

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गारव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.13/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2016-17**)

Dadha Pharma Distribution Pvt. Ltd. New No. 250, Old No. 268, Lloyds Road, Royapettah, Chennai – 600 014.	बनाम/ Vs.	DC/ACIT (OSD) Corporate Range-1, Chennai.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AAFCD-4589-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Written Submissions
प्रत्यर्थी की ओर से/ Respondent by	:	Shri ARV Sreenivasan (Addl.CIT) – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	25-04-2022
घोषणा की तारीख / Date of Pronouncement	:	05-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 05.08.2020 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 29.12.2018. The only grievance of the assessee is denial of depreciation for Rs.11,28,444/- on goodwill which has arisen pursuant to

business acquisition made by the assessee from M/s. Dadha Pharma Private Limited.

2. The registry has noted a delay of 116 days in the appeal, the condonation of which has been sought by the assessee on the strength of condonation petition. The delay has been attributed to Lockdown situation arising out of Covid-19 Pandemic. The impugned order is stated to have been received by the assessee on 05.08.2020 which fall in the lockdown period during Covid-19 pandemic. Though Ld. DR opposed condonation of delay, however, concurring with assessee's pleadings, we condone the delay and proceed for adjudication of the same on merits.

3. The assessee has filed written submissions in support of the claim which has been controverted by Ld. Sr. DR on the ground that goodwill has not been purchased by the assessee. Having heard rival submissions, our adjudication would be as under.

4. The assessee being resident corporate assessee has been assessed u/s 143(3) wherein it transpired that the assessee claimed depreciation on goodwill for Rs.11.28 Lacs. The assessee submitted that it acquired distribution business of M/s Dadha Pharma Private Ltd. (DPPL) under a business transfer agreement for lump sum consideration of Rs.735 Lacs. Under the agreement, entire business was taken over as going concern w.e.f. 30.09.2015 and all assets and liabilities have been taken over at subsisting value as on the date of transfer of business (30.09.2015). The excess consideration so paid by the assessee has been considered as goodwill and accordingly, capitalized in the books. The same being, intangible asset, would be entitled for depreciation. However, rejecting the same Ld. AO denied the depreciation.

5. The Ld. CIT(A) confirmed the stand of Ld. AO on the ground that no values were allocated for individual items of assets and liabilities including goodwill. Accordingly, the assessee did not purchase any goodwill. Aggrieved, the assessee is in further appeal before us.

6. Upon perusal of documents on record, it could be seen that the assessee has acquired distribution business of DPPL w.e.f. 30.09.2015 on slump sale basis which postulate passing of consideration without assigning any values to individual assets and liabilities. The assessee has paid a consideration of Rs.735 Lacs. The assets and liabilities that have been acquired by the assessee are listed at Schedule-1 of the agreement. The assessee has computed the goodwill based on audited financial statements as on 30.09.2015 as under: -

Dadha Pharma Private Limited
Acquisition of Kerala Division of Dadha Pharma Pvt. Ltd
Computation of Goodwill Based on audited financial statements (September 30, 2015)

No.	Particulars	Reference	Amount (in INR)	Amount (in INR)
A	SLUMP SALE CONSIDERATION PAID FOR ACQUISITION OF PHARMACEUTICAL BUSINESS AT ERNAKULAM, KERALA	BTA		7,35,00,000
	LESS: NETWORTH OF ASSETS AND LIABILITIES			
	LESS : FIXED ASSETS			
B	TANGIBLE ASSETS	Audited FS	49,06,069	
C	INTANGIBLE ASSETS	Audited FS	<u>90,585</u>	<u>49,96,654</u>
D	Value before working capital changes: D = A -(B + C)		6,85,03,346	
E	LESS: CURRENT ASSETS			
	INVENTORIES	Audited FS	7,39,93,196	
	TRADE RECEIVABLES	Audited FS	11,37,60,795	
	CASH AND CASH EQUIVALENT	Audited FS	2,76,770	
	SHORT TERM LOANS AND ADVANCES	Audited FS	8,69,464	
	OTHER CURRENT ASSETS	Audited FS	74,14,134	
	Sub - Total		19,63,14,360	

F	LESS : CURRENT LIABILITIES			
	SHORT TERM BORROWINGS	Audited FS	(11,46,56,413)	
	TRADE PAYABLES	Audited FS	(1,54,80,687)	
	OTHER CURRENT LIABILITIES	Audited FS	(27,39,255)	6,34,38,005
	Sub – Total		(13,28,76,354)	
	Changes in Working Capital			50,65,341
	ADD: NON CURRENT LIABILITIES	Audited FS		6,97,030
	LESS : NON CURRENT ASSETS	Audited FS		(12,48,592)
	BALANCE TREATED AS GOODWILL			45,13,779

Upon perusal of the above tabulation, it could be seen that the assets and liabilities have been taken over at values as appearing in the financial statements as on 30.09.2015. The excess payment made by the assessee over the book-value of assets and liabilities has been treated as goodwill which is correct accounting treatment and is in accordance with applicable accounting standards. The assessee has paid lump sum consideration of Rs.735 Lacs. Therefore, the observation of Ld. CIT(A) that the assessee has not purchased the goodwill, is not a correct observation. The case law of Hon'ble Delhi High Court in **Triune Energy Services (P.) Ltd. V/s DCIT (65 Taxmann.com 288)** squarely apply to the facts of assessee's case. In this case, it was held by Hon'ble Court that where the assessee purchased business as going concern, consideration paid in excess of value of tangible assets was classifiable as goodwill eligible for depreciation. The further exercise to value goodwill was not warranted. Accordingly, we direct Ld. AO to allow deduction of depreciation as claimed by the assessee.

7. The appeal stands allowed in terms of our above order.

Order pronounced on 05th May, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 05-05-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF