*



disallowance of depreciation. The appeal of assessee is allowed."

5. Respectfully, following the earlier year's order in assessee's own case and the decision of Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd. (supra), we delete the disallowance of depreciation.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 07.01.2020.

Sd/-

(पवन सिंह / PAWAN SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:07.01.2020

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(शमीम याहया / SHAMIM YAHYA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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