

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.165/Bang/2021
Assessment Year : 2015-16

M/s. Dusters Total Solutions Services Pvt. Ltd., 4 <sup>th</sup> Floor, No.50, Zatakia Centre, 100 Ft. Road, Indiranagar, Bengaluru – 560 038. <b>PAN : AACCD 5989 Q</b>	Vs.	DCIT, Circle – 2(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Padam Chand Khincha, CA
Revenue by	:	Shri. Roumuan Paite, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	16.03.2022
Date of Pronouncement	:	23.05.2022

**ORDER**

***Per B. R. Baskaran, Accountant Member:***

The assessee has filed this appeal challenging the revision order dated 31.3.2021 passed by Ld Principal Commissioner of Income tax -2 (PCIT), Bengaluru and it relates to the assessment year 2015-16. The assessee is challenging the validity of revision proceedings initiated by Ld PCIT.

2. The assessee is engaged in the business of rendering facility management services. The original assessment was completed by the AO u/s 143(3) of the Act on 14.12.2017, wherein he disallowed only excess claim of brought forward loss. The Ld PCIT, on examination of assessment record, noticed that two subsidiary companies of the assessee named M/s

Prostar Hospitality Services P Ltd and Facilitec Services Ltd were amalgamated with the assessee company w.e.f. 1.4.2014 pursuant to a scheme of amalgamation. He noticed that the assessee has paid a sum of Rs.15,72,22,871/- for acquisition of above said two companies, while the net asset value of assets/liabilities taken over from these companies was only Rs.21,36,357/-. The difference amount, being excess payment made over and above the net asset value, amounting to Rs.15,50,86,514/- was treated by the assessee as "Good will" asset. During the year under consideration, the assessee had claimed depreciation on good will to the tune of Rs.3,87,71,629/-.

3. The Ld PCIT noticed that the AO has not examined the effect of Explanation 3 to sec.43(1), i.e., the AO has not verified the value of various amalgamated assets recorded by the assessee in its books of account in terms of sec. 43(1). He noticed that the assessee has recorded the value of assets at their Fair Market Value, which is contrary to the provisions of sec.43(1) of the Act. He noticed that the value of good will was also not examined by the AO. The Ld PCIT also observed that the depreciation should have been computed at the prescribed rates as if the amalgamation has not taken place, since the proviso to sec.32(1) mandates that the total amount of depreciation allowable in case of amalgamation should not exceed the amount of depreciation allowable had such amalgamation has not taken place. The Ld PCIT also took support of the decision rendered by Bangalore bench of Tribunal in the case of United Breweries (2016)(76 taxmann.com 102), wherein it was held that the depreciation on good will should be restricted to NIL, since no depreciation was claimed by the amalgamating company on good will. Since the AO has allowed the depreciation on good will, the Ld

PCIT took the view that the assessment order is erroneous and prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act. After providing opportunity of hearing to the assessee, the Ld PCIT held that the assessing officer has failed to perform his duty by not applying his mind to the issue at hand and failed to arrive at the 'only view possible' in given sets of facts. He also held that the assessment order is erroneous and prejudicial to the interests of the revenue. Accordingly, the Ld PCIT passed following order:-

“Accordingly, the assessment order is set aside with a direction to examine the nature of assets that accrued to the assessee on account of payment made well in excess for value assets of the amalgamated and whether the assessee is eligible to claim depreciation of such assets claimed as good will in the light of discussions made in the preceding paragraphs. The assessing officer is directed to carry out thorough and detailed enquiry as per the provisions of the Income tax Act. The assessee must be provided with reasonable opportunity of being heard during the course of assessment proceedings in pursuance to this order and the assessing officer must pass a speaking order on the basis of the facts and law. Accordingly, the assessment order dated 14.12.2017 passed u/s 143(3) of the IT Act, 1961 is partially set aside.”

4. We heard the parties and perused the record. We have gone through the paper book filed by the assessee. We notice that the AO, in his notice dated 21.4.2017 called for the details of restructuring like amalgamation/merger/acquisition, if any carried out during the year and also full details with taxation treatment of the same. The assessee submitted that it has amalgamated two subsidiary companies (100%) with it. It further submitted that other details are under compilation and the same will be furnished at the earliest. The AO, thereafter has emailed another letter on 16<sup>th</sup> August, 2017, wherein he has asked for details of accounting for goodwill in terms of the assets acquired, liabilities acquired, net value of

asset over liability, copy of order of High Court with regard to the amalgamation. The assessee furnished the details, vide its letter dated 21.8.2017. Thereafter, the AO has passed the assessment order, wherein, as stated earlier, he has disallowed a portion of claim of set off of brought forward losses. The assessment order is a cryptic order without any discussion except on the brought forward losses.

5. We notice that the AO has collected the details relating to amalgamation, working of good will etc., but it is not discernible from the assessment order, whether the AO has applied his mind on the issue of claim of good will. As pointed out by Ld PCIT, it is not clear as to whether the AO has examined the claim of depreciation on the assets acquired through amalgamation in terms of requirements of sec. 43(1) and also sec. 32. It is the case of Ld PCIT that the assessee has recorded the value of assets adopting "Fair market value", while depreciation thereon should be allowed on the WDV, as if the amalgamation has not taken place. It is not clear as to whether the AO has carried out this type of examination.

6. The assessee has contended before the PCIT that, merely because the AO has not explicitly discussed the issue in the assessment order, the same would not render the assessment order erroneous. It has also placed reliance on the decision rendered on certain decisions before the Ld PCIT to contend that the claim of depreciation is admissible and further the fifth/sixth proviso will not apply to good will.

7. However, we notice that a new explanation, viz., Explanation 2 has been inserted in sec. 263 of the Act by Finance Act, 2014 w.e.f. 1.6.2015, as per

which if any order is passed without making enquiries or verification which should have been made, the said order is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. In the instant case, as noticed earlier, it is not clear as to whether the AO has examined the details of value of assets, in terms of sec. 43(1)/sec.32. Further, the value of good will is dependent upon the fair market value of various assets and it has also not been examined. Hence, in our view, the assessment order is rendered erroneous and prejudicial to the interests of revenue to this extent.

8. We notice that the Ld PCIT has expressed the view that the depreciation is not allowable on good will amount and in this regard, he has placed reliance on the decision rendered by the Tribunal in the case of United Breweries (supra). He has also stated that it is the 'only possible view. Accordingly, he has directed the AO to examine the eligibility of the assessee to claim depreciation on value of good will in the light of discussions made by him. Having expressed the view that depreciation is not available on good will, in our view, the Ld PCIT has indirectly directed the AO to disallow the depreciation on good will. In our view, this kind of indirect direction cannot be sustained.

9. Accordingly, while upholding the revision order for the reasons discussed above, we modify the same giving full liberty to the assessing officer to examine the issue relating to the value of good will and also claim of depreciation on good will without being influenced by the views expressed by Ld PCIT. The assessee is free to make all submissions in support of its claim for depreciation.

10. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

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

Sd/-  
**(N.V. VASUDEVAN)**  
**Vice President**

Sd/-  
**(B. R. BASKARAN)**  
**Accountant Member**

Bangalore,  
Dated: 23.05.2022.  
/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.