

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 No. 290/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

TEKsystems Global Services Pvt. Ltd.,
Hyderabad
[PAN No. AABCF1518Q] Vs. Deputy Commissioner of
Income Tax,
Circle-2(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms. Amulya K. AR
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 31/01/2024
घोषणा की तारीख/Pronouncement on: 09/02/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 19/04/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of TEKsystems Global Services Private Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Disallowance to the tune of Rs. 77,32,454/- under section 32 of the Income Tax Act, 1961 ('the Act') in respect of goodwill (Rs. 33,46,509/-) and other net tangible assets (Rs. 43,85,945/-) is the subject matter of this appeal. Facts giving rise to this issue are that the assessee and Allegis India are part of the Allegis Group of Companies that provides recruiting and staffing solutions in relation to a wide range of industries. Assessee specialised in information technology line of services and is engaged in providing software consultancy and support services and after acquisition by the Allegis Group, is providing such services to some unrelated parties in India. Allegis India is engaged in multiple business lines such as engineering, design and consultancy services, IT services, recruitment services, IT staffing services and was engaged in rendering the said services to its overseas clients.

3. During the financial year 2016-17, there was a global re-organization exercise was undertaken within the Allegis Group and in such exercise, the holding structure of the assessee was brought under the TEKsystems Group and the operational structure of the assessee and the Allegis India was also re-organized and the IT services division of Allegis India was sold to the assessee on a going concern basis. The net value of the IT services division, as per the audited financial statements of the seller, prior to its acquisition was Rs. 6.69 crores; whereas the acquisition of such IT division has been accounted for in the books of the assessee as per the accounting standards, at Rs. 9.30 crores and the difference amount of Rs. 2.6 crores is allocated towards goodwill, and depreciation was claimed.

4. Learned Assessing Officer disallowed this claim of depreciation on goodwill holding that since it is pursuant to a transaction undertaken with a group entity and the execution of the Business Transfer Agreement (BTA) and Share Transfer Agreement (STA) within a short time that too ten days before the close of the financial year renders them colourable device only for the creation of goodwill and to avoid payment of taxes. Learned Assessing Officer further observed that the employees' consent was received subsequent to the transfer of the concern and not during the financial year in which such transfer took place. Learned Assessing Officer also disallowed depreciation on other assets on the ground that such assets were not put to use, and therefore, no depreciation is allowable.

5. Assessee preferred appeal before the learned CIT(A) and contended that the business acquisition was undertaken as a part of the global re-organization exercise undertaken within the Allegis Group to rationalise the holding and operational structures for deriving more focussed and efficient business operations and since such operations are usual phenomenon and a common practice in the corporate world, there is nothing to suspect the same. It was contended that the learned Assessing Officer should have considered the commercials of the slump sales instead of branding it as a colourable device. Further it was submitted that in the hands of the seller, the capital gains were accepted and such capital gains. It was further argued that the assessee earned incremental revenue of 87% and incremental profit of 39% pursuant to the business agreement and the assessee recovered more than two times the consideration paid by it for the value of intangible assets in the first year of acquisition itself.

6. Learned CIT(A), however, did not agree with the assessee. In the impugned order it is observed that the goodwill recorded in the books of the assessee is based on un-audited management certified financial statements and the consultants did not rely upon any comparative market data to arrive at the valuation of the fixed assets acquired and valuation of goodwill recorded. Learned CIT(A) accordingly held that the BTA was prepared by the assessee just for the sake of creation of goodwill and the contention of the assessee regarding the seller paying the capital gains arising on the transfer does not merit consideration since such capital gains would be very marginal as compared to the eligible depreciation and that payment of capital gain tax does not legitimize a colourable device.

7. Insofar as the disallowance of depreciation on the other assets is concerned, learned CIT(A) did not agree with the assessee's contention that under the Act, claiming depreciation is not dependent on usage of any number of days, but on the block assets concept, disregard of usage for 180 days or more or less. Learned CIT(A) observed that the BTA was executed on 27/03/2017 with the closing date and time being 31/03/2017 at 11.59 p.m. when the assessee assumed the assets and liabilities and, therefore, in the absence of transfer of any employees and usage of the machinery, the assessee is not entitled to claim depreciation under section 32 of the Act.

8. It is argument on behalf of the assessee that the requirement for claim of depreciation is the acquisition of the asset during the year under consideration is ready for use, but law does not require actual usage or usage for any number of days. Since the IT services division of Allegis India was acquired on a going concern basis, the question of usage does not

arise at all. Learned AR further submitted that the claim of depreciation in respect of the assets was allowed in the hands of the seller after scrutiny assessment without any adjustment and, therefore, the plea of non-usage cannot be taken when such asset came to the hands of the assessee.

9. Learned DR submitted that as rightly pointed out by the learned CIT(A), the BTA came into force on 31/03/2017 at 11.59 p.m. and effectively on 01/04/2017 only, therefore, the assessee cannot claim depreciation for assessment year 2017-18. Another plea taken by the learned DR is based on the 6th proviso to section 32(1) of the Act which says that in any assessment year, the aggregate deduction in respect of depreciation of assets allowable to the predecessor and successor in case of transfer shall not exceed the deduction calculated at the prescribed rates as if the succession had not taken place, and such deduction shall be apportioned between the predecessor and successor in the ratio of the number of days for which the assets were used by them.

10. We have gone through the record in the light of the submissions made on either side. On a perusal of the impugned orders, we noticed that the authorities suspected the genuineness of the BTA on the grounds that the said arrangement is not established to have resulted in any better business scenario or any fruitful outcome. Learned CIT(A) further observed that the BTA is a colourable device, created only to reduce the taxes, because the capital gain tax paid by the seller would be very marginal when compared to claim depreciation on goodwill. Further according to the learned CIT(A), the valuation of the goodwill is based on un-audited and management certified financial statements and the

consultants have not relied upon any comparative market data to arrive at the valuation of the fixed assets.

11. Learned AR brought to our notice through the statement of profit and loss that pursuant to the business acquisition, assessee earned incremental revenue of 87% from Rs. 91,53,20,147/- as on 31/03/2017 to Rs. 1,72,02,28,563/- as on 31/03/2018; whereas the profit before tax was Rs. 16,01,36,551/- as on 31/03/2017 and Rs. 1,52,00,09,378/- as on 31/03/2018. This statement further shows that the tax expense of the assessee was Rs. 5,90,00,000/- as on 31/03/2017 and Rs. 8,91,87,967/- as on 31/03/2018. These figures are showing the impact of business transfer and contradicting the observations of the learned CIT(A) that no better business scenario or fruitful outcome resulted from the business transfer. Even otherwise also, it is the prerogative of the business man to decide how to conduct the business and all the business decisions need not always result in profits or in better business scenario.

12. Coming to the observation of the learned CIT(A) that the capital gains tax paid by the seller would be very marginal as compared to the eligible depreciation to the assessee, learned AR submitted, with reference to the facts and figures, that the total tax impact on depreciation on good will comes to Rs. 55,76,696/- whereas the capital gains tax paid by the seller is Rs. 67,41,196/-. She submitted that considering the amendments introduced by the Finance Act, 2021, with effect from 01/04/2021, no depreciation is allowable on goodwill whether or not it is recorded in the books prior to the amendment and, therefore, the tax impact on depreciation claim would be far less than Rs. 55,76,696/-. This is another factor which missed the attention of the learned CIT(A) from the books

and, therefore, the learned CIT(A) was labouring under the impression that the capital gains tax paid by the transferor company would be very marginal as compared to the eligible depreciation. The impugned order, however, does not provide any basis for this observation of the learned CIT(A).

13. It remains an undisputed fact that the seller company is assessed to tax and the capital gains offered by it are accepted without any adjustment. Assessee placed reliance on the decision of the Hon'ble High Court of Delhi in the case of Triune Projects Private Limited 77 taxmann.com 40 and the view taken by the Co-ordinate Bench of the Bangalore Tribunal in the case of I&B Seeds Pvt. Limited., 142 taxmann.com 274 for the principle that once the department accepted the capital gains in the hands of the seller, the said transaction cannot be doubted in the hands of the purchaser. These decisions bind us.

14. Viewing from any angle, the circumstances cited by the authorities to hold that the BTA is a colourable device created only to reduce the tax, does not hold water. We, therefore, while disagreeing with the authorities, return a finding that it is legitimate for the assessee to go for acquisition of IT services division of Allegis India and there is no material to make it a colourable device in the shape of any undue advantage derived by the assessee. We, accordingly, direct the learned Assessing Officer to allow the depreciation on goodwill.

15. Now coming to the depreciation on other tangible assets, it is disallowed on the ground that such assets were not put to use by the assessee during the year under consideration. When once we accept the

BTA, it goes without saying that the assessee acquired the IT services division of Allegis India on a going concern basis. Submission made on behalf of the assessee that in the hands of the seller, depreciation in respect of such assets was allowed and in accordance with the provisions under the 6th proviso to section 32(1) of the Act is a verifiable fact. If such assets are considered for depreciation in accordance with law in the hands of the seller, the question of putting such assets to use by the assessee does not arise and only requirement is compliance with the 6th proviso to section 32(1) of the Act.

16. 6th proviso to section 32(1) of the Act reads that in any previous year, the aggregate deduction in respect of depreciation of the tangible assets allowable to the predecessor and successor in case of succession shall not exceed the deduction calculated at the prescribed rates as if the succession had not taken place, and such deduction shall be apportioned between the predecessor and successor in the ratio of the number of days for which the assets were used by them. No record is available before us throwing light on the proportion of the depreciation claimed by the seller, but the assessee is entitled to claim such depreciation only in proportion to the number of days for which the asset held by it. We, therefore, deem it just and proper to cause verification of this fact and to allow such depreciation.

17. With this view of the matter, we set aside the issue relating to the depreciation on the other tangible assets to the file of the learned Assessing Officer to verify and allow depreciation as directed above. Ground No. 2 is allowed with the above directions.

18. In respect of ground No. 3, we direct the learned Assessing Officer to verify and grant interest on refund in terms of section 244A of the Act.

19. In the result, appeal of the assessee is allowed as directed above.

Order pronounced in the open court on this the 9th day of February, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 09/02/2024

TNMM

Copy forwarded to:

1. TEKsystems Global Services Private Limited, Floor 22, Skyview 10, Sy.No. 83/1, Hyderabad Knowledge City, Raidurgam (Panmaktha), Serilingampally Mandal, Hyderabad.
2. Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad.
3. Pr.CIT-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD