IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.6252/Del/2019
[Assessment Year : 2015-16]

SRF Limited, The Galleria, DLF Mayur Vihar, Unit No.236 & 237, Second Floor, Mayur Place, Noida Link Road, Mayur Vihar, Phase-I Extn., Delhi-110091. ***PAN-AAACS0206P***	vs	ACIT, Circle-1, LTU, New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Shri Pradeep Dinodia, CA, Shri R.K.Kapoor, Adv. & Shri Harish Dhamija, Adv.
Respondent by	Shri Subhra Jyoti Chakraborty, CIT DR
Date of Hearing	26.10.2023
Date of Pronouncement	20.11.2023

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)-22, New Delhi dated 31.05.2019 for the assessment year 2015-16.

2. The assessee has raised following grounds of appeal:-

General Ground

1. *"The Ld CIT(A) has erred in law and on facts and in the circumstances of the appellant's case in upholding the addition/ disallowance/ denying deductions amounting to 35,88,28,243/-on account of disallowance of weighted deduction u/s 35(2AB), disallowance of depreciation on Goodwill and claim of balance additional depreciation. Further Ld. CIT(A) has erred in upholding addition/not allowing adjustment to tune of 17,08,16,247/- on*

account adjustment of certain items in computation of book profits u/s 115JB of the Act.

2. *That the assessment order u/s 143(3) of the Act dated 27th December, 2017 passed by the Ld. AO and order of the Ld. CIT(A) dated 31st May, 2019 u/s 250(6) of the Act are bad in law. The additions/disallowances made by Ld. AO and subsequently upheld by Ld. CIT(A) are wholly illegal, untenable and erroneous.*

3. Disallowance of weighted deduction u/s 35(2AB)

3.1 *The Ld. CIT(A) has erred in law and in facts and in the circumstances of the appellant's case in upholding the disallowance of weighted deduction u/s 35(2AB) of the Act made by the Ld. AO to the extent of 6,17,97,008/-, being the amount short approved by Department of scientific and industrial research (DSIR) mainly on account of delay in filing of Form No. 3CK.*

3.2 *The Ld. CIT(A) has failed to appreciate that above disallowance couldn't have been made by Ld. AO as delay in filing Form no.3CK is not attributable to the appellant.*

3.3 *The Ld. CIT (A) has erred in law and facts of the case, in not appreciating that no disallowance could have been made u/s 35(2AB) of the Act read with Rule 6(7A) as the extant provisions of Rule 6(7A) did not permit DSIR to quantify the expenditure incurred on in-house research and development facility for the relevant assessment year.*

4. Disallowance of depreciation on Goodwill

4.1 *The Ld. CIT(A) has erred in law and in facts and in the circumstances of the appellant's case- by upholding the disallowance made by Ld. AO in respect of depreciation of 19,15,183/- on goodwill arisen on account of acquisition of Business Units from SRF Polymers Ltd during financial year 2008-09.*

4.2 *The Ld. CIT(A) has failed to appreciate that such depreciation has been claimed on written down vale (WDV) of goodwill which has*

been brought forward from the preceding years since its acquisition in financial year 2008-09.

5. Non-allowance of claim of balance additional depreciation made during the assessment proceedings

5.1 The Ld. CIT(A) has grossly erred in law in not entertaining the claim of the appellant of balance additional depreciation @10% amounting to 29,51,16,052/- on the ground that such deduction has not been claimed by the appellant in its original or revised return of income. The Ld. CIT(A) failed to appreciate that being an appellate authority, he should have adjudicated the claim of the appellant raised before him.

5.2 The Ld CIT(A) has grossly erred in law and on the facts of the case, in not allowing the deduction of balance additional depreciation @ 10% for assets which were put to use for less than 180 days during the relevant previous year.

Book Profits u/s 115JB of the Income Tax Act, 1961

6. The Ld. CIT(A) has grossly erred in law and facts and circumstances of appellant's case in upholding the addition of depreciation on goodwill of 19,15,183/- made by Ld. AO while computing the book profits u/s 115JB of the Act.

7. The Ld. CIT(A) has grossly erred in law and facts and circumstances of appellant's case in not reducing the amount of capital receipts amounting to 16,89,01,064/- in the nature of profit on sale of investments while computing the book profits u/s 115JB of the Act.

Penalty & Interest

8. The Ld. AO has grossly erred in initiating penalty proceedings under section 271(1)(c) of the Act mechanically and without recording any satisfaction for its initiation.

9. That the Ld. A.O has erred in law in charging interest u/s 234C and 234D of the Act on wholly illegal and untenable grounds.

- *The above grounds are without prejudice to each other.*

- *The Appellant craves leave to alter, amend or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary either before or during the hearing.*
- *The appellant prays that the appeal be allowed."*

3. Facts giving rise to the present appeal are that the assessee company was engaged in the business of manufacturing of nylon tyre cord fabrics, packaging film, chemicals, engineering plastics and refrigerant gases. The original return of income declaring total income of INR 94,05,32,950/- was filed after claiming deduction under Chapter VI-A of INR 1,98,87,500/- and book profit of INR 3,81,66,29,461/- on 30.11.2015. Thereafter, the return of income was revised and declared total income of INR 105,07,73,790/-. The case was selected for scrutiny assessment and a notice u/s 143(2) of the Income Tax Act, 1961 ("the Act") was issued and served upon the assessee. In response to the statutory notices, Ld. Authorized Representative ("AR") of the assessee attended the proceedings and furnished the requisite details as called by the Assessing Authority. The Assessing Officer ("AO") while framing the assessment u/s 143(3) of the Act dated 27.12.2017, made various additions on account of disallowance u/s 14A of the Act amounting to INR 23,00,192/- excess claim made in return of income in respect of Research and Development expenditure u/s 35(2AB) of the Act amounting to INR 6,17,97,008/- and disallowance of depreciation Goodwill amounting to INR 19,15,183/-. Thus, he computed total taxable income at INR 1,11,67,86,173/-. The AO recorded that since the tax payable on income assessed under MAT Act is higher than tax payable under normal provision of the Act, the assessee is liable to pay MAT under section 115JB of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, the Ld.CIT(A) deleted the addition which was made by invoking the provision of section 14A of the Act. However, the rest of the additions were sustained.

5. Aggrieved against the order of Ld.CIT(A), the assessee has preferred the present appeal before this Tribunal against the sustaining of addition made by disallowing deduction u/s 35(2AB) of the Act amounting to INR 6,17,97,008/- and disallowance of depreciation in respect of goodwill of INR 19,15,183/-.

6. Ld. Counsel for the assessee vehemently argued that the issues are squarely covered in favour of the assessee qua the deduction u/s 35(2AB) of the Act amounting to INR 6,17,97,008/-. He contended that the contention of the AO is that the approval by DSIR is pre-condition for allowability of claim. However, statute does not prescribe it as a pre-condition, only requirement, is that in house R&D activities should be approved by DSIR. He contended that provision of section 35(2AB) of the Act, no where requires that receipt of Form No.3CL is pre-condition for claiming deduction under said section and also no further requirement that weighted deduction would be allowed only to extent of expenditure approved by DSIR. Such requirement of approval of expenditure of revenue & capital expenditure is being laid down under Rule 6(7AB) of the Income Tax Rules, 1962 ("the Rules") which cannot override provision of the Act. Such requirement of approval of expenditure by DSIR may be for tracking and reporting purpose but law has not intended that claim of deduction should be allowed on the basis of approval by DSIR. He further contended that law

has been now amended the condition or requirement of obtaining approval from DSIR is inserted w.e.f 01.07.2016 by amendment made in Rule 6(7A)(b) of Rules. However, such provision cannot override the main Act. In support of this proposition, Ld. Counsel for the assessee relied upon various case laws:-

a) *"ACIT vs. Crompton Greaves Ltd. ([2019] 111 taxmann.com 338 (Mumbai-Trib.)) (P. no. 197-213 of Case Law Compilation);*

b) *CIT vs. Claris Lifesciences Ltd. ([2008] 174 Taxman 113 (Gujarat)) (P. no. 238-241 of Case Law Compilation);*

c) *CIT-III vs. Sandan Vikas (India) Ltd. ([2012] 22 taxmann.com 19 (Delhi)) (P. no. 242-245 of Case Law Compilation);*

d) *Maruti Suzuki India Ltd. vs. Union of India ([2017] 84 taxmann.com 45 (Delhi)) (P. no. 246-262 of Case Law Compilation);*

e) *Cummins India Ltd. ([2018] 96 taxmann.com 576 (Pune-Trib.)) (P. no. 263-286 of Case Law Compilation);*

f) *Crest Composites & Plastics Pvt. Ltd. (ITA No. 28/Ahd/2017) (P. no. 287-295 of Case Law Compilation);*

g) *Force Motors Ltd. ([2021] 133 taxmann.com 71 (Pune-Trib.)) (P. no. 296-308 of Case Law Compilation);*

h) *Natural Remedies Pvt. Ltd. (TS-36-ITAT-2021(Bang)) (P. no. 309-322 of Case Law Compilation):*

i) *Crest Composites & Plastics Pvt. Ltd. (2022-TIOL-675-ITAT-AHM) (P. no. 323-328 of Case Law Compilation)."*

6. Ld. Counsel for the assessee further contended that it is settled law that claim of the assessee in the form of deduction u/s 35(2AB) of the Act cannot be denied on account of non-receiving of approval in Form No.3CL from DSIR. In this regard, he relied upon following case laws:-

(a) *"DCIT vs M/s. STP Ltd. (2021-TIOL-128-ITAT-KOL) (P.No.214-221 of Case Law Compilation);*

(b) *CIT vs Sun Pharmaceutical Industries Ltd. [2017] 85 taxmann.com 80 (Gujarat) [P.No.222-227 of Case Law Compilation]; and*

(c) *Special Leave Petition by revenue against ruling of Hon'ble Gujarat High Court, has been dismissed by Hon'ble Supreme Court [2018-YIOL-282-SC-IT] (P.No.228-229 of Case law Compilation); and*

(d) *Minilec India (P.) Ltd. vs Asstt. CIT [2018] 93 taxmann.com 213/171 ITD 124 (Pune-Trib.) (P.No.230-237 of Case Law compilation)."*

7. On the other hand, Ld. CIT DR for the Revenue opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that the claim of the assessee was rejected by the AO on the basis that section 35(2AB) of the Act explicitly provides that such expenditure on Research & Development should be approved by the prescribed Authority. In this case, prescribed authorities, Secretary, DSIR which is pre-condition to be fulfilled by the assessee before allowing weighted deduction. Ld.CIT(A) confirmed the finding of Assessing Authority by observing as under:-

9.2. "I have carefully examined the finding of the AO and submission of the Ld. AR. The additional evidence u/s 46A submitted is nothing but the reason for short approval of expenditure for deduction u/s 35(2AB) obtain by the appellant from DSIR. These documents were forwarded to AO for remand report and in the remand report the AO has primarily reiterated what stated in the assessment order. The additional evidence filed has already been admitted in the earlier para. I have examined these documents and I find that these evidences does not help the appellant when the preconditions for allowability of expense is expressly mentioned in the Act itself then

where is the question of debate on this issue on this point. The Ld. AR relied upon certain case laws. I have perused these decisions. In the case laws relied upon by the Ld. AR, the judicial authorities had delivered on different facts and circumstances. These decisions are not applicable in the facts of the case of the appellant.

9.3 As per section 35(2AB) of the Act such expenditure on Research & Development facility should be approved by the prescribed authority [in this case Secretary, DSIR], is a pre-condition to be fulfilled by the assessee before being allowed weighted deduction. The reason for short approval by DSIR is not relevant as the authority for this approval lies with DSIR and the amount which has been approved by DSIR has already been allowed at the time of assessment proceeding. The appellant claimed deduction in its ITR u/s 35(2AB) of Rs. 52,62,21,008/-. The deduction as approved by the prescribed authority (DSIR) as submitted by the assessee on 06.11.2017 was Rs.46,44,24,000/-. The assessee has claimed excess deduction of Rs.6,17,97,008/- [Rs.52,62,21,008/- (-) Rs.46,44,24,000/-]. Therefore, I do not find any infirmity in the finding of the AO, the disallowance of excess claim is confirmed and ground of appeal is dismissed."

8.1. It is evident from the above finding that lower authorities disallowed the claim of deduction on the ground that the deduction claimed by the assessee in Income Tax Return u/s 35(2AB) of the Act amounting to INR 52,62,21,008/-. However, the Prescribed Authority (DSIR) approved a sum of INR 46,44,24,000/-, thus amount of INR 6,17,97,008/- was claimed excessive.

9. The case of the assessee is that the lower authorities have failed to appreciate the fact that law does not require approval by DSIR. It is contended on behalf of the assessee that as per the AO, approval by DSIR is a pre-condition for allowability of claim. However, statute does not prescribed it as a pre-condition, only requirement is that in house R & D activities should be

approved by DSIR. Also provisions of section 35(2AB) of the Act, no where requires that receipt of Form No.3CL, is pre-condition for claiming deduction under the aforesaid provision and also no further requirement that the weighted deduction would be allowed on the expenditure approved by DSIR. It was further stated the condition of requirement of obtaining approval from DSIR had been inserted w.e.f. 01.07.2016 vide amendment made in Rule 6(7A)(b) of Rules. However, the provision of the Act do not speak about such requirement. Therefore, the Rules cannot over-ride the main provision of the Act. Reliance in this regard is placed by the assessee on various case laws. Now the question is that whether the Authorities below were justified in declining the claim of the assessee on the basis that such claim was excessive of the expenditure approved by DSIR.

10. The AO opined that section 35(2AB) of the Act explicitly provide that such expenditure on R&D facility should be approved by the prescribed authority. In this case, Secretary, DSIR which is a pre-condition to be fulfilled by the assessee before being allowed weighted deduction. For the sake of clarity, section 35(2AB) of the Act is reproduced as under:-

> *35(2AB). (1) "Where a company engaged in the business of "[bio-technology or in "[any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule]] incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of "[a sum equal to "[one and one-half] times of the expenditure] so incurred:*
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> *Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house*

research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred.]

"[Explanation. For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).]

(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and [fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed].

(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the [Principal Chief Commissioner or Chief Commissioner or] [Principal Director General or] Director General in such form and within such time as may be prescribed.]

(5) [***]

(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2008]."

11. As per this section, deduction is allowable if the assessee satisfied condition as stated in the aforementioned provision. The expenditure which is allowable on scientific research qua in-house, R&D facility is approved by the prescribed authority. If the assessee fulfils the conditions as laid in section 35(2AB) of the Act, in that event, deduction of one and half times of such expenditure would be allowable.

12. However, it is brought to our notice that the related issue to the disallowance of impugned expenditure is otherwise, under challenge before the Hon'ble High Court of Delhi in *W.P(Civil) No.1772 of 2018* which is pending adjudication and now fixed for hearing on **06.02.2024.** The subject matter pending before Hon'ble High Court is also regarding exclusion of R&D Centre at Gurgaon. It is observed that substantial disallowance is related to Gurgaon Centre. Since the related issue of approval by DSIR, is pending adjudication before the Hon'ble High Court, therefore, for maintaining judicial discipline, we are not expressing our view on the merit of issue, same is kept opened. The AO is hereby directed to re-compute the disallowance after the decision of Hon'ble High Court. Hence, this issue is restored to the AO. Accordingly, Ground No.3 raised by the assessee is allowed for statistical purposes.

13. **Ground Nos. 1 & 2** raised by the assessee are general in nature, need no separate adjudication, hence dismissed.

14. **Ground No.7** raised by the assessee is not pressed.

15. **Ground No.8** raised by the assessee is against the initiation of penalty proceedings which is pre-mature hence, dismissed.

16. **Ground No.9** raised by the assessee is against the charging of interest u/s 234C & 234D of the Act, is consequential in nature, needs no separate adjudication, hence dismissed.

17. **Ground Nos.4 & 6** raised by the assessee are inter-connected and raised against disallowance of depreciation on goodwill of INR 19,15,183/- under normal provisions.

18. At the outset, Ld. Counsel for the assessee submitted that the issue is squarely covered by the decision of Co-ordinate Bench of the Tribunal in assessee's own case. Ld. Counsel for the assessee contended that the assessee company recognized goodwill of INR 3,68,94,006/- on account of purchase of three (03) businesses in 2008 for consideration of INR 150,31,26,228/- as slump sale from SRF Polymers Ltd. and paid in excess of value of assets acquired of INR 146,62,32,222/- with respect of three (03) businesses. The assessee has claimed Goodwill of INR 19,15,183/- for the period under appeal. The assessee duly submitted the requisite facts and evidences during the course of assessment proceedings. The AO disallowed the claim of depreciation of goodwill on the ground that it is balancing figure and not goodwill which the assessee paid in excess of its valuation to its group company. The assessee had not furnished any reasons as to why valuation of assets & liabilities were not made before purchase. Further, goodwill was not there in given schedule of assets & liabilities in agreement for transfer of business dated 01.01.2009. Such excess amount may be treated as a book entry. Ld.CIT(A) confirmed this finding. Ld. Counsel for the assessee submitted that the identical issue came before the Co-ordinate Bench of this Tribunal in earlier years and the issue is squarely covered in favour of the assessee for the decision rendered in assessee's own case for Assessment Years 2009-10, 2014-15 & 2012-13. He submitted that even otherwise also documentary evidences with regard to claim of depreciation of goodwill was duly furnished vide submission dated 06.11.2017 and 20.09.2016 which is duly taken note by the AO. The observation of the AO is that goodwill is not given in asset and liability in agreement of transfer of business dated 01.01.2009 is misplaced as goodwill

cannot be part of agreement. He placed reliance on the judgement of Hon'ble Supreme Court in the case of ***CIT, Kolkata vs Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC)*** in which the Hon'ble Apex Court held that *"goodwill amounts to intangible assets which are eligible for depreciation".* Therefore, he contended that the issue is squarely covered in favour of the assessee.

19. On the other hand, Ld.CIT DR supported the orders of the authorities below. However, he fairly conceded the fact that identical ground has been decided by the Tribunal in favour of the assessee.

20. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that identical ground was raised by the assessee. We also find that Tribunal in assessee's own case in *ITA No.774/Del/2017 for Assessment Year 2009-10* vide order dated ***23.02.2023*** has decided the issue in favour of the assessee by observing as under:-

> *43. "We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the claim of depreciation on goodwill. On the issue of the claim being disallowed as it was made for the first time before CIT(A), we have herein above at para 34 & 35 have held that CIT(A) was not justified in not deciding the claim made by the assessee for the first time before him and CIT(A) should have decided the claim of the assessee. That apart, we find that the issue of goodwill also arose in the case of the assessee in A.Y. 2014-15 and 2012-13. We find that Co-ordinate Bench of Tribunal while deciding the issue for A.Y. 2014-15 (ITA No.6620/Del/2018 order dated 13.12.2021) by*

following the order of the Tribunal for A.Y. 2012-13 has decided the issue in favour of the assessee by observing as under:

> *"36. During the course of assessment proceedings, it was noticed that assessee had claimed depreciation on goodwill amounting to Rs 25,53,577/-. It was submitted that assessee had purchased three business namely Industrial Yarn Business at Manali (Tamilnadu), Engineering Plastic business at Manali (Tamilnadu) and Engineering Plastic business at Pantnagar (Uttrakhand) for a consideration of Rs.150,31,26,228/- as slump sale on 31st December 2008. It was submitted that the businesses was purchased from M/s SRF Polymers Limited on lump sum basis and the amount of goodwill appearing in the Balance Sheet as at 31.03.2009 represents the total consideration paid for acquiring business which exceeds the value of assets taken over by the assessee. Assessee also relied on various decisions in respect of its claim for depreciation. The submissions of the assessee were not found acceptable to AO. AO noted that the assessee had purchased three business for a consideration of Rs.150,31,26,228/- as slump sale without making its valuation. He noted that assessee, after the purchase had made valuation of the assets and liabilities which was determined at Rs.146,62,32,222/- and the balancing amount of Rs.3,68,94,006/- was treated as Goodwill. AO was of the view that the aforesaid amount of Goodwill was a balancing figure and was not Goodwill for which assessee had paid in excess of its valuation to its group companies. He was of the view that since the assets and liabilities has not been valued; no Goodwill can be purchased by the assessee. He accordingly disallowed the claim of depreciation on Goodwill amounting to Rs.25,53,577/-.*
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> *37. When the matter was carried before the DRP, DRP noted that in assessee's own case in earlier year, DRP vide order*

dated 13.07.2018 had upheld the action of AO with respect of disallowance. DRP therefore, following the order of its predecessor, upheld the action of AO. Pursuant to the action of DRP, AO in the final assessment order disallowed the claim of depreciation. Aggrieved by the order of AO, assessee is now before us.

38. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that the issue of depreciation on goodwill is covered in favour of the assessee by the decision of Hon'ble Apex Court in the case of CIT vs. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC) wherein the Hon'ble Apex Court has held that goodwill amounts to intangible assets which are eligible for depreciation. He further submitted that identical issue arose in assessee's own case in A.Y. 2012-13 wherein the Hon'ble Tribunal has held the goodwill to be intangible assets and eligible for depreciation. He pointed to the copy of the relevant portion of the order which is at Page 117 of the Paper Book. He submitted that the Hon'ble Tribunal had allowed the claim of depreciation on goodwill but since it was an additional claim made before the Tribunal, the matter was set aside to AO for examination. In the year under consideration, he submitted that it is not a case wherein an additional claim has been made and therefore following the decision of Hon'ble Apex Court in the case of Smifs Securities Ltd. (supra), the claim of the assessee be allowed.

39. Learned DR on the other hand took us to the findings of the AO and DRP and pointing to their findings submitted that the AO was fully justified in denying the claim of depreciation.

40. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the claim of depreciation on goodwill. We find that issue of depreciation on goodwill also arose in

assessee's own case in A.Y. 2012-13 and the Co-ordinate Bench of Tribunal in ITA No.5784/Del/2016 order dated 24.04.2020 by relying on the decision of Hon'ble Apex Court in the case of Smifs Securities Ltd. (supra), held that assessee is eligible to claim depreciation on goodwill. However in that order since the claim of depreciation was made as an additional claim before the Tribunal, the matter was remitted to the AO for examination. In the year under consideration, we are of the view that since the claim was already made in the return of income and was denied by AO and DRP, we are of the view that ratio of the decision rendered by Hon'ble Apex Court in the case of Smifs Securities is squarely applicable to the facts of the case. We are therefore direct the AO to grant the depreciation of such goodwill. Thus the ground of assessee is allowed."

44. *Before us, Learned DR has inter alia contended that since the issue of goodwill is arising in the year under consideration for the first time, the issue may be remitted back to AO for verification and adjudication. We do not find merit in the aforesaid contention of the Learned DR in view of the fact that the issue of depreciation also arose before the tribunal in assessee's own case in A.Y. 2012-13 (ITA No.5784/Del/2016 order dated 24.02.2020) wherein the coordinate Bench of Tribunal by relying on the decision of Hon'ble Apex Court in the case of SMIFS Securities (2012) 24 taxmann.com 222 (SC) had held that assessee is eligible for depreciation on goodwill but however since the issue was an additional claim, the matter was restored to AO. We further find that the Co-ordinate Bench of tribunal while deciding the appeal of the assessee for A.Y. 2014-15 (ITA No.6620/Del/2018 order dated 13.12.2021) had held the assessee to be eligible for depreciation. Before us, no material has been placed by the Revenue to point out any judicial precedence to support his*

contention that when depreciation arising out of the same transaction has been allowed in other years, whether it can be denied in other years. Before us, Revenue has also not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the order of Tribunal in assessee's own case for A.Y. 2012-13 has been stayed/set aside/overruled by higher judicial forum. In view of the aforesaid facts, we are of the view that Assessee is eligible to claim depreciation on goodwill. We accordingly direct the AO to allow the claim of depreciation. Thus the ground of assessee is allowed."

21. The Revenue has not brought any contrary decision to our notice. We therefore, taking the consistent view, hereby direct the AO to delete the impugned addition and allow the depreciation on goodwill as claimed by the assessee. Therefore, Ground Nos. 4 & 6 raised by the assessee are allowed.

22. **Ground Nos. 5 to 5.2** raised by the assessee are in respect of non-allowance of claim of additional depreciation @ 10% amounting to INR 29,51,16,062/- made during assessment proceedings.

23. Ld. Counsel for the assessee submitted that the assessee had made this claim with respect to additional depreciation of INR 29,51,16,052/- during the assessment proceedings. The AO did not discuss this claim and Ld.CIT(A) also did not entertain the claim. Reliance is placed upon the judgement of Hon'ble Supreme Court in the case of ***Goetze (India) Ltd. vs CIT [200] 157 taxman-1 (SC).*** He submitted that the issue is fully covered by the orders of the Tribunal in assessee's own case in different years and remitted the issue back to the file of AO. It is pointed out by the Ld. Counsel for the assessee that the AO

passed order giving appeal effect for providing balance additional depreciation in assessee's own case for AY 2014-15 and AO also quantified amount of additional depreciation for the year under appeal.

24. On the other hand, Ld. CIT Dr relied on the orders of lower authorities.

25. We have heard the rival submissions and perused the material available on record. Under the identical facts, the Tribunal was pleased to remit the matter back to the AO in the assessee's own case for AY 2014-15 by observing as under:-

> 57. *"We further find that following the decision of the tribunal for A.Y. 2010-11, the claim was allowed in A.Y. 2012-13. Before us, no distinguishing features in the facts of the case in the year under consideration and that of the earlier years has been pointed out by Revenue. Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the reasoning of the Co-ordinate Bench for A.Y. 2010-11 and for similar reasons set aside the issue back to the file of AO to consider the same on merits after considering the submissions made by assessee and in accordance with law. The AO shall be free to call for such information and explanations as he deems fit to adjudicate the claim of the assessee. Needless to state that AO shall grant adequate opportunity of hearing to the assessee and the assessee shall also be at liberty of file such documents, explanations and submissions as deemed fit in respect of its claim. Thus the ground of assessee is allowed for statistical purposes."*

26. The AO in pursuance of the aforesaid passed order giving appeal effect by observing as under:-

b. *"For short claim of additional depreciation assessee has submitted that during the year under consideration addition in plant & machinery put to use for less than 180 days. Hon'ble ITAT has directed to allow additional depreciation u/s 32(1)(iia) of the act, in line with order of Hon'ble ITAT in case of CIT vs Cosmo films Ltd (2012)(ITA 1404/2008) to allow remaining additional depreciation in subsequent year. Applying the Judgment of Hon'ble ITAT in case of CIT vs Cosmo films Ltd (2012)(ITA 1404/2008) remaining additional depreciation of AY 2013-14 will be allowed in AY 2014-15. It is evident from depreciation schedule of Tax Audit of AY 2013-14, that addition in New Plant and Machinery (P&M) acquired and installed during the year but put to use for less than 180 days is amounting to Rs. 19,01,09,072/-. On the said addition in P&M, additional depreciation claimed by assessee is Rs. 191,01,09,072/- against eligible additional depreciation u/s 32(1)(a) is of Rs.38,20,21,814/- (Rs. 191,01,09,072/- x 20% = Rs 38,20,21,814/-). As per section 32(1)(iia), in the case any new machinery or plant which has been acquired and installed after 31 March 2005 by any assessee engaged in the business of manufacturing or production of any article or thing or in the business of generation, transmission or distribution of power, a further sum equal to twenty per cent of the actual cost such machinery or plant shall be allowed as deduction under clause (ii). From the given facts and law, it is apparent that assessee has short claimed additional depreciation by Rs. 19,10,10,907/-, therefore said amount of additional depreciation is allowed in addition to depreciation already claimed by assessee Claim of assessee for the current year left out additional depreciation of Rs. 67,94,23,592/- shall be allowed in the subsequent assessment year i.e AY 2015-16."*

26.1. Therefore, the AO is hereby directed to verify the claim of the assessee and allow in the light of aforesaid orders of the Tribunal. Thus, the ground raised by the assessee is allowed for statistical purposes.

27. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 20th November, 2023.

Sd/- Sd/-

(N.K.BILLAIYA) **(KUL BHARAT)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI