

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Shri George George K., Vice President
and**

Ms. Padmavathy S., Accountant Member

ITA No.1855/Bang/2024: Asst.Year : 2018-2019

M/s.Autodesk India Pvt.Ltd. 4 th Floor, Block Sunriver, Embassy Golf Links Business Park, Survey No.10/2A & 10/2B, Intrmediate Ring Road Challaghatta Village, Domlur Bangalore – 560 071. PAN: AABCA6924B.	vs.	The Deputy Commissioner of Income-tax, Circle 1(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by: Ms.Tanmaya, AR
Respondent by: Ms.Neha Sahay, JCIT-DR

Date of Hearing : 30.10.2024	Date of Pronouncement: 30.10.2024
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ORDER

Per: Padmavathy S., A.M.

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (the CIT(A) in short) dated 25.07.2024 for assessment year (AY) 2018-19. The assessee raised the following grounds of appeal –

“1. *The Order is bad in law and on facts*

1.1 *The Order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, New Delhi [‘Ld. CIT(A)] under section 250 of the Income Tax Act, 1961 (‘the Act’), is bad in law and on facts.*

2. *Disallowance of depreciation on goodwill of INR 31,713,006*

2.1 *The Ld. CIT(A) erred in not allowing depreciation of INR 31,713,006 as claimed by the Appellant.*

2.2 *The Ld. CIT(A) erred in not following the decision pronounced by the jurisdictional Bangalore Bench of the Income-tax Appellate Tribunal [ITAT] in the Appellant's own case for AY 2017-18, wherein following the Hon'ble SC decision in the case of M/s Smifs Securities Ltd (2012] 24 taxmann.com 220 and Jurisdictional High Court decision in the case of CIT versus Manipal Universal Learning (P) Ltd [2013] 34 taxmann.com 9 (Kar HC), the ITAT, inter alia, held that depreciation should be allowed considering the facts of the Appellant's case.*

3. *Erroneous levy of interest under section 234C of the Act*

3.1 *The Ld. CIT(A) erred in not adjudicating the above ground while passing the Order under section 250 of the Act.*

3.2 *On facts and in circumstances of the case, the National Faceless Assessment Center, Delhi ('Ld. AO') erred in levying interest under section 234C at INR 93,114 while passing the final assessment order for AY 2018-19.*

4. *Initiation of penalty proceedings*

4.1 *The Ld. CIT(A) erred in not adjudicating the above ground while passing the Order under section 250 of the Act.*

4.2 *The Ld. AO erred in initiating penalty proceedings under section 274 r.w.s 270A of the Act."*

2. The Assessee is engaged in the business of providing marketing, technical support and research and development services to its Associated Enterprises (AEs). The assessee filed the return of income for assessment year (AY) 2018-19 on 30.11.2018 declaring a total income of Rs.255,636,680. The assessee's case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessing officer (AO) completed the assessment under section 143(3) r.w.s.144B of the Income Tax Act 1961 (the Act) wherein the AO made the disallowance of depreciation on goodwill to the tune of Rs.31,713,006. On further appeal the CIT(A) confirmed the disallowance made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A)

3. The Id AR submitted that the disallowance made by the AO towards depreciation on goodwill is the continuation of the depreciation disallowed in the first year in which the goodwill was capitalised in AY 2017-18. The Id AR further submitted that the goodwill on which the depreciation is claimed by the assessee is arising out of the business transfer agreement (“BTA”) entered into by the assessee on 01.08.2016 with Delcam Software India Pvt. Ltd. (“Delcam”) for purchase of business undertaking by way of a slump sale for a lump sum consideration i.e. relevant to AY 2017-18. The Id AR also submitted that the coordinate bench in assessee's own case for AY 2017-18 (ITA(TP) 553/Bang /2022 dated 09.02.2023) has held that the assessee is entitled to claim depreciation on goodwill and that since the disallowance made in the current year is on the WDV of the same goodwill, the issue is squarely covered by the decision of the coordinate bench.

4. The Id DR on the other hand vehemently argued that the fair market value of the assets ought to have been determined on the date of the slump sale as per sub-rule (4) of Rule 11UAE of the Income Tax Rules, where as in assessee's case the value as per valuation report which is the basis for determining the value of goodwill is not correct. The Id DR further submitted that this aspect has not been considered by the coordinate bench while allowing depreciation for AY 2017-18 and therefore the issue needs to be looked at afresh.

5. We heard the parties and perused the materials on record. During the financial year relevant to AY 2017-18, the assessee had entered into a BTA with Delcam for purchase of business/undertaking by way of a slump sale for a lump sum consideration of Rs. 11,33,11,028/-. The book value of net liabilities transferred amounted to Rs. 5,58,25,006/-, resulting in a goodwill of Rs. 16,91,36,034/-. The AO did not allow the depreciation on the goodwill for AY 2017-18, and for the year under consideration, the AO has followed his

own findings of AY 2017-18 and disallowed the depreciation. We notice that the coordinate bench in assessee's own case for AY 2017-18, has considered the issue of depreciation on goodwill and held that –

11. We heard the rival submissions and perused the material on record. We will first look at some of the relevant clauses of the BTA agreement entered into by the assessee with Delcam. 11.1 From the above it is clear that the assessee has acquired the local business of Delcam as a going concern including the employees but excluding certain assets and liabilities which according to the assessee are not core to the functioning of the business taken over. The first contention of the revenue is that the entire assets have not been taken over leaving certain assets such as land & building etc., and therefore the entire transaction is not a slump sale. In this regard we will look at the definition of “slump sale” as contained in section 2(42C) of the Act which reads as under –

"Slump sale means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. Explanation 1.—For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA). Explanation 2.—For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities

Explanation 1 to clause (19AA) – “undertaking” For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

11.2 From the plain reading of the above provisions it is clear that the for the purpose of a transaction to be considered as a slump sale there should be a transfer of an undertaking / business and the assets or liabilities not constituting a business activity are excluded from undertaking / business. Therefore in assessee's case the transaction culminated between the assessee and Delcam cannot be held to be not a slump sale for the reason that entire assets and liabilities are not transferred. The next contention of the revenue is that there is specific intangible asset that is transferred as part of the agreement. We notice that the valuation report submitted by the assessee is

rejected by the AO stating that the report has no merits. In this regard the ld AR submitted that the valuation of the business that is transferred as part of slump sale is carried out by the independent Chartered Account who has done the valuation using DCF method. The ld AR also submitted that Delcam has paid the capital gain arising out the slump sale on the consideration which is paid basis the said valuation. Therefore ld AR submitted that the revenue is not justified in rejecting the valuation report in total without any finding to the contrary. From the agreement, we notice that the local business of Delcam is purchased by the assessee as a going concern and the consideration paid basis the valuation report is towards the business contracts, know how, skilled workforce, access to wider market etc. as contended by the ld AR. Once the department accepted the capital gain offered by the seller the same transaction cannot be doubted in the hands of purchaser. We therefore see no merit in the finding of the AO that the assessee has attributed a fictitious value to goodwill and has not valued it correctly. Under slump sale no value is attributed to the individual assets wherein the difference between the net book value and the consideration paid basis a recognised method is recorded as good will in the books of the assessee which in our view is done correctly.

11.3 On the issue of invoking the sixth proviso to Section 32(1) of the Act we are of the considered we that the same is not applicable in assessee's case where the goodwill recorded is arising out of the difference between the sale consideration of a slump sale and the net book value of the assets acquired. 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.

11.4 Now coming to the issue of the depreciation on goodwill, the Hon'ble Supreme Court in the case of Smifs Securities Ltd (supra) has considered a similar issue and held that –

4. Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences,

franchises or any other business or commercial rights of similar nature. A reading the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

5. In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act.

6. One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax (Appeals) ['CIT(A)', for short] has come to the conclusion that the authorised representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT', for short]. We see no reason to interfere with the factual finding.

11.5 The jurisdictional High Court in the case of Manipal Universal Learning (supra) has followed the above decision of the Apex Court and held that –

4. The Apex Court in the case of CIT v. SMIFS Securities Ltd. [2012] 24 taxmann.com 222/210 Taxman 428 has held that Explanation 3 to Section 32(1) of the Act, which defines the expression 'asset' includes intangible asset like goodwill. Therefore, the goodwill is an asset under Explanation 3(b) to section 32(1) of the Act. Therefore, the depreciation is leviable even on the goodwill. In view of the law declared by the Apex Court in the aforesaid judgment, the substantial question of law framed is answered in favour of the assessee and against the Revenue. No merits. Dismissed.

11.6 Respectfully following the above judicial pronouncements we hold that the depreciation on goodwill should be allowed considering the facts in assessee's case. The disallowance made in this regard is deleted.

6. The claim of depreciation for the year under consideration which is disallowed by the AO is the depreciation on the WDV of the same goodwill which was capitalised during the financial year relevant to AY 2017-18 and therefore in our considered view, the above decision of the coordinate bench is applicable to the impugned issue for the year under consideration. Accordingly respectfully following the above decision we direct the AO to delete the disallowance made towards depreciation on goodwill.

7. With regard to the arguments of the Id DR on the valuation of goodwill, we notice the rule 11UAE has come into effect from 24.05.2021 and therefore in our considered view contending issue on the basis of applicability of the said rule for the year under consideration is not tenable.

8. In result the appeal of the assessee is allowed.

Order pronounced in the open Court on 30th October, 2024.

Sd/-
(George George K.)
Vice President

Sd/-
(Padmavathy S.)
Accountant Member

Bengaluru, Dated: 30th October, 2024

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
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By Order

Assistant Registrar
ITAT, Bangalore