

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “J”, MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL(JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.588/Mum/2017  
(Assessment year 2012-13)**

M/s Publicis Communications Private Limited, Viva Centre, 126, Mathurada Mills Compound, N.M. Joshi Marg, Off. Senapati Bapat Marg, Lower Parel (West), Mumbai-400 013 <b>PAN : AABCA5243G</b>	vs	The Deputy Commissioner of Income-tax, Circle 7(3)(2), Mumbai, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Ketan Ved
Department represented by	Shri Nihar Samal SR DR

Date of hearing	04-03-2024
Date of pronouncement	15-03-2024

**ORDER**

**PER : MS PADMAVATHY S. (AM)**

This appeal is arising out of order in M.A. No.396/Mum/2023 wherein the Tribunal has recalled its order dated 27/04/2023 for the limited purpose of adjudicating grounds No.2 & 3 which have not been decided respectively on disallowance of depreciation on goodwill and credit for tax deducted at source.

2. The relevant grounds read as follows:-

**“2.0. Re.: Disallowance of depreciation on goodwill of Rs. 2,11,00,663/-**  
2 : 1 *The AO/DRP have erred in disallowing depreciation on goodwill of Rs. 2,11,00,663 (i.e. depreciation on goodwill of Rs. 2,06,05,720 and Rs. 4,94,943 arising pursuant to acquisition of business of Capital Advertising Private Limited [CAPL] and Ambience Advertising Private Limited [AAPL] respectively).*

2 : 2 *Without prejudice to the above, it is submitted that the Appellant should be allowed depreciation of Rs. 82,635 on written down value of business and commercial rights of Rs. 3,30,542 in the nature of intangible assets acquired pursuant to merger with AAPL.*

2 : 3 *The DRP has erred in not issuing directions in connection with the objections regarding disallowance of depreciation on goodwill arising pursuant to merger with AAPL.*

**3 : 0 Re.: TDS Credit**

3 : 1 *The AO erred in granting TDS credit of Rs. 4,79,02,987 as against TDS credit of Rs. 5,67,34,234 as claimed in the return of income by the Appellant.*

3 : 2 *The AO erred in not following the directions of the DRP wherein the AO has been directed to verify and grant TDS credit as per the provisions of section 199 of the Income-tax Act, 1961.”*

### **DEPRECIATION ON GOODWILL**

3. The assessee acquired the business of Capital Advertising Private Limited (CAPL) with effect from 01/04/2011 pursuant to the scheme of arrangement and amalgamation approved by the Hon’ble Bombay High Court. As per the scheme of amalgamation of assets and liabilities of CAPL are transferred to the assessee at their respective book value. The assessee paid a consideration of Rs.16,40,38,000/- in the form of shares allotted to Publicis Groupe Holding B.V. to the tune of Rs.9,73,83,000/- and paid a sum of Rs.6,66,45,000/- to Indian shareholders of CAPL. The assessee treated the difference between the net asset value of assets and liabilities and the consideration paid as goodwill which is worked out as below:-

Sr.No.	Particulars	Amount (Rs.)
1	Fixed assets (net block)	2,06,74,264
2	Current assets, loan and advances	10,35,25,421
3	<b>Total assets taken over</b>	<b>11,41,99,685</b>
4	Less: Current liabilities	35,334,774
5	Secured loans	1,17,406
6	<b>Total liabilities</b>	<b>35,452,180</b>
7	Difference between assets and liabilities taken over	7,87,47,505
8	Deferred tax Assets (net)	28,67,614
9	<b>Net assets taken over [7-8]</b>	<b>8,16,15,119</b>
10	<b>Total consideration paid</b>	<b>16,40,38,000</b>
11	<b>Goodwill</b>	<b>8,24,22,881</b>

4. The assessee, during the year under consideration claimed depreciation on such goodwill at 25% amounting to Rs.2,06,05,720/-. The Assessing Officer held that the excess amount paid cannot be treated as paid towards acquisition of goodwill since the assessee company is not using the name or brand of CAPL for the purpose of business of the assessee and that the amount is paid to the shareholders of CAPL for acquiring shares. Accordingly, the Assessing Officer treated the cost of goodwill at Rs.Nil and disallowed the entire depreciation while passing the draft assessment order. The Assessing Officer also made a disallowance of Rs.4,94,943 towards depreciation on the brought forward goodwill following a similar disallowance in the earlier years.

5. The assessee raised objections before the DRP wherein the assessee contended that –

*“4.1 As mentioned above, the assessee has taken over the business including all the assets and liabilities of CAPL with effect from the appointed date i.e. 1 April 2011 pursuant to the scheme of amalgamation duly approved by the jurisdictional High Court. It may be appreciated that as per the scheme of amalgamation, the assessee has inter-alia acquired all licenses, registrations, copyrights, patents, trade names, trademarks, applications for copyrights,*

*patents, trade names, trademarks, intellectual properties, labels, label designs, quality certifications, leases, licenses, tenancy rights business contracts, customer pricing information, etc. along with fixed assets, current assets, current assets, deferred tax assets, current liabilities and provisions, etc.*

4.2 *Thus, the assessee has paid consideration of Rs. 16,40,38,000 for acquisition of running business of CAPL alongwith fixed assets, current assets, deferred tax assets, current liabilities and provisions, etc. of CAPL at their estimated fair value. It is submitted that pursuant to acquisition of CAPL, the assessee has also obtained variety of intangible benefits including reputation, a cohesive human resource, customer base, customer information etc.*

4.3 *Further, it may appreciated that the assessee has paid consideration in excess of book value of assets" in view of the future expected profitability of CAPL. In this regard, the assessee has obtained a report of valuation of the business of CAPL. As per the valuation report of Chartered Accountants, on the basis of Discounted Free Cash Flows method of valuation, the total equity value of the business of CAPL is Rs. 18,56,01,278. Copy of the valuation report is enclosed herewith on pages 1614 -1618 of the paper book.*

4.4 *Thus, consideration paid to CAPL is not merely towards acquisition of shares from shareholders of CAPL as alleged by the AO.*

4.5 *The difference between the total consideration paid of Rs. 16,40,38,000 and net tangible assets acquired of Rs. 8,16,15,119 has been treated as goodwill i.e. Rs. 8,24,22,881 (Rs. 16,40,38,000 - Rs. 8,16,15,119) in the books of account of the assessee.*

4.6 *The above treatment is in accordance with Accounting Standard 10 — Accounting for fixed assets issued by the Institute of Chartered Accountants of India. As per Paragraph 16 of Accounting Standard 10, in case of acquisition of business, goodwill is the price (payable either in cash or in shares or otherwise) which is in excess of the value of the net assets of the business taken over.*

4.7 *The relevant extract of Accounting Standard 10 is as under:*

*"16.1 Goodwill, in general, is recorded in the books only when some consideration in money or money's worth has been paid for it. Whenever a business is acquired for a price (payable either in cash or in shares or otherwise) which is in excess of the value of the net assets of the business taken over, the excess is termed as 'goodwill'. Goodwill arises from*

*business connections, trade name or reputation of an enterprise or from other intangible benefits enjoyed by an enterprise. "*

*4.8 In light of the various judicial precedents, it is submitted that the consideration paid in excess of book value of net assets is in the nature of goodwill and the assessee is entitled to depreciation on such goodwill being 'business or commercial right of similar nature' in accordance with the provisions of section 32(1)(ii)."*

6. The DRP upheld the disallowance for the same reason as has been stated by the Assessing Officer. The DRP also noted that for A.Y. 2009-10 in assessee's own case, the disallowance of depreciation on goodwill in consequence of amalgamation with Publicis (India) Communications Pvt Ltd were confirmed by the DRP and the facts and circumstances for the year under consideration being similar, the DRP followed the said decision to confirm the disallowance of depreciation on goodwill made by the Assessing Officer. The assessee is in appeal before the Tribunal against the final order of assessment passed by the Assessing Officer disallowing the depreciation on goodwill.

7. The Ld.AR reiterated the submissions made before the AO / DRP. The Ld.AR submitted that as per the scheme of amalgamation approved by the High Court (clause 15.5 on page 22), the amount paid in excess of net assets of the transferor company, i.e. CAPL and the amount of consideration if results in a negative number, then the same will be accounted as goodwill. The Ld.AR further submitted that as per the Accounting Standard 10 issued by the Institute of Chartered Accountants of India (ICAI) the cost of acquisition in the case of goodwill is the price (payable either in cash or in shares or otherwise) which is in excess of the value of net asset of the business taken over. Therefore, the Assessing Officer is not correct in attributing Nil as the value of goodwill. The

Ld.AR also submitted that the contention of the Assessing Officer that the amount paid by the assessee is towards acquisition of shares is factually incorrect for the reason that the assessee has acquired the business of CAPL as a going concern and the consideration paid is towards acquiring the assets and liabilities which include intangible assets such as patents, trade marks, customers etc. The Ld.AR relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs Eltek SGS(P.) Ltd (2023) 153 taxman.com 263 (Delhi) and the decision of the Hon'ble Gujarat High Court in the case of PCIT vs Zydus Wellness Ltd (2017) 87 taxmann.com 82 (Gujarat). The Ld.AR submitted that in both the above decisions, the Hon'ble High Courts have allowed the depreciation on goodwill following the decision of the Hon'ble Supreme Court in the case of CIT vs Smifs Securities Ltd (2012) 348 ITR 302 (SC). The Ld.AR also submitted that the co-ordinate bench has followed the said decision of the Apex Court in many of its decisions allowing depreciation on goodwill.

8. The Ld.DR, on the other hand, submitted that the excess consideration paid by the assessee cannot be attributed to the cost of acquisition of goodwill, since the assessee has not used the brand name of CAPL and there is no evidence to prove that the goodwill so acquired has been put to use by the assessee. The Ld.DR also submitted that the subsequent amendment to section 32(1) of the Act wherein goodwill has been excluded for the purpose of depreciation would have a persuasive value that the intention of the legislature was never to allow depreciation on goodwill. Therefore, the Ld.DR submitted that the lower authorities are correct in not allowing the depreciastion claim of the assessee.

9. We heard the parties and perused the material on record. During the year under consideration, the assessee is amalgamated with CAPL with effect from 01/04/2021 in accordance with the scheme of amalgamation approved by the Hon'ble Bombay High Court. As per the scheme of amalgamation, the assessee has acquired all licenses, registrations, copyrights, patents, trade names, trademarks, intellectual properties, labels, label design, quality certification, leases, tenancy rights, business contracts, customer pricing information, etc. along with fixed assets, current assets, current liabilities and provisions, etc. The assessee has acquired the assets and liabilities at book value and the consideration paid in excess of the net value of assets and liabilities as in the books of CAPL are accounted as goodwill (refer table in para 3 above). The contention of the Revenue is that the excess amount paid is not towards acquisition of goodwill since the assessee is not using the brand name of CAPL and also that the consideration is in the form of shares allotted to the parent company and to the Indian shareholders of CAPL and, therefore, is not paid towards acquisition of goodwill. The Revenue, therefore, attributed Nil as the cost of acquisition of goodwill and disallowed the depreciation claimed by the assessee on the goodwill accounted in the books of account. From the perusal of the scheme of amalgamation we notice that the assessee has inter-alia acquired all licenses, registrations, copyrights, patents, trade names, trademarks, applications for copyrights, patents, trade names, trademarks, intellectual properties, labels, label designs, quality certifications, leases, licenses, tenancy rights business contracts, customer pricing information, etc. along with fixed assets, current assets, current assets, deferred tax assets, current liabilities and provisions, etc. We further notice that the assessee has obtained the valuation of business of CAPL as certified by the Chartered Accountant on the basis of

discounted free cash flows method of valuation by which business were valued at Rs.18,56,01,278/- which is more than the cost paid by the assessee. It is also relevant to note that as per the Accounting Standard-10, wherever a business is acquired for a price which is in excess of value of net assets of the business taken over, the goodwill is recorded in the books of account as the difference between the value paid towards acquisition of the business and the net value of assets and liabilities of the transferor company. Therefore, the value of goodwill cannot be treated as Nil for the reason that assessee has not paid any amount specifically towards acquisition of goodwill. The second reason for disallowing depreciation is that the assessee is not using the brand of CAPL. We have already noted that the assessee has acquired certain intangible assets in the form of patents, trade marks, customer base etc., besides the other assets and liabilities and therefore in our considered view the cost of acquisition of goodwill cannot be treated as Nil merely for the reason that the assessee is not using the brand name of CAPL. Further the certificate obtained from the Chartered Accountant where the valuation is done using DCF method on the future accepted profitability of CAPL is also much more than the cost of acquisition paid by the assessee to CAPL. Therefore, we are of the view, the Revenue is not correct in attributing Nil value to goodwill and thereby denying the depreciation allowance claimed by the assessee. As regards allowance of depreciation on goodwill we notice that the Hon'ble Supreme Court in the case of CIT vs Smifs Securities Ltd (supra) while considering an identical issue held that goodwill arising on amalgamation to be a capital asset eligible for depreciation. The facts in assessee's case being similar the ratio laid down by the Supreme Court as has been followed by the Hon'ble Delhi and Gujarat High Courts is applicable to assessee also. Accordingly we hold that the assessee is entitled for

depreciation on the said value as has been claimed on amount recorded as goodwill arising out of the difference between the cost of acquisition paid by the assessee in the form of shares and otherwise and the difference of net value of assets and liabilities as per the book value of CAPL. The Assessing Officer is directed to delete the disallowance made in this regard.

9. As regards the disallowance of depreciation on brought forward goodwill we notice that the coordinate bench while consideration the same issue for AY 2009-10 remitted the issue back to the Assessing Officer with a direction to decide it in accordance with the decision for AY 2000-01 and to consider whether assessee has acquired intangible assets eligible for depreciation. The relevant observations of the coordinate bench is extracted below –

*022. Ground no.3 and ground no.4 are with respect to depreciation on goodwill. The learned Assessing Officer disallowed the depreciation on goodwill amounting to ₹11,73,198/-. The learned Assessing Officer made the above disallowances on protective assessment manner. The assessee company entered into business transfer agreement with M/s Ambience Advertisement Pvt. Ltd. for ₹6.25 crores. This sum was capitalized by the assessee as goodwill and claimed depreciation there on at the rate of 25%. The first claim of depreciation was made in A.Y. 2000-01. For that assessment year the assessee approached ITAT and ITAT, has set aside the issue to the file of the learned Assessing Officer. Therefore, unless the issue of depreciation decided in that year, this ground of appeal cannot be decided. Accordingly, ground no.3 and 4 of the appeal are also restored back to the file of the learned Assessing Officer to decide it in accordance with the decision for A.Y. 2000-01 and to consider whether assessee has acquired intangible assets eligible for depreciation.*

10. We notice that the Assessing Officer disallowed the depreciation on carry forward goodwill by placing reliance on the decision in earlier year and therefore the above directions of the coordinate bench is applicable for the year under

consideration also. Accordingly we remit the issue of depreciation on brought forward goodwill back to the Assessing Officer with similar directions. It is ordered accordingly.

11. Ground No.3 pertains to short credit for TDS. In this regard we notice that the DRP, in its direction, has directed the Assessing Officer to verify and grant credit to the assessee in the year in which income is brought to tax as per provisions of law. We accordingly remit the issue back to the Assessing Officer with similar directions based on various evidences as may be produced by the assessee in this regard and allow credit in accordance with law after affording reasonable opportunity of being heard to the assessee. This ground is allowed for statistical purpose.

12. In the result, ground 2 is allowed and ground 3 is allowed for statistical purposes. The appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the open court on 15/03/2024.**

**Sd/-**

**sd/-**

<b>(KAVITHA RAJAGOPAL)</b>	<b>(MISS. PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 15<sup>th</sup> March, 2024

Pavanan

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

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2. प्रतिवादी/ The Respondent.
  
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
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BY ORDER,

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Asstt. Registrar / Senior Private Secretary  
**ITAT, Mumbai**