

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRICHANDA POOJARI, ACCOUNTANT MEMBER**

ITA Nos.953 to 955/Bang/2019
Assessment Years : 2014-15 to 2016-17

M/s. Middleby Celfrost Innovations Pvt. Ltd., 3 rd Floor, Onyx Centre, No.5, Musuem Road, Bengaluru – 560 001. PAN : AAICM 8445 J	Vs.	DCIT, Circle – 4(1)(2), Bengaluru.
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Assessee by	:	Shri. T. Suryanarayana, Advocate
Revenue by	:	Shri. Sankar Ganesh K, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	14.12.2021
Date of Pronouncement	:	20.12.2021

ORDER

Per N. V. Vasudevan, Vice President

These are appeals by the assessee against 3 orders of CIT(A)-4, Bengaluru, dated 15.02.2019 relating to Assessment Years 2014-15, 2015-16 and dated 18.03.2019 relating to Assessment Year 2016-17.

2. We shall first deal with the appeal for Assessment Year 2014-15. The issue that arises for consideration in the above appeal pertains to the disallowance of Rs. 1,60,32,084/- on account of depreciation claimed on goodwill amount arrived at after the fair value adjustment made to debtors and inventory in the book of accounts. In the alternative, the Assessee is claiming

for a deduction with respect to inventory and debtors adjustment from the business profits.

3. During the financial year 2013-14, the assessee acquired the assets and liabilities of the refrigeration business of Celfrost Innovations Private Limited ('Seller' or 'Celfrost') as a going concern on a slump sale basis for a total consideration of Rs. 74,60,00,000/-through a Business Transfer Agreement ('BTA') dated 15 October 2013. Under the said BTA, the assessee acquired the business undertaking, including assets related to the undertaking including but not limited to, tangible fixed assets, goodwill, exclusive right to all data and lists of customers and suppliers, business intellectual property, brand/ trademark, business and domain names, utility models, business information etc. As per section 2(42C) of Income -tax Act 1961, 'slump sale' means **the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.** In CIT v. Smifs Securities Ltd. - (2012) 24 taxmann.com 222 (SC), the Hon'ble Supreme Court held that Explanation 3 to s. 32 states that the expression "asset" shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. The words "any other business or commercial rights of similar nature" in clause (b) of Explanation 3 indicates that **goodwill would fall under the expression "any other business or commercial right of a similar nature"**. The principle of **ejusdem generis** would strictly apply while interpreting the said expression which finds place in Explanation 3(b). Consequently, **"Goodwill" is an asset under Explanation 3(b) to s. 32(1) & eligible for depreciation. The difference between the cost of an asset and the amount paid in the process of amalgamation constituted "goodwill"**. There is no dispute that the above principle will also apply to a slump sale where business is acquired as a going concern and payment over and above book value of net tangible assets can be allocated by assessee towards

acquisition of bundle of business and commercial rights, compendiously termed as 'goodwill' and depreciation claimed on the same. We may also clarify that there is no provision in the Act as to how the purchaser in a slump sale has to record the value of assets/rights acquired in a slump sale, though the value of assets/rights would be available and agreed by the parties. The sale consideration paid would be a lump sum consideration without values being assigned to individual assets.

4. Admittedly, the slump sale concluded on 15.10.2013 as per the terms of the BTA. After conclusion of slump sale, the assessee obtained a valuation report dated 9.8.2014 from an independent valuer for the allocation of the purchase price towards various assets (hereinafter the 'Purchase Price Allocation report' or 'PPA report') and accordingly recorded them in its books. As per the PPA, all assets were recorded at fair value and an allocation was made towards the brand value. The resultant excess purchase consideration paid was recognized towards goodwill, which was valued at Rs. 38,05,00,766/-. In terms of the said report, the goodwill so arrived at was subject to adjustments in the value of certain current assets (i.e. sundry debtors and inventory), C Form Liability and subsequent adjustments to the purchase consideration.

5. The assessee carried out the adjustments to the values of Sundry debtors and Inventory taken over from Celfrost at the year end, during closing of the books. The book value of Sundry Debtors was reduced by Rs. 4,21,37,570/- and the book value of Inventories was reduced by Rs. 8,61,19,099i-, totaling to Rs. 12,82,56,669/-, on account of which, the goodwill arrived at stood increased to the extent of Rs. 12,82,56,669/-. Apart from the above, adjustments were also made for C Form liability (Rs. 1,50,00,000/-) and to the purchase consideration (Rs. 33,00,000/-).

Consequently, the revised Goodwill valued and recorded in the books by the assessee was at Rs. 52,70,57,435/-.

6. In the assessment order passed, the Ld. AO accepted that the difference between the purchase consideration and the net value of the assets was goodwill entitled for Depreciation under Section 32 of the Act. However, the AO was of the view that to the extent of Rs. 12,82,56,669/- which had arisen on account of adjustments to debtors and inventory, the same was not in terms of the valuation report and that therefore, no depreciation ought to be allowed on the same. He held that such adjustments were not required as per clause 4.24 and 4.25 under the BTA which stated that the debtors and the inventories were at their realizable values; and Depreciation claimed on the enhanced goodwill amounted to a double benefit as the assessee would claim deductions at the time of write off of debtors and inventories. He however accepted the two other adjustments to Goodwill on account of C - Form liability (Rs.1,50,00,000/-) and adjustment to purchase consideration (Rs. 33,00,000/-). Consequently, the final goodwill was determined to be Rs. 39,88,00,767/- by the Ld. AO. Accordingly, the depreciation allowance on the enhanced goodwill was also disallowed thereby resulting in reducing the loss declared by the assessee from Rs. 5,66,14,356/- to Rs. 2,59,19,772/-. The AO was of the view that by revaluing its debtors and inventory, the assessee was indirectly trying to claim depreciation on non-depreciable assets and also that it would amount to a double deduction. While doing so, the AO erroneously considered the entire depreciation claimed by the assessee on intangible assets (trademark plus goodwill). The assessee had, in parallel, filed a rectification application under Section 154 of the Act against the erroneous disallowance of the depreciation on trademark. The AO rectified the error and restricted the disallowance of depreciation only on the adjustments made to Goodwill.

7. On appeal to the Commissioner of Income-tax (Appeals) ["CIT(A)], the CIT(A) passed an order upholding the order of the AO by: -

- Not accepting the fair value adjustment made to goodwill with respect to debtors and inventory in the books of account by the Assessee, thereby disallowing the depreciation impact of the same.
- Not accepting the audited financial statements where the fair value adjustments made in connection with the goodwill were accepted by the auditors.
- Not considering the alternate claim made by the assessee in its submission with respect to inventories.

The CIT(A) however accepted that the assessee had demonstrated that they have not claimed any double deduction with respect to debtors and inventory in the subsequent years till FY 2017-18. Aggrieved by the Order of the Ld. CIT(A), the assessee has filed the present appeal before the Tribunal.

8. The issues that arise for consideration in this appeal are, whether,:

- a) The CIT(A) erred in not accepting the fair value adjustment made to goodwill on account of adjustments to debtors and inventory in the book of accounts of the assessee despite the same being accepted by the auditors. (Ground Nos. 1 to 3); and
- b) Without prejudice and in the alternate, the assessee is entitled be allowed a deduction with respect to inventory adjustment from the business profits. (Ground No. 4)
- c) Without prejudice and in the alternate, the assessee is entitled be allowed a deduction with respect to debtors from the business profits. (Ground No. 5)

9. The learned counsel for the assessee submitted that at the end of the financial year, while closing its books, inter alia, the assessee made the following fair value adjustments to its debtors and inventory taken over from Celfrost:

Amount in Rs.				
Adjustment made towards	Original Book value at the time of slump	Adjustment (Rs.)	Fair value finally considered	Impact on goodwill
Debtors account	18,27,35,030	(4,21,37,570)	14,05,97,460	Increase in value of
Inventory	25,89,30,370	(8,61,19,099)	17,28,11,271	Increase in value of

As a result of the above adjustment, the goodwill which was increased by Rs. 12,82,56,669/- i.e. the total of the above adjustments and the assessee claimed depreciation on the enhanced goodwill thereof. The adjustments were primarily in the nature of provision for doubtful debts and adjustments for slow-moving, obsolete and short inventory.

10. **Submissions with regard to revaluation of Debtors:** The learned counsel for the Assessee submitted that subsequent to the slump sale, the management identified that certain debtors taken over from Celfrost were not stated at their realizable value at the time of their transfer owing to ageing, legal disputes, default in timely payments, past disputes, reconciliation and other inherent issues and a provision on this account was therefore recorded at Rs. 4,21,37,570/-. The analysis of the debtors was done on a scientific basis for each of such debtor individually. This exercise was possible only upon the taking over of the debtors. Further, since the adjustment pertained to the debtors taken over, it is fair and logical that the goodwill is adjusted for the said amount since no adjustments to the Purchase Consideration was possible. The independent valuer at the time of the PPA report, expressly recognised the said fact and noted it suitably in Para 11.2.1 and 11.2.5 of the PPA report, which stated as follows:

"11.2.1 As per the management book value of working capital is considered as fair value"

11.2.5 The implied goodwill balance represented above may not necessarily be equal to the total amount of goodwill implied by the transaction as it may exclude certain closing accounting adjustments to be made by the Management."

[Emphasis Supplied]

The above remarks were applicable for both debtors and inventory adjustment. Accordingly, the Assessee created a provision of the doubtful debts, to monitor its effort on the recoverability for debtors. It was submitted that the fair value adjustment made by the Assessee with respect to debtors and inventory was also found reasonable to the auditors as per para 28 of the audited financial statements. The fact that no adverse qualifications were noted in the audit report for the year ended 31 March 2014, goes to show that the adjustment represented true and fair value of the asset taken over which is the basis of drawing up the financial statements under the Companies Act, 2013.

11. The learned counsel submitted that the reference by the AO to clause 4.25 of the BTA which contains a disclosure by the seller as to the largest ten suppliers / customer as on June 2013 and the fact that the supplier / customer as mentioned in that schedule are in healthy relationship with the seller and his conclusion based on the same that debtors require no adjustment is not sustainable and overlooks the fact that actual position would be reflected only when the debtors is taken over and the realisation is undertaken by the assessee independently.

12. It was submitted that even as on March 2018, i.e. even after four years of acquisition of business, the assessee has realised only around 20% debtors during subsequent years. It was submitted that had the assessee not claimed adjustment in goodwill and claimed the debts which could not be recovered from the debtors as bad debts in the year of write off, the assessee would have

claimed more deduction than what the assessee had claimed in the form of depreciation on enhanced value of goodwill. Given the fact that the assessee has not earned any profit since inception and has accrued losses upto 31 March 2018, that as on 31 March 2018, the assessee has claimed a total deduction of Rs. 3,04,71,553/- towards depreciation as compared to Rs. 3,35,23,187/- had the said amount not been adjusted to goodwill but towards profits/ losses of the assessee. As such, the assessee has actually under-claimed Rs. 30,51,634/- as on 31 March 2018 due to making the fair value adjustment to goodwill, instead of adjusting through P&L accounts. Further, it is also submitted that majority of the debtors have either being written off or recovered and the balance amount as on 31 March 2018 is not very substantial which may either be recovered or written off in near future. It was submitted that the assessee has not claimed any deduction for writing off bad debts in the year of actual write off. Rather, any recovery from such debtors, has been offered for tax by the assessee in the respective year. In view of the above, it was submitted that by adopting the adjustment of debtors through Goodwill, the assessee is only postponing the claim/ deduction of expense in the books of accounts and no undue benefit is taken. Further, it was submitted that the adjustment made to the value of goodwill is not prejudicial to the interest of the revenue and the assessee does not gain from tax perspective in any manner whatsoever.

13. Submissions related to adjustments made to Inventories :

Subsequent to the slump sale, the management identified that certain inventories taken over from Celfrost were not stated at their realizable value at the time of their transfer owing to a number of factors for example market acceptance, obsolescence, discontinued products, usage of products, ageing, physical condition - defective, refurbished, rusting, brand, etc. Post-acquisition, upon evaluation of the inventory, the assessee ascertained that

there were many adjustments which had to be made to the value for inventory to represent their true realisable value and accordingly, the inventories were written down by Rs. 8,61,19,099/-. The analysis of the inventories was done on a scientific basis for each factor. This exercise was possible only upon the taking over of the inventories. Further, since the adjustment pertained to the inventories taken over, it is fair and logical that the goodwill is adjusted for the said amount since no adjustments to the Purchase Consideration was possible.

14. The learned counsel for the assessee submitted that the assessee has bucketed the inventory into various items to ascertain the stock value adjustment. The same has been summarized below:

Category	Reason for the
Difference between stock taken over and physical stock	Difference in the quantity of stock reported as taken over from Celfrost and physical stock available with the Assessee. The said difference was identified by the Assessee item-wise and was adjusted towards opening stock of inventory for the purpose of accounting in the books.
Defective items	Since the defective goods would have to be sold in the market as such, the Assessee depreciated the said stock by 50%.
Goods more than 1 year old and not sold	Goods that were not selling in the market due to various reasons like obsolescence, market acceptance, customer usage etc., were identified and considered as non-moving goods and thus
Goods more than 1-year-old but still selling sluggishly	Goods that were considered as slow moving goods whose realizable value could be impacted in the near future were identified separately. Since the said goods were selling at a very low pace, their value was considered to be impacted due to ageing, obsolescence, market acceptance, customer demand etc. in the longrun. Accordingly, a write down of 50% was made in this respect.

Discontinued product	The Assessee sold certain products internationally, which were in competition with some of the existing products of Celfrost, which sold its business to the Assessee. Post-acquisition, the
Spares related to the above equipment's/ stock	The spares related to the above equipment's was also identified and provided by the management on a reasonable basis

It was submitted that the assessee has evaluated the stock in detail and has made the fair value adjustment on a scientific basis to ascertain the true and fair value of the stock. It was submitted that the AO has ignored the observations and comments made by the valuer and statutory auditors and disregarded the value of inventory in the assessment order. It was pointed out that the fair value adjustment made in the books of accounts and adjusted to inventory do not have an impact on the P/L account as the same is adjusted to the opening stock of the assessee and therefore, correspondingly, the closing stock also contains the effect of the adjustment and no impact is created in the P/L account for the year.

15. SUBMISSIONS ON ALTERNATE GROUNDS IN GROUND NOS. 4 AND 5:

The Assessee is entitled be allowed a deduction with respect to inventory adjustment from the business profits. (Ground No. 4)

Alternatively, and without prejudice to the above submissions, the learned counsel submitted that had it not adjusted stock to goodwill but written off to the P/L account, the same would be treated as an allowable expenditure as per Accounting Standard 2 - Valuation of Inventories ('AS-2') and section 145(2) of the Act. Under the circumstances, the entire amount of Rs. 8,61,19,099/-

would be debited to the P/L account and the losses would have increased substantially to that extent. The impact of the same is tabulated below:

Financial Year	Goodwill Adjustment		Amount in Rs.
	Amount adjusted to goodwill (Rs.)	Claim of depreciation on the same in FY 2013-	P/L adjustment Amount adjusted to P/L account (Rs.)
FY 2013-	8,61,19,099/-	1,07,64,887/-	8,61,19,099/-

The Ld. CIT(A) has not adjudicated on the above alternate claim made by the assessee in the submission during the course of the appeal proceedings. Further, the Ld. CIT(A) while upholding the Order of the AO has held that the fair value adjustment made to the value of goodwill was an afterthought of the assessee as in case of slump sale, write off of bad and doubtful debts and inventories cannot be made by the new purchaser without making any efforts towards them. Since the contention of the assessee as well as the alternate claim was not accepted by the Ld. CIT(A), while filing the above appeal before this Hon'ble Tribunal, it was felt necessary to add an alternate Ground of Appeal for the said adjustment with respect to inventory. Accordingly, ground nos. 4 and 5 are raised. It was submitted that in case of inventories, the assessee is required to conduct an exercise of valuing its stock on the basis of AS-2 prescribed on the basis of the market value. Further, the mercantile system of accounting is followed by the assessee and as mentioned above, as per the said system of accounting, inventory revaluation is allowed as deduction under the Act and as mentioned by the Ld. CIT(A) no specific efforts are required for the said claim to be allowed to the assessee. The learned counsel placed reliance on the decision given by the Hon'ble Karnataka High Court in the case of **CIT vs. IBM India Ltd. [2015] 55 Taxmann 515 (Karnataka)** wherein it was held that where an assessee does not reduce the value of obsolete items from value

of inventory and instead create provision for obsolescence, such accounting treatment is in compliance with AS-2 and said provision is an allowable deduction from business profits. Thus, even if the assessee had recorded its stock at gross values and made a provision for obsolescence to arrive at the value as per AS-2, the assessee had a right to deduction of the said provision from its business profits. It was submitted that the assessee has debited the said adjustment amount to goodwill account instead of P/L account and has reduced the same from the value of inventory disclosed in the balance sheet, thereby giving effect of an actual write off instead of a provision. As such, relying on the principles laid in the above jurisprudence, the assessee is entitled to the deduction of the said adjustment from its business profits. It was further submitted that since the assessee has not debited its P/L account while accounting for the said inventory adjustment since the same was debited to the goodwill account, if the goodwill adjustment pertaining to inventory is disallowed then the assessee will suffer a loss as it will perpetually lose its right claim a deduction to which it is legally entitled to. Hence, the alternate claim made by the assessee is genuine and should be allowed. The learned counsel relied on the decision of Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. vs. CIT [1971] 82 ITR 363 (SC) wherein it was held that an assessee who follows the mercantile system of accounting will be entitled for deduction of an expense which has accrued during the year from the profits and gains of the business if it is allowed under law irrespective of the fact that the assessee has not made a provision in its book of accounts for such expenditure. Thus it was submitted that the amount of provision for diminution in the value of inventory can be claimed as an allowable deduction from business profits even in case the said provision was not debited to P&L account for that year. In view of the above, it was submitted that the assessee should be allowed the alternate claim of deduction of inventory adjustment from its profits if the said adjustment made to goodwill is not accepted.

16. With regard to alternate submission on Grd.No.5, we shall first reproduce Grd.No.5, which reads as follows:

The Assessee is entitled to be allowed a deduction as regards debtor's adjustment from business profits. (Ground No. 5)

Regarding Grd.No.5, the learned counsel for the assessee submitted that the assessee had debited the amount of provision of debtors to goodwill account and claimed depreciation thereon. However, this entire adjustment to goodwill was disregarded by the AO thereby disallowing the depreciation claim on the said amount in the P/L account. The CIT(A) upheld the Order of the AO in this regard and held that the fair value adjustment made to the value of goodwill was an afterthought of the assessee as in case of slump sale, write off of bad and doubtful debts and inventories cannot be made by the new purchaser without making any efforts towards them. Since the contention of the assessee was not accepted by the Ld. CIT(A), while filing the said appeal before the Hon'ble ITAT, it was felt necessary to add an alternate Ground of Appeal for the said provision adjustment with respect to debtors. In this regard, it was submitted that since the assessee has debited the entire provision related to debtors to goodwill account, the same was not debited to the P/L account. Accordingly, no amount in this respect has been claimed as a deduction in the tax computation/ Income tax return ('ITR') on this account. It was submitted that the assessee has disclosed the amount recovered from debtors in the subsequent years as income of the year in which such sum was recovered and offered the same to tax. Moreover, the assessee has not claimed any deduction in the P/L account or ITR during actually write off of bad debts made in the books of accounts at later point in time. However, if the goodwill adjustment is dismissed and depreciation claim is disallowed by the Tribunal, then the assessee will suffer a loss as it will perpetually lose its right claim a deduction

to which it is legally entitled to. Therefore, the assessee has pleaded in Grd.No.5 an alternate relief, notwithstanding its contention that the adjustment made to the value of goodwill is valid and should not be disallowed. He placed relied on decision of Hon'ble Apex Court in the case of CIT vs. T. Veerabhadra Rao [1985] 22 Taxman 45 (SC) wherein it was held that even if a debt is transferred from one owner to another the transferee should be entitled to the same treatment as in the hands of predecessor with respect to the debt transaction.

17. Further, it was submitted that as on 31 March 2018, even after four years of acquisition of the business of Celfrost, the assessee has realized only around 20% of the debtors after making all efforts for recovery of the same. Hence, it was submitted that the assessee carried out efforts to recover the debtors taken over and in case the same was not possible, the said provision was written off. In view of the above, it is submitted that in case the goodwill adjustment is dismissed and consequent depreciation claim is disallowed, the assessee be allowed deduction of the write off of actual bad debts on the basis of the principles laid down in the case of Veerabhadra Rao(supra). Under the circumstances. the following claim will be made to the tax computation of the assessee.

Financial Year	Nature of expense	Actual Debtors Written off	Treatment in P/L account	Treatment in ITR	Pleaded adjustment to ITR
2013-14	Actual bad debts written off	-	-	-	-
	Baddebts recovered	-	-	-	-
	Actual bad debts written off	1,00,465	Net provision debited to P/L account	Not offered to tax	Allow as tax deductible expenditure

2014-15	Baddebts recovered	29,55,065	No impact	Offered to tax as income	Reverse the income declared
2015-16	Actual bad debts written off	2,14,89,609	Net provision debited to P/L account	Not offered to tax	Allow as tax deductible expenditure
	Bad debts recovered	23,43,353	No impact	Offered to tax as income	Reverse the income
2016-17	Actual bad debts written off	66,34,695	Net provision debited to P/Laccount	Not offered to tax	Allow as tax deductible expenditure
	Bad debts recovered	-	-	-	-
2017-18	Actual bad debts written off	-	-	-	-
	Bad debts recovered	-	-	-	-

18. Per contra, the learned DR submitted that the predominant question involved in this case regarding bad debt are, (i) Can recognition of sundry debts as bad debt **subsequent to purchase of business on slump sale basis** be treated as goodwill? (ii) Whether write off of debts which were acquired as assets subsequent to slump sale purchase is revenue loss or capital loss? It was submitted that Assessee acquired refrigeration business M/s. Celfrost Innovation Pvt. Ltd., through a Business Transfer Agreement (BTA) for a total sale consideration of Rs.74.6 Crores on slump sale basis on 15.10.2013 i.e. in the mid of F.Y.2013-14 relevant to Asst. Year 2014-15. **This value of Rs.74.6 Crores was arrived based on the report of an independent valuer.** However, the assessee claimed that **during finalization of audit** for the F.Y.2014-15, it had reduced the value

of inventory and debtors downwards. The assessee treated the difference between the value arrived for the purpose of slump sale purchase and the value arrived for the purpose of year-end audit as **Goodwill**. The assessee had claimed **depreciation** on the same. Though the assessee claims it as **revaluation** it is fact of **identification** of bad debts. The depreciation was disallowed by the Assessing Officer. On an appeal, the CIT(A) confirmed the same. It has to be noted that the Assessing Officer did not disallow depreciation on goodwill recognized consequent to the business transfer agreement (slump sale). The Assessing Officer disallowed depreciation claim on account of recognition of sundry debtors and inventory as bad debt at the time of finalization of books of account only. The Assessing Officer vide Para 4.6 and 4.7 of the assessment order for AY 2014-15 has brought out very clearly that at the time of acquisition of business sundry debtors were good enough. Hence, subsequent event which led to downward valuation cannot be claimed as goodwill. **It is a capital loss**. Hence disallowance was made by the Assessing Officer is right in law. Now the assessee before the Tribunal, in its paper book dated 30/12/2019 has claimed that the debtors were actually written off. The following are the amount of debtors written off:

Asst. Year	Amount written off (Rs.)
2015- 16	1,00,465
2016- 17	2,14,89,609
2017- 18	6,6,34,695

It was submitted that from the above, it is very clear that no debt was written off during the Asst. Year 2014-15. Write off of Bad debts (acquired as asset from another party) cannot be claimed as goodwill. If at all write off of bad debt is claimable, it can be claimed only u/s.36 (1)(vii) subject to the conditions laid down in Sec.36(2). However, it is being acquired assets it is capital in nature. The assessee had not fulfilled conditions laid down under subsection 2 to Section 36. Hence the claim of the assessee that the recognition of bad debt as valuation

is to be negated and should be treated as just identification of bad debt. As those debts were capital in nature and write off of it is capital loss. Hence, no deduction u/s 36(1)(vii) is to be allowed.

19. We have given a careful consideration to the rival submission. The facts on record show that during the financial year 2013-14, the assessee acquired the assets and liabilities of the refrigeration business of Celfrost as a going concern on a slump sale basis for a total consideration of Rs. 74,60,00,000/- through a Business Transfer Agreement ('BTA') dated 15 October 2013. Under the said BTA, the assessee acquired the business undertaking, including assets related to the undertaking including but not limited to, tangible fixed assets, goodwill, exclusive right to all data and lists of customers and suppliers, business intellectual property, brand/ trademark, business and domain names, utility models, business information etc. The difference between the cost of assets acquired under BTA and the sale consideration paid was a sum of Rs.38,05,00,766/-. He however accepted the two other adjustments to Goodwill on account of C - Form liability (Rs.1,50,00,000/-) and adjustment to purchase consideration (Rs. 33,00,000/-). Consequently, the final goodwill was determined to be Rs. 39,88,00,767/- by the AO. The AO did not agree to the claim of depreciation on enhanced value of goodwill claimed by the assessee on account of revision of book value of Sundry Debtors less by Rs. 4,21,37,570/- and the book value of Inventories less by Rs. 8,61,19,099/-, totalling to Rs. 12,82,56,669/-.

20. Admittedly, the slump sale concluded on 15.10.2013 as per the terms of the BTA. After conclusion of slump sale, the assessee obtained a valuation report dated 9.8.2014 from an independent valuer for the allocation of the purchase price towards various assets (hereinafter the 'Purchase Price

Allocation report' or `PPA report') and accordingly recorded them in its books. As per the PPA, all assets were recorded at fair value and an allocation was made towards the brand value. The resultant excess purchase consideration paid was recognized towards goodwill. In terms of the said report, book value of Sundry Debtors was reduced by Rs. 4,21,37,570/- and the book value of Inventories was reduced by Rs. 8,61,19,099/- which resulted in consequent enhancement of the value of goodwill to the extent of Rs. 12,82,56,669/-. There is no provision in the Act as to how the purchaser in a slump sale has to record the value of assets/rights acquired in a slump sale, though the value of assets/rights would be available and agreed by the parties. As per the agreement between the parties the refrigeration business was acquired by the assessee on a slump sale basis for a particular sale consideration. The business purchase agreement is dated 15.10.2013 and in terms of article 3.1, the transaction concluded on the date of signing the business agreement. The cost/consideration allocated to various assets have to be and have been recorded as bargained between the assessee and the vendor of the refrigeration business. It is only thereafter that the assessee undertook the exercise of valuation by an independent valuer and noticed that the debtor's account and inventory had been valued higher at the time of slump sale. It is therefore clear in terms of the decision of the Hon'ble Supreme Court in the case of Smiffs Securities (supra), the assessee could claim as goodwill only the difference between the consideration paid at the time of slump sale and the net value of the assets that the assessee acquired by virtue of the slump sale. The assessee cannot seek to vary the quantum of goodwill based on an exercise carried out by it subsequent to the slump sale and by passing entries in the books of accounts towards the end of the financial year, even though there may be valid reasons for doing so, as in the present case. In such an event where the quantum of consideration attributable to various assets in a slump sale is sought to be varied from what was bargained between the parties to the slump sale, like in this case towards unrealizable debts/bad debts fall or slump in the

value of inventory, the claim can be only by way of either a write off of debt as bad u/s.36(1)(vii) or diminution in the value of inventory by necessary entries in the books of account in the relevant account. The claim will be examined by the AO in accordance with the relevant provisions of the Act like Sec.36(1)(vii) of the Act for write off of debts as bad. It is only on satisfaction of conditions for allowing deduction as per the Act, the deduction will be allowed. Instead of doing so, if an adjustment is made to the quantum of goodwill, then such examination by the AO will not be possible. We are therefore in agreement with the DR on this aspect. We, therefore, are of the view that the Revenue authorities were justified in rejecting the claim of the assessee for depreciation on enhanced value of goodwill to the extent of Rs.12,82,56,669/-. We however do not agree with the submission of the learned DR that the deduction claimed is of a capital nature. In this regard we are of the view that both the items of sundry debtors and inventory are part of the business that was acquired by the assessee on slump sale, they will therefore retain the same character as they had with the vendor. The assessee only steps into the shoes of the Vendor in so far as the business that was transferred as a going concern is concerned and therefore the assessee would be entitled to claim bad debts as well as fall in value of inventory as deduction, subject to satisfaction of the conditions for such allowance laid down in the Act. The decision of the Hon'ble Supreme Court in the case of T.Veerabhadra Rao (supra) supports the plea of the assessee in this regard.

21. As far as the alternate submission made by the assessee with regard to allowing deduction with respect of inventory adjustment of Rs.8,61,19,099 as raised in Ground No.4 is concerned is concerned, we find that the assessee claimed deduction of a sum of Rs.1,07,64,887 in the form of depreciation on enhanced goodwill to the extent of Rs.8,61,19,099/-. To the extent of Rs.8,61,19,099/- the assessee has reduced from the value of inventory disclosed in the balance sheet, thereby the assessee has written off inventory. If

depreciation to the extent of Rs.1,07,64,887/- is denied on enhanced value of goodwill to the extent of Rs.8,61,19,099/-, the assessee pleads for allowing deduction of Rs.8,61,19,099/- as write off of inventory, with a plea that whatever is realized on sale of the written off inventory would be and is being offered to tax by the assessee. This plea raised by the assessee before the CIT(A) has not been examined by the CIT(A) and we are of the view that it requires verification of facts and hence the issue is remanded to the AO for consideration afresh in accordance with law after affording opportunity of being heard to the assessee.

22. With regard to the alternate plea of allowing deduction on account of debtors adjustment from business profits as raised in Grd.No.5 is concerned, the assessee has debited the entire provision related to debtors to goodwill account, the same was not debited to the P/L account. Accordingly, no amount in this respect has been claimed as a deduction in the tax computation/ Income tax return ('ITR') on this account. It was submitted that the assessee has disclosed the amount recovered from debtors in the subsequent years as income of the year in which such sum was recovered and offered the same to tax. Moreover, the assessee has not claimed any deduction in the P/L account or ITR during actually write off of bad debts made in the books of accounts at later point in time. If the goodwill adjustment is dismissed and depreciation claim is disallowed by the Tribunal, then the assessee will suffer a loss as it will perpetually lose its right claim a deduction to which it is legally entitled to. Therefore, the assessee has pleaded in Grd.No.5 an alternate relief, notwithstanding its contention that the adjustment made to the value of goodwill is valid and should not be disallowed. The plea in this regard in principle is supported by the decision of the Hon'ble Apex Court in the case of CIT vs. T. Veerabhadra Rao (supra) wherein it was held that even if a debt is transferred from one owner to another the transferee should be entitled to

the same treatment as in the hands of predecessor with respect to the debt transaction. The amount of bad debts written off in the books for subsequent AYs by the assessee and the recovery of amounts written off which was offered to tax by the assessee has been given in paragraph-17 of this order. To substantiate the figures so given, the assessee has filed an application for admission of the following documents as additional evidence.

Sl. No.	Particulars
1.	Statement of debtors written off for AY 2015-16
2.	Statement of debtors written off for AY 2016-17
3.	Statement of debtors written off for AY 2017-18
4.	Sample ledger extracts demonstrating write off for AY 2015-16.
5.	Sample ledger extracts demonstrating write off for AY16-17.

These documents are admitted as additional evidence as the same is necessary for effectively adjudicating the issue before the Tribunal. We also find that the additional evidence will explain the cascading effect of the claim of the assessee in the subsequent Assessment Years. Since the goodwill adjustment is dismissed and depreciation claim is disallowed, the assessee will suffer a loss as it will perpetually lose its right claim a deduction on account of bad debts written off to which it is legally entitled to. Therefore, we are of the view that the plea raised in the alternative in Grd.No.5 deserves to be accepted. The AO will examine the claim of the assessee in this regard and allow the deduction in accordance with law in the year of write off in the light of the additional evidence and also such other evidence that the AO may insist for allowing and examining the claim of the assessee. The appeal for the Assessment Year 2014-15 is accordingly treated as partly allowed for statistical purposes. In the appeals for Assessment Years 2015-16 and 2016-17, the only claim is for allowing depreciation on enhanced value of goodwill, which we have already not accepted in the appeal for AY 2014-15. Hence, these appeals are dismissed.

23. In the result, appeal for the Assessment Year 2014-15 is treated as partly allowed for statistical purposes. The appeals for Assessment Years 2015-16 and 2016-17 are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 20.12.2021.

/NS/*

Copy to:

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|---------------|---------------|
| 1. Assesseees | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.