

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA Nos. 2829 to 2833/MUM/2023  
Assessment Year: 2013-14 to 2017-18**

M/s Gati Kintetsu Express Pvt.  
Ltd,  
4<sup>th</sup> floor, A Wing, Allcargo House,  
CST Road, Kalina,  
Santacruz (East),  
Mumbai-400098.

**PAN NO. AADCG 2096 A**

**Appellant**

**Vs.**

Ass./Dy. CIT, Circle 14(1)(2),  
Room No. 455, 4<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Respondent**

Assessee by : Mr. Madhur Agrawal,  
Mr. Fenil Bhatt &  
Mr. C.C. Dangi  
Revenue by : Ms. R A Dhyani, CIT-DR

Date of Hearing : 19/02/2024  
Date of pronouncement : 13/05/2024

**ORDER**

**PER BENCH**

These appeals by the assessee are directed against separate orders passed by the National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14 to 2017-18 respectively.



2. As common grounds of appeal are involved in these appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

3. The grounds raised by the assessee in the appeal for assessment year 2013-14 are reproduced as under:

*1.1. On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC") vide order dated June 20, 2023 under section 250 of the Income tax Act, 1961 ("the Act") erred in confirming the order of the Learned Asst. Commissioner of Income tax 2(2), Hyderabad ("Ld. AO") vide order dated March 31, 2015 under section 143(3) of the Act ("impugned order") without appreciating that the same is contrary to law.*

*1.2 The Appellant prays that the impugned order dated March 31, 2015 be quashed and set*

*2.1 On the facts and in circumstances of the case and in law, the Ld. NFAC erred in confirming the disallowance made by the Ld. AO of depreciation amounting to Rs. 31,26,46,956 claimed on intangibles and goodwill arising out of Business Transfer Agreement dated February 13, 2012 entered into with Gati Ltd. for acquiring Express distribution and Supply chain business on a going concern basis from the close of business hours on March 31, 2022.*

*2.2 The Appellant prays that the Ld. AO be directed to allow deduction of depreciation amounting to Rs. 31,26,46,956 claimed on intangibles and goodwill.*

*3.1 On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming disallowance made by the Ld. AO of business advances written off amounting to Rs. 35,68,793 and bad debt written off amounting to Rs. 18,16,695.*

*3.2 The Appellant prays that the Ld. AO be directed to allow deduction of business advances written off amounting to Rs. 35,68,793 and bad debt written off amounting to Rs. 18,16,695.*

4. Brief facts of the case for assessment year 2013-14 are that assessee is engaged in the business of cargo transport, express distribution and supply chain and warehousing. The assessee filed its return of income for the year under consideration on 30.09.2013



declaring total income at Rs.26,42,09,390/-, which was further revised on 27.11.2014 declaring a loss of Rs.4,83,80,650/-. In the revised return of income, the assessee claimed depreciation of Rs.31,26,46,956/- on intangible assets of Rs.125,05,87,823/- for entire assessment year. The return of income filed by the assessee was selected for scrutiny assessment. The Ld. Assessing Officer (AO) completed the assessment in terms of section 143(3) of the Income-tax Act, 1961 (in short 'the Act') determining total income at Rs.26,95,94,880/-.

5. Aggrieved by the additions made to returned loss, the assessee filed appeal before the Ld. CIT(A) however could not succeed.

6. On further appeal by the assessee before the Income-tax Appellate Tribunal (in short 'the Tribunal') the matter was remanded back by the Tribunal vide order dated 11/01/2019 in ITA No. 992/Hyd/2017 to the file of the Ld. CIT(A) for deciding the issue on merit after providing opportunity of being heard to the assessee.

7. The Ld. CIT(A) thereafter passed the impugned order wherein the claim of depreciation on intangible / goodwill of the assessee has been rejected. Aggrieved the assessee is before the Tribunal by way of grounds reproduced above.

8. In the grounds raised before us, primarily two issues are arising as under:



(i) Disallowance of depreciation on intangible and goodwill arising out of Business transfer agreement (BTA) dated 13.02.2012 for acquiring express distribution and supply chain (EDSC) business of M/s Gati Ltd on going concern basis.

(ii) Disallowance of business advances and bad debt written off.

8.1 Before us, the Ld. Counsel for the assessee has filed a Paper Book containing pages 1 to 308.

9. Regarding the first issue of disallowance of depreciation claimed on intangible/ goodwill by the Assessing Officer, the facts in brief are that the assessee entered into a business transfer agreement (BTA) dated 13.02.2012 with M/s Gati Ltd. ( i.e. holding company ) for the purpose of acquiring express distribution supply chain (EDSC) business of Gati Ltd. on a going concern basis (PB- 68 to 104). The transfer of the business was made effective from close of business hour on financial year end i.e. 31.03.2012. The BTA did not provide for payment of consideration by the assessee to M/s Gati Ltd. , however, the liabilities taken over by the assessee was in excess of the assets of the undertaking. The assessee treated the excess amount of the liability over and above the value of the assets amounting to Rs.125.6 crores as intangibles and goodwill. The total liability taken over amounted to Rs.380.11 crores which was broken into Rs. 255.05 crores towards the tangible assets (moveable and immovable) and the remaining liability Rs.125.06 crores towards



intangible assets. The assessee claimed depreciation of Rs. 31,26,46,956/- at the rate of 25% of the goodwill/intangible asset of Rs. 125.06 crores arising out of business transfer agreement.

9.1 The Ld. Assessing Officer disallowed the claim of the depreciation by holding as under:

*(i) The goodwill was not purchased by the assessee which is evident from the BTA and no payment was made by the assessee for purchase of any commercial rights, business rights or rights of similar nature. Goodwill shown by the assessee is nothing but accounting entry to the surplus liabilities received by the assessee.*

*(ii) The Gati Ltd. has not treated surplus of Rs.125.06 crores liability taken over as sale consideration and has shown the same as capital reserve in its books of account. When the Gati Ltd. has not transferred goodwill, the question of assessee receiving the same does not arise.*

*(iii) The treatment of surplus liability and claiming depreciation thereon, is nothing but a collusive transaction between the assessee and the Gati Ltd.*

9.2 On further appeal, the Ld. CIT(A) also rejected the various contention of the assessee and held that-

*(i) the assessee accounted excess amount of liabilities over the assets amounting to Rs.125 crores as goodwill in its books of account in*



*accordance with accounting standard (AS-14) issued by the Institute of Chartered Accountant of India (ICAI). The Ld. CIT(A) held that AS-14 is applicable in case of the amalgamation, however, the present case is not of amalgamation but of succession of business through going concern basis from holding company to subsidiary company and thus AS-14 is not applicable.*

*(ii) No monetary consideration has been paid by the assessee for transfer of assets and liabilities under the BTA. Therefore, there is no question of any intangible asset in the nature of goodwill.*

*(iii) The Ld. CIT(A) distinguished the reliance placed by the assessee on the decision of the Hon'ble Supreme Court in the case of CIT v. Smiffs Securities Ltd. (2022) (348 ITR 302) (SC) on the ground that in the said ruling of the Hon'ble Supreme Court the issue decided is whether the goodwill falls in the category of intangible assets or in other business or commercial rights of similar in nature and hence eligible for depreciation as per provision of section 32(1)(ii) of the Act. But in the instant case issue is that no intangible assets in the nature of goodwill could be said to be arises in the hand of the assessee as a result of the transfer of the business.*

*(iv) Further as per 5<sup>th</sup> proviso to section 32(1) of the Act in case of succession of business, the aggregate deduction in respect of depreciation on any tangible or intangible assets allowable to the predecessor and the successor shall not exceed, in any previous*



*year, 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 the successor in the ratio of the period of usage of assets. Since, the predecessor had not claimed any depreciation on goodwill as intangible assets; therefore, if the succession had not taken place there would not be claim of depreciation of the goodwill. Thus the assessee cannot be allowed the claim depreciation more than the depreciation allowable to the predecessor company in case of succession.*

9.3 On the allegation of the Assessing Officer that no intangible had been transferred to the assessee on account of BTA, the Ld. counsel for the assessee referred to the BTA (PB 83 and 75) and submitted that all the properties, assets, resources, rights, privileges and licenses forming part of express distribution and supply chain (EDSC) business of the Gati ltd has been transferred to the assessee as going concern. The 'EDSC' in agreement has been defined as business undertaking, properties, and business of the Gati Ltd. The relevant part of the BTA referred by the Ld. counsel for the assessee is reproduced for ready reference:

*"2 Transfer of the Business Division*

*Subject to the provisions of this Agreement, the Transferor hereby agrees to, transfer convey, assign and deliver, as the case may be, to the Transferee and the Transferee hereby agrees to acquire from the Transferor on the Closing Date, all rights, title and interest of the Transferor in and to the **Business Division** as of and effective from the Closing Date, together **with all properties, Assets, resources, rights, privileges and licenses forming part of the Business Division, as a going concern**, such that upon Closing, the*



*Business Division shall be deemed to have been transferred and vested in the Transferee as of and effective from the Closing Date; and the Transferee would be entitled, subject to the terms and conditions of this Agreement, to all Assets and Assumed Liabilities of the Business Division as of and effective from the Closing Date, and have the full ability, rights, power and authority, necessary for conducting and carrying on the business of the Business Division for the benefit of the Transferee, in the same manner, in which the Transferor has conducted and carried on the business of the Business Division."*

*The subject matter of transfer, that is, "Business Division" is as below:*

***"Business Division" means all the business, undertaking, properties, assets and liabilities, in possession or reversion, present or contingent of whatsoever nature and kind and wheresoever situate, relating to the express distribution and supply chain business of the Transferor comprising of domestic surface (road express, air express, Gati Transport Solutions ("GTS") and the third party logistics Redsun business comprising warehousing and value added services carried on by the Transferor, as on the Closing Date (collectively the "Transferred Business"), other than the Excluded Business and the Excluded Liabilities, to be transferred on a going concern basis, which shall mean and include (without limitation):***

*(i) all movable property of every kind, nature or description pertaining exclusively to the Business Division, whether tangible or intangible, including all current assets, loans and advances, plant and machinery, capital work in progress, furniture & fittings, office equipments, computers, appliances, accessories and vehicles, in terms of the broad description set out in Part A of Schedule I ("Moveable Assets") which will be updated as of the Closing Date;*

*(ii) all the immovable properties of every kind, nature or description pertaining exclusively to the Business Division including the freehold and leasehold land, buildings, warehouses, structures, offices, plant and machinery thereon as more specifically described in Part B of Schedule 1 ("Immoveable Assets");*

*(iii) all the current assets such as sundry debtors, accounts receivable (including refunds and rebates), advances, earnest moneys, cash, bank accounts (including bank balances) the aggregate of such cash and bank balances being INR 126 million, bills of exchange, benefit of any deposits including security deposits, benefit of any bank guarantees and letters of credit all exclusively relating to the Business Division, loans (excluding inter divisional loans) and advances as appearing in the books of the Transferor as of the Accounts Date, in terms of the broad description set out in Part C of Schedule 1 ("Current Assets");*



*(iv) all rights, entitlements, benefits, quotas (including without limitation rights under any customer contracts, or other contracts or agreements to which the Transfer is a party to and which relate to the Business Division) tenancies, registrations **goodwill associated exclusively with the Business Division**, all other rights, benefits and entitlements including any tax exemptions, deferrals and other benefits or privileges, lease rights (including the benefit of any applications made therefore, rights to use and avail of any telephones, telexes, facsimile connections, communication facilities and installations, utilities, electricity and other services, insurance policies, funds, exclusively relating to the Business Division, including: (a) the Permits and Licenses Properesten permitted under applicable Laws), and (b) the intellectual Property.”*

***(emphasis supplied)***

9.4 In view of the above, the Ld. Counsel for the assessee submitted that the agreement specifically provided that the goodwill associated with the business division as well as the intellectual property should be transferred to the assessee.

9.5 The Ld. Counsel for the assessee further submitted that both the lower authorities observed that the Gati Ltd. was in business of EDSC since the year 1989 and was engaged in courier/package services for a significant time. As on 13.02.2012, when the BTA was entered into with the assessee, the Gati Ltd. expanded its customer base and it had about 3,275 major regular ongoing contracts. In addition to the same, it had walk-in-customers and non-regular customers in several lakhs catered through more than 300 branches spread all over the country. The Gati Ltd. had 608 offices which included branches, franchisee and huge warehouses numbering to about 60. It had about 5,000 delivery trucks at its disposal which comprises owned hired or belonging to its business associates. Thus it had developed a vast network of distribution and supply



chain. The Gati took about 23 years to develop its infrastructure, customer base, brand name and other business and commercial rights attached to the EDSC business. The assessee used the name Gati, its logo in all its correspondence, documents, vehicles, ads. etc., which carry a great commercial advantage to its benefit. The name 'Gati' had developed a brand value, for time bound delivery, for delivery of merchandise without any damage and without any pilferage and shortage. It has developed a brand name for customer satisfaction. The assessee company acquired all other benefits for carrying on the business which are all intangible assets having a tremendous commercial value.

9.7 The Ld. Counsel for the assessee further rebutted the allegation of the Ld. AO that the assessee had not received any intangible asset pursuant to the BTA. He submitted that the assessee derived substantiate advantage by acquiring the above intangible assets, business and commercial rights and goodwill of Gati Ltd. and it could achieve substantial turnover having details as under:

		<b>Amount in crores</b>
i.	Financial year 2012	854.27
ii.	Financial year 2013	1021.83
iii.	Financial year 2014	1138.71
iv.	Financial year 2015	1139.89

9.8 Without obtaining the business and commercial rights including all the advantages as described above, it would not have



been possible for any new business to achieve the above turnover from day one.

9.9 The Ld. Counsel for the assessee further submitted that the consideration paid was required to be apportioned between tangible assets and intangible assets. It was submitted that for determining the value of the intangible assets, the assessee obtained an independent valuer's report which was submitted during the course of the assessment proceedings. The independent valuer vide its report dated 06.08.2015 (Refer PB No. 28 to 40) accepted the value of tangible asset and with relation to intangible assets observed that Gati Ltd. had developed a huge supply chain, IT network and distribution network that would entail the assessee delivering its products in an efficient manner. The valuer also observed that Gati Ltd. had developed a large number of customer relations due to its supply chain and distribution network. The assessee on account of that would have a continued relationship with customers and ready access market. Lastly, the valuer observed that the assessee also obtained marketing and trading reputation of Gati with respect to EDSC business. **The valuer had identified intangible in the form of distribution network, customer relations and the balance amount has been recognized as goodwill.**

9.10 In view of the above, the Ld. Counsel submitted that AO's allegations no intangibles have been transferred to the assessee on account of BTA is wholly incorrect. The Ld. Counsel further



submitted that the Ld. AO has not brought any material on record to disregard the report of an independent valuer.

9.11 In relation to the allegation of the Ld. AO as well as the Ld. CIT(A) that no consideration has been paid for acquiring the intangible as well as goodwill, the Ld. counsel for the assessee submitted that assessee has taken over the obligation to discharge the liabilities of the Gati Ltd., which is nothing but agreeing to pay creditors directly instead of paying to Gati Ltd. Therefore, it is a consideration in monetary value only and not a book entry. This liability taken over is in lieu of payment for taking over the tangible and intangible assets, which the assessee considers as valuable. The assessee further submitted that the liabilities have been discharged over a period by the assessee.

9.11 The Ld. Counsel for the assessee further submitted that the assessee under BTA, instead of making monetary payment to Gati took over liability of more than the value of its assets. The total liabilities taken over is Rs.380.11 crores which is broken up into Rs.255.05 crores towards the value of tangible assets (movable and immovable) and the remaining liability of Rs.125.06 crores towards the value intangible assets.

9.12 The Ld. counsel for the assessee submitted that the negative net worth which has been taken over itself is a consideration and the same has to be considered for working out capital gain in case



of the slump sale by treating the negative net worth as taxable u/s 50B(2) of the Act. In this regard, the Ld. counsel for the assessee placed reliance upon the decision of the Hon'ble Special Bench in the case of **DCIT v. Summit Securities Ltd. (135 ITD 99)** wherein the Hon'ble Special Bench has held that negative figure of network should be considered for working out of capital gain in case of slump sale. Therefore, the allegation of the Ld. AO as well as the Ld. CIT(A) that no consideration has been paid is incorrect.

9.13 In relation to the allegation of the Ld. AO and Ld. CIT(A) that the holding company Gati has not offered the income nor has reduced the same from cost of its assets, therefore, the intangible and goodwill is nothing but a book entry, the Ld. counsel for the assessee submitted that in the hands of the Gati Ltd. vide assessment order dated 31.03.2015 (PB 121 to 133), the Ld. Assessing Officer has treated the surplus arising out of transfer of EDSC on a going concern basis under income from other sources, which was deleted by the Ld. CIT(A). However, on further appeal by the Revenue, the Tribunal reversed decision of ld CIT(A) following the Hon'ble Special Bench in the case of Summit Securities Ltd. (supra) holding that negative net worth of a going concern is taxable u/s 50B of the Act. During the pendency of the appeal, the Gati settled the issue under the Vivad Se Vishwas Scheme and paid the taxes thereon. Therefore, the allegation of the Ld. Assessing Officer that Gati Ltd. has not offered the said surplus income for tax and



the treatment given in the books of accounts of the assessee is merely as book entry, is incorrect.

9.14 The Ld. counsel for the assessee further submitted that the reliance placed by the Ld. CIT(A) on AS-14 is incorrect, as AS-14 is applicable only in case of amalgamation and demerger whereas assessee has acquired EDSC business on a slump sale basis as a going concern.

9.15 In relation to the allegation of the Ld. CIT(A) that 5<sup>th</sup> proviso (now 6<sup>th</sup> proviso) to section 32(1) of the Act is applicable to the facts of the assessee's case as it is a case of succession, therefore, depreciation on goodwill for the year under consideration in the hands of the successor i.e. the assessee, and predecessor shall be apportioned in the ratio of period of use of assets, the Ld. counsel for the assessee submitted that since no depreciation on goodwill as intangible assets was claimed by the "Gati Ltd.", the assessee being the successor cannot claim any depreciation invoking 5<sup>th</sup> Proviso of section 32(1) of the Act. The Ld. Counsel for the assessee submitted that for three reasons 5<sup>th</sup> proviso (now 6<sup>th</sup> proviso) to section 32(1) of the Act is not applicable to the facts of the assessee's case. **Firstly**, 5<sup>th</sup> proviso is applicable only to succession referred to in clause (xiii), (xiib) and (xiv) of section 47 of the Act or section 170 or amalgamation or demerger and not the case of transaction of the slump sale. The Ld. Counsel submitted that the assessee has taken over business EDSC of Gati ltd. on the slump sale basis as a going



concern and it is not a case of any of the modes referred to in 5<sup>th</sup> proviso to section 32(1) of the Act. Therefore, the question of invoking 5<sup>th</sup> proviso does not arise. **Secondly**, 5<sup>th</sup> proviso is applicable when the succession has taken place during the year and not at the beginning of the year or at the end of the year. The BTA was entered into on 13.02.2012 and the business was transferred from the closing date i.e. 31.03.2012 relevant to assessment year 2012-13. The transfer had taken place at the close of the business hours on 31.03.2012. Therefore, 5<sup>th</sup> proviso shall have no applicability. **Thirdly**, 5<sup>th</sup> proviso is applicable only if the asset is also appearing in the books of accounts of the predecessor company. The Ld. Counsel for the assessee submitted that since, the intangible and goodwill were self-generated assets, same were not appearing in the books of Gati Ltd. Therefore, the question of claiming any depreciation by the predecessor on the same does not arise. The 5<sup>th</sup> proviso is applicable only when the predecessor company is also claiming depreciation. In this case, the question of Gati ltd claiming any depreciation does not arise. In view of the above three reasons, the proviso to section 31(1) of the Act is no applicability to the facts of the case of the assessee.

9.16 In this regard, the Ld. counsel for the assessee relied on the decision of the coordinate bench of Tribunal in the case of **Thermo Fisher Scientific India (P) Ltd. v. DCIT (155 taxmann.com 346)**, wherein the Tribunal has held that 5<sup>th</sup> proviso will not be applicable



in a case where goodwill was not in existence as an intangible asset in the case of the predecessor company from whom the assessee acquired a corresponding units under slump sale. In the said case also business was taken over on a slump sale basis and the Tribunal held that assessee is eligible for depreciation of goodwill arising pursuant to slump sale.

9.17 The Ld. counsel for the assessee further placed reliance on the decision of the Coordinate bench Bangalore Tribunal in the case of **I & B Seeds P. Ltd. v. DCIT (142 Taxmann.com 274)**. In said case, the assessee company had taken over a business of a negative net worth company on a slump sale basis. The Tribunal held that 5<sup>th</sup> proviso to section 32(1) of the Act restricts aggregate deduction both by the predecessor and the successor and has no effect in a particular year where there is no aggregate reduction. The 5<sup>th</sup> proviso in any case, will apply only in the year of succession and not in subsequent years. Further, the Tribunal held that 5<sup>th</sup> proviso is applicable only in the case of an asset already existing and it is not applicable on assets recognized only by the successor company pursuant to slump of purchase. Further, the Tribunal held that depreciation is allowable on goodwill arising pursuant to slump sale transaction. The Ld. counsel for the assessee further relied on the decision of the Hon'ble Delhi High Court in the case of **Areva T & D Ltd. v. DCIT (345 ITR 421)** wherein the intangibles acquired



pursuant to a slump sale agreement are held to be eligible for depreciation.

10. On the contrary, the Ld. DR relied on the decision of the Coordinate Bench of the Tribunal in the case of **Borkar Packaging (P.) Ltd. v. ACIT (2010) 131 TTJ 99 (Panaji), Jeypore Sugar Co. Ltd. v. ACIT [2011] 9 taxmann.com 122 (Visakhapatnam)**. In the rejoinder, the Ld. counsel for the assessee submitted that both the decisions are for the period prior to the decision of the Hon'ble Supreme Court in the case of Smiffs Securities Ltd. (supra).

11. We have heard rival submission of the parties and perused the relevant material on record. Before us, the issue which emerges from the facts of the cases is whether the 'goodwill' has arisen in the case of the assessee under BTA for transfer of 'EDSC' unit of the Gati Ltd. to the assessee. The main allegation of the lower authorities is that under the 'BTA' neither any intangible in the form of business or commercial rights or goodwill specially transferred to the assessee. In our opinion, this allegation is without any basis. The Ld. counsel for the assessee has referred to the relevant clause of the BTA wherein the business and commercial rights which were in existence with the 'EDSC' unit of the Gati Ltd. have been transferred to the assessee. The Ld. Counsel for the assessee has duly explained the number of franchisee, distribution network, warehouses and the brand name associated with the EDSC which has been acquired under the



slump sale. Further, the Ld. Counsel for the assessee has also brought on record the effect of increasing turnover and the profit of the assessee consequent to business and transfer rights along with goodwill received under the BTA. Further, we also do not agree with the allegation of the lower authorities that no consideration has been paid to the Gati Ltd. for acquiring such intangibles including business and commercial rights and the goodwill. It is evident that assessee has acquired liabilities in excess of the assets amounting to Rs.125 crores and such liability is discharged by the assessee in subsequent years and therefore, that liability discharged and paid is in the form of consideration for acquiring intangibles in the form of business and commercial rights and goodwill. Regarding the allegation of the lower authorities that Gati Ltd. has not shown any such gain on the slump sale, the Ld. counsel for the assessee has brought on record that in the case of the Gati Ltd., the Co-ordinate Bench of the Tribunal (supra) held the transaction of the slump sale resulting into capital gain in the hand of the Gati Ltd. The Ld counsel has submitted that the said decision of the Tribunal has been accepted by the Gati Ltd. and the tax on such capital gain has been paid under 'Vivad se vishvas' scheme of the CBDT i.e. dispute resolution scheme. This fact has not been disputed by the Ld. DR and therefore, this allegation of the lower authorities that Gati Ltd. has not treated the transaction as capital gain, is now no more valid. Further, regarding the allegation of the transaction being treated in the books of accounts as under accounting standard (AS-



14), we are of the view that treatment of transaction in books of account of the assessee is not determinative of its taxability under the provisions of the Income-tax Act and the transaction has to be examined as per the provisions of the Act only. Regarding the allegation of the transaction falling under the 5<sup>th</sup> proviso (now 6<sup>th</sup> proviso) to section 32(1) of the Act is concerned, we are of the opinion that said proviso only relate to the transaction in the nature of the succession/amalgamation or demerger and not in case of succession through slump sale. Further, the business and commercial rights and goodwill have been self-generated and were not appearing in the books of account of the Gati Ltd. , therefore, there was no question of claiming depreciation by the Gati Ltd. Hence, the question of depreciation in the hands of the Gati Ltd. and the assessee invoking 5<sup>th</sup> proviso to section 32(1) of the Act does not arise. Accordingly, the contentions of the Ld. DR are rejected. The Co-ordinate Bench of the Tribunal in the case of **Thermo Fisher Scientific India (P) Ltd. (supra)** has examined the issue of depreciation or goodwill recognized on purchase of unit under slump sale and held that depreciation is allowable on the goodwill acquired under the slump sale. The relevant finding of the Tribunal is reproduced as under:

*“5.18 We have heard rival submission of parties. The issue in dispute is claim of depreciation on Goodwill recognised by the assessee in two transaction of acquisition of two units. The assessee claimed that those acquisitions are for purchase of unit for lumpsum consideration, as going concerns in the nature of slump sale, which is subject to capital gain tax u/s 50B in the hand of seller. Whereas the according the Assessing officer the acquisitions are in the nature of amalgamation. Before us, the learned*



counsel has referred to various clauses of business transfer agreement (BTA) in respect of units acquired from GSK and CTPL respectively. On perusal of relevant clauses referred, we find that transaction in both the cases are of slump sale and not, amalgamation as stated by the Assessing Officer.

5.19 The learned Assessing Officer has further relied on the Explanation 7 to section 43(1) of the Act, to hold that assessee is not entitled for depreciation on the Goodwill recognised. For ready reference, the relevant explanation is reproduced as under:

*“Explanation 7.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.*

*Explanation 7A.—Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business :*

*Provided that such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company.”*

5.20 On perusal of the above Explanation, we find that same is in relation to transactions of amalgamation and not related to slump sale transactions, which is the case of the assessee.

5.21 The learned Assessing Officer has further relied on Explanation-2 to section 43(6) of the Act, which reads as under:

*“Explanation 2.—Where in any previous year, any block of assets is transferred,—*

*(a) by a holding company to its subsidiary company or by a subsidiary company to its holding company and the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied; or*

*(b) by the amalgamating company to the amalgamated company in a scheme of amalgamation, and the amalgamated company is an Indian company,*

*then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the transferee-company or*



*the amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.*

5.22 *On perusal of above Explanation, we find that it is in relation to acquisition of a subsidiary company by its holding company or vice versa and in relation to transactions of amalgamation and not in respect of slump sale.*

5.23 *The learned Assessing Officer has further relied on fifth proviso (now sixth proviso) to section 32(1)(ii) of the Act, which is reproduced for ready reference:*

*“Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.”*

5.24 *On plain reading of the above proviso, it is clear that same is in relation to allocation of the depreciation on the asset between predecessor and successor entities, whereas in the instant case goodwill was not in existence as intangible asset in the case of predecessor companies from whom the assessee has acquired corresponding units under slump sale. Therefore, the said provision is also not applicable of the facts of the instant case.*

5.25 *The ratio is in the case of United Breweries (supra) is also not applicable over the facts of case as in the said case there was amalgamation of the three wholly owned subsidiaries whereas in the instant case there is a acquisition of units of third parties by way of slump sale.*

5.26 *The learned DR before us submitted that allocation of values to the fixed asset acquired has been on lower side for creating goodwill as intangible asset. But in our opinion, if the quantum of goodwill is reduced,*



*the valuation of the fixed asset will increase, which are also eligible for depreciation and thus in the exercise of reallocation of values among the goodwill and other fixed asset, will be a revenue neutral exercise.*

*5.27 In view of the above discussion, we concur with the arguments of the learned counsel of the assessee that goodwill arising from transactions of acquisition of units of GSK and CTPL, is eligible for depreciation under the provisions of the Act. As far as claim of the assessee for allowing depreciation on said goodwill corresponding to assessment year 2008-09, we are of the opinion that claim with respect to depreciation for assessment years 2008-09, cannot be allowed in the appeal for assessment year 2009-10. It is for the assessee to explore necessary remedy under the provisions of the Act or any other legal remedy as advised. The ground No.2 (two) of the appeal of the assessee is accordingly allowed.”*

11.1 The Co-ordinate Bench of the Tribunal in the case of **I & B Seeds P. Ltd. (supra)** also held that goodwill arising on slump sale is eligible for depreciation and 5<sup>th</sup> proviso to section 32(1) of the Act is not applicable on slump sale. The relevant finding of the Tribunal is reproduced as under:

*“13.10. In this case, the AO did not principally contend against the position of the Appellant, that the goodwill recorded by it is an intangible asset eligible for depreciation under Section 32(1) of the Act. In our opinion, the claim of assessee is to be allowed on the following lines:-*

*i. The said goodwill is in the nature of any other commercial or business right under the category of an intangible asset that is eligible for depreciation under section 32 of the Act. The issue whether Goodwill arising on transfer is eligible for depreciation or not, is no longer Res-Integra, and has been settled by the Hon'ble SC in the case of Smifs Securities Ltd. (348 ITR 302), wherein held that “in the present case, it is the valuation that is challenged and not the eligibility of depreciation on goodwill.” The position of law held by the Hon'ble SC constitutes the law of the land and is binding on all the lower authorities, in terms of Article 141 of the Constitution of India.*

*ii. In this regard, we place further reliance on the decision of the Hon'ble Karnataka High in the case of Manipal Universal Learning P. Ltd., 255 ITR 26, the facts and circumstances of which are similar to the present case, wherein the Hon'ble HC allowed the claim of depreciation on goodwill arising on acquisition of business under slump sale model, reiterating the decision of the Hon'ble SC in the case of Smifs Securities (Supra).*



iii. Further, we place reliance on the following decisions, wherein it was principally held that goodwill is an intangible asset eligible for depreciation under section 32 of the Act in the context of business transfer through slump sale:

Areva T & D India Ltd. 345 ITR 21
Truine Energy Services (P) Ltd. 65 taxmann.com 238
Toyo Engineering India India Limited TS-811-HC-2012
Volvo India Pvt. Ltd. TS-391-ITAT-2019
Dorma India Pvt. Ltd. TS-735-ITAT-2019

13.11. The sixth proviso to Section 32(1) of the Act also not applicable. It is applicable, only in case of assets already existing in the books of predecessor company on which predecessor company was claiming depreciation before slump purchase, and it is not applicable on assets recognized only by successor company pursuant to such slump purchase. The legislative intent behind the introduction of the said proviso was to curb the practice of claiming' depreciation on the 'same assets' by both the predecessor company and the successor company. This evident from the memorandum explaining the provisions of Finance Bill, 1996, which introduced the sixth proviso (erstwhile fifth proviso) to section 32(1) of the Act. Thus, a commonality of assets should exist between predecessor and the successor goodwill arising pursuant to acquisition belongs only to successor company.

13.12. Further, the Ahmedabad Bench of the Tribunal, in the case of Urmin Marketing Pvt. Ltd., 122 taxmann.com 40 rejected invocation of the said proviso and held that the same is not applicable in a case where goodwill is recorded pursuant to a merger, on the basis of purchase consideration paid (which is determined based on a valuation report), and no goodwill from the books of the transferor is recorded by the transferee.”

11.2 We find that the Co-ordinate Bench of the Tribunal Chennai in the case of **ACIT v. Dorma India (P.) Ltd. [IT Appeal Nos. 1664 to 1666/Chny/2019** dealt with the eligibility of depreciation of goodwill under the slump sale agreement and held that excess payment made over the tangible immovable assets (net of liabilities) acquired is towards intangible assets acquired by the taxpayer under business contract and thus the payments by the taxpayers over and above is to be treated as goodwill and depreciation is allowed on the same. The case laws relied upon by the Ld. DR



pertain to the period prior to the decision of the Hon'ble Supreme Court in the case of Smiff Securities Pvt. Ltd. (supra) and therefore, ratio of the said cases is not applicable over the facts of the instant case. In those cases the excess of assets over the liabilities was not held to be in the nature of goodwill.

11.3 In view of the above discussion and relying on the decisions discussed above, we set aside the finding of the Ld. CIT(A) on the issue in dispute and direct the Assessing Officer to allow the depreciation on the amount of the goodwill recorded in the books of accounts of the assessee under the BTA between the assessee and the Gati Ltd. The ground Nos. 2.1 and 2.2 of the appeal are accordingly allowed.

12. The ground Nos. 3.1 and 3.3 of the appeal of the assessee relates to deduction disallowed of Rs.53,85,488/- in respect of two items (i) amount of receivables/bad debt written off of Rs.18,16,695/- (ii) advance and loans written off amounting to Rs.35,68,793/-.

13. Before the Assessing Officer it was submitted that sum of Rs.18,16,695/- was included in the income of Gati Ltd. in earlier years and formed part of the receivables. Regarding the amount of Rs.35,08,793/- it was submitted that Gati Ltd. advanced said sum to various parties for his business requirements. Both those amounts were taken over by the assessee under the business



transfer agreement. However, the assessee could not recover both these amounts and therefore, suffered loss. The Assessing Officer as well as the Ld. CIT(A) rejected the claim the deduction for the said loss by holding that **firstly**, the advances written off amounting to Rs.35,68,795/- were not offered income in earlier years in the hands of the assessee. Further, the Assessing Officer observed that assessee has not adduced any evidence that those advances were business advances. **Secondly**, regarding receivables written off amounting to Rs.18,16,695/- it is observed that same were not offered income by the assessee in the earlier year therefore, cannot be allowed as bad debt written off u/s 32(2) of the Act in the hands of the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“7.3 I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. This is an undisputed fact that a sum of Rs. 53,85,488/- being bad debts written off has been charged against profits chargeable to tax. The said sum comprises of -(i) bad debt of Rs. 18,16,695/- which has been offered as income in the hands of M/s Gati Limited in earlier years; and ii) business advances of Rs. 35,68,793/- which was written off as irrecoverable. On these facts, it is evident that the said sum of Rs. 53,85,488/- has not been taken into account in computing income of the appellant in any previous years. The debt of Rs. 18,16,695/- has been offered as income in the hands of M/s Gati Limited, the holding company, and not in the hands of the appellant company. The remaining sum of Rs. 35,68,793/- being in the nature of irrecoverable business advance has also not been offered as income in the hands of the appellant in any previous year.*

*7.4 The clause (vii) of section 36 (1) provides that the amount of any bad debt or part thereof which is written off as irrecoverable in the account of the assessee for the previous year, shall be allowed as deduction in computing business income, subject to the provisions of section 36(2). Section 36(2) lays down several conditions for allow ability of deduction for a bad debt or part thereof. One of such conditions, specified in clause i) thereof, is that no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the*



*assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year. In the instant case, it is clear from facts that the sum of Rs. 53,85,488/-, which has been charged to profits for the year on account of bad debts written off, cannot be allowed as deduction in computing income under section 28, for reason that the said sum has not been taken into account in computing income of the appellant company in any previous year.*

*7.4.1 Hon'ble Madras High Court in the case of Tube Investments of India Ltd. Vs JCIT(2016) (67 taxmann.com 59) (Madras) has taken note of the finding reverted by the Assessing Officer that the debt was not part of the assessee's stock-in-trade and that it has not been incurred while purchasing or selling the goods in which the company was dealing with and, on these facts upheld that the expenditure involved cannot be treated as a debt and therefore, it is not an admissible deduction.*

*7.4.2 Hon'ble Supreme Court in the case of Pr. CIT Vs Khyati Realtors (P.) Ltd. (2022) (141 taxmann.com 461) (SC) has held that where assessee-company, engaged in business of real estate and financing, failed to prove that amount paid to a developer as advance for booking commercial space was in its ordinary course of business, said amount being written off as bad debt could not be allowed.*

*7.4.3 In the instant case, the issue and the material facts for the year under consideration i.e. Assessment Year 2013-14 are identical. Therefore, I see no reason to deviate from the ratio of above Court rulings.*

*7.5 In view of the facts and circumstances of the case, and respectfully following the judicial precedent, I find that the disallowance of bad debts of Rs. 53,85,488/- charged to profits for the year has been correctly made by the Assessing Officer, as the said sum has not been taken into account in computing income of the appellant in any previous year. The action of AO in making the disallowance of Rs. 53,85,488/- on this account does not call for any interference, hence sustained. These grounds of appeal are dismissed.”*

14. Before us, the Ld. counsel for the assessee submitted that the aforesaid receivables as well as advances of Gati Ltd. were taken over by the assessee under the BTA. Those receivables were duly taken into consideration by the Gati Ltd. in the income offered and therefore, the assessee meets the condition of section 36(2) of the Act and deduction for same is allowable. Regarding the advances and loans written off it was submitted that the losses arising were incidental to the business of the assessee and therefore same are to



be allowed as deduction while computing profit and gains of business or profession. Further, the Ld. counsel submitted that there was no requirement of furnishing any evidence in respect of advances made during the course of business because once the assessee has entered into shoes of the Gati Ltd. there is no further obligation on the part of assessee to adduce evidence in respect of transaction undertaken by the Gati Ltd.

15. On the other hand, the Ld. DR submitted that under the slump sale the assessee has purchased going concern of the assessee and it is not a case of succession of the another entity by the assessee and therefore, the assessee does not fulfill the condition of section 36(2) in respect of receivables and conditions u/s 28 of the Act in respect of advances and loans written off treating it to be business advances.

17. We have heard rival submission of the parties. The issue in dispute is whether the debt and advances of the unit of predecessor company, which have been acquired by the successor company under slump sale, however written off subsequently due non recoverability, are eligible for deduction u/s 32(2) as bad debt or loss of business respectively. An identical issue came up before the Hon'ble Supreme Court in the case of **CIT Vs T Veerabhadra Rao & KKoteswara Rao & Co. reported in 155 ITR 152 (SC)**. In said case the assessee, a partnership firm, took over the business of an earlier firm resulting into all the assets and liabilities of the



predecessor firm passed on to the assessee firm, which included a debt of ₹ 23,577/- due from luxury trading company to the predecessor firm. The total amount due in the account relating to the Laxmi trading company was ₹ 40,549/-comprising an outstanding amount of ₹ 29, 200/-and interest thereon in the sum of ₹ 11, 349/-for the period 31<sup>st</sup> April, 1960 to 31/03/1961. The amount of interest was taxed in the hands of the assessee for the assessment year 1963-64 on 31/03/1965. The parties affected a settlement under which a sum of ₹ 25,000 was accepted by the assessee in full settlement of said debt and the balance amount of ₹15,100/-was written off as a recoverable. In background of the above facts, the Hon'ble Supreme Court observed that *if the business along with its assets and liabilities is transferred by one owner to the another, there is no reason why a debt so transferred should not be entitled to the same treatment in the hands of the successor. The Hon'ble Supreme Court observed that the recovery of the debt is right transferred along with numerous other rights comprising the subject of the transfer any of the law permits the transfer to treat the whole or part of the debt as a recoverable and to claim a deduction on that account, it seems difficult to accept that same right should not be recognised in the hands of the transferee.* The relevant observations of the Hon'ble Supreme Court are reproduced as under:

*"It is not disputed that the assessee succeeded to the business of the predecessor firm and took over all its assets and liabilities, including the debt due from Laxmi Trading Company. The business carried on by the*



*predecessor firm was now carried on by the assessee. The facts also show that the assessee paid income tax on the interest income accruing on the debt for the assessment year 1963-64. It is also not disputed that the parties effected a settlement on March 31, 1965 whereby a sum of Rs. 25,000 was accepted by the assessee in satisfaction of the debt and that the balance of Rs.15,100 was written off by the assessee as irrecoverable. The question is whether money owed by a debtor under a transaction with a predecessor firm can be written off as irrecoverable in the accounts of its successor, the assessee, in a subsequent year and could be claimed as a bad debt under cl.(vii) of sub-s.(1) of s.36 of the Income Tax Act, 1961.*

*Cl.(vii) of sub-s.(1) of s.36 of the Income Tax Act, 1961 provides :*

*"36.(1). The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 - .....*

*(vii) subject to the provisions of sub-s.(2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year".*

*Sub-s.(2) of s.36 declares :-*

*"(2). In making any deduction for a bad debt or part thereof, the following provisions shall apply :-*

*(i) no such deduction shall be allowed unless such debt or part thereof -*

*(a) has been taken into account in computing the income of the assessee of the previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee, and*

*(b) has been written off as irrecoverable in the accounts of the assessee for that previous year;*

*(ii) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;*

*(iii) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year, but the Income-tax Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;*

*(iv) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year and the Income-tax Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the*



previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply".

S.28, referred to in sub-s.(1) of s.36, provides that income under the head "Profits and gains of business or profession", shall be chargeable to income-tax. The profits and gains of a business are charged to income-tax. To compute the profits and gains so chargeable, s.36 provides for allowing a number of deductions. Each of the deductions must relate to the business. If the same assessee was carrying on a business and he wrote off a debt relating to the business as irrecoverable, he would without doubt be entitled to a corresponding deduction under cl.(vii) of sub- s.(1) of s.36 subject to the fulfilment of the conditions set forth in sub-s.(2) of s.36. If a business, along with its assets and liabilities, is transferred by one owner to another, we see no reason why a debt so transferred should not be entitled to the same treatment in the hands of the successor. The recovery of the debt is a right transferred along with the numerous other rights comprising the subject of the transfer. If the law permits the transferor to treat the whole or part of the debt as irrecoverable and to claim a deduction on that account, it seems difficult to accept that the same right should not be recognised in the transferee. It is merely an incident flowing from the transfer of the business, together with its assets and liabilities, from the previous owner to the transferee. It is a right which should, on a proper appreciation of all that is implied in the transfer of a business, be regarded as belonging to the new owner. Unless the language of the statute plainly and clearly compels a construction to the contrary, the normal rule of the law should be given its proper play. It is true that cl.(i) of sub-s.(2) of s.36 declares that a deduction can be allowed only if the debt, or part thereof, has been taken into account in computing the income of the assessee of that previous year or an earlier previous year and that it has also been written off as irrecoverable in the accounts of the assessee for that previous year. In the present case, the debt was taken into account in the income of the assessee for the assessment year 1963-64 when the interest income accruing thereon was taxed in the hands of the assessee. The interest was taxed as income because it represented an accretion accruing during the earlier year on money owed to the assessee by the debtor. The item constituted income because it represented interest on a loan. The nature of the income indicated the transaction from which it emerged. The transaction was the debt, and that debt was taken into account in computing the income of the assessee of the relevant previous year. It is the same assessee who has subsequently, pursuant to a settlement, accepted part payment of the debt in full satisfaction and has written off the balance of the debt as irrecoverable in his accounts. It appears therefore that the conditions in both sub-clauses

(a) and (b) of cl.(i) of sub-s.(2) of s.36 are satisfied in the present case, and the High Court as well as the Appellate Tribunal and the Appellate Assistant Commissioner are right in the view which they took.

It seems to us that even if the debt had been taken into account in computing the income of the predecessor firm only and had subsequently been written off as irrecoverable in the accounts of the assessee, the



*assessee would still have been entitled to a deduction of the amount written off as a bad debt. It is not imperative that the assessee referred to in sub-cl.(a) must necessarily mean the identical assessee referred to in sub-cl (b). A successor to the pertinent interest of a previous assessee would be covered within the terms of sub-cl.(b). The successor assessee, in effect, steps into the shoes of his predecessor.*

*Accordingly, we hold that the assessee in the instant case was entitled to the deduction as a bad debt of the sum of Rs. 15,100 written off by it in its accounts of the previous year as irrecoverable.*

*We may add that although a number of decisions of various High Courts were cited before us on behalf of the assessee we consider it unnecessary to refer to them.*

*As regards the sum of Rs.6,880 claimed by the assessee as legal expenses in connection with an appeal filed in this Court to recover an amount due from the Central Government, it is apparent that the transaction related to the predecessor firm and the suit instituted by it was continued by the assessee on taking over the assets and liabilities of the predecessor firm. The Income Tax Officer, the Appellate Assistant Commissioner, the Appellate Tribunal and the High Court dealt with this claim on the same basis as the claim made in respect of the bad debt. We are satisfied that the view we are taking in respect of the sum of Rs. 15,100 claimed as a bad debt should also form the basis for acknowledging the claim to deduction of Rs.6,880.”*

17.1 Respectfully following the above decision, we are of the opinion that in principle deduction for the bad debt written off and advances written off cannot be disallowed in the hands of the assessee for the reason that same were not transacted by the assessee and only received under the transaction of slum sale. We reject the finding of the 1d CIT(A) on this issue. However, the assessee has to satisfy the requirement of section 32(2) of the Act in respect of amount of ₹ 18,16,695/- and demonstrate that said sum was part of the debt under the ordinary course of the business and shown as income in earlier years by the predecessor . The assessee has also to demonstrate whether any interest income was shown in its books of accounts in respect of those debts. Regarding the loans



and advances written off amounting to ₹ 35,68,793/-, the assessee is required to demonstrate whether those loans and advances were for the purpose of the business of the predecessor. The assessee cannot take the shelter under the business transfer agreement and claim that the assessee is not required to satisfy the requirement of law. Accordingly, we set aside the finding of the Ld. CIT(A) and the Assessing Officer on this issue in dispute, and restore the matter back to the file of the Assessing Officer for deciding afresh in accordance with law, with the direction to the assessee to produce all the relevant document to support its claim as discussed above. Accordingly, ground Nos. 3.1 to 3.2 of the appeal are allowed for statistical purposes.

18. Now we take up the appeal for assessment year 2014-15. The grounds raised by the assessee are reproduced as under:

*1.1. On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC") vide order dated June 13, 2023 under section 250 of the Income tax Act, 1961 ("the Act") erred in confirming the order of the Learned Asst. Commissioner of Income tax 2(2), Hyderabad ("Ld. AO") vide order dated December 9, 2016 under section 143(3) of the Act ("impugned order") without appreciating that the same is contrary to law.*

*1.2 The Appellant prays that the impugned order dated December 9, 2016 be quashed and set aside.*

*2.1 On the facts and in circumstances of the case and in law, the Ld. NFAC erred in confirming the disallowance made by the Ld. AO of depreciation amounting to Rs. 23,44,85,217 claimed on intangibles and goodwill arising out of Business Transfer Agreement dated February 13, 2012 entered into with Gati Ltd. for acquiring Express distribution and Supply chain business on a going concern basis from the close of business hours on March 31, 2022.*



2.2 The Appellant prays that the Ld. AO be directed to allow deduction of depreciation amounting to Rs. 23,44,85,217 claimed on intangibles and goodwill.

3.1 On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming disallowance made by the Ld. AO of interest amounting to Rs. 49,727 paid on late payment of tax deducted at source.

3.2 The Appellant prays that the Ld. AO be directed to allow deduction of interest amounting to Rs. 49,727 paid on late payment of tax deducted at source.

18.1 The ground No. 1 is general in nature. The ground No. 2.1 and 2.2 relates to depreciation on intangible and goodwill. This issue has already been adjudicated by us in the appeal of the assessee for assessment year 2013-14. Respectfully following our finding the issue in dispute is decided *mutatis mutandis*.

18.2 The ground No. 3.1 and 3.2 of the appeal relates to disallowance of interest amounting to Rs.49,727/- paid for late payment of tax deducted at source. Before us, the Ld. counsel for the assessee submitted that assessee did not press the said ground. Therefore, the said ground is dismissed as infructuous.

19. Now we take appeal for assessment for assessment year 2015-16. The grounds raised by the assessee are reproduced as under:

1.1 On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC") vide order dated June 14, 2023 under section 250 of the Income tax Act, 1961 ("the Act" erred in confirming the order of the Learned Asst. Commissioner of Income tax 2(2), Hyderabad ("Ld. AO") vide order dated December 12, 2017 under section 143(3) of the Act ("impugned order") without appreciating that the same is contrary to law.

1.2 The Appellant prays that the impugned order dated December 12, 2017 be quashed and set aside.



2.1. On the facts and in circumstances of the case and in law, the Ld. NFAC erred in confirming the disallowance of made by the Ld. AO of depreciation amounting to Rs. 17,58,63,913/- claimed on intangibles and goodwill arising out of Business Transfer Agreement dated February 13, 2012 entered into with Gati Ltd. for acquiring Express distribution and Supply chain business on a going concern basis from the close of business hours on March 31, 2022.

2.2. The Appellant prays the Ld. AO be directed to allow deduction of depreciation amounting to Rs. 17,58,63,913/- claimed on intangibles and goodwill.

19.1 The ground No. 1 is general in nature. The ground No. 2.1 and 2.2 relates to depreciation on intangible and goodwill. This issue has already been adjudicated by us in the appeal of the assessee for assessment year 2013-14. Respectfully following our finding, the issue in dispute is decided *mutatis mutandis*.

20. Now, we take appeal for assessment for assessment year 2016-17. The grounds raised by the assessee are reproduced as under:

1.1 On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC") vide order dated June 14, 2023 under section 250 of the Income tax Act, 1961 ("the Act") erred in confirming the order of the Learned Asst. Commissioner of Income tax 2(2), Hyderabad ("Ld. AO") vide order dated December 13, 2018 under section 143(3) of the Act ("impugned order") without appreciating that the same is contrary to law.

1.2. The Appellant prays that the impugned order dated December 13, 2018 be quashed and set aside.

2.1. On the facts and in circumstances of the case and in law, the Ld. NFAC erred in confirming the disallowance made by the Ld. AO of depreciation amounting to Rs. 13,18,97,934 claimed on intangibles and goodwill arising out of Business Transfer Agreement dated February 13, 2012 entered into with Gati Ltd. for acquiring Express distribution and Supply chain business on a going concern basis from the close of business hours on March 31, 2022.



*2.2 The Appellant prays that the Ld. AO be directed to allow deduction of depreciation amounting to Rs. 13,18,97,934 claimed on intangibles and goodwill.*

20.1 The ground No. 1 is general in nature. The ground Nos. 2.1 and 2.2 relates to depreciation of intangible and goodwill. This issue has already been adjudicated by us in the appeal of the assessee for assessment year 2013-14. Respectfully following our finding, the issue in dispute is decided *mutatis mutandis*.

21. Now, we take appeal for assessment year 2017-18. The grounds raised by the assessee are reproduced as under:

*1.1. On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC") vide order dated June 14, 2023 under section 250 of the Income tax Act, 1961 ("the Act") erred in confirming the order of the Learned Asst. Commissioner of Income tax 2(2), Hyderabad ("Ld. AO") vide order dated November 25, 2019 under section 143(3) of the Act ("impugned order") without appreciating that the same is contrary to law.*

*1.2. The Appellant prays that the impugned order dated November 25, 2019 be quashed and set aside.*

*2.1 On the facts and in circumstances of the case and in law, the Ld. NFAC erred in confirming the disallowance of made by the Ld. AO of depreciation amounting to Rs. 9,89,23,451 claimed on intangibles and goodwill arising out of Business Transfer Agreement dated February 13, 2012 entered into with Gati Ltd. for acquiring Express distribution and Supply chain business on a going concern basis from the close of business hours on March 31, 2022.*

*2.2 The Appellant prays that the Ld. AO be directed to allow deduction of depreciation amounting to Rs. 9,89,23,451 claimed on intangibles and goodwill.*

*3.1 On the facts and in circumstances of the case and in law, the Ld. NFAC erred in confirming the treatment of denial of MAT Credit by the Ld. AO amounting to Rs. 2,67,15,179.*

*3.2 The Appellant prays that the Ld. AO be directed to allow MAT credit amounting to Rs. 2,67,15,179.*



21.1 The ground No. 1 is general in nature. The ground No. 2.1 and 2.2 relates to depreciation on intangible and goodwill. This issue has already been adjudicated by us in the appeal of the assessee for assessment year 2013-14. Respectfully following our finding the issue in dispute is decided *mutatis mutandis*.

21.2 The ground No. 3.1 and 3.3 relate to denial of MAT credit by the Assessing Officer. The Ld. counsel for the assessee submitted that this ground is consequential. Accordingly, we are not required to adjudicate upon and the Assessing Officer is directed to give consequential effect.

22. In the result, appeal for AY 2013-14 is allowed partly for statistical purposes, appeal for AY 2014-15 is partly allowed, appeals for AY 2015-16 and 2016-17 are allowed and appeal for AY 2017-18 allowed partly.

**Order pronounced in the open Court on 13/05/2024.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 13/05/2024  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**