

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI R.K.PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.601/Del/2021  
(ASSESSMENT YEAR 2016-17)**

Aricent Technologies (Holdings)Limited 5, Jain MandirMarg (Annex),Connaught Place, New Delhi-110 001.  PAN-AACCK 8280B	Vs.	Addl. CIT, Special Range-1, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

**S.A. No.167/Del/2021  
Arising out of I.T.A. No.601/Del/2021  
(ASSESSMENT YEAR 2016-17)**

Aricent Technologies (Holdings) Limited 5, Jain MandirMarg, (Annex), Connaught Place, New Delhi-110 001.  PAN-AACCK 8280B	Vs.	Addl. CIT, Special Range-1, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>
Appellant By	<b>Sh. Ajay Vohra, Sr. Adv., Sh. Neeraj Jain, Adv. &amp; Sh. SaksheemSinghal, Adv.</b>	
Respondent by	<b>Mrs. Meenakshi Singh, CIT- DR</b>	
Date of Hearing	<b>07.10.2021</b>	
Date of Pronouncement	<b>04.01.2022</b>	

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against final assessment order dated 31.3.2021 passed u/s 143(3) read with section 144 (13) of the Income Tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are that the assessee is engaged in the business of developing packaged software. It provides software consulting services and other ancillary products and services primarily for the use of the telecommunication industry. The assessee is also carrying on business of trading in telecommunication testing equipment. The return of income for the year was filed declaring an income of Rs. 2,77,08,55,770/- and the case was selected for scrutiny under CASS guidelines. The total income of the assessee was computed at Rs. 3,46,90,96,220/- after making certain additions and disallowances, which are as under:-

- i) Disallowance of depreciation on goodwill amounting to Rs. 66,96,48,045/- claimed u/s 32(1)(i) of the Income Tax Act, 1961. on the Written Down Value (WDV) of goodwill at Rs. 2,67,85,92,179/- arising out of the amalgamation of Flextronics Software Limited (Flextronics) and Futures Software Limited (FSL) into the assessee company on the ground that the assessee

- had not assigned a fair value of other assets while computing the goodwill.
- ii) Disallowance of ESOP Expenses amounting to Rs. 14,99,05,312/- claimed on account of reimbursement paid to the parent company towards ESOP for granting Stock option to the assessee's employees.
- iii) Non granting of deduction on profit on sale of assets amounting to Rs. 2,20,86,134/- thereby resulting in double taxation of same amount.

2.1 The assessee is before this Tribunal challenging the above mentioned additions / disallowances by raising the following grounds of appeal:-

*“1. That the Ld. assessing officer (AO)/ Dispute Resolution Panel (DRP) erred on facts and in law in computing the total income of the appellant at Rs. 3,46,90,96,220, as against the returned income of Rs. 2,77,08,55,770.*

*2. That the Ld. AO has erred on facts and in law in not following the directions of the DRP to verify if the Revenue has filed any appeal in the High Court, against the claims made by the appellant for the covered issues, and simply proceeded to make the impugned additions, without any cogent basis.*

*3. That the Ld. AO/ DRP erred on facts and in law in not allowing depreciation of Rs. 66,96,48,045 claimed under section 32(1)(i) of the Act on written down value of Goodwill*

of Rs. 267,85,92,179 arising out of amalgamation of Flextronics Software Limited (Flextronics) and Futures Software Limited (FSL) into the appellant on the ground that appellant has not assigned fair value to other assets while computing Goodwill.

3.1 That the Ld. AO/DRP erred on facts and in law in not appreciating that the Goodwill represents difference between the aggregate book value of investment in tie equity shares of Flextronics in the books of the appellant and FSL in the books of Flextronics and the aggregate face value of share capital of Flextronics held by the appellant and FSL held by Flextronics accounted as goodwill amounting to Rs.26,75,57,10,570 pursuant to amalgamation of Flextronics and FSL with the appellant.

3.2 That the Ld. AO/ DRP erred on facts and in law in alleging that the valuation of goodwill is unclear and the assessee had failed to ascribe a correct value to goodwill, i.e. the fair value of net assets.

3.3 That the Hon'ble DRP/Ld. AO erred on facts and in law in relying on the ITAT Ruling of DCIT vs. Toyo Engineering Ltd., ITA No.3279/Mum/2008 without appreciating that the same was reversed by the HobbbleMumbai Bench of the Tribunal.

3.4 That the Id. AO erred, in law and on facts and circumstances of the case in proposing to disallow depreciation on Goodwill by alleging that the Supreme Court in the case of CIT vs. Smifs Securities Ltd.: 348 ITR 302 does not give any clarity on the aspect related to valuation of 'Goodwill'.

4. That the Ld. AO/DRP erred on facts and in law in not allowing the deduction of Rs.2,85,92,404 claimed on account of reimbursement paid to the parent company towards ESOP for granting stock options to employees of the appellant.

4.1 That the Ld. AO/ DRP erred on facts and in law in proposing to hold that employees compensation expense

*claimed by the appellant was not allowable under section 37 of the Act alleging that the same was not incurred wholly and exclusively for the purpose of the business of the appellant company.*

4.2 *That the Ld. AO/ DRP erred on facts and in law alleging that the expenditure claimed did not represent a crystallized liability and being without any objective evidence for justification, the same was not allowable as deduction.*

4.3 *That the Ld. AO/ DRP erred on facts and in law in holding that ESOP is a part of salary and since the appellant did not deduct any tax at source on payment to the group company, the amount claimed was disallowable under section 40(a) of the Act.*

4.4 *Without prejudice, that the Ld. AO/ DRP failed to appreciate that: (a) tax was not deductible on mere issuance of options and (b) no disallowance, in any case, can be made under section 40(a) of the Act on account of alleged non-deduction of tax on payments made in the nature of 'emoluments' to employees.*

4.5 *That the Ld. AO/ DRP erred on facts and in law in failing to appreciate that the appellant had merely reimbursed the expenses to its group company and the same was not subject to deduction of tax at source.*

4.6 *That the Ld. AO/ DRP erred on facts and in law in treating the amount of discount a short capital receipt and the entire expenditure to be in the nature of capital expenditure.*

5. *That the Ld. AO erred on facts and in law in not granting deduction of profit on sale of assets, amounting to Rs. 2,20,86,134 and the amount erroneously continued to remain a part of the business profits, thereby resulting in double taxation of the said amount.*

6. *That the Ld. AO erred on facts and in law in not granting Minimum Alternate Tax (MAT) credit amounting to*

*Rs.29,10,99,501 claimed by the appellant in its return of income.*

7. *That the Ld. AO erred on facts in allowing credit of the tax deducted at source of Rs.27,01,40,968 as against Rs.27,04,10,498 claimed by the appellant in its return of income, resulting in short TDS credit amounting to Rs. 2,69,530.*

8. *That the Ld. AO erred on facts and in law in charging interest under sections 234B and 234C of the Act.*

*The appellant craves leave to add to, alter, amend or vary the above grounds of appeal at or before the time of hearing.”*

3.0. The Ld. Authorised Representative (AR) submitted a chart depicting all the issues which are now for consideration before this Bench and submitted that as far as the issue of disallowance of depreciation on goodwill and disallowance of ESOP expenses was concerned, both these issues stood covered in favour of the assessee by the order of this Tribunal in assessee's own case. It was submitted that the disallowance of depreciation on goodwill was covered in assessee's favour by the orders of the Tribunal for assessment years 2008-09, 2009-10 vide order dated 26.7.2019 and also by Tribunal's orders for assessment years 2010-11 to 2014-15 vide order dated 29.11.2019 and by Tribunal order for assessment year 2015-16 vide order dated 23.12.2019. Copies of the same orders were placed on record.

3.1 In respect of disallowance of ESOP expenses, it was submitted that similar disallowance was made by the Assessing officer on identical facts during the assessment years 2014-15 and 2015-16, which was deleted by this Tribunal in ITA No. 7637/Delhi/2018 and ITA No. 5708/Delhi/2019 respectively.

3.2 With respect to non grant of deduction of profit on sale of assets amounting to Rs. 2,20,86,134/-, it was submitted that during the relevant assessment year, the assessee had earned a profit of Rs. 2,20,86,134/- on sale of fixed assets and that the said profit had been duly credited in the profit and loss account. It was further submitted that for the purpose of computing the income tax in terms of provisions of section 43(6) of the Act, the amount on sale consideration received on the sale of fixed assets was reduced from the Written Down Value (WDV) of the block of assets, and consequently the business profit were reduced by the amount of profits i.e. Rs. 2,20,86,134/-. It was further submitted that in the final assessment order, the income from business and profit was incorrectly computed without allowing the deduction of this amount which has resulted in double taxation of the amount of Rs. 2,20,86,134/-. Our attention was also drawn to the copy of the tax audit report for assessment year 2016-17 evidencing that the same consideration on sale of fixed assets was duly reduced from the WDV of block assets. It was

submitted that, in view of this factual matrix, the Assessing officer should be directed to delete the impugned addition.

3.3 With respect to the ground No.6 of the appeal, it was submitted that the Assessing officer had not granted the credit of Rs. 29,10,99, 501/-standing against the Minimum Alternate Tax (MAT) account which may be granted to the assessee after due verification. Similarly, in respect of ground No. 7, it was submitted that the Assessing officer had erroneously granted credit of Tax Deducted at Source (TDS) at Rs. 27,01,40,968/- as against Rs. 27,04,10,498/- , which was claimed by the assessee in its return of income, thereby, resulting in short grant of TDS of Rs. 2,69,530/-. It was prayed that the directions may be issued to grant correct credit of tax after verification

4.0 Per contra, the Ld. CIT DR supported the orders of the authorities below.

5.0 We have heard the rival submissions and have also perused the material on record. We, now take up various grounds one by one for the purpose of adjudication.

5.1 Ground Nos. 1 and 2 are general in nature and do not require any specific adjudication.

5.2 Ground Nos. 3 to 3.4 challenge the action of the lower authorities in making disallowance in respect of depreciation on goodwill. We agree with the

contention of the Ld. AR that this issue stands covered by the orders of this Tribunal in assessee's own case in assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. For the sake of completeness and ready reference, we reproduce the relevant paragraphs from the order of this Tribunal in assessment year 2010-11 in ITA No. 1308/Del/2015, wherein, vide order dated 29.11.2019, it was held as under:-

*“33. Coming to the issue in hand, the Tribunal in Assessment Year 2008-09 (supra) had admitted the additional Ground of appeal vide paras 34 to 41 and then adjudicated the issue on merits vide para 42 onwards. The first aspect which was decided by the Tribunal was that all the facts in relation to creation of goodwill were available on record. Thereafter, looking into the aspects of amalgamation of two companies with assessee, under scheme of arrangement and amalgamation w.e.f 01.04.2007, which was approved by the Hon'ble High Court and after taking note of salient features of the amalgamation in paras 47 to 50 at page 25 to 33 of the order, wherein Tribunal also took note of the methodology approved as part of scheme of amalgamation, for computation of goodwill arising on amalgamation of two concerns of the assessee company, observed that the said methodology was approved by tax auditor of the assessee company. In para 52 onwards, the contention of the DRP was noted and one of the contentions was that exercise had to be carried out to determine the valuation of the assets and vide para 53, it was held that the said contention of the Ld. DR was not acceptable and it was observed as under:-*

*53. “This contention of the DR is not acceptable as the Hon'ble High Court in its order giving effect to the scheme of amalgamation mentioned elsewhere*

*has clearly stated that the difference in the net asset value of FSSL and FSL and the consideration paid by the assessee shall be towards goodwill.”*

*34. The Tribunal vide paras 54 to 63 dealt with all other aspects of the issues and the arguments of the DRP on different facets of goodwill acquired in business reconsideration and held that the assessee to be entitled to claim depreciation on goodwill, as per the rates applicable for the year under consideration. We are referring to the findings of the Tribunal in paras 54 to 63, but not reproducing the same for the sake of brevity. However, following same parity of reasoning, we allow the claim of the assessee of depreciation on goodwill. The Ground of appeal Nos. 5 & 5.1 are thus allowed. Ground of appeal No.5.2 is dismissed as not pressed and Ground of appeal Nos. 5.3 & 5.4 also stand allowed.”*

5.3 Accordingly, respectfully following the order of the Coordinate Bench of the Tribunal in assessee's own case as mentioned above, we allow ground Nos.3 to 3.4

5.4 Ground Nos. 4 to 4.6 challenge the action of the lower authorities in not allowing deduction of Rs. 14,99,05,312/- incurred on account of reimbursement paid to the parent company towards ESOP for granting stock options to the employee of the assessee. We note that similar disallowance was made by the Assessing officer on identical facts during assessment years 2014-15 and 2015-16 and this Tribunal had deleted the disallowance for assessment year 2014-15 in ITA No. 7637/Del/2018 for Assessment year 2015-16 in ITA No. 5708/Del/2019. The relevant observations made by the Coordinate Bench

of this Tribunal in assessee's appeal for assessment year 2014-15 in ITA No. 7637/Del/2018 vide order dated 29.11.2019 are being reproduced here-in-under for ready reference.

*“112. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is with regard to claim of the expenses on account of reimbursement paid to the parent company towards ESOP for granting stock auctions to the assessee's employees. Share incentive plan for the employees of Aricent Group was floated and under the scheme, as part of the employee compensation measure, an option to purchase the shares after the completion of the vesting period was granted to the employees of the company at a discounted price to the fair market value of the share. The difference between the fair market value of the shares and the amount paid by the employee on actual exercise of option represented employee compensation expenses. Since the option was granted to the employees during the relevant assessment year and assessee reimbursed the said amount to the group company, as the liability had accrued/crystallized and the same was recognized in the year itself as the assessee was following mercantile system of accounting.*

*The aforesaid expense was claimed as deduction u/s 37(1) of the Act. It may be pointed out herein itself that the aforesaid payment to the Aricent Cayman has been accepted by the TPO to be at arms length.*

*113. We hold that the aforesaid payment under the ESOP scheme wherein the reimbursement was paid to the parent company, towards ESOP for granting stock options to assessee's employees is in the nature of employees compensation and is deductible as the*

*expenditure incurred was wholly and exclusively for the purposes of business.*

*114. We further find that the issue stands covered by the decision of Hon'ble Madras High Court in CIT vs M/s PVP Ventures Ltd. (supra) wherein it was held that the amount of difference between the market value of the shares issued under Employees Stock Option Scheme and the value at which they were allotted to the employees, which was debited to the P&L account in accordance with SEBI Guidelines, is an ascertained liability, and thus, allowable as revenue expenditure under section 37(1) of the Act.*

*115. The said proposition has been applied by the Hon'ble High Court in CIT vs Lemon Tree Hotels Ltd. (supra) and the claim of ESOP expenditure has been allowed as expenditure u/s 37 of the Act.*

*116. Further, the Special Bench in Biocon Ltd. vs DCIT (supra) held that discount on issue of ESOP, i.e. the difference between the market price of shares on date of exercise was deductible as business expenditure, since the same represents consideration/compensation for services rendered by employees. The Special Bench observed that the company incurs obligation of issuing shares at a discounted price on a future date in lieu of services rendered by the employees, which is allowable as deduction under section 37(1) of the Act. The Special Bench further held that the said discount was an ascertained liability, since the employer incurred obligation to compensate the employees over the vesting period, notwithstanding the fact that the exact amount of discount which is quantified only at the time of exercising the options.*

*117. Following the same parity of reasoning, we hold that the said expenses are allowable as a business expenditure in the hands of the assessee.”*

5.5 Respectfully following the order of the Co-ordinate Bench, as reproduced above, we direct the Assessing officer to delete the impugned disallowance of ESOP. Thus, ground Nos. 4 to 4.6 also stand allowed.

5.6 Ground No.5 challenges the action of the lower authorities in not granting deduction of profit on sale of assets to the tune of Rs. 2,20,86,134/-. It is contended by the Ld. Authorised Representative that the assessee had earned profit of Rs. 2,20,86,134/- on sale of fixed assets and that such profit had been duly credited in the Profit & Loss account. It has been further submitted that for the purpose of income tax, in terms of provision 43(6) of the Income Tax Act, 1961, this sale consideration was reduced from the WDV of block of assets and, thus, the business profits were reduced by this amount. It has further been submitted that at the time of computing the taxable income of the assessee, this amount was not deducted by the Assessing officer thereby resulting in double taxation of the impugned amount. To evidence the claim of the assessee a copy of the Tax Audit report for the assessment year 2016-17 has already been filed, wherein, undisputedly the sale consideration of sale of fixed assets has been reduced from the WDV of block of assets. We have given a thoughtful consideration to the issue at hand and we remit this issue back to the file of the Assessing officer for rectifying the computation of income

after verification of the claim of the assessee. Thus, ground No.5 stands allowed for statistical purposes.

5.7 Ground No.6 challenges the action of the lower authorities in not granting MAT credit of Rs. 29,10,99,501/-. The Assessing officer is directed to verify and,thereafter, grant the MAT credit as per Rules.Thus, ground No.6 stands allowed for statistical purposes.

5.8 Ground No. 7 challenges the order of the lower authorities in granting short credit of TDS to the tune of Rs. 2,69,630/-. The Assessing officer is directed to allow the benefit of the balance TDS credit after due verification.This ground also stands allowed for statistical purposes.

5.9 Ground No.8 challenges the charging of interest u/s 234 B and 234C of the Income Tax Act, 1961. This ground is consequential in nature and does not require any specific direction

6.0 In the final result, the appeal of the assessee stands allowed in terms of our above mentioned directions.

**Stay Application No. 167/Del/2021:-**

7.0 As the appeal of the assessee is decided on merits, the Stay Application of the assessee become infructuous and is dismissed as such.

8.0 In the final result, the Stay Application of the assessee stands dismissed.

Order pronounced on 04.01.2022.

Sd/-

**(R.K.PANDA)**  
**ACCOUNTANT MEMBER**

Dated:04/01/2022

PK/Ps / rkk

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

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