

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2055/Mum/2023
(Assessment Year :2016-17)**

Piramal Estate Pvt. Ltd. 8 th floor, Piramal Tower, Peninsula Corporate Park, Kadam Marg, Lower Parel Mumbai- 400 013	Vs.	DCIT, Cir – 1(3)(1) 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
PAN/GIR No.AACCA7777K		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ronak Doshi
Revenue by	Shri. H.M. Bhatt (Sr. D.R.)
Date of Hearing	08/02/2024
Date of Pronouncement	27/02/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 31.3.2023 passed by National Faceless Appeal Centre (NFAC), Delhi for the quantum of assessment passed u/s.143(3) the assessment year 2016-17.

2. Before us the assessee has filed an application of withdrawal of the appeal vide letter dated 5.2.2024.

*"The Registrar,
Income-tax Appellate Tribunal,
'C' Bench
Mumbai-400 020.*

Respected Sir/Madam,

Re: PIRAMAL ESTATES PRIVATE LIMITED
(formerly known as Alpex International Private Limited)
Appeal No.: ITA 2055/MUM/2023
Assessment Year: 2016-17

Sub: Application for withdrawal of appeal

The Appellant has pursuant to the order of Hon'ble Bombay High Court, recognized in its books Goodwill of INR 8,76,67,105, during PY 2015-16. The Appellant pursuant to said recognition of goodwill, has for AY 2016-17, correctly claimed depreciation of INR 219,16,776. on the said goodwill. Prior to amendment in income-tax law with effect from 1.4.2021, including for the concerned AY 16-17, depreciation on goodwill recognized in books of accounts was allowable under Section 32 of the Income-tax Act. This has been upheld by Supreme Court in CIT v. Smiff Securities (210 taxman 248). Appellant has also been placing reliance on the decision of Bombay High Court in case of CIT v. Aditya Birla Nuvo Ltd. [79 taxmann.com 210] which has also held that goodwill recognized in the books is eligible for depreciation.

It may be mentioned that in the case of the Appellant, the goodwill so recognized pursuant to the High Court's Order is self-generated. There is no restriction under income-tax law on claiming depreciation on self-generated goodwill once recognized in books. Depreciation under Section 32 is allowable on an asset "acquired". "Acquisition" cannot be restricted to "acquisition by way of purchase". Gujarat High Court in CIT v Mohanbhai Pamabhai (91 ITR 393] has held that self-generated assets are acquired the moment it is created. The relevant extract of the decision is reproduced below.

"The word "acquire", according to its plain natural meaning, is a word of very wide import. It is not confined to obtaining of a thing from a third party. When an assessee gains a thing by his own exertions or comes to own it or have it by any recognised made which would doubtless include the mode of creation, he can be said to have acquired the thing. There are various modes of acquisition by which a thing may be acquired by an assessee and creation is one of them. When an assessee creates a

painting, sculpture or a building, he gains it, he comes to have it or to own it. He acquires the painting, sculpture or building by creating it. When a capital asset is created by an assessee, it becomes his property, he comes to own it and, therefore, he acquires it the moment it is created. Creation or production of a capital asset is not foreign to the concept of acquisition."

The above decision has been upheld by the Supreme Court.

The only question that arises in respect of a self-generated goodwill is its "cost". In cases where cost of self-generated goodwill is not determinable, it is not recognized in the books of accounts and consequently, depreciation on the same is not claimed. However, in the case of the Appellant, part of the cost of the self-generated goodwill has been specifically determined in pursuance of the order of the High Court and the said cost has been recognized and recorded in the books of the Appellant as per the order of the High Court. Once part cost of self-generated goodwill is determined pursuant to a court order, to that extent the cost of self-generated goodwill is ascertained, the self-generated goodwill can be recognized as an asset at the ascertained cost and depreciation on the said recognized cost can be claimed by the assessee.

It may also be mentioned that the Appellant has accumulated losses carried forward prior to AY 2016-17. As in AY 2015-16, the aggregate accumulated losses carried forward is INR 301,46,36,311. Thus, considering the accumulated unclaimed losses, the cost of self-generated goodwill identified and recognized in AY 2016-17, has not been claimed by the Appellant in previous years. The said cost is thus, allowable as depreciation claim for AY 2016-17 and the same does not amount to double deduction.

The Appellant in the present case, has thus, rightly claimed depreciation on goodwill recognized in its books pursuant to the High Court Order. It may be mentioned that the Appellant during AY 2016-17, was engaged in the business of Service Centre, Real Estate/Real Estate Development, leasing and licensing of premises and financing and investment business activities. During PY 2015-16 relevant to AY 2016-17, the Appellant had transferred its then existing leasing division to ASAAN Developers and Constructions Pvt. Ltd, through a scheme of arrangement approved by Hon'ble Bombay High Court Pursuant to the said transfer, the Appellant was proposing to acquire/ develop new property to continue its leasing activities. Accordingly, the Appellant, recognized the goodwill as a business asset and claimed depreciation on the same. However, the Company has been into losses, and the business has not been developed. The Company presently, is carrying out only Real Estate Development activity which also does not have any taxable profits.

Considering that the Appellant Company did not have any taxable profits in AY 2016-17 or subsequently, the claim for depreciation under appeal

though allowable, is infructuous for the Appellant. The Appellant therefore, would like to seek permission to withdraw the said ground

Hoping to be excused for inconvenience caused.

Thanking You,

Yours faithfully,

For PIRAMAL ESTATE PRIVATE LIMITED

3. In view of the above application, we allow the withdrawal of the appeal as the Learned Departmental Representative also does not have any objection. Accordingly the appeal of the assessee is dismissed as withdrawn.

Order pronounced on 27th February, 2024

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated: 27/02/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai