

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3482/Mum./2023

(Assessment Year : 2017-18)

&

ITA no.3480/Mum./2023

(Assessment Year : 2018-19)

ACIT-4(2)(1)

640, Aayakar Bhavan, M. K. Road,
Mumbai-400020

..... Appellant

v/s

Keva Fragrances Pvt. Ltd
Devkaran Mansions 36, Mangaldas
Road, Mumbai-400002
PAN- AAACK2243A

..... Respondent

Assessee by : Shri Saurabh Bhat

Revenue by : Shri Biswanath Das

Date of Hearing – 23/04/2024

Date of Order – 03/05/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the Revenue challenging the separate orders dated 02.08.2023 and 03.08.2023, passed u/s 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment years 2017-18 and 2018-19, respectively.

2. Since both the appeals pertain to the same assessee and involve a similar issue that arises out of a similar factual matrix, therefore, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the assessment year 2017-18 is taken up as a lead case and the decision rendered therein shall apply "mutatis mutandis" to the appeal for the assessment year 2018-19 filed by the Revenue.

ITA. No.3482/Mum./2023
Assessment Year 2017-18

3. In its appeal, the Revenue has raised the following grounds: –

"1. Whether on the facts and circumstances of the case, the Ld CIT(A)/NFAC is erred in deleting the disallowance of depreciation claimed on 'Goodwill' of Rs. 47,26,00,000/- as per valuation done by DCF method as against NAV method adopted by the AO ignoring the provisions of Section 55(2)(a)ii) which mandates that cost of acquisition of capital assets being goodwill shall be taken at NIL as the same was not purchased from the previous owner".

2. Whether on the facts and circumstances of the case and in law, Ld CIT(A)/NFAC failed to appreciate that the existence of "Goodwill" itself in question and cannot be justified

3. Whether on the facts and circumstances of the case and in law, Ld CIT(A)/NFAC failed to appreciate that as per Proviso 6 to Section 32, the amalgamated company cannot claim depreciation higher than what was actually allowed in the amalgamating company

4. Whether on the facts and circumstances of the case and in law, Ld CIT(A)/NFAC failed to appreciate the fact that the decision of Hon'ble Supreme Court in the case of Smifs Securities Ltd wherein the goodwill was created due to extra consideration paid towards the Goodwill is not applicable in this case",

5) Whether on the facts and circumstances of the case and in law, Ld CIT(A)/NFAC failed to appreciate the fact that the amalgamated company KVAPL has since changed its name to Keva Fragrances Pvt Ltd, which is actually the original name of the amalgamating company and also the intention of amalgamation was not to merge the companies as a matter of business arrangement or commercial expediency but to evade taxes."

4. The only issue raised by the Revenue is against the deletion of disallowance of depreciation claimed on the "Goodwill" by the assessee.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of manufacturing of perfumes, fragrances & flavours. For the year under consideration, the assessee filed its return of income on 29.11.2017 declaring a total loss of Rs.5,99,74,572/-. The return filed by the assessee was subsequently revised on 18.01.2019 declaring a loss of Rs.6,43,52,776/-. The return filed by the assessee was selected for scrutiny and statutory notices u/s 143(2) as well as section 142(1) of the Act were issued and served upon the assessee. The assessee is a private limited company of Keva Group of Companies. M/s. S. H Kelkar and Co. Ltd. is the 100% holding company of the assessee. During the preceding year, i.e. assessment year 2016-17, another 100% subsidiary of M/s. S. H. Kelkar and Co. Ltd., i.e. M/s. Keva Fragrances Pvt. Ltd, amalgamated with the assessee, earlier known as M/s. K. V. Arochem Pvt. Ltd., pursuant to the scheme of amalgamation as sanctioned by the Hon'ble High Court of Bombay with effect from 01.05.2015. After amalgamation, the name of the assessee was changed from M/s. K. V. Arochem Pvt. Ltd to M/s. Keva Fragrances Pvt. Ltd. The value of the amalgamating entity was arrived at Rs.381.72 cr using the Discounted Cash Flow ("DCF") Method. The assessee issued 6,21,029 fully paid-up equity shares of Rs.100/- each at a premium of Rs.6,046.50/- to M/s. S. H. Kelkar and Co. Ltd., i.e. the 100% shareholder of the amalgamating company, for the aforementioned purchase consideration. The assessee accounted for the amalgamation under the purchase method as

prescribed in AS-14 and the difference of total consideration and value of assets over liabilities of the amalgamating company of Rs.236.28 cr was accounted as "Goodwill" on amalgamation in the books of the assessee. As per the Act, the assets and liabilities are booked at the book value and the difference of Rs.188.39 cr (Rs.251.50 cr less Rs.63.11 cr) is added to the fixed assets as "Goodwill" under intangible asset. The assessee claimed depreciation @ 25% on the "Goodwill" amounting to Rs.47.26 cr, during the year under consideration.

6. The Assessing Officer ("AO") vide order dated 29.12.2019 passed u/s 143(3) of the Act noted that the amalgamated company, i.e. the assessee, is a loss-making company and has used carry forward losses and unabsorbed depreciation. On the other hand, the amalgamating company is a profit-making company with significant turnover. The AO further noted that the scheme of amalgamation has resulted in a large sum of depreciation on "Goodwill" resulting in losses for the amalgamated company. Further, it was noted that the assessee has followed the purchase method for accounting the amalgamation instead of "pooling of interests" method despite the nature of amalgamation being in the nature of the merger as per the conditions prescribed by AS-14. Accordingly, the AO held that the only impact of the entire exercise of amalgamation is to set off the huge losses and unabsorbed depreciation that the assessee has carried forward till the relevant financial year. The AO further held that the market value as determined by the DCF Method is not the right method for determining the value of the amalgamating company, even in the scenario of the DCF Method representing the market

value, it would be incorrect to consider the difference between the market value and the identifiable net assets value as "Goodwill". The AO held that the generation of "Goodwill" and the claim of depreciation is not genuine but only a means to reduce the tax liability. Accordingly, the AO disallowed the depreciation claimed on "Goodwill" on account of amalgamation on the basis that the existence of "Goodwill" itself is in question and cannot be justified, since the entire exercise of amalgamation amongst the group companies is for the purpose of evasion of tax.

7. In the appellate proceedings before the learned CIT(A), the assessee, *inter-alia*, submitted that in the preceding year, i.e. assessment year 2016-17, the Tribunal has allowed the claim of depreciation on "Goodwill" arising out of aforesaid amalgamation. The learned CIT(A), vide impugned order, following the order passed by the Tribunal in assessee's own case for the assessment year 2016-17 allowed the appeal filed by the assessee and deleted the disallowance made by AO. Being aggrieved, the Revenue is an appeal before us.

8. We have considered the submissions of both sides and perused the material available on records. In the present case, pursuant to the scheme of amalgamation approved by the Hon'ble High Court of Bombay, M/s. Keva Fragrances Pvt. Ltd was amalgamated with M/s. K. V. Arochem Pvt. Ltd, i.e., the assessee, with effect from 01.05.2015. Submission to the amalgamation, the name of the amalgamated company, i.e. the assessee, was changed to M/s. Keva Fragrances Pvt. Ltd. In the present case, it is not in dispute that both amalgamating and amalgamated companies were 100% wholly and

subsidiary of M/s. S. H. Kelkar and Co. Ltd. Since the total consideration of amalgamation was higher than the amount of assets over liabilities of the amalgamating company, the differential amount was treated as "Goodwill" by the assessee in its books. Since the scheme of amalgamation was sanctioned by the Hon'ble High Court of Bombay with effect from 01.05.2015, the assessee claimed depreciation on "Goodwill" as an intangible asset during the financial year 2015-16, relevant to the assessment year 2016-17. We find that the claim of depreciation on "Goodwill" on account of amalgamation was disallowed by the Revenue in the assessment year 2016-17. The learned CIT(A) also dismissed the appeal filed by the assessee on this issue. In further appeal by the assessee, the Co-ordinate Bench of the Tribunal in M/s. Keva Fragrances Pvt. Ltd Vs. DCIT, ITA. No.334/Mum./2020, vide order dated 02.08.2021 allowed the appeal filed by the assessee and deleted the disallowance of depreciation claimed on "Goodwill". We find that the Co-ordinate Bench further held that the 5th proviso to section 32 of the Act, which is now the 6th proviso to section 32 of the Act, is not applicable to the present case as the amalgamating company did not claim any depreciation on "Goodwill". The relevant findings of the Co-ordinate Bench, vide aforesaid order, are reproduced as under: -

"10. We have carefully perused the decision relied upon by the revenue authorities in the case of United Breweries Ltd Vs ACIT(supra) and find that the same is not applicable on the facts of the instant case as in the said decision the goodwill was already appearing in the books of amalgamating company which was acquired by the amalgamated company and then it was revalued. Besides we note that the said decision of the coordinate bench has been distinguished by the co-ordinate bench of the Tribunal in the case of Aricent Technologies (Holdings) Ltd. vs. DCIT (supra). Further in view of the decision of Hon'ble Karnataka High Court in the case of Padmini Products Pvt. Ltd. vs. DCIT 2020-TIOL-1797-HC-Kar-IT, the decision in United Breweries Ltd Vs ACIT is not a good law as the Hon'ble High Court has held that 5th proviso to section 32(1) is only

applicable in the circumstances where the predecessor and successor both claimed depreciation in respect of the same asset. We find that the 5th proviso was inserted in order to prevent double claim of the depreciation in respect of the same asset. But these are not the facts in the present case before us as the amalgamating company did not claim any depreciation on the goodwill and therefore the same can not be disallowed.

11. In view of the above facts and circumstances and the various decisions as discussed above, the order of the Id CIT(A) upholding the order of AO on this issue can not be sustained. Accordingly we set aside the order of Id CIT(A) on this issue and direct the AO to allow the depreciation on goodwill. The appeal of the assessee is allowed."

9. Thus, from the perusal of the aforesaid decision of the Co-ordinate Bench of this Tribunal, we find that the claim of depreciation on "Goodwill" arising on account of amalgamation amongst group companies was allowed in a similar factual matrix. Therefore, respectfully following the decision of the Co-ordinate Bench rendered in assessee's own case in the preceding year, we are of the considered view that the assessee is entitled to claim the depreciation in the year under consideration on "Goodwill", which is arising on account of the aforesaid amalgamation. In any case, since the year under consideration is the second year of the claim of depreciation on "Goodwill" by the assessee, which has already been allowed to the assessee in the first year of its claim, therefore the entire exercise of determining the eligibility of claim in the year under consideration is merely academic, as in this year the depreciation on "Goodwill" is to be calculated on its opening WDV. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A), and the same is upheld. As a result, the grounds raised by the Revenue are dismissed.

10. In the result, the appeal by the Revenue for the assessment year 2017-18 is dismissed.

ITA. No.3480/Mum./2023
Assessment Year 2018-19

11. The only dispute raised by the Revenue, in the present appeal, is against the deletion of the disallowance of depreciation claimed on "Goodwill". Since a similar issue has already been decided in Revenue's appeal for the assessment year 2017-18, therefore, our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue, and the same is upheld. As a result, the grounds raised by the Revenue are dismissed.

12. In the result, the appeal by the Revenue for the assessment year 2018-19 is dismissed.

13. To sum up, both appeals by the Revenue are dismissed.

Order pronounced in the open Court on 03/05/2024

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/05/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy
By Order

Assistant Registrar
ITAT, Mumbai