

IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 976 & 977/Mum/2021

(A.Y: 2013-14 & 2014-15)

Teleperformance Global Services Pvt Ltd., Teleperformance Tower, Plot CST No. 1406 A/28 Mindspace Goregaon West Mumbai- 400 064.	Vs.	The Pr.CIT-5 Room No. 515, 5 th Floor, Aaykar Bhavan, MK Road, Mumbai - 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCV2572L		
Appellant	..	Respondent

Appellant by :	Shri Madhur Agarwal.AR
Respondent by :	Shri H.N Singh.DR

Date of Hearing	18.10.2022
Date of Pronouncement	04.01.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These two appeals are filed by the assessee against the separate orders of the Pr. Commissioner of Income Tax(Pr.CIT)-5 Mumbai passed u/s 263 of the Act.

Since the issues in these two appeals are common and identical, hence are clubbed, heard and

consolidated order is passed. For the sake of convenience, we shall take up the ITA No. 976/Mum/2021 for the A.Y. 2013-14 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal:

1. Re.: Validity of Order u/s. 263:

1.1 On the facts and in the circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax (PCIT") has erred in initiating the revision proceedings and passing the Order dated 30 March 2021 u/s. 263 of the Income-tax Act, 1961 (the Act).

1.2 On the facts and in the circumstances of the case and in law, the Appellant submits that the Order passed by the Ld. DCIT was neither erroneous nor prejudicial to the interest of the revenue and hence the revision of the same by the Hon'ble PCIT u/s 263 of the Act is erroneous and bad in law.

1.3 On the facts and in the circumstances of the case and in law, the Appellant submits that the details required during the course of assessment proceedings were duly submitted by the Appellant and, hence, the assessment order cannot be said to be erroneous.

1.4 On the facts and in the circumstances of the case and in law, the Appellant submits that invoking proceedings u/s 263 of the Act in response to audit objection raised by the internal audit department is bad in law.

1.5 On the facts and in the circumstances of the case and in law, the Appellant submits that the revision order has

been passed by the Hon'ble PCIT without appreciating the facts and considering the submissions of the Appellant and, hence, the same is bad in law.

1.6 On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has failed to appreciate that the proceedings u/s 263 cannot be initiated once the assessment order is passed u/s 143(3) r.w.s. 144C(13) of the Act. 1.7 On the facts and in the circumstances of the case and in law, the Appellant prays that the impugned Order passed u/s 263 of the Act by the Learned PCIT is to be struck down.

Without prejudice to the aforesaid:

2. Re: Disallowance of depreciation on intangibles

2.1 On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has failed to appreciate that the assessment order allowing depreciation on goodwill arising on account of amalgamation, is based on the decision of the Supreme Court in the case of CIT vs. Smifs Securities Ltd. [2012] 24 taxmann.com 222 and, hence, the same cannot be said to be erroneous.

2.2 On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has failed to appreciate that the goodwill came into existence on amalgamation in Assessment Year 2012-13 and was considered a part of block asset in the said year. The depreciation on the said

goodwill was also claimed and allowed in the AY 2012-13. Considering that the written down value of the said goodwill is forming a part of the opening block asset for the assessment year 2013-14, the claim of depreciation on the same cannot be challenged for the captioned assessment year.

2.3 On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has failed to appreciate that depreciation on goodwill has been consistently allowed to the Appellant for AY 2010-11 and AY 2011-12. Further, the depreciation on goodwill arising out of amalgamation is allowed in AYS 2012-13 and 2013-14 and, thus, the assessment order allowing similar depreciation in the relevant year, cannot be said to be erroneous so as to come within the ambit of provisions of section 263 of the Act.

2.4 On the facts and circumstances of the case and in law, the Hon'ble PCIT erred in holding that the assessing officer ought to have inquired into the issue of depreciation of goodwill in the captioned year, when the transaction pertained to an earlier year and depreciation on the same was allowed after inquiring into the same issue in that year.

2.5 On the facts and in the circumstances of the case and in law, the Appellant prays that the claim of depreciation on the intangibles to be allowed.

3. Re: Disallowance of prior period expenses

3.1 On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has erred in holding that the prior period expenses amounting to Rs. 50,51,635 is to be disallowed without appreciating the fact that the same

was already disallowed by the Appellant in the computation of income.

3.2 On the facts and in the circumstances of the case and in law, the Appellant prays that the direction of the Hon'ble PCIT for disallowance of Rs. 50,51,635 as prior period expenses should be deleted.

4. Re: Excess depreciation an account of difference in closing WDV for AY 2012-13 and opening WDV for AY 2013-14 in case of goodwill and furniture & fixtures balance.

4.1 On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has erred in holding that excess depreciation of Rs. 9,03,79,940 is claimed on account of difference in closing WDV for AY 2012-13 and opening WDV for AY 2013-14 in case of goodwill and furniture & fixtures balance without appreciating that there was no difference between the closing WDV for AY 2012-13 and opening WDV for AY 2013-14. The Hon'ble PCIT has erred in considering the original tax audit report and not the revised tax audit report filed for AY 2012-13 subsequent to the amalgamation in coming to eronneous conclusion.

4.2 On the facts and in the circumstances of the case and in law, the Appellant prays that the observation of the Hon'ble PCIT w.r.t. claim of excess depreciation should be deleted.

5. Re: Erstwhile entity i.e. M/s Intelenet Global Services Private Limited bearing PAN AAACI7387P ('amalgamating entity'/ 'IGSPL') earned certain income and incurred certain expenses during AY 2013-14 but not fied income tax return for AY 2013-14.

5.1 On the facts and circumstances of the case and in law, the Hon'ble PCIT has disregarded the revised income tax returns filed by IG SPL and the Appellant for Assessment Year 2012-13 giving effect to the amalgamation order.

5.2 On the facts and circumstances of the case and in law, the Hon'ble PCIT has failed to appreciate the fact that the income earned by erstwhile amalgamating entity, IG SPL was offered to tax by the Appellant during the captioned assessment year.

2. The brief facts of the case are that the assessee company is engaged in the business of providing software development services (IT) & Information Technology Enabled Services (ITES). The assessee has filed the return of income for the A.Y 2013-14 electronically on 28.09.2013 disclosing a total loss of Rs.3,26,17,215/-, subsequently the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142 (1) of the Act were issued. There was a change in registered office of the assessee company due to merger with M/s Servo BPO Pvt Ltd. The assessee has filed the revised return of income on 30.03.2015 disclosing a loss of Rs.68,50,30,783/-. The Assessing officer (AO) on perusal of the financial statements and Audit report in Form No.3CEB found that the assessee has during the year international

transactions with its Associate Enterprises (AEs) and therefore with the prior approval, the matter was referred to the Transfer Pricing Officer (TPO) to compute the Arms Length Price (ALP). Whereas the TPO has considered the various factual aspects, transfer pricing study and comparables and has made the adjustment of Rs. 6,59,57,728/- to the ALP with respect to international transactions and passed the order u/s 92CA(3) of the Act dated 31.10.2016.

3. Whereas, the draft assessment order u/s 144C(1) of the Act dated 23.12.2016 was passed. Against the draft assessment order the assessee has filed objections with the Dispute Resolution Panel (DRP). Whereas the DRP has upheld the action of the TPO and rejected the objections and passed order u/s 144C(5) of the Act dated 22.09.2017. Finally, the A.O. has passed the assessment order with the addition of Rs. 6,59,57,72/- on account of adjustment in ALP as approved by the DRP and assessed the total loss of Rs. 61,90,73,055/- and passed the order u/s 143(3) r.w.s 144C(13) of the Act dated 26.10.2017.

4. Subsequently, the Pr.CIT on perusal of the facts and the assessment record found that the A.O has not made any enquiry/ verified the facts when passing the assessment order and therefore the Pr. CIT has issued show cause notice referred at Para 4.1 of the order as under:

4.1. After receipt of above proposal, for action U/s.263, the same was considered and after examining and perusing the relevant records and facts once again, First show cause notice U/s.263 of the Income Tax Act 1961 was issued to the assessee vide this office letter dated 09.03.2020, the relevant part of which are reproduced as under:

"It is seen from record that the assessee has during the year claimed substantial depreciation as per Income Tax Act on intangible assets including Rs.224.01 crores on goodwill, Rs. 46.16 crores on Customers Contracts and Rs.20.67 crores on Customers Relationships. It further seen from the notes to the depreciation statement that it is mentioned that a scheme of amalgamation of Intelnet Global Services Pvt. Ltd. and SKR BPO Pvt. Ltd. with the Company was approved by the Bombay High Court with effect from 7th July, 2011 vide order dated 5th March, 2013 with effective date of 4th April, 2013 and that the company was in the process of revising its return of

income for financial year ending 31st March, 2012 after considering scheme of amalgamation and hence the opening WDV of fixed assets as on 1st April, 2012 consists of assets taken over on amalgamation by the company.

3. It is further seen that Note No. 23 to the Annual report has been shown as a merger note wherein it has been mentioned that SKR BPO Services Pvt. Ltd (SBSPL) (a wholly owned subsidiary of the assessee company) and has amalgamated with the assessee company and the assets and liabilities of the SBSPL has been included in the assets/liabilities of the assessee company and the same has been accounted under the purchase method whereby the assets and liabilities has been transferred to the assessee at their fair market value. The assessee has provided a table in the said note as under:

4. The said amount of Rs. 1,146.09 is the amount shown as goodwill in the Fixed assets schedule on which depreciation @25% has been claimed for the year after giving effect to the depreciation that it would have been eligible in the immediately preceding year. It is further seen that the customers contract and customers relationship is on account of the revalued intangible assets with actual w.d.v of Rs. 12.14 crores revalued to Rs.351.65 crores. It is seen from record including the order sheet notings, that the assessee had filed details

vide letters dated 20th July, 2015, 6th December, 2016 and 22nd December, 2016 but there is no explanation or submissions made regarding the amalgamation except a general note on the reason for increased depreciation claim submitted in the letter dated 6th December, 2016. Besides there is a copy of the Order of the High Court in Company Scheme Petition No.858 of 2012 and a copy of some pages of the scheme of amalgamation. However there are no other details and documents filed as mentioned in the above referred order of the Hon'ble High Court and the scheme of amalgamation including the valuation reports of the assets/liabilities of the amalgamating companies, balance sheets of the entities and also other documents like Exchange ratio report and affidavit of the Regional Director of Company Affairs.

5. The details available indicate that the assessee has claimed depreciation on the revalued amount of Rs.363.79 crores of intangible assets excluding goodwill and including amounts shown as Customers contract and customers relationship whose w.d.v was only Rs.12.14 crores However such depreciation cannot be claimed on revalued amount and has to be claimed on the w.d.v. Moreover there is no asset in the nature of goodwill in the books of the amalgamating companies and consequently as such alleged goodwill arises out of business acquisition on account of difference between the value of assets of the amalgamating companies and the value of

investment made by the assessee company and its subsidiary, the same does not arise out of transfer of any tangible assets eligible for claim of depreciation. Moreover it is seen that the assessee's diminution in value of investment in its subsidiary has been converted favourably by the assessee as goodwill on which it has claimed depreciation.

6. In view, of the said facts, the assessment order dated 26/10/2017 for AY 2013-14 is erroneous and prejudicial to the interest of revenue and requires to be revised accordingly u/s 263 of the IT Act to exclude the extent of ineligible and incorrect depreciation claimed by revaluation of assets and creating goodwill which did not exist in any of the Companies involved in the scheme of amalgamation. You are hence required to show cause as to why the assessment order passed on 26/10/2017 u/s 143(3) rws 144C(13) of the IT Act for AY 2013 14 should not be revised u/s 263 of the Income Tax Act, 1961. Your objections, if any, to the proposed revision of assessment may be filed before the undersigned on or before 13.03.2020. This date is also fixed for hearing in my office at the above address at 11.30 am. You may appear personally or through your authorized representative in this regard."

5. The Pr.CIT has issued another show cause notice referred at Para 4.2 of the order read as under:

4.2 Meanwhile, the case was still being examined and on further perusal of records, it was further noticed that there were some more facts/issues which were not properly inquired into / verified by the Assessing Officer before passing the said assessment order, as such, one further show cause was issued to the assessee for reply and clarifications. The relevant part of second show cause dt. 17.03.2020 is reproduced here under :

"2. In continuation to this office show cause notice dated 09/03/2020, and on further perusal of records certain points have been noted, which are as under :

1. While going through the record and IT Return where the assessee has declared loss of 68,50,30,783, which was assessed u/s 143(3) rws 144C(13) and where the assessment was completed at loss of Rs. 61,90,73,0555, an examination of the profit and loss account show that the assessee had debited an amount of Rs.7,02,38,808 on account of rent which included prior period expense of Rs.50,51,635. The prior period expenses needed to be disallowed which was not done. This resulted in underassessment of income amounting to Rs.50,51,635 with resultant potential short levy of tax of Rs. 17,17,050 (including surcharge and cess) on this point it self.

2. It has been further noticed that during the year, SKR BPO Services Pvt Ltd and Intelnet Global Services Pvt Ltd

merged with Serco BPO Pvt Ltd Pursuant to the merger fixed assets of the amalgamating company was added to the assessee company. As per statement attached to the Form 3CD showing depreciation claimed as per Income Tax Act, the scheme of amalgamation was approved by the Bombay High Court with effect from 7th July 2011 vide order dtd 5th March 2013 with effective date of 4th April 2013. Accordingly the company was in the process of revising its return for year ended March 2012. Hence opening WDV of fixed assets as on 1st April 2012 consisted of assets taken over on amalgamation by the company. Audit scrutiny and comparison of the depreciation schedule as per ITR of AY 2012-13 and AY 2013-14 revealed the following: 2-13 and TAX

As per the assessee's submission, the opening WDV included assets taken over during amalgamation and the WDV was net of depreciation which would be taken on revision of the return of AY 2012-13. Considering the above, audit reconciled the figures given in the asset schedule in Form 3CD and value of additions made in the above two categories in the depreciation schedule as per Companies Act.

From the above it can be seen that the assessee had availed excess depreciation amounting to Rs.9,03,79,940 with resultant short levy of tax of Rs.2,93,23,771.

Similarly, the WDV of other class of assets also needs to be explained to verify the correctness of the depreciation claimed on addition to fixed assets on amalgamation."

5. In view, of the above said facts, the assessment order dated 26.10.2017 for AY 2013-14 is erroneous and prejudicial to the interest of revenue and requires to be revised accordingly u/s 263 of the IT Act regarding the above two issues. You are hence required to show cause as to why the assessment order passed on 26.10.2017 u/s 143(3) rws 144C(13) of the IT Act for AY 2013-14 should not be revised u/s 263 of the Income Tax Act, 1961. Your objections, if any, to the proposed revision of assessment may be filed before the undersigned on or before 19/03/2020. This date is also fixed for hearing in my office at the above address at 12.45 pm. You may appear personally or through your authorized representative in this regard."

6. The Pr.CIT has issued third show cause notice on 23.03.2020 referred at page 14 Para 4.3 of the order read as under:

4.3. Besides, it has further been noticed that there were some more facts/issues which were not properly inquired into/verified by the Assessing Officer before passing the said assessment order, hence one further show cause

was issued to the assessee for reply and clarifications. The relevant part of Third show cause dt. 23.03.2020 is reproduced hereunder :

"In continuation to the earlier notices dated 09.03.2020 and 17.03.2020 issued in your case for A. Y. 2013-14 in connection with the proceedings u/s 263 of the Act it has further been found that M/s. IntelNet Global Services Pvt. Ltd (PAN AAAC17387P) which has subsequently merged with M/s Serco BPO Pvt Ltd and presently renamed as M/s IntelNet Global Services Pvt. Ltd (the assessee) that the said entity had filed Service Tax Return showing receipts of Rs. 1/369.23 crores, Interest receipt of Rs. 10.67 crores and had also shown remittances of Rs. 5.23 crores to a foreign company. Moreover, there is credit card payment of Rs. 19.35 lakhs and payments to hotels and restaurants at Rs. 6.51 lakhs. However, no return of income was filed by the said entity. From the records it is seen that these transactions were also not verified or examined by the Assessing Officer before passing of the said relevant Assessment Order. Accordingly, you are also required to show cause as to why the said relevant Assessment Order. Accordingly. you are also required to show cause as to why the said receipts should also not be considered in your hands considering that you are the successor company to the said M/s. IntelNet Global Services Pvt. Ltd t. Ltd (PAN AAAC17387P).

2. In view of the above said facts, the assessment order dated 26.10.2017 for AY 2013-14 is erroneous and prejudicial to the interest of revenue and requires to be revised accordingly u/s 263 of the IT Act regarding the above two issues. You are hence required to show cause as to why the assessment order passed on 26.0.2017 should not be revised u/s 263 of the Income Tax Act, 1961. Your objections, if any, to the proposed revision of assessment may be filed before the undersigned on or before 26.03.2020. This date is also fixed for hearing in my office at the above address at 12:45 pm. You may appear personally or through your personally authorised representative in this regard."

7. Whereas, with reference to the three show cause notices, the assessee company has also filed the reply and submitted emails correspondence. The assessee has made submissions before the Pr. CIT vide letter dated 13.01.2021 referred at Para 5.1 of the order as under:

5.1. Vide this submission dated 13.01.2021, the assessee company had submitted as under:

On perusal of the said notices, we understand that your goodself believes that the assessment order passed under section 143(3) r.w.s. 144C(13) of the Act on 30 January

2018 is erroneous and prejudicial to the interest of revenue. According to you, the order is prejudicial to the revenue on the following grounds:

a) Incorrect allowance of depreciation on revalued intangible assets on amalgamation to the tune of Rs. 351.65 crores;

b) Incorrect set-off of brought forward losses to the extent of Rs. 113.91 crores; c) Excess claim of depreciation to the extent of Rs. 7,01 crores on account of difference in the closing WDV of AY 2012-13 and opening WDV of AY 2013-14 of goodwill and furniture & fixtures.

In light of above, our company is required to explain as to why proceedings under section 263 of the Act should not be initiated for the captioned assessment year. In this connection, we would like to submit as follows:

Facts of the case

1. The assessee company (formerly known as IGSP) was known as Serco GPO Private Limited till 10 January 2016

2. Serco BPO Private Limited i.e. the amalgamated company had invested in M/s. SKR BPO Services Private Limited ('SKR GPO') and in turn SKR BPO has made

investment in Iritelenet Global Services Private limited (IGSPL). PARTME

3. During AY 2012-13, SKR BPO and IGSPL (transferor companies) were amalgamated / merged with effect from 7 July 2011 under a Scheme of Merger under the provisions of section 391 to 394 of the Companies Act 1956. As a result of the merger, the investments made by our company in SKR GPO and IGSPL were cancelled. The name of the amalgamated company i.e. Serco BPO Private Limited was changed to Intelenet Global Services Private Limited with effect from 11 January 2016.

4. Pursuant to the above-mentioned scheme of amalgamation, the investments (actual cash paid) made by above named Serco BPO Private Limited in SKR BPO were cancelled and the excess value of new equity shares allotted over the fair market value of the assets acquired by the assessee, being Serco SPO Private Limited (subsequently known as Intelenet Global Services Limited and currently known as Teleperformance Global Services Private Limited) was recorded as goodwill. The Scheme of Merger was in conformation with the provisions of section 2(1B) of the Act.

5. The Amalgamation had been accounted under the "Purchase" method in accordance with Accounting Standard 14 issued by the Institute of Chartered

Accountants of India. Assessment proceedings under section 143(3) of the Act

Assessment proceeding under section 143(3) of the Act

1. At the outset the company submits that it has duly furnished all the information and details as requested by the learned assessing officer ('Ld. AO') from time to time during the assessment proceedings for AY 2014-15. Further, the company has also provided various explanations and clarification sought by the Ld. AO during the course of the hearings, including the aforesaid facts of the amalgamation and resulting goodwill. 2. On perusal of the submissions filed by the company vide letters dated 14 November 2017, 22 November 2017, 12 December 2017 and 18 December 2017, your goodself would appreciate the following facts:

1. The company has adequately disclosed the amalgamation transaction in the financial statements, consistently;

2. Vide it's submission dated 14 November 2017, the company has filed details of additions made to the fixed assets before the Ld. AC-Refer Point 19 of the submission.

3. Further, the Ld. AC requested the company to explain as to why there is an increase in claim of depreciation vis-à-vis previous year. The company vide letter 18

December 2017, provided a justification for the increase in depreciation claim. Further, the same was also explained in detail during the personal hearing conducted by the Ld. AO.

4. Statement of brought forward losses and unabsorbed depreciation alongwith relevant assessment orders was submitted to the L AO vide letter dated 12 December 2017.

8. It is submitted that the Ld. AC, examined various items in the financial statements of our company and also after examining the treatment given thereto in the Computation of total income, made adjustments vis-à-vis the items where, in his view, the treatment given by the our Company was not in accordance with law. No adjustment was made vis-a-vis the issues where the Assessing Officer agreed with the stand/position taken by the company. It is therefore imperative that the impugned assessment order was passed by the Assessing Officer only after making necessary inquiries in this regard.

Legal Arguments

1. We would like to invite your honour's attention to the provisions of section 263 of the Income tax which read as under:

"263. (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

1. From a plain reading of the above it is clear that the revision u/s. 263 of the Act can be invoked only if the following two conditions are satisfied:

The order is prejudicial to the interests of the Revenue and

Therefore, the Order of the Assessing Officer (sought to be revised) is erroneous;

1. Your specific attention is also drawn to clauses (a) and (b) of Explanation 2 to section 263 of the Act which states that for the purpose of section 263, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it prejudicial to the interests of the revenue, if in the opinion of the Principal Commissioner or Commissioner:

1. The order is passed without making inquiries or verification which should have been made;

2. The order is passed allowing any relief without inquiring into the claim

1. We would like to draw your attention to the observations of the Hon'ble Ahmedabad ITAT in the case of *Torrent Pharmaceuticals Ltd Vs Dy CIT (ITAT Ahmedabad) [2018] 97 taxmann.com 671 (Ahmedabad - Trib.)*. In this case, the ITAT observed that the Revisional Commissioner is expected to show that the view taken by the Assessing Officer is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to Section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer

concerned for no fault on his part. Apparently, this is not intended by the Explanation.

2. It is also well settled law that if the Assessing Officer has adopted a view of law laid down by a Court, prevailing at the time of the assessment, the Assessing Officer cannot be said to have committed an error in making the assessment, while following the said decision. We place strong reliance on the Honble Supreme Court decision in case of C.I.T. vs G.M. Mittal Stainless Steel (P) 2003 263 ITR 255 SC read with our ensuing submissions below.

3. Reliance in this regard is placed on CIT v/s. Max India Ltd. (2007) 295 ITR 282 (SC) wherein it was held that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law.

4. Further, Bombay High Court in the case of Gabreil India Ltd (1993) 203 ITR 108 (Born) held that this section

does not visualise a case of substitution of the judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the ITO while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the ITO. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the ITO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion, it may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent.

5. In addition to the above, reliance is also placed on the following illustrative list of cases where it has been held

that proceedings u/s. 263 are not valid vis-à-vis the areas where the Assessing Officer has applied his mind and taken a possible view and that the provisions of section 263 of the Income-tax Act, 1961 do not permit the Commissioner of Income-tax to substitute his view with that of the Assessing Officer:

CIT v/s. Design & Automation Engineers (Bombay) (P) Ltd. (2008) 323 ITR 632 (Born);

CIT v/s. Mehrotra Brothers (2004) 270 LTR 157 (MP);

CIT v/s. Deepka Mittal (2010) 324 ITR 411 (P&H);

CIT v/s. International Travel House (2010) 194 Taxman 324 (Del);

*CIT v/s. Sunbeam Auto Ltd. (2010) 189 Taxman 436 (Dcl);
CIT v/s. Anil Kumar Sharma (2010) 194 Taxman 504 (Del).*

1. It is submitted that the company had submitted the relevant details in relation to the depreciation claimed in the return of income and even the reasons for the increase in depreciation during the year as well as details of the brought forward losses and unabsorbed depreciation, entailing the necessary inquiries by the Assessing Officer, as referred to in the preceding paragraphs 6, 7 and 8. Thus, the Id. AO, after taking into consideration the details submitted by the company and

applying his mind, allowed the claim of depreciation on Goodwill as well as on other fixed assets.

2. Consequently and imperatively, it is humbly submitted that based on the above facts and law, the assessment order passed under section 143(3) r.w.s 144C(13) of the Act cannot be said to be erroneous and thereby prejudicial to the interest of revenue, which is a sin qua non for invoking the provisions of section 263 of the Act.

3. In view of the facts and the relevant law, it is humbly submitted that since the impugned issue has been examined by the Learned AO while passing the impugned assessment orders, the basis of the Notice issued u/s. 263 on the premise that the Assessing Officer has not examined the Issue, is not correct in law.

Submission on merits of the case

20. Having given our submissions on the non-applicability of the provisions of section 263 of the Act and without prejudice to the aforesaid, we now proceed to submit as to why depreciation on goodwill ought to be allowed to the company.

20.1. Claim for depreciation on intangibles 2

20.1.1 At the outset, as mentioned in above para's the company has recorded the intangible assets at fair value based on the valuation report. Further, your goodself will

appreciate that goodwill recorded in the books of account is the difference of the net worth of the amalgamating companies (i.e. SKR BPO & IG SPL) and the value its investments cancelled by the company plus value of the shares issued to the minority shareholder. Basis the said working the goodwill recorded in the books of account is Rs. 1146.09 crores (i.e. Rs. 2572.47 crores less Rs. 1426.72 crores plus Rs. 0.35 crores).

20.1.2 Your goodsself has stated that the company has revalued the intangible from Rs. 12.14 crores to Rs. 351.65 crores and claimed higher depreciation on the revalued amount. However, by revaluating the intangible the company has increased the net-worth of the amalgamating companies. If the revaluation was not done the net worth of the amalgamating companies would be less by Rs. 351.65 crores, which would result in increase In the value of the resulting goodwill on cancellation of investments.

20.1.3 Accordingly, if the revaluation would not have been done the net-worth of the amalgamating would be Rs. 1111.07 crores and the resulting goodwill would be Rs. 1497.74 crores.

20.1.4 In light of the above, revaluation of intangible would not have any impact on the resulting goodwill considering the net goodwill recorded in the books is the

difference of the net-worth of the amalgamating companies and cancellation of investments made by the company. The depreciation on said goodwill ought to be allowed as the same is acquired goodwill and not self-generated goodwill.

20.1.5 Section 32(1)(ii) of the Act provides for deduction in respect of depreciation on know-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial right of similar nature.

20.1.6 The expression 'any other business or commercial rights of similar nature' should mean to include all kinds of commercial rights as per the Mumbai Tribunal ruling in the case of India Capital Markets Private Limited (56 SOT 32) (Mumbai Tribunal). Accordingly, depreciation on intangibles claimed by the assessee is as per the provisions of the Act. Further, it is submitted that the claim of depreciation on the aforesaid intangibles has been allowed by the income-tax department in the past years as well.

20.1.7 In the present case, as stated in the facts of the case, above, Serco BPO Private Limited i.e. the assessee has made investment in MIS. SKR BPO Services Private Limited ('SKR RPO') and in turn SKR BPO has made investment in Intelenet Global Services Private limited ('IGSPL').

20.1.8 During, AY 2012-13, our company, SKR BPO and IG SPL (transferor companies) were merged into assessee on 7 July 2011 under a Scheme of Merger under the provisions of section 391 to 394 of the Companies Act 1956. As a result of the merger, the investments made by our company in SKR BPO were cancelled. Thereby, the value exceeding the fair value of net assets of the Transferor companies was recorded as goodwill. The Scheme of Merger was in conformation with the provisions of section 2(1B) of the Act.

20.1.9 Pursuant to the scheme, the investment (actual cash paid) made by the company in were cancelled and the excess of value of new equity shares allotted over the fair value of the assets acquired by the company was recorded as goodwill. Therefore, it cannot be said that the goodwill recorded in books of account is a self-generated goodwill. Imperatively therefore, the same is in the nature of acquired goodwill.

20.1.10 Neither the Act nor the Income Tax Rules provide any guidelines for the purpose of determining the circumstances under which depreciation could be allowed on goodwill. Accordingly, reliance is placed on various judicial decisions, which have laid down the principles for determining the circumstances under which depreciation can be claimed on goodwill.

20.1.11 The key principles emerging from the various judicial decisions can be summarized as under: (1) Depreciation is not allowable on goodwill simpliciter. In order to claim depreciation, the value of goodwill should be represented by underlying assets, which are in the nature of 'any other business or commercial right of a similar nature'. The assets not satisfying the criteria are not eligible for depreciation.

(i) Consideration is paid for reputation which the amalgamating company enjoy in order to retain Its exiting clientele. The said goodwill should fall within the definition of 'any other business or commercial rights of similar nature'.

(iii) Commercial rights are such rights which are obtained for effectively carrying on the business and commerce, as is understood, is a wider term which encompasses in its fold many a facet. Accordingly, any right which is obtained for carrying on the business with effectiveness is likely to fall or come within the sweep of meaning of intangible asset.

(iv) Intangible assets, viz., business claims; business information; business records; contracts; employees; and knowhow, are all assets, which are Invaluable and result in carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by

the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a license to carry out the existing transmission and distribution business of the transferor.

(v) Goodwill paid is for ensuring retention and continued business of the assessee, it. is certainly for acquiring a business and commercial right and is comparable to trademark, franchise, copyright etc., referred to in the first part of sub-clause (ii) of section 32(1) of the Act.

(vi) The expression 'any other business or commercial rights of similar nature' would include such rights which can be used as a tool to carry on the business.

(vii) The definition further provides that the business or commercial rights should be of similar nature as know-how, patents, copyrights, trademarks, licenses, franchises etc. all these are the assets which are not manufactured or produced overnight but are brought into existence by experience and reputation. They assume importance in the commercial world as they represent a particular benefit or advantage. or reputation built over a period of time and customers associate with such assets. Similarly, goodwill is nothing but positive reputation built by a person/company/business-house over a period of time. Thus, goodwill is a 'business or commercial right of similar nature.

20.1.12 Based on the above, it may be appreciated that goodwill should be considered as being in the nature of an intangible asset as defined under section 32 of the Act provided it is demonstrated that there are underlying commercial rights which can be construed to be business or commercial rights of a similar nature. 20.1.13 The Hon'ble Supreme Court in the case of CIT y. Smifs Securities Ltd. [2012] 210 Taxman 428/ 24 taxmann.com 222 has held that goodwill acquired on amalgamation (being difference between cost of assets and consideration paid) was a capital right which would fall under the expression 'any other business or commercial right of a similar nature' and, hence, eligible for depreciation while computing business income.

The relevant extracts of the Supreme Court are as under:

"In the said case, the CIT(A) held that the assets and liabilities of M/s. YSN shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-company in the process of amalgamation had acquired a capital right in the form of goodwill... This finding has also been upheld by ITAT. We see no reason to interfere with the factual finding.

... the Revenue did not file an appeal on the finding of fact referred to hereinabove." The Supreme Court has also observed that

"A reading of 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). In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act."

Thus, even though the Supreme Court has not specifically held in relation to the issue that Goodwill arising out of amalgamation was goodwill eligible for depreciation, the Tribunal in the said case has held that the difference between the cost of asset and amount paid on amalgamation is a capital right in the form of Goodwill. Thus, the Tribunal in the said case has taken the said position and the Revenue has not challenged the same.

20.1.14 In view of the above discussion and relying on the judgement of the Hon'ble Supreme Court in the case of Smifs Securities and various other appellate authorities, depreciation is eligible on intangibles pursuant to assets acquired on amalgamation.

20.1.15 Furthers it is stated above Goodwill is created in the books of accounts in lieu of amalgamation of the subsidiary with the company. The cancellation of investments in SKR BPO and excess of value of new equity shares allotted over the fair value of the assets acquired by the assessee was recorded as goodwill. Accordingly, a new asset has been created on amalgamation.

20.1.16 Also, reliance is placed on the decision of the Bombay High Court in the case of M/s. Sonic Biochem Extractions Pvt. Ltd. (ITA No. 2088 OF 2013) wherein It is held that once the concept of block of assets was brought into effect from assessment year 1989-90 onwards, the individual asset loses its identity for purposes of depreciation and the user test is to be satisfied at the time the purchased asset becomes a part of the block of assets for the first time. Accordingly, as mentioned above, in the instant case, the Goodwill came into existence on amalgamation in AY 2012-13. Accordingly, in this case the user test has to be tested during the year of amalgamation and not in subsequent years. In fact, it is highlighted here that depreciation on the said block of asset was allowed in the past years. Accordingly, the same cannot be challenged in the captioned year considering the fact that the said asset is now forming part of the block of asset.

20.1.17 It is trite law that the Assessing Officer has rightly not violated the principle of Article 141 of the Constitution of India, wherein he followed the principle laid down by the Supreme Court in case of *Smiff's Securities supra* on allowability of depreciation on goodwill. Therefore, the impugned assessment order, being in consonance with the Supreme Court order is not prejudicial to the interest of the revenue and therefore not erroneous deserving a revision proceeding under section 263 of the Act.

20.1.18 Additionally, reliance is also placed on the Hon'ble Bombay High Court in the case of show cause notices dated 06.03.2020 and 17.03.2020 has held that revisional jurisdiction u/s. 263 cannot be exercised where possible view has been taken by the Assessing Officer while applying the provisions of the Act.

20.1.19 Reference is drawn to Hon'ble Delhi High Court in the case of *C.I.T. vs. Sunbeam Auto Limited* reported in 332 ITR 167 (Del) held that "One has to keep in mind the distinction between lack of inquiry and inadequate inquiry. If there was any inquiry, even inadequate, that would not, by itself, give occasion to the Commissioner to pass orders under section 263 merely because he has different opinion in the matter. It is only in cases of lack of inquiry' that such a course of action would be open."

20.1.20 In light of the above discussion and facts of the case, it is submitted that the Ld. Assessing Officer did examine various items in the financial statements of our company and also after examining the treatment given thereto in the Computation of total income, made adjustments vis-à-vis the items where, in his view, the treatment given by the our Company was not in accordance with law. N

No adjustment was made vis-à-vis the issues where the Assessing Officer agreed with the stand/position taken by the company. It is therefore imperative that the impugned assessment order was passed by the Assessing Officer only after making necessary inquiries in this regard.

20.1.21 In light of the aforementioned discussion, your goods elf would appreciate the fact that the company has correctly claimed deduction for depreciation on goodwill and the Id. AO has rightly allowed the company's claim after making necessary inquiries and examination of the facts.

20.2 Set-off of brought forward losses and unabsorbed depreciation

20.2.1 As per your records, we understand that the actual loss available to the company was Rs. 3,56,67,31,646 whereas 11-ie loss set off allowed by the

Ld. AO was Rs. 4,70,57,99,166 and thus, this has resulted into excess set of loss of Rs. 1,13,90,67,520.

20.2.2 In this regard, we would like to submit that the actual total loss (Business loss and unabsorbed depreciation) available to the company was Rs. 4,85,02,19,732 out which the loss set off is Rs. 4,70,57,99,166 in AY 2014-15 and remaining amount of Rs. 14,44,20,566 was carried forward in the subsequent years.

20.2.3 The summary of the losses brought forward and set off as the assessment order passed for the years mentioned therein are provided in Annexure A for your perusal. The assessment orders clarifying the claims made for set off of losses are also attached for your perusal.

20.2.4 However, without prejudice to the above, we would like to submit before your goodself that invoking proceedings under section 263 of Act in response to audit objection raised by the internal audit department is bad in law. Reliance is placed on the following judicial precedents in support of the above view.

20.2.5 In light of the above, we submit that there is no excess set off of loss amounting to Rs. 1,13,90,67,520 and thus, the set-off losses is correctly allowed by the Ld. AO.

20.3 *Difference in closing WDV for AY 2012-13 and opening WDV for AY 2013-14 in case of Goodwill and Furniture & fixtures balance*
20.3.1 *In this regard, the difference in WDV of the assets as pointed out by your goodsself is mainly on account of revision of tax audit report submitted by the company for AY 2012-13.*

20.3.2 *We would like to submit that on account of amalgamation the company has filed revised Tax Audit Report ('Revised TAR') for AY 2012-13. The closing WDV for goodwill as reflected in Revised TAR of AY 2012-13 reconciles with the opening WDV for goodwill in TAR filed for AY 2013-14. The summary of the same is enclosed at Annexure B for your perusal.*

20.3.3 *As per your notice u/s 263 of the Act the closing WDV of goodwill and furniture and fixture considered as Rs. NIL and Rs 70,04, 16, 158 respectively for AY 2012-13.*
20.3.4 *The closing WDV for AY 2012-13 as per original Tax Audit Report ('original TAR') in case of goodwill is Rs. 32,08,02,497 and for furniture & fixtures including leasehold equipment is Rs 24,83,71,598.*

20.3.5 *The revised closing WDV for AY 2012-13 as per Revised TAR for goodwill is Rs. 11,55,38,77,534 and for furniture & fixtures including leasehold equipment is Rs.99, 16,27,934. The same reconciles with opening WDV*

for goodwill and furniture & fixtures respectively for AY 2013-14.

20.3.6 Therefore, we understand that there is no difference between opening WDV for AY 2013-14/ AY 2014-15 and closing WDV of AY 2012-13/AY 2013-14. Further, w.r.t. your query related to excess depreciation of Rs. 7,01,48,381, we would like to point out the depreciation calculations has been worked out in consideration of Revised TAR.

20.3.7 In light of the above depreciation claim for AY 2012-13, 2013-14 and 2014-15 is not erroneous and there lies no difference in the opening and closing WDVS of the above mentioned years and imperatively, there is no claim of excess depreciation.

21. However, without prejudice to the above, we would like to submit before your goodself that invoking proceedings under section 263 of Act in response to audit objection raised by the internal audit department is bad in law. Reliance is placed on the following judicial precedents in support of the above view.

22. In case of Lotus Energy (India) Ltd vs C.I.T. [2017] 53 ITR (T) 227 (Mumbai) the tribunal held that all the details were duly submitted before the Assessing Officer by the assessee and the Assessing Officer had taken a decision based on his judgment which was a plausible view. With

respect to non-deduction of TDS on usance interest, the Assessing Officer while replying to audit objection had sought permission to invoke provisions of section 154 to rectify the mistake apparent from record. The word 'records' used in section shall also contemplate including the record pertaining to proceedings under section 154 arising subsequently out of the assessment order passed by the Assessing Officer under section 143(3) and such record was before the Commissioner before he issued notice under section 263. Thus, the assessment order passed by the Assessing Officer was neither erroneous nor it was prejudicial to the interests of the revenue, and the Commissioner had not correctly invoked the provisions of section 263. sation 263.

23. Reliance is place on Pune Tribunal decision in case of Sunil Chhagan Bhaybhang vs C.I.T. ITA No. 932/PUN/2016 wherein it was held that it is a well settled law that where the enquiry has been conducted by the AO and has passed assessment order taking one of the possible views, the provisions of section 263 t be invoked by the C.I.T. to substitute his view or to meet with the objections raised by Internal Audit Party.

24. Reliance is also placed on following judicial proceedings in support of our view:

Jaswinder Singh vs CIT ITA No. 690/Chd/2020, ITAT Chandigarh; CIT vs Sonhana Woollen mills [296 ITR 238 (P&H)];

25. *Consequently and imperatively, it is humbly submitted that based on the above facts and law, the assessment order passed under section 143(3) r.w.s 144C(13) of the Act cannot be said to be erroneous and thereby prejudicial to the interest of revenue, which is a sine qua non for invoking the provisions of section 263 of the Act. In light of the aforementioned discussion, we humbly pray before you that the impugned rectification order ought not to be revised or cancelled or modified. We therefore humbly pray that you drop the proceedings u/s 263 of the Act.*

We would be pleased to provide you with further information/clarification that you may require in this regard. Should you still disagree with the contentions of our company, we request your goodself to grant us an opportunity to provide further justifications in support of our contention.

8. Finally, the Pr.CIT was not satisfied with the submissions and is of the opinion that the AO has not verified the information and issued directions to the AO referred at Para 6.15 to 8 of the order read as under:

6.15. As regards to case laws relied on by the assessee company they are factually distinguishable and not applicable to facts and circumstances of assessee's case and law. It is further mentioned that the applicability of the judicial decisions relied upon by the assessee company or otherwise, it will be of material only when all the relevant facts and circumstances are fully ascertained.

6.14. In view of the above, I am of the opinion that assessment order is erroneous to the extent of non verification of valuations reports and working of share premium. The failure to conduct enquiries in this regard has rendered the order erroneous as well as prejudicial to the interest of the revenue and the order is liable to be set aside on the issues mentioned above. In the circumstances, am satisfied that the Assessing Officer failed to examine the issues mentioned in the notice u/s 263 of the Act and to this extent, the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue on the issues discussed in the preceding paras.

7. In view of the above discussions and considering the fact that necessary enquiry were not conducted and the issue was not examined by the Assessing Officer and further in view of the provisions of the Act and the judicial interpretation thereto, the order of the Assessing Officer is erroneous insofar as it is prejudicial to the interest of revenue. This being so, the said assessment order passed by the Assessing Officer, is set aside on the issue discussed above. Further, in view of the facts noted in earlier paragraphs and present circumstances, the Assessing Officer is directed to reassess the income of the assessee afresh after examining the relevant details and such other issues and conduct proper and necessary enquiry, as may be relevant and necessary and then pass a speaking assessment order. Needless to state, the Assessing Officer should follow due procedure and also afford full and reasonable opportunity of being heard to the assessee before the completion of the reassessment.

8. The order U/s 263 of the Income Tax Act 1961 is passed accordingly.

9. Aggrieved by the order of the Pr.CIT, the assessee has filed an appeal before the Hon'ble Tribunal.

10. At the time of hearing, the Ld. AR submitted that the AO has allowed the depreciation on goodwill as per the provisions of the Act. Whereas the Pr. CIT has

only issued the directions and has not supported with any findings. The Ld.AR submitted that the Pr.CIT has erred in set aside the order of the A.O., which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue and direct the A.O to do a fresh assessment. The Ld.AR submitted that the explanation 2 to sec 263 of the Act ought to be considered only when the AO has not applied his mind, the facts are to be verified and no enquiry is conducted. The Ld. AR emphasized that the assessee has complied with the notices and the clarifications were filed. The A.O. has dealt on the facts in respect of the issues raised by the Pr.CIT but there are no observations in the assessment order. Further the Pr.CIT has erred in overlooking facts that the assessee has filed the written submissions before the lower authorities. The Ld.AR also emphasized that the A.O. having satisfied with the provisions of Act has allowed the claim of depreciation on goodwill and substantiated the submissions with the judicial decisions and factual paper book and prayed for allowing the appeal. Contra, the Ld.DR supported the order of the Pr.CIT and made submissions on the

application of the provisions and explanation 2 to section 263 of the Act and the A.O has not taken the facts of the first year of amalgamation.

11. We heard the rival submissions and perused the material available on record. The Ld.AR contentions are that the order passed by the A.O. does not satisfy the twin conditions that (i) erroneous and (ii) prejudicial to the interest of the revenue. The Ld. AR further submitted that the Pr.CIT is of the opinion that the AO has not conducted enquiry on the claim of depreciation on Good Will. The A.O. has allowed the depreciation on goodwill which has arise on account of amalgamation in A.y.2012-13 and forms part of block of Asset and depreciation was claimed in the first year of amalgamation. Whereas the issue is in respect of claim of depreciation on intangible assets including the customers contract /customers relation which is subject matter of dispute, the Pr.CIT is of the opinion that the AO has not verified these facts and has not applied his mind on these factual aspects. Further the Pr.CIT found that the assessee has claimed rent in the profit & Loss account which includes prior period expenses and is of the opinion that the prior period

expenditure has to be disallowed. On the last disputed issue the Pr. CIT observed that M/s Intel Global Net Service Pvt Ltd which was subsequently merged has filed the service tax return disclosing the income receipts and interest receipts and certain credit card payments and hotel payments but no return of income was filed and the AO has not verified or examined these factual aspects before passing the assessment order.

12. We find that, as per the amalgamation of SKR BPO and IG SPL all the assets and liabilities of these companies are merged with the assessee company and due to the excess value of the assets over liabilities has resulted in goodwill and was recorded in the balance sheet for the A.Y 2012-13 and the assessee has claimed the depreciation. The contentions raised by the Ld.AR that the AO has allowed the depreciation on goodwill on amalgamation in the A.Y 2012-13 and only on the Written down value, the assessee has claimed the depreciation as per the provisions of law. Further for A.Y 2015-16 there is no disallowance of depreciation but for A.Y 2016-17 the AO has made disallowance of claim of depreciation. The contentions

of the Ld. AR are based on the accounting standards, submissions and merits of case on allowability of claim. Whereas, the Issues envisaged in the present case, to find that the AO has verified, examined and applied his mind on these aspects in the assessment proceedings has to be considered. On perusal of the information in the paper book, we found that the assessee in compliance to notice u/s 142(1) of the Act has filed a reply placed at Page 290 to 330 of the paper book to mention that the submissions are also in respect of depreciation on goodwill along with other information vide letter dated 06.12.2016 placed at Page 290 of the paper book in particular on details of depreciation as under:

b) Details of Depreciation

The prime reason for increase in depreciation amount was due to merger of SKR BPO Services Pvt. Ltd, Intelenetglobal services pvt ltd. with Serco BPO Pvt. Ltd. in the previous year. Pursuant to merger all Fixed Assets of amalgamating entities are added to SBPO. IGSPL, an operating entity had huge Fixed Assets in its audited accounts which was transferred to SBPO pursuant to merger.

In view of above, the claim of depreciation is higher in comparison with previous assessment year of SBPO. Moreover, we would also like to state that SBPO has not claimed depreciation at rates higher than what is

prescribed under the Income Tax Act, 1961 or additional depreciation during the year under consideration. The details of additions to fixed assets are attached herewith as Annexure 2

The assessee has submitted the statement of additions to the assets, prima-facie we found that the issue with respect of claim of depreciation on goodwill has been not considered or dealt in the course of hearing by the AO and shall have a far reaching effects though in some years the claim was allowed and was disallowed in other years. We found that the Pr.CIT has dealt on the facts to prove that the AO has not applied his mind or made enquiries on the issue. Whereas, the assessee has filed the details of claim of depreciation along with the list of additions in response to notice u/s 142(1) of the Act as referred above. But in the assessment proceedings though the AO has called for the information there is no examination or verification of facts or findings by AO on the claim of depreciation on goodwill and subsequent carry forward of WDV. Accordingly, the matter needs to be examined and verified and we do not find infirmity in the directions issued by the Pr.CIT to

the Assessing officer for verification of claim of depreciation on goodwill.

13. On the second disputed issue, the AO has not considered the facts that rent debited to the profit and loss account includes the prior period expenditure. The assessee has filed the information and explanations in the revision proceedings that the assessee sumotto has made disallowance in the computation of income. We considering the facts and information, do not find any loss of revenue as the AO is aware of the computation of income filed and the assessee has disallowed prior period expanses. We are of the opinion that the directions of the Pr.CIT on this disputed issue cannot be sustained.

14. On the third disputed issue with respect to claim of expenses and treatment of income in respect of amalgamating company. The assessee has made submissions before the Pr.CIT and the facts dealt with respect to offering of income. Since the assessee has filed the revised tax audit report, revised return of income disclosing the income and expenses, hence there is no violation or error in the non consideration

of facts in the assessment proceedings and we do not find merits in the directions of the Pr.CIT on this disputed issue.

ITA No. 977/Mum/2021, A.Y 2014-15.

15. The facts and circumstances in this appeal are identical to ITA No. 976/Mum/2021, for A.Y 2013-14 (except variance in figures). Whereas the assessee is challenging the directions of the Pr.CIT to Assessing officer in respect of verification and examination of claim of depreciation on revalued intangible assets on amalgamation and incorrect set off of brought forward losses and excess claim of depreciation on account of difference in WDV and the decision rendered in above paragraphs no.12 would apply mutatis mutandis for these issues also.

16. On the Last disputed issue in respect of excess claim of depreciation on the furniture and fittings, the contentions raised by the Ld. AR that the revised tax audit report was filed on account of amalgamation and the difference is due variation in the WDV and the Ld. AR has referred to the revised tax report and ITR. We find that the assessee has

explained the details and filed the reconciliation supported with the factual details which cannot be over looked. Accordingly, we modify the directions of the Pr.CIT and direct the AO to consider the revised tax audit report & WDV and grant the claim of depreciation on furniture and fittings and we order accordingly.

17. In the result, the two appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 04.01.2023.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 04.01.2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//