

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA-TP No. 463/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

S&P Capital IQ (India) Private Limited, Hyderabad [PAN No. AACCS8657G]	Vs.	Asst. Commissioner of Income Tax, Circle-3(1), Hyderabad
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, AR
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 06/12/2023
घोषणा की तारीख/Pronouncement on: 26/12/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of M/s. S&P Capital IQ (India) Private Limited ("the assessee"), for the assessment year 2018-19 under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (for short "the Act"), assessee filed this appeal.

2. Brief facts of the case are that the assessee is engaged in providing Information Technology Enabled Services to its Associated Enterprises (AEs). During the financial year 2016-17, assessee acquired entire shareholding of SNL Financials (India) Private Limited ("SNL India ") for a consideration of Rs.1,72,43,00,000/- from its existing shareholders. Since the Assessee had acquired shares at premium from existing shareholders of SNL India, excess purchase consideration over net assets of SNL for Rs.1,04,16,27,225/- was recorded as 'goodwill' in the consolidated audited financials of assessee for the financial year 2016-17, prepared under Companies Act, 2013. Pursuant to such merger, the assessee recorded the excess purchase consideration over net assets of SNL for Rs.1,04,16,27,225/- as negative capital reserve in terms of Ind-AS accounting, which is nothing but 'goodwill', which again is an intangible asset from tax perspective.

3. While filing the return of income for the assessment year 2018-19, according to the assessee, the claim of the additional deduction of depreciation on goodwill amounting to Rs.26,04,06,806/- was inadvertently not preferred. Assessee made such a claim by way of filing revised computation of income. The learned Assessing Officer in the draft assessment order passed on 24/09/2021, did not consider the additional claim made by the assessee by filing revised computation of income without providing any reasons.

4. Aggrieved, assessee preferred objections before the learned DRP. Assessee contended before the learned DRP that by mistake or inadvertence, while filing the return of income, did not claim the additional depreciation on goodwill. According to the assessee, whether or not the

assessee claimed the deduction in respect of depreciation in computing the total income, the provisions under section 32(1) of the Act shall continue to apply. Assessee placed reliance on the decision of the Hon'ble Apex Court in the case of Smifs Securities [2012] 348 ITR 302, wherein it was held that goodwill of a business or profession is a depreciable asset.

5. Learned DRP rejected such a claim observing that, the object of the issue of notice under section 143(2) of the Act is only to ensure that there is no understatement of income or no underpayment of the tax or there is no excess claim of loss or reduction, and, therefore, the learned Assessing Officer is not empowered to reduce the total income shown in the return of income; that the legislature while introducing sub section (5) of section 139 of the Act were aware of the fact that there may be certain wrong statements or omissions in the return of income and, therefore, the provisions for filing the revised return was incorporated and accordingly every assessee was allowed a time of one year from the end of the assessment year. According to the learned DRP, when the law provides that any error or omission can be rectified only by filing the revised return within the prescribed time under section 139(5) of the Act, neither the assessee is entitled to raise such claim after the prescribed time before the assessing officer nor the assessing officer is empowered to entertain such claim.

6. Learned DRP, insofar as merits of the case are concerned observed that depreciation cannot be claimed on goodwill arising out of amalgamation/merger under the existing provisions of the Act, holding that under Explanation 7 to Section 43(1) of the Act actual cost of capital assets in the hands of amalgamated company to be same as in the hands

of amalgamating company; that under Explanation 2(b) to Section 43(6)(c) of the Act written down value of capital assets in the hands of amalgamated company to be same as in the hands of amalgamating company; that under Explanation 2 to Section 32(1) of the Act, depreciation on 'Written down value of the block of assets' shall have the same meaning as in section 43(6)(c) of the Act; that under 5th proviso to Section 32(1) of the Act, restrictions on depreciation in the hands of amalgamating company and amalgamated company in the previous year to the depreciation calculated on 'actual cost' of capital asset in the hands of amalgamating company prior to amalgamation; and that under section 49(1)(iii)(e) of the Act, cost of capital assets to be the same as in the hands of previous owner where capital assets became the assets of the successor as a result of transfer under section 47(vi) of the Act.

7. Learned DRP recorded that the decision in the case of Smifs Securities (supra) was without considering the provisions under 5th proviso to section 32(1), section 49(1)(iii)(e), Explanation 7 to section 43(1) and/or Explanation 2(b) to section 43(6)(c) and section 55(2)(a)(ii) of the Act, which were relevant to the issue in hand, given the fact that these were not argued before the court, could not be extended on the points which were not argued or evaluated at all. Further, According to the learned DRP, in the case of Smifs Securities (supra), the taxpayer acquired capital right in the form of existing clientele, i.e., 'goodwill' which was noted as a finding of fact and was not appealed by the Revenue before the Hon'ble High Court and the only issue for consideration was whether goodwill is an asset within the meaning of section 32 of the Act, which the court answered in affirmative. Even though the Hon'ble Supreme Court in the case of Smifs

Securities (supra) decided that goodwill is depreciable asset, one may note that the contention before the court was not as to whether difference arising out of amalgamation was goodwill eligible for depreciation. Learned DRP further noted that the decisions favoring the section 55(2)(a)(ii) of the Act were not referred. Learned DRP, therefore, distinguished the decision in Smifs Securities (supra). Learned DRP accordingly declined to interfere with the non-allowance of depreciation on goodwill by the learned Assessing Officer. Learned Assessing Officer passed the final assessment order. Hence, this appeal by the assessee.

8. It is the submission on behalf of the assessee that in terms of the decision of the Hon'ble Apex Court in the case of Smifs Securities (supra), goodwill is an intangible asset and depreciation on goodwill is allowable. Further according to Explanation 5 to Section 32(1) of the Act, whether or not the assessee claimed the deduction in respect of depreciation in computing the total income, the provisions under section 32(1) of the Act shall continue to apply. Circular No. 14 (XL-35) of 1955, dated 11/04/1955, the officers of the department are under legal obligation not to take advantage of ignorance of any assessee as to his rights and they are supposed to take initiative in guiding a taxpayer about the reliefs due to him. Learned AR further submitted that under Article 265 of the Constitution of India, taxes not to be imposed nor levied nor collected except by authority of law. On this premise he submits that when the assessee is entitled to claim depreciation on goodwill, still such depreciation has to be allowed and denial of the same would amount to levying in collecting more tax than sanctioned by law.

9. In respect of the observations of the learned DRP about the distinguishability of the decision of the Hon'ble Apex Court in the case of Smifs Securities (supra), learned AR submitted that once the decision of the Hon'ble Apex Court is speaking, no debate concerning its correctness can be allowed and such a decision has to be respected invariably. He submits that the decision of the Hon'ble Apex Court cannot be avoided on the grounds that certain aspects were not argued when the matter was heard. On the other hand, the presumption is that when the matter was heard, all the conceivable defences material for decision were raised at that time. Merely because the provisions under Explanation 2 to Section 43(6) and Explanation 7 to Section 43(1) of the Act, were not specifically mentioned in the order of the Hon'ble Supreme Court, it is not open for the learned DRP to find a reason not to follow the ratio. If such a course is allowed, it will lead to anarchy, because it would be easy to find a particular aspect absent in the judgment and to avoid the following of the binding precedent. He further submitted that as a matter of fact, Explanation 2 to Section 43(6) of the Act has application in this matter, because the intangible asset in the shape of goodwill comes into existence only on the event of amalgamation in this case. So also, he submitted that 6th proviso to Section 32(1) of the Act is also not applicable because such an asset in the shape of goodwill was not available to the amalgamating company because of its coming into existence, in this case, only on the event of amalgamation. He further submitted that Explanation 7 to Section 43(1) of the Act also does not impact the right of the assessee because the assessee did not incur any financial outlay, and the goodwill is the result of the excess consideration amount paid. Lastly his submission is that the

Memorandum to Financial Bill, 2021, holding depreciation not to be claimed on goodwill, is not applicable to the assessment year 2018-19.

10. Per contra, learned DR placed heavy reliance on the observations of the learned DRP and submitted that in view of the decision of the Hon'ble Apex Court in the case of Goetz India Ltd. 284 ITR 323 (SC) a deduction can be claimed if return has filed only by way of filing of revised return of income and, therefore, the learned DRP rightly held that the learned Assessing Officer has no jurisdiction to entertain a claim made otherwise than by filing a revised return of income. She further submitted that since the Hon'ble Apex Court did not consider the vital aspects of the Income Tax Act, touching the issue under consideration, such a decision is distinguishable.

11. We have gone through the record in the light of the submissions made on either side. Insofar as aspect of power of authorities to consider the claim of the assessee for additional depreciation is concerned, such an issue is no longer res integra and is covered by the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd. vs. CIT [2006] 157 Taxman 1 (SC). In the case of Goetze (India) Ltd. (supra), the question was whether the assessee could make a claim for deduction other than by filing a revised return, in an appeal against the findings of the High Court to the effect that the Revenue authorities were not justified in refusing to consider the taxpayer's claim for deduction on the grounds that such claim was not made in the original return or the revised return filed before the learned Assessing Officer. Accordingly, the High Court restored the matter to the learned CIT(A) for fresh adjudication on the issues relating to deduction under section 10B of the Act. Hon'ble Apex Court affirmed the principle

that the appellate authorities can consider additional claim even if the same is not raised by the taxpayer in the original or revised return and the Tribunal under section 254 of the Act has the power to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. We are, therefore, of the considered opinion that there is no bar to consider the claim of the assessee for additional depreciation, made otherwise than by a revised return of income by the appellate authorities. We shall now proceed to consider such a claim of the assessee for additional depreciation.

12. It is not in dispute that the assessee acquired the goodwill pursuant to the amalgamation with SNL India, and consequently, the assessee acquired right to take over employees, right to use financial, managerial and technical resources, personnel capabilities, skills, expertise and the right to enjoy all the advantages of established business of SNL India. The assessee paid excess consideration over net assets of amalgamating company towards goodwill. The issue of depreciation on goodwill arising on amalgamation has already been dealt with by Hon'ble Supreme Court in the case of Smifs Securities (supra), which is later followed in various cases by the Hon'ble High Courts and Co-ordinate Benches of the Tribunal.

13. We find force in the submissions of the learned AR that Explanation 2 to Section 43(6) of the Act, does not affect the right of amalgamated company to claim depreciation as the explanation is applicable only where an existing block of asset is transferred to the amalgamated company, and that since here goodwill comes into existence only for the first time because of excess consideration paid, explanation does not apply. So also, the 6th proviso to Section 32 of the Act, has no application to the case of

goodwill not recorded in books of amalgamating company, but recorded by amalgamated company, since the proviso requires apportionment when a particular asset is used in business by both the entities. In this case, goodwill as an asset had arisen only on amalgamation, and not before. It was available in the hands of the amalgamating company. In the same way, Explanation 7 to Section 43(1) of the Act does not affect the right of the amalgamated company to claim depreciation as it would operate where an asset is acquired by amalgamating company, without incurring any financial outlay and such asset is transferred to amalgamated company without incurring any financial outlay. In the instant case, excess consideration is paid for goodwill, the explanation is inapplicable.

14. As rightly argued by the learned AR, when once the Hon'ble Apex Court declared the law, it binds on all the judicial and public authorities. Decision in the case of Smifs Securities (supra) was pronounced way back on 22/08/2012. Till today such decision holds the field and it did not come to our notice that such a decision was sought to be distinguished on the grounds raised by the learned DRP in its order in this case. By way of amendment through Finance Act, 2021 clause (b) of Section 2(11) of the Act was amended and the goodwill of the business or profession is excluded from the block of assets comprised in intangible assets. This amendment has come into force with effect from 01/04/2021. It follows that by way of this express provision, the Legislature excluded the goodwill of a business or profession from the block of intangible assets and till then, it shall be construed that goodwill was comprised in the block of intangible assets eligible for depreciation. If we have to accept the logic followed by the learned DRP that for not advertent to certain provisions of the Act in

the order, the decision in the case of Smifs Securities (supra) is distinguishable, there was no need for this legislative interference. We, therefore, have no hesitation to hold that goodwill is an intangible asset and eligible for depreciation.

15. Explanation 5 to Section 32(1) of the Act clearly lays down that the provisions of such sub-section shall apply whether or not the assessee has claimed the deduction in respect of the depreciation in computing the total income. It, therefore, goes without saying that irrespective of the fact of assessee claiming or not, the depreciation shall be allowed while computing the total income of the assessee. Then it becomes the obligation on the part of the Revenue to allow depreciation on goodwill even if it is not claimed by the assessee. At the same time, the CBDT Circular No.14 (XL – 35) of 1955, date 11/04/1955, reinforces this obligation in unequivocal terms, stating that the department must not take advantage of ignorance of any assessee as to his rights and it is one of the duties of the department to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs, by taking initiative in guiding the taxpayer where the proceedings are before them indicate that some relief is due to the taxpayer. When we read Explanation 5 to Section 32(1) of the Act and the above circular issued by the CBDT in the context of Article 365 of the Constitution of India, we find it difficult to uphold the action of the authorities below in depriving the assessee of the claim for deduction of depreciation on goodwill.

16. For the reasons set forth in the foregoing paragraphs, we are of the considered opinion that disallowance of the claim for deduction of depreciation on goodwill by the authorities below cannot be sustained and

the same is liable to be deleted. We hold and order so. Grounds of appeal are accordingly allowed.

17. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 26th day of December, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 26/12/2023

TNMM

Copy forwarded to:

1. S&P Capital IQ (India) Private Limited, Survey No. 83/1, Sky View 10, Floor No. 19, 20, 21, Knowledge City, Raidurgam Village, Serilingampally Mandal, Hyderabad.
2. Asst. Commissioner of Income Tax, Circle-3(1), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE.

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