

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “G”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2651/M/2017  
Assessment Year: 2011-12**

M/s. SNB Infrastructure Pvt. Ltd., 512/A, Kohinoor City, Kiorol Road, Off. L.B.S. Marg, Kurla (W), Mumbai – 400 070 <b>PAN: AAMCS0182N</b>	Vs.	DCIT 10(1), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Hoshang B. Irani, D.R.

Date of Hearing : 28 . 06 . 2022  
Date of Pronouncement : 29 . 07 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. SNB Infrastructure Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 16.01.2017 passed by Commissioner of Income Tax (Appeals)-22, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2011-12 on the grounds inter alia that :-

*“1. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in sustaining the order of the AO. The learned CIT (A) ought to have granted the claim of depreciation on*

*intangibles for Rs.1,19,06,200/- on the basis of facts and in accordance with the law.*

*2. On the facts and in the circumstances of the case and in law the learned CIT (A) without appreciating the submissions made and on the specious ground of the facts and circumstances being identical denied the claim of depreciation. The learned AO was enjoined to accept claim with regard to the depreciation of Rs.1,19,06,200/-.*

*3. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in denying the claim of depreciation of Rs. 1,19,06,200/- on intangibles. The learned CIT (A) failed to realize that conditions precedent being met for succession under 47(xiii) the claim for depreciation made on the assets on the date of succession which included intangibles as well.*

*4. On the facts and in the circumstances of the case and in law the learned CIT (A) erred in denying the claim of exempt income of Rs8,41,073/-on the share of profit from SNB RCC (JV). The learned CIT (A) ought to have held that the income was exempt under the provisions of section 86 read with section 67A.*

*5. On the facts and in the circumstances of the case and in law the learned CIT (A) without appreciating the submissions made and on the specious ground of the facts and circumstances being identical denied the exemption to Rs8,41,073/-. The learned AO was required to consider that the income from SNB-RCC(JV) was assessed separately and the share falling to the members was exempt and not exigible to tax.*

*6. All the above grounds are independent and without prejudice to each another.*

*7. The appellant craves leave to add, amend, alter, substitute modify any or all grounds of appeal at the time of hearing.”*

2. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee is into the business of infrastructure development, civil work, excavation, transportation, RMC etc. Assessee has succeeded the business to M/s. Syam Narayan & Brothers vide succession agreement dated 01.10.2009. Assessee's claim of depreciation on goodwill and commercial rights and registration amounting to Rs.1,19,06,250/- is disallowed on the ground that this transaction was just a book entry amongst

the common parties and there could not be no creation of assets out of the said transactions as there is no future economic benefits flowing out of the same. Assessing Officer (AO) noticed that the assessee company has reduced an amount of Rs.8,41,073/- from business income being exempt share of income from AOP. In the absence of any detail furnished by the assessee to prove this claim the same is disallowed by the AO. AO proceeded to frame the assessment under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') at the total income of Rs.24517341/- under the normal provisions of the Act and at Rs.15851325/- under section 115JB of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the assessment order by dismissing the appeal. Feeling aggrieved with the impugned order assessee has come up before the Tribunal by way of filing present appeal.

4. Numerous notices for 27.08.2018 onwards issued to the assessee through RPAD not received back served or unserved and presumed to have been served upon the assessee but none appeared. So the Bench proceeded to decide the case on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

### **Grounds No.1 to 3**

5. Assessee is before the Tribunal against the denial of claim of depreciation of Rs.1,19,06,200/- on intangibles under section 47(xiii) of the Act. The Ld. CIT(A) by relying upon his own order for A.Y. 2010-11 declined the depreciation claimed by the assessee on intangible.

6. The Ld. D.R. for the Revenue brought to the notice of the Bench that this issue has already been decided against the assessee by the co-ordinate Bench of the Tribunal in its own case for A.Y. 2010-11 in ITA No.666/M/2016 order dated 02.05.2018.

7. We have perused the order passed by the co-ordinate Bench of the Tribunal which is on identical facts having been decided against the assessee by returning following findings:

*“2.5. We have heard both the Counsel and perused the records. The ld. Counsel of the assessee reiterated the submissions made before the Ld. Commissioner of Income tax(Appeals). He submitted that the assessee company has duly taken over the partnership firm. The goodwill and commercial rights were duly taken over from the partnership firm .Assessee is very much eligible as per law to claim depreciation their upon. In this regard he referred to the paper book filed by the assessee. Per contra Ld. Departmental Representative relied upon the order of the ld. CIT(A). He submitted that the ld. CIT(A) has given a clear finding in his order that there was no such goodwill or commercial right in existence in the books of the partnership firm which has been taken over. Hence, Ld. Departmental Representative submitted that there is no question of granting any depreciation on the asset which were never in existence.*

*2.6. We have carefully considered the submissions and perused the records.*

*2.7. We find that the ld. Commissioner of Income Tax (Appeals) in his order has given a clear finding that no tangible asset on account of goodwill and commercial rights and registration existed in the books of the firm before succession. This duly corroborates that the assessee has created artificially these assets after the succession of the firm. Apparently this is a colorable device to claim huge depreciation on this account. In this regard, we note that the assessee has submitted paper book before us which is running into 83 pages. On paper book no. 1, we note that there is a balance sheet of M/s. Shyam Narayan & Brothers, the firm which has succeeded as on 31.09.2009. In this balance sheet in fixed assets there is a mention of schedule E and F being details of business fixed asset and non business fixed asset respectively. However, we note that no such schedule has been attached. In this balance sheet there is no mention any where whatsoever about the existence of any goodwill or commercial right which has been claimed by the assessee company to have taken over. It may also be noted that in the succession agreement produced in PB pg. 68, which is dated 01.10.2009, it has*

*been mentioned that the assets and consideration thereof are as per the balance sheet of the firm M/s. Shyam Narayan & Brothers as on 30.09.2009. Hence, it is clear that as on 30.09.2009 in the balance sheet submitted of the firm in succession there was no existence of any goodwill or commercial right. Now further we note that in pages 6 to 30, the assessee has attached in the said paper book balance sheet as on 01.10.2009 of M/s. Shyam Narayan & Brothers. In this balance sheet account there is an existence of fixed assets, business and non business of same amount as mentioned in the balance sheet as on 30.09.2009. However, in this balance sheet, in page no. 11, there is schedule E which mentions goodwill and commercial rights of Rs.63,50,000/- each. This schedule is an unsigned document as against the main balance sheet which contains a signature of Chartered Accountant and a partner of the firm. We find it is strange that when the firm has been taken over on the balances of existing as on 30.09.2009, how on 01.10.2009 in the balance sheet of the same firm, balances as on 30.09.2009 are existing and surprisingly there is a existence of unsigned Schedule E and F which were absent in the earlier balance sheet.*

*3. We further note that in the succession agreement produced before us there is no mention of existence of any goodwill and similar right which is being taken over. The said agreement only mentions that the balance sheet of the firm drawn on 30.09.2009 will be taken over and the consideration shall be discharged by way of allotment of equity shares to the partners of the said firm in ratio of capital balance. In the paper book submitted, the assessee has produced Form No.2 submitted before the Registrar of Companies pursuant to section 75(1) of the Companies Act. The said Form No.2 runs of 4 pages running from PB pgs. 64 to 67. In the said Form of allotment the property and asset acquired have been shown at Rs.20,74,79,650/-. Furthermore, there is no mention in the column for goodwill and other items. This makes it further clear that no information about the existence of goodwill or commercial right was there on the date of allotment after the succession. Furthermore, the said allotment also shows share premium of Rs.17,78,39,700/-. We find there is no mention whatsoever in the succession agreement for allotment of shares on premium. The ld. Counsel of the assessee submitted that he had no information or details as to how and on what account the share premium was arrived at and mentioned.*

*4. In the light of the above factual details and evidence we are of the considered opinion that ld. Commissioner of Income tax(Appeals) is quite correct in holding that there is no evidence whatsoever on record regarding the existence of goodwill and commercial right claimed to have been taken over from partnership firm either in the books of the said partnership firm or from documents submitted before the registrar of Companies. In such situation when no intangible asset on account of goodwill and commercial right and registration existed in the books of the partnership firm before*

*succession, there is no question of the assessee company taking over the same and claiming depreciation thereupon. In view of this factual finding the entire claim of the assessee regarding the reliance upon provisions of section 47(xiii) and the case laws doesn't support the case of the assessee in as much as there is no quarrel about the principles laid down in the Act and those case laws. However the facts of the present case are totally different as it has not been established that the assets in the form of goodwill and commercial right claimed which has been taken over were in existence in the books of the predecessors firm. We concur with the Assessing Officer that these assets were artificially created subsequent to the succession of the firm in the books of the assessee company. The only purpose of this action is to claim huge depreciation in hands of the assessee company. 5. Hence, in the background of the aforesaid discussion, we do not find any infirmity in the order of the ld. Commissioner of Income Tax (Appeals). Accordingly, we affirm the same."*

8. So following the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2010-11 we are of the considered view that AO as well as Ld. CIT(A) have rightly decided the issue against the assessee on the ground that "this transaction was just a book entry amongst the common parties and there can be no creation of assets out of the said transaction as there is no future economic benefits flowing out of the same". Moreover, no goodwill or any such assets can be created out of the transactions with oneself. So we hereby upheld the findings returned by Ld. CIT(A) on this issue, hence grounds No.1 to 3 are determined against the assessee.

**Grounds No.4 & 5:**

9. Assessee company claimed exempt income of Rs.8,41,073/- on the share of profit from SNB RCC (Joint Venture) (JV), which has been declined by the AO on failure of the assessee to bring on record any details/evidences to prove the genuineness of its claim. Ld. CIT(A) upheld the order passed by the AO by following its own order for A.Y. 2010-11 by returning following findings:

**“6.3 I have considered the facts of the case and the appellant's submissions. This issue was also considered by the undersigned in the appellant's appeal for A.Y. 2010-11 wherein I had observed and held as under:**

**"6.3. I have considered the facts and circumstances of the case. The appellant had submitted copies of the Income Tax return, assessment order u/s 143(3) and audit report and balance sheet of the AOP, M/s SNB & RCC JV. It is seen from the balance sheet of the AOP that there is a balance of Rs. 73,76,423/- in the capital account. In the Audit Report in Form No. 3CD, the profit sharing ratios of the members are shown at 97% and 3% for M/s Shyam Narayan & Bros and M/s Rajesh Construction Co. respectively. The appellant's name does not figure as a member of the AOP in the Audit Report. Moreover, perusal of the appellant's balance sheet also shows no investment made in the said AOP. In view of all these facts, the action of the Assessing Officer in disallowing the share of profit of AOP claimed by the appellant from its total income is upheld. The appellant's ground of appeal on this issue is dismissed."**

10. This issue also came up before the Tribunal in assessee's own case for A.Y. 2010-11 which was decided against the assessee in assessee's own case (supra) by returning following findings:

**“10. We have heard both the counsel and perused the records. We find that the assessee has claimed as exempt share of profit from AOP, M/s. SNBL&RCC JV. This share in the said AOP has also been claimed to have taken over from the partnership firm which has been succeeded. However, as noted by the ld. Commissioner of Income Tax (Appeals) and also observed by us from the balance sheet as on 31.03.2010 of the said AOP produced in PB pgs. 79-80 in the capital account as on 31.03.2010 there is no mention of the assessee company as partner. In the capital account of AOP, M/s. Shyam Narayan & Bros capital account exists as under:**

<b>Opening balance as on 01.04.2009</b>	<b>Rs.60,83,439/-</b>
<b>All credit transactions</b>	<b>Rs.9,24,15,425/-</b>
<b>Balance as on 31.03.2010</b>	<b>Rs.70,07,593.25/-</b>

**11. Now we note that in the balance sheet of the assessee company, produced before us in the sundry debtor group summary on page no. 83, there is a mention of M/s. SNBL & RCC JV capital account at Rs.70,07,593/-. We find it is strange that when the balance sheet of the M/s. SNBL & RCC JV does not show the assessee company as a partner, despite the said balance sheet of AOP being certified by a Chartered Accountant, how the assessee company's balance sheet**

*shows the existence thereof as sundry debtor is not understandable. We further note that the ld. Commissioner of Income Tax (Appeals) has given a finding that in the Audit Report of AOP in Form No. 3CD, the profit sharing ratios of the members are shown at 97% and 3% for M/s Shyam Narayan & Bros and M/s Rajesh Construction Co. respectively. The assessee's name does not figure as a member of the AOP in the Audit Report. In these circumstances, in our considered opinion, the action of the authorities below in disallowing the share of the profit of the AOP claimed by the assessee is correct. Hence, we affirm the order of the authorities below."*

11. So following the order passed by the co-ordinate Bench of the Tribunal, we are of the considered view that when the assessee has not brought any evidence on record to prove the genuineness of its claim by proving the fact that the assessee company was a partner in joint venture, which fact is missing in the balance sheet of M/s. SNBL and RCC, the entry to this effect in the balance sheet of the assessee is sham entry, hence not sustainable. So Ld. CIT(A) has rightly decided this issue against the assessee. So we hereby decide grounds No.4 & 5 against the assessee.

12. In view of what has been discussed above, present appeal filed by the assessee is hereby dismissed.

**Order pronounced in the open court on 29.07.2022.**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 29.07.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.