



ITA Nos.1246 to 1248/Mum/2019
Assessment Years :2010-11, 2013-14 & 2014-15
M/s Gilbarco Veeder Root India Private Ltd.

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.1246/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

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आयकर अपील सं./ I.T.A. No.1247/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं./ I.T.A. No.1248/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT-1(1)(2) Room No.579 Aaykar Bhavan, M.K. Marg Mumbai-400 020.	बनाम/ Vs.	M/s. Gilbarco Veeder Root India Pvt. Ltd. SF No.627 & 628/2 Sec.W4, PDP Coimbatore Campus Eachanari Chettipalayam Road Industrial Estate, PO Malunichmappiti Coimbatore, Tamil Nadu -641 021
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AADCG-4992-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	S/Shri Pranith Golecha & Parmeshwaran – Ld. ARs
Revenue by	:	Shri V. Vinod Kumar -Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	26/06/2020
घोषणा की तारीख / Date of Pronouncement	:	13/07/2020

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)



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1. Aforesaid appeals by revenue for Assessment Years (AY) 2010-11, 2013-14 & 2014-15 contest separate orders of first appellate authority which are all dated 31/12/2018. Since, common issue is involved in all the three appeals, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience & brevity. First, we take up appeal for AY 2010-11.

2. The Ld. DR, drawing our attention to the grounds of appeal, submitted that learned first appellate authority erred in admitting fresh claim of the assessee and further, the relief has been granted to the assessee on account of depreciation on goodwill merely by relying upon the decision of Tribunal for AY 2011-12 without verifying the valuation of goodwill. Per Contra, Ld. AR submitted that the issue is squarely covered in assessee's favor by the decision of this Tribunal for AY 2011-12, ITA No.2695/Mum/2017 order dated 07/09/2018. A digital copy of the same has been placed before the bench. It was submitted that Ld. CIT(A) relied upon this decision while deciding the issue and therefore, the appellate order would not require any interference on our part.

3. We have carefully heard the rival submissions and perused relevant material on record including documents submitted through electronic mode. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs. The sole issue involved in the appeal is assessee's claim of depreciation on goodwill.

4.1 Facts from case records of AY 2010-11 would reveal that the assessee being resident corporate assessee is stated to be engaged in development, manufacturing and marketing of engineering products and fuel dispensers, submersible tank pumps, outdoor payment terminals. It



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was assessed for year under consideration in scrutiny assessment u/s 143(3) on 22/03/2013 wherein the loss of the assessee was determined at Rs.1497.30 Lacs after sole disallowance of depreciation on capitalized interest for Rs.4.55 Lacs which was suo-moto offered by the assessee during the course of assessment proceedings.

4.2 The original return of income was e-filed on 15/10/2010 at loss of Rs.1501.86 Lacs. However, during assessment proceedings, the assessee filed a revised computation of income wherein it reduced claim of depreciation on fixed assets by Rs.4.55 Lacs on account of capitalized interest, which was accepted by Ld. AO. At the same time, it claimed certain depreciation on goodwill in terms of the decision of Hon'ble Supreme Court in the case of **Smifs Securities Ltd. (24 taxmann.com 222)** However, relying upon the decision of Hon'ble Supreme Court in **Goetz India Ltd. V/s CIT (284 ITR 323)**, Ld. AO refused to admit the same since the claim was made after expiry of time allowed for filing of revised return of income u/s 139(5) of the Act and the assessee had not claimed the same by way of filing revised return of income.

4.3 The learned CIT(A) opined that the claim not made in the return of income could be made before appellate authorities and therefore, the claim was to be admitted. It was noted that the assessee acquired PDP division of an entity namely L&T Ltd. on slump sale basis vide business transfer agreement dated 17/11/2009 and the goodwill arose on account of excess consideration being paid over net assets taken over. The assessee recorded the goodwill at Rs.8766.84 Lacs which was reported in Tax Audit Report. However, upon subsequent review by management, the goodwill was recognized at Rs.9191.74 Lacs. Accordingly, the



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assessee claimed depreciation on the same @12.5%, being half of 25% since the acquisition was in later half of the year. The Ld. CIT(A) rejected the enhancement made by the management but accepted the goodwill at Rs.8766.84 Lacs and directed Ld. AO to allow depreciation on the same @12.5%. *Prima facie*, the assessee has accepted the verdict of learned CIT(A) and has not contested the same any further. However, the revenue is under further appeal before us with following grounds of appeal: -

- i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in admitting the claim of depreciation on goodwill by relying upon the decision of Hon'ble Supreme Court in the case of Goetz India Ltd. (284 ITR 323) wherein it was held that the appellate authorities have powers to admit claim; without appreciating the fact the 'appellate authority' as mentioned in the order cited above is the ITAT and its powers vested under Sec. 254 of the Act and not the Commissioner of Income Tax (Appeals).
- ii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation on goodwill by relying on ITAT decision in assessee's own case for AY 2011-12 and the Apex Court decision in the case of Smifs Securities Ltd. (384 ITR 302), which amounts to admitting of additional evidences.; without appreciating the fact that the CIT(A) is governed by the provisions of Sec. 251 r.w.r. 46A of the IT Rules and hence, should have remanded the issue to the file of AO for verification.
- iii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation on goodwill by relying on the decision of ITAT in assessee's own case for AY 2011-12; without verifying the valuation of goodwill; the method of accounting employed for valuation; the applicability of ratio of decision of the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (384 ITR 302) in assessee's case, as it is distinguishable on facts, as such, the issue may be set aside back to the file of A.O. for fresh adjudication of the merit.

4.4 The main contention of the revenue is that Ld. CIT(A) could not admit the claim and further, if the claim was to be admitted, the matter should have been remanded back to the file of Ld. AO for verification of valuation of goodwill and computations thereof. The Ld. AR would submit that similar claim has been allowed by the Tribunal in AY 2011-12 which



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has been followed by Ld. CIT(A) and therefore, the appellate order would require no interference.

5. We have carefully considered the same. So far as the revenue's submissions that Ld. CIT(A) could not have admitted a new claim is concerned, the same would stand negated by the decision of Hon'ble Supreme Court in **Goetz India Ltd. V/s CIT (284 ITR 323)** as well as the decision of Hon'ble Bombay High Court in its judgment titled as **CIT vs. Pruthvi Brokers & Shareholders P. Ltd. (2012) 349 ITR 336 (Bom.)** wherein it was held that there was no bar for the appellate authorities to admit assessee's new claim otherwise than by way of filing revised return of income. It is also undisputed fact that the assessee had made this claim during the course of assessment proceedings itself before Ld. AO by way of letter dated 11/09/2012 along with supporting documents but the same were not admitted by Ld. AO since the assessee did not revise its return of income. However, Ld. CIT(A), being an appellate authority, was empowered to do so. Furthermore, this claim of the assessee has been accepted by the Tribunal in AY 2011-12 vide ITA No.2695/Mum/2017 order dated 07/09/2018 which has been followed by Ld. CIT(A). Therefore, this plea of the revenue was to be rejected and we find no infirmity in the action of Ld. CIT(A) in admitting assessee's claim by relying upon the cited decision of the Tribunal in assessee's own case for AY 2011-12.

6. Having said so, we find that assessee's new claim arises out of business transfer agreement dated 17/11/2009 and this was the first year of claim which would have consequential impact on subsequent years. It is quite evident that Ld. AO had no occasion to consider the



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assessee's claim since the claim was not admitted and no verification as to quantification / computations / valuation of goodwill has been done at the level of Ld. AO. Therefore, to dispel the concerns raised by revenue and keeping in view the fact that this was first year of claim, while in principal holding that the assessee was entitled to claim the depreciation on goodwill in terms of the decision of Hon'ble Supreme Court in the case of **Smifs Securities Ltd. (24 taxmann.com 222)** as well as in terms of decision of Tribunal for AY 2011-12 in assessee's own case, the limited matter of verification of valuation of goodwill stand remitted back to the file of Ld. AO. The Ld. AO is directed to allow the depreciation after due verification of quantification of amount of goodwill after appreciating the relevant documents. For the said limited purpose, the matter stand restored back to the file of Ld. AO.

7. Resultantly, the appeal stands partly allowed for statistical purposes in terms of our above order.

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8. Similar are the facts in revenue's appeals for AYs 2013-14 & 2014-15. The Ld. CIT(A) has allowed assessee's new claim of depreciation on goodwill in similar manner, against which the revenue is in further appeal before us. Since, these years are subsequent years, our adjudication as for AY 2011-12 shall *mutatis mutandis* apply to both these years also. Resultantly, both the appeals stand partly allowed for statistical purposes.



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Conclusion

9. All the appeals stand partly allowed for statistical purposes.

Order pronounced in the open court on 13th July, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/07/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.