

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI M. BALAGANESH, ACCOUNTANT MEMBER

**ITA No. 7886/MUM/2019
Assessment Year: 2001-02**

**ITA No. 7887/MUM/2019
Assessment Year: 2003-04**

&

**ITA No. 7888/MUM/2019
Assessment Year: 2005-06**

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|--|------------|---|
| Assistant Commissioner of Income Tax – 14 (2) (2), Room No. 461, 4 th Floor, Aayakar Bhavan, M.K. Road, Marine Lines, Mumbai - 400020 | Vs. | M/s Nuvoco Vistas Corporation Ltd., (Formerly known as Lafarge India Pvt. Ltd.), 4 th Floor, Tower-3, Equinox Business Park, L B S Road, Kurla (West), Mumbai - 400070 PAN: AAACL4159L |
| (Appellant) | | (Respondent) |

Revenue by : Shri Tharian Oommen (DR)

Assessee by : Shri Madhur Agrawal (AR)

Date of Hearing: 05/05/2021

Date of Pronouncement: 02/06/2021

ORDER

PER SAKTIJIT DEY, JM

The captioned appeals by the revenue arise out of three separate orders, all dated 30.09.2019 of learned Commissioner of Income Tax (Appeals) – 22, Mumbai for the assessment years 2001-02, 2003-04 and 2005-2006.

2. The grounds raised by the revenue are identical in all these appeals and relate to the common issue of allowance of assessee's claim of depreciation on goodwill.

3. Briefly the facts are, the assessee, earlier known as Lafarge India Pvt. Ltd., is engaged in manufacture and sale of cement and allied products. Though, in the return of income filed for assessment year 2001-02 the assessee did not claim any depreciation on goodwill, however, in course of assessment proceeding, the assess filed a revised computation claiming depreciation. The Assessing Officer, though, agreed that the assessee is entitled to claim depreciation on goodwill in view of the decision of the Hon'ble Supreme Court in case of *CIT vs. Smif Securities Ltd. (348 ITR 302)* and the decision of the Hon'ble Bombay High Court in case of *Taj Sat Air Catering Ltd. vs. CIT (211 Taxmann 84)*. However, he disallowed assessee's claim on the ground that the assessee has not made such claim in the return of income. While doing so, he relied upon the decision of the Hon'ble Supreme Court in the case of *Goetze India Ltd. (2006) 84 ITR 323 (SC)*. The Assessing Officer followed up with of similar disallowance in assessment years 2003-04 and 2005-06. The assessee contested the disallowance of depreciation before the learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record learned Commissioner (Appeals) allowed assessee's claim by holding that the assessee can make a claim of deduction in course of assessment proceedings. In this context he relied upon the decision of the Hon'ble jurisdictional High Court in case of *CIT vs. M/s Pruthvi Brokers & Shareholders Pvt. Ltd. (349 ITR 336)*.

4. We have considered rival submissions and perused the material on record. On a reading of the observations of the Assessing Officer in the impugned assessment order, it is very much clear that he does not deny the fact that the assessee is eligible to claim depreciation on goodwill in view of the decision of the Hon'ble Supreme Court in case of *CIT Vs. Smif Securities Ltd.(supra)*. The only reason for disallowance is, the assessee has not claimed such deduction in the return of income. In fact, the grounds raised by the revenue are also to the similar effect. Now, it is fairly well settled even if the assessee by mistake or inadvertently has not claimed a legitimate deduction in

the return of income, which is otherwise available, assessee can claim such deduction not only in course of assessment proceedings but even before the appellate authority. The decision of the Hon'ble jurisdictional High Court (supra) relied upon by the learned Commissioner (Appeals) clearly lays down such proposition. Therefore, keeping in view the settled legal position on the issue, we uphold the decision of learned Commissioner (Appeals). Accordingly, grounds are dismissed.

5. In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 2nd June, 2021.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 02/06/2021

Alindra, PS

आदेश 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//

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