



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “ए” न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE ‘A’ BENCH, PUNE
BEFORE SHRI S S VISWANETHRA RAVI, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 668/PUN/2022

निर्धारण वर्ष / Assessment Year : 2018-19

Millennium Engineers & Contractors Ltd.,

Office No.501 to 504, Transbay,

Mitcon Rd., Balewadi,

Pune – 411 045

PAN: AABCM8432E

..... अपीलार्थी / *Appellant*

बनाम / V/s

Dy. Commissioner of Income Tax,

Central Circle-1(3), Pune

..... प्रत्यर्थी / *Respondent*

द्वारा / *Appearances*

Assessee by : Mr C. H. Naniwadekar [‘Ld. AR’]

Revenue by : Mr Ramnath Murkude [‘Ld. DR’]

सुनवाई की तारीख / Date of conclusive Hearing : 23/08/2023

घोषणा की तारीख / Date of Pronouncement : 30/10/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM ;

This appeal of the assessee for assessment year [for short ‘AY’] 2018-19 is assailed against DIN & Order ITBA/APL/S/250/2022-23/10447166031(1) dt. 17/08/2022 of Commissioner of Income Tax (Appeals)-11, Pune [for short ‘CIT(A)’] passed u/s 250(6) of the Income-tax Act, 1961 [for short ‘the Act’], which in turn ascended out of assessment order dt. 29/10/2020 passed u/s 143(3) by Asstt. Commissioner of Income Tax, Central Circle–1(3), Pune [for short ‘AO’].



2. Brief facts of the case are that;

2.1 The assessee is an Indian company. During the year under consideration the assessee acquired its subsidiary company 'Reyami Millennium Interior Pvt Ltd' [for short 'RMIPL'] as going concern. Pursuant to approved scheme of arrangement when all assets and all liabilities were pulled in the books of account, the assessee recorded the resultant debit figure of ₹2,99,42,138/- as goodwill. A claim of depreciation u/s 32(1)(ii) of the Act thereon @25% was made in return of income filed by the assessee was disallowed by the Ld. AO while framing regular scrutiny assessment u/s 143(3) of the Act.

2.2 The assessee unsuccessfully agitated the aforestated disallowance in an appeal before the first appellate authority. Aggrieved appellant instituted present appeal u/s 253(1) of the Act on a substantive & solitary ground against the denial of claim for depreciation on goodwill claimed to have arisen to it on acquisition of its subsidiary.

3. At the physical hearing, the Ld. AR Mr. Naniwadekar adverting to scheme of arrangement, share valuation report detailing the swap ratio and relevant part of Accountings Standards-14 [for short 'AS-14'], submitted that, pursuant to approved scheme of amalgamation, the assessee acquired its subsidiary company at a price exceeding net assets value which resulted into purchase of goodwill. The said goodwill was arisen in terms of 'AS-14' on account of excess of combined value of its investment into subsidiary and value of consideration paid in terms of scheme. To drive home his contention for claim of depreciation, Mr Naniwadekar beside other case laws, has strongly pressed into service the decision of Hon'ble Supreme Court in '*CIT Vs Smifs Securities Ltd.*' reported in 348 ITR 302(SC).



4. *Per contra*, Ld. DR Mr. Murkunde without disputing the ratio of Hon'ble Supreme Court (*supra*) refuted that, as the matter-of-fact subsidiary RMIPL had no goodwill in its books as on the date of its acquisition by the assessee. Further the assessee did fail to prove any excess purchase consideration paid by it over the value of net assets taken over under the scheme. Thus, the assessee has neither acquired any goodwill from its subsidiary nor it has purchased by way of excess payment. This being the factual position, there remain no scope for recording goodwill in its books, consequently any claim for depreciation thereon is like rain without clouds.

5. *We* have heard rival contentions of both the parties on substantive grounds; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short 'ITAT, Rules'] perused material placed on records, case laws relied upon both the parties and duly considered the facts of the case in the light of settled legal position, which are also forewarned to parties present.

6. We observed that,

6.1 Pursuant to approved scheme arrangement, the assessee acquired whole of its subsidiary RMIPL as going concern. In computing the amount of goodwill, the appellant aggregated the value of investment held by it in RMIPL which resulted into balancing debit figure of ₹2,99,42,138/-. The said balancing figure was recognised as goodwill and depreciation @25% thereon was claimed in its return. Both the tax authorities below denied to allow the appellant the aforestated claim.

6.2 In view of the Ld. AO, since under approved scheme of arrangement the subsidiary company had no intangible assets to be transferred to the assessee company, therefore the question of accounting for cost of goodwill in terms of



explanation 7 to section 43(1) no longer arises. Thus the Ld. AO at the very outset dislodged the claim of creation of goodwill and consequently disallowed the claim for depreciation by placing reliance on the decisions of co-ordinate bench in '*DCIT Vs Toya Engineering India Ltd. (ITA No 3279/Mum/2008)*' and '*Sanyo BPL Pvt Ltd. Vs DCIT (ITA No. 1395/Bang/2014)*, and '*United Breweries Ltd. Vs ACIT*' (ITA 722/Bang/2014'.

6.3 On the other hand, when the assessee agitated aforesaid disallowance *vis-à-vis* creation/purchase of goodwill in an appeal before first appellate, the Ld. CIT(A) countenanced the views of the Ld. AO and dismissed the claim for depreciation dislodging the acquisition and purchase of any such goodwill finding that;

*12. I have considered the facts of the case and the submissions made by the appellant. It is an undisputed fact that no goodwill was recorded in the books of accounts of amalgamating company. It is also not in dispute that no separate specific amount was paid by the assessee company towards goodwill recorded in its books of accounts. It is also not in dispute that the quantification of goodwill was not based on any method prescribed by ICAI or any Accounting Standard or valued by any expert or valuer. As explained by the appellant, **the value of goodwill has been determined being excess of company's investment in RMIPL over net asset taken over.***

*13. One of the arguments taken by the appellant is that the goodwill was self-generated asset by Ms RMIPL and same was acquired by the appellant on amalgamation. Therefore, the same was separately recorded in the books of accounts of the appellant company while giving effect to amalgamation scheme. In this connection, it is seen that the appellant has filed a copy of Certificate of valuation of share exchange ratio of MIs Reyami Millennium Interiors Private Limited and Millennium Engineers & Contractors Private Limited, dated 30th April 2017 issued by M/s S.D. Bhandwalkar & Co. As per this certificate, the fair market value of shares of M/s RMIPL was determined at Rs. 1.15/- per share by using Net Asset Value (NAV), method. It is also seen from the said certificate that no value for so-called 'self-generated goodwill' has been assigned by the valuer. Therefore, **the claim of the appellant that the said company RMIPL had self-generated goodwill valuing Rs.2,99,42, 138/- at the time of amalgamation, is contradictory to facts from the records.** Had there been this goodwill earned by RMIPL, same would have been considered by the valuer while determining the FMV of shares of RMIPL for the purposes of swap ratio.*

14. It can be seen from the above table that the appellant company purchased 28, 12,500 number of shares of RMIPL from M/s KPS Holdings India Private Limited on 29/12/2016 at a total consideration of Rs. 7,31,250/-. The appellant company paid Rs. 0.267- per share of RMIPL to M/s KPS Holdings Pvt. Limited. These facts also suggest that the Fair Market Value of shares of M/s RMIPL as on 29/12/2016 (just before the amalgamation which was effective from 01/01/2017) was Rs. 0.26/- per share. The total number of shares of RMIPL



was 62,50,000 and thus the total value of the company on the basis of FMV per share comes to Rs. 16,25,000/- ($62,50,000 \times 0.26$). **This value is almost matching with the net asset amounting to Rs. 20,07,8621-taken over by the appellant company.** These facts also suggests that there was no self-generated goodwill earned by RMIPL which could carry a value of Rs.2,99,42,138/- as shown by the appellant company in its books of accounts. Had this been the actual value of goodwill, in that case M/s KPS Holdings Pvt. Limited would not have transferred its shareholding in RMIPL at a rate of Rs. 0.26/- per share. This discussion also suggests that there was no self-generated goodwill by M/s RMIPL.

15. The accounting entries done by the appellant suggests that it made a total investment of Rs. 3,19,51,000/- in M/s RMIPL. The Fair Market Value of said investment as on 01/01/2017 was much lower than its cost of investment. The appellant has simply recognised the balancing figure (excess of cost of investment in RMIPL over Net Assets taken over) as 'goodwill acquired'. As discussed above, **the amalgamating company did not have any self-generated goodwill and the assessee company has recognised the 'goodwill only to claim deduction of the capital loss incurred by it on the investment made by the company in RMIPL.** As discussed in detail by the Assessing Officer, the goodwill can never be a balancing figure and it is something which is earned or built by a person or a business concern over a period of time. It is also a well settled legal position that the goodwill has to be valued by the recognised method and in the present case no such valuation report has been filed by the appellant. Rather in the valuation report dated 30th April 2017 vide which the FMV of shares of RMIPL was valued, no value has been attached by the valuer to such goodwill. In such situation, the findings of the Assessing Officer that the amalgamating company did not have any goodwill and the assessee company has simply recognised the goodwill as a balancing figure, cannot be found fault with.

16. The appellant has heavily relied on the decision of Hon. Supreme Court in the case of CIT vs Smifs Securities Ltd. 340 IT 302. A perusal of said decision suggests that in that particular case, the Hon. Supreme Court noticed that the assets were acquired by paying consideration and the excess of consideration paid by the assessee over the value of Net Asset acquired was recognised as goodwill. The Hon. Supreme Court also took note of the factual finding of lower authorities that after the amalgamation of two companies, the assessee company acquired goodwill because of which market worth of the assessee company stood increased. However, in the present case no consideration has been paid by the appellant company for acquiring the assets of RMIPL and there is no evidence that the market worth of the appellant company increased due to the amalgamation. Further, the facts discussed in detail earlier in this order clearly suggest that the amalgamating company did not have any self-generated goodwill as claimed by the appellant company and the appellant company has created this asset only as a balancing figure for claiming the deduction of capital loss incurred by it for the investment made in its subsidiary company, in the form of depreciation on goodwill over a period of time. Since the facts of present case are different than the case of M/s Smifs Securities as well as the case of M/s Aricent Technologies Holdings Limited, therefore, same are not applicable to the present case.

17. Considering the totality of facts of the present case, I am of the opinion that the amalgamating company did not have any self-generated goodwill as claimed by the appellant company. Since **no goodwill is acquired by the appellant company on amalgamation**, same cannot be created just to claim deduction for capital loss incurred by it for the investment made in its subsidiary company, in the form of depreciation on goodwill over a period of time. Accordingly, the addition of Rs.74,85,535/- made by the Assessing Officer on account of disallowance of depreciation on goodwill is upheld. The ground no. 4 & 5 raised by the appellant are DISMISSED.



7. Basically, goodwill comes into existence in two scenarios i.e., either acquired or purchased and more specifically (1) Acquisition: when a company (acquirer/transferee) acquires any other company (transferor) which has goodwill in its books prior to its acquisition by acquirer, and (2) Purchased: when a company (acquirer/transferee) acquires any other company (transferor) at a payment consideration in excess of net assets value of transferor. Under Income tax laws it is a settled proposition that, acquirer/transferee company subject to provisions of section 43 r.w.s 32 of the Act is entitled to claim depreciation u/s 32(1)(ii) of the Act on goodwill which is either acquired or purchased by an excess payment of consideration over net asset value taken over or by former combined modes and this finds force in the ratio laid down by the Hon'ble Supreme Court (supra).

8. In the instant case, we note that, the assessee company was holding 95% of total equity share capital of its subsidiary RMIPL prior to execution of scheme of arrangement. It remained an undisputed fact that, the subsidiary company RMIPL had no goodwill in its books of accounts as on the date of its acquisition by its holding company, the appellant. Therefore, the question of transfer of any such amount of goodwill while recording assets of subsidiary company into its books in first place uncloudly failed. That is to say there was no acquisition of goodwill by the assessee while acquiring its subsidiary RMIPL. Consequently, on this issue, both the tax authorities came to a rightful conclusion that, when RMIPL had no goodwill in its books of account, then the question of recording the same in its books doesn't arise and resultant claim of depreciation thereagainst was baseless. This being the factual position, we see no reasons to hold otherwise in the absence of any deprecative material placed and brought to our notice by the appellant company.



9. Now the question remains as to whether the assessee company purchased any goodwill by an excess payment consideration over and above the value of net asset of its subsidiary company RMIPL acquired under approved scheme. Admittedly, the acquisition of RMIPL resulted into excess of net assets value of ₹20,07,8621/- to the appellant. As against this acquisition the appellant was to issue of *'One (1) fully paid equity share of Rs10/- each for every Hundred (100) equity share of Rs10/- held in RMIPL'* towards total purchase consideration. From page 54-55 r.w.p 24 of paper book placed on record, it is clearly evident that pursuant to scheme only a third party viz; KPS holding India Private Limited which was entitled to receive 3,125 equity shares of the appellant company in live of KPS's holding in its subsidiary RMIPL. The appellant's holding in its subsidiary, by virtue of clause 5.1 of scheme, was subjected to extinguishment without any consideration thereagainst. Whereas the fair market value of equity shares of the assessee company as per registered valuer's report (placed on page 33 of paper book) was worked @ ₹142.08/per equity share. In summation, total value of purchase consideration under the approved scheme of arrangement payable was to be worked out with reference to 3,125 equity share @ price of ₹142.08/per share. The resultant consideration paid/payable by the appellant under approved scheme, as rightly submitted by the Ld. AR that, was even much less than the value of net assets acquired by it. This being the factual admitted position, there was no scope of purchase of goodwill by excess payment of purchase consideration. The wholesome findings Ld. CIT(A) remained flawless to the effect that, the amount of goodwill supposedly claimed by the assessee can be traced into accounting entries passed by the assessee, which reveals that the appellant company has simply recognised the balancing figure i.e., excess of its cost of investment in RMIPL over Net Assets taken over by it as goodwill purchased. This treatment



however, in our considered view is neither in accordance with the approved scheme of arrangement nor in consonance with the mandatory AS-14 issued by the Institute of Chartered Accountant of India. In nutshell, the material placed on records and the argument advanced beyond an iota of doubt establishes that, the appellant did neither acquired any goodwill from its subsidiary RMIPL nor it has made any excess payment towards purchase consideration over and above value of net asset acquired under the scheme. Therefore, it gave rise to no goodwill in the hands of the appellant assessee, resultantly no claim of depreciation thereagainst could arise. In these facts and circumstances, we countenanced the disallowance for foregoing reasons. All the grounds of appeal stand adjudicated accordingly.

10. In the light of aforesaid discussion and settled legal position, in our considered view the impugned order calls for no interference.

11. In result, the appeal of the assessee stands DISMISSED.

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Monday 30th day of October, 2023.

-S/d-

S S VISWANETHTRA RAVI
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 30th day of October, 2023.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The CIT(A) -11, Pune(MH-India)
5. DR, ITAT, Pune Bench 'A', Pune
Ashwini

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

3. The Pr.CIT (Central), Pune MH-India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.