

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

**BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM**

I.T.A. No.1953/Mum/2023
(Assessment Year: 2015-16)

I.T.A. No.1954/Mum/2023
(Assessment Year: 2016-17)

I.T.A. No.1955/Mum/2023
(Assessment Year: 2017-18)

I.T.A. No.1956/Mum/2023
(Assessment Year: 2018-19)

Jet Privilege Pvt. Ltd., 703, Kanakia Wall Street, Andheri Kurla Road, Andheri East, Mumbai-400059. PAN : AACCCJ9147J	Vs.	DCIT, CC-5(2) (erstwhile DCIT-10(2)(1), Room No. 1908, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
Assessee)	:	Respondent)

I.T.A. No.2160/Mum/2023
(Assessment Year: 2016-17)

I.T.A. No.2161/Mum/2023
(Assessment Year: 2018-19)

I.T.A. No.2162/Mum/2023
(Assessment Year: 2015-16)

I.T.A. No.2163/Mum/2023
(Assessment Year: 2017-18)

DCIT, CC-5(2) Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	Jet Privilege Pvt. Ltd., 703, Kanakia Wall Street, Andheri Kurla Road, Andheri East, Mumbai-400059. PAN : AACCCJ9147J
Assessee)	:	Respondent)

C.O No. 98/Mum/2023 (arising out of I.T.A. No.2162/Mum/2023
(Assessment Year: 2015-16)

C.O No. 100/Mum/2023 (arising out of I.T.A. No.2160/Mum/2023
(Assessment Year: 2016-17)

C.O No. 101/Mum/2023 (arising out of I.T.A. No.2163/Mum/2023
(Assessment Year: 2017-18)

C.O No. 102/Mum/2023 (arising out of I.T.A. No.2161/Mum/2023
(Assessment Year: 2018-19)

Jet Privilege Pvt. Ltd., 703, Kanakia Wall Street, Andheri Kurla Road, Andheri East, Mumbai-400059. PAN : AACCCJ9147J	Vs.	DCIT, CC-5(2) Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
Assessee)	:	Respondent)

I.T.A. No.2287/Mum/2023
(Assessment Year: 2021-22)

Jet Privilege Pvt. Ltd., 703, Kanakia Wall Street, Andheri Kurla Road, Andheri East, Mumbai-400059. PAN : AACCCJ9147J	Vs.	DCIT, CC-5(2) (erstwhile DCIT-10(2)(1), Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
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Assessee)	:	Respondent)
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I.T.A. No.2325/Mum/2023
 (Assessment Year: 2021-22)

DCIT, CC-5(2) Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	Jet Privilege Pvt. Ltd., 703, Kanakia Wall Street, Andheri Kurla Road, Andheri East, Mumbai-400059. PAN : AACCCJ9147J
Assessee)	:	Respondent)

C.O No. 103/Mum/2023 (arising out of I.T.A. No.2325/Mum/2023
 (Assessment Year: 2021-22)

Jet Privilege Pvt. Ltd., 703, Kanakia Wall Street, Andheri Kurla Road, Andheri East, Mumbai-400059. PAN : AACCCJ9147J	Vs.	DCIT, CC-5(2) Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
Assessee)	:	Respondent)

Assessee / Assessee by : Shri J.D. Mistry, AR
Revenue / Respondent by : Shri Vivek Perampurna, CIT-DR
Date of Hearing : 03.10.2024
Date of Pronouncement : 11.11.2024

ORDER

Per Padmavathy S, AM:

These Cross Appeals by the assessee and the Revenue and the Cross Objections of the assessee are against the orders of Commissioner of Income Tax

(Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 29.03.2023 for Assessment Years (AY) 2015-16 to AY 2018-19, 29.03.2023 for AY 2016-17, 2017-18, 2018-19 and dated 24.04.2023 for AY 2021-22. The issues contended as tabulated below in these appeals are common and hence these appeals were heard together and disposed of through this common order –

Grounds of appeal	Appeal by	AY 2015-16	AY 2016-17	AY 2017-18	AY 2018-19	AY 2021-22
Assessee Appeal No.		ITA 1953/Mum/2023	ITA 1954/Mum/2023	ITA 1955/Mum/2023	ITA 1956/Mum/2023	ITA 2287/Mum/2023
Department Appeal No.		ITA 2162/Mum/2023	ITA 2160/Mum/2023	ITA 2163/Mum/2023	ITA 2161/Mum/2023	ITA 2325/Mum/2023
Cross Objection No.		CO 98/Mum/2023	CO 100/Mum/2023	CO 101/Mum/2023	CO 102/Mum/2023	CO 103/Mum/2023
Disallowance of depreciation claimed on goodwill and other intangible assets	A	4,52,93,35,670	3,39,70,01,752	2,54,77,51,314	1,91,08,13,485	45,87,04,670
Addition on account of difference in billing amount as per books of account and AIS/ Form 26AS	A			33,80,04,124		
Addition on account of miles difference between CRIS and SAP	A			24,00,000	78,60,000	
Consequential levy of interest under section 234B of the Act	A			✓	✓	
Excess levy of interest under section 234C of the Act on assessed income	A			✓	✓	
Additional Ground: Double taxation of provision for 'remeasurement of miles' disallowed in earlier years credited to the Profit & Loss Account under the head 'revenue from operations'	A					✓
Additional Ground: Double taxation of reversal of provision for rebranding disallowed in earlier years credited to the Profit & Loss Account	A					✓

ITA No. 1953/Mum/2023 –assessee's appeal for AY 2015-16.

2. The assessee is a private limited company engaged in the business of managing reward points and the loyalty programs for its program partners. The assessee filed the return of income for AY 2015-16 on 30.11.2015 declaring a loss of Rs. 356,44,15,278/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) on perusal of the computation of income noticed that the assessee has claimed depreciation under section 32(1) r.w.r 5 of the I.T. Rules at Rs. 4,54,94,71,728/- as against depreciation charged to the P&L A/c of Rs. 86,39,27,671/-. The AO further noticed

that during the year under consideration the assessee has made the following additions to the intangible assets against which the depreciation is claimed.

S · N o	Nature of Intangible Asset	Opening Balance as on 1.4.2014	Additions during the year	Deletions during the year	Rate of Depreciation	Depreciation during the year	Closing Balance
1	Software	0	8,20,549	Nil	60%	4,92,329	3,28,220
2	Commercial Agreement	Nil	4,48,71,00,000	Nil	25%	1,12,17,75,000	3,36,53,25,000
3	Brand / Trademarks	0	61,65,00,000	Nil	25%	15,41,25,000	46,23,75,000
4	Goodwill	0	13,01,37,42,680	Nil	25%	3,25,34,35,670	9,76,03,07,010
Total			18,11,81,63,229			4,52,98,27,999	13,58,83,35,230

3. The AO also noticed that Note No. 27 of the financial statements filed by the assessee contains the following statement with regard to the goodwill capitalized by the assessee in the financial statements –

“Slump Sale

The Company at its Board meeting held on 19th November 2013 approved the execution of various transactions and documents including slump sale agreement, ticket asset agreement and other relevant agreements relating to acquisition of 'Jet Privilege Frequent Flyer Programme' from Jet Airways (India) Limited.

During the year 2013-2014, the Company had paid an advance of Rs. 11,962,133,329 (including stamp duty) to Jet Airways (India) Limited against the Stamp sale agreement. On satisfaction of conditions to the Slump sale agreement and pursuant to Business Transfer agreement (BTA) dated 19th November 2013 between Jet Privilege Private Limited ("Company") and Jet Airways (India) Limited, ("transferor"), the Company acquired Jet Privilege Frequent Flyer Programme with effect from 21 April, 2014 on going concern basis.

The Company has done the allocation of purchase price to individual assets and liabilities based on valuation report by independent valuer.

The assets and liabilities taken over and resulted goodwill on acquisition of programme is as under:

<i>Tangible Assets and Software</i>	1,311,952
<i>Commercial agreement</i>	4,487,100,000
<i>Brand/Trademarks</i>	616,500,000
<i>Trade/Receivables</i>	157,119,934
<i>Receivables from JPPL (Existing)</i>	789,038,400
<i>TDS receivable on Co-brand Advance</i>	28,196,490
<i>Total Assets</i>	<u>6,079,266,776</u>
<i>Advance from JPPL Miles)</i>	2,900,000,000
<i>FFP Liability on legacy Miles</i>	3,903,600,000
<i>Advance from Co-brand partners</i>	281,964,899
<i>Trade Payables</i>	42,316,651
<i>Employee Funds</i>	1,994,576
<i>Total Liabilities assumed</i>	<u>7,130,876,127</u>
<i>Total consideration paid</i>	<u>11,962,133,329</u>
<i>Goodwill</i>	<u>13,013,742,680</u>

Consequently, the goodwill of Rs.13,013,742,680 arising from said acquisition is disclosed in the balance sheet, under the heading Intangible assets. ”

4. The assessee submitted before the AO that the assessee has acquired Jet Privilege Frequent Flyer Program (JPFFP) from M/s Jet Airways India Ltd. under slump sale and has paid a sum of Rs. 1196,21,33,329/- (including stamp duty) to M/s Jet Airways Ltd. against the said slump sale agreement. The assessee also furnished the details of asset & liabilities transferred on a going concerns basis by

M/s Jet Airways India Ltd. to the assessee by assigning individual values to all asset & liabilities of JPFFP based on valuation report by an independent valuer. After perusing the details furnished by the assessee, the AO noticed that the following intangible assets are included as part of consideration paid by the assessee –

(i)	Commercial agreement	- Rs. 448,71,00,000/-
(ii)	Brand/ Trademarks	- Rs. 61,65,00,000/-

5. The AO was of the view that besides the above two M/s Jet Airway India Ltd. did not have any other intangible assets and hence the excess amount of Rs. 13,01,37,42,680/- on slum sale basis and creation of goodwill thereon does not look justified and accordingly issued a show cause notice in this regard. The assessee made detailed submission before the AO along with the valuation report. The AO after considering the submissions of the assessee held that the entire scheme of arrangement of business transfer of JPFFP by M/s Jet Airways India Ltd. to the assessee company is nothing but a colourable device adopted by the assessee by treating the entire transaction as slum sale. The AO further held that the impugned transactions need to be examined from the angle of demerger and called on the assessee to furnish details in this regard. The AO after perusing the details furnished by the assessee held the entire scheme of arrangement to be a demerger and the relevant observations of the AO in this regard are extracted below:

“6.12 Once it is established that the entire scheme of arrangement of JPFFP was a demerger and cannot be regarded as a transfer within the meaning of Sec. 47(vib) t.w.s. 45 of the Act. Further, owing to the fact that there has not been any transfer of capital asset, any payment made in lieu of such transfer cannot be regarded as a genuine business transaction incurred wholly and exclusively for the purpose of business. It is pertinent to note that, in the

scheme of demerger of any capital asset from a demerged company to a resultant company, doesn't require any payment for such transfer, as all the assets and liabilities immediately prior to the demerger are transferred to the resultant company and in lieu of that the existing shareholders of the demerged company are well compensated in the swap ratio, wherein the financial values allocated to the shares of the resultant company are commensurate with the values of assets and liabilities of the demerged company. In the instant case, not only the entire existing shareholders of the demerged company ie. M/s Jet Airways (India) Limited became the shareholders of the resultant company i.e. the assessee company but also they were allotted shares of the assessee company in a swap ratio which was commensurate with the values of the assets and liabilities of the demerging company i.e. JPFFP.

6.13 In view of the above facts and the provisions of sec. 2(19AA) of the Act, it can be clearly construed that the amount of payment made by the assessee company of Rs. 11,96,21,33,329/- cannot be attributed to the demerger of JPFFP from M/s Jet Airways (India) Limited to the assessee company, and hence, is a colorable device, adopted by the assessee company to drain the ex-chequer by claiming fictitious goodwill to the extent of Rs. 13,01.37,42,680/- and charging depreciation thereon of Rs. 3,25,24,35,670/-, hence the same is not admissible to the assessee.

6.14 It is pertinent to note that the assessee company in its reply has submitted that the claim of depreciation on goodwill is an allowable expenditure as per the provisions of sec. 32(1) of the Act, and the same is covered by the decision of the Hon'ble Apex Court in the case of CIT v/s Smifs Securities. The contention of the assessee company is not tenable on the fact that the Hon'ble Apex Court in the aforesaid decision has only classified goodwill as an intangible asset as per Sec. 32(1)(ii) of the Act. Further, the Hon'ble Court also emphasized on the fact that any goodwill acquired externally and payment made shall be eligible for claim of depreciation at the same rate as that of any intangible asset as per Rule 5 of the IT Rules, 1962. However, in the case of the assessee company as already held that the payment made was not in for the acquisition of any goodwill as the entire scheme of arrangement was a demerger as per the provision of Sec. 2(19AA) of the Act and the same is not regarded as transfer within the meaning sec. 47(vib) r.w.s. 45(1) of the Act. Therefore, the claim of depreciation on a fictitious goodwill does not hold good. Accordingly, the claim of depreciation amounting to Rs. 3,25,24,35,670/- is disallowed and added by the total income. Penalty proceeding u/s 271(1)(c) of the Act are

initiated for furnishing of inaccurate particulars of income leading to concealment.”

6. The AO also disallowed the depreciation claimed by the assessee on the intangibles i.e. commercial agreements and brand trade marks for the reason that prior to the demerger the value of commercial agreement and brand trade marks in the books of Jet Airways India Ltd. pertaining to JPFFP was nil.

7. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) by placing reliance on the valuation report of Intangible assets gave partial relief to the assessee by allowing depreciation on certain intangible assets as valued in the report after adjusting the liability towards legacy miles. The amount on which the CIT(A) has allowed the depreciation is as detailed below –

8. However the CIT(A) did not allow depreciation on the value of partner's agreement as contained in valuation report for the reason that as per the valuation report it is stated that the value of the said intangible is to be considered as Nil as per IGAAP. The assessee is in appeal before the Tribunal against the order of the CIT(A) on the following issues

- (i) The difference between the net assets and the consideration paid as part of slump sale should be considered as Goodwill and that the same is eligible for depreciation.
- (ii) The CIT(A) is not correct in adjusting the liability towards legacy miles while allowing the depreciation on certain intangible assets based on the valuation report
- (iii) The CIT(A) is not correct in denying the depreciation of partner's agreement

9. The ld. AR at the outset submitted that the AO has denied the depreciation on goodwill claimed by the assessee by treating the entire transaction of slum sale as demerger which is factually incorrect. The ld. AR further submitted that the assessee has acquired the assets and liabilities of JPFFP from M/s Jet Airways India Ltd. and all the supporting documents such as the valuation report, partner's agreement, slum sale agreement, business transfer agreement etc. were furnished before the AO and this fact has been admitted by the AO while passing the assessment order. The ld AR also submitted that in spite of admitting that the assessee has submitted the supporting documents, the AO proceeded to treat the entire transaction as a demerger and on that basis held that the successor cannot claim depreciation more than the predecessor. The ld. AR also submitted that the assessee has capitalized the difference between the price paid for acquisition of JPFFP and the net value of assets & liability as goodwill and claimed depreciation under section 32(1) of the Act. The ld. AR argued that the revenue has chosen to allow depreciation on certain intangible assets but has denied the said benefit on goodwill which is also an intangible asset. The ld. AR relied on plethora of decisions including the decision of the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (2012) 348 ITR 302 to submit that the depreciation on goodwill is an allowable deduction. On the issue of CIT(A) reducing the liability towards legacy miles while allowing deprecation on intangible assets, the ld. AR submitted that the difference between the purchase price and net assets is a value of intangible capitalized by the assessee and therefore, the CIT(A) is not correct in reducing the liability from the intangible assets. The ld. AR further argued that the assets & liabilities are recorded at their book value in the books of assessee post slum sale and therefore the question of reducing the liability from the asset for the

purpose of depreciation does not arise. The Id. AR submitted that the CIT(A) has given a finding that whether the case is slum sale or demerger will not make a difference in the treatment in the hands of the seller is not a legally tenable observation for the reason that in a demerger the consideration is in the form of issue of shares whereas in the case of slum sale the consideration is paid in the form of lump sum payment. The Id. AR also took the bench to through the financial statement of the assessee (page 56 of PB) where the transactions of slum sale have been recorded and the various other documentary evidences in support of the slum sale (page 153, 238, 465 & 468 of PB).

10. The Id. DR on the other hand argued that the assessee has not substantiated the basis on which the purchase consideration was determined and therefore the entire goodwill recorded in the books of accounts of the assessee on which depreciation is claimed is without any basis. The Id. DR further submitted that in the case law relied on by the assessee namely Smifs Securities (supra), the Hon'ble Supreme Court has considered only the issue of whether goodwill is an asset and therefore the claim of depreciation on the basis of the decision of the Hon'ble Supreme Court by the assessee is not correct. The Id. DR relied on the decision of the Co-ordinate Bench in the case of ACIT Vs. Dosti Reality Ltd. (ITA No. 2043/Mum/2022 dated 13.04.2023).

11. We heard the parties and perused the material on record. The assessee has entered to a business transfer agreement with M/s.Jet Airways India Ltd., whereby the JPFFP business is transferred to the assessee as going concern. The transaction was carried out as a slump sale for a consideration of Rs. Rs. 1196,21,33,329/- and it is submitted by the Id AR during the hearing that M/s.Jet Airways India Ltd., has

already offered the same as capital gains. As per the working mentioned in Notes to accounts (refer relevant extract in earlier part of this order) the value of goodwill was worked out at Rs. 13,013,742,680 and the assessee capitalized the same besides capitalizing two other intangible assets viz., Commercial Agreement at Rs. 448,71,00,000/- and Brand / Trade Mark at Rs. 61,65,00,000/-. The AO denied the benefit on depreciation claimed on all three intangible assets. The reason for denying depreciation on goodwill is that the entire transaction of slump sale basis which the goodwill is capitalized is a colorable device and that the same is to be considered a demerger. The AO denied the benefit of depreciation on the other two intangible for the reason that the value of these two items as per the books of M/s.Jet Airways India Ltd is Nil. The CIT(A) gave partial relief to the assessee by allowing depreciation on certain intangible after adjusting the intangible liabilities as per the workings given in the valuation report of identifiable intangible assets / liabilities (page 238 to 294 of paper book). We are proceeding to adjudicate the issues contended in this appeal in two parts. First whether depreciation on goodwill / intangible assets arising as a result of slump sale should be allowed or not? Second what is the amount of depreciation that is to be allowed in assessee's case based on the facts / documentary evidences?

12. From the perusal of the documentary evidences submitted before us as well as the lower authorities it is evident that the M/s. Jet Airways India Ltd., has sold the JPFFP as a going concern by entering into Slump Sale Agreement dated 1911.2013 (page 153 to 237). In our considered view the contention of AO that the entire transaction is a demerger is not tenable for the reason that the basic events / elements of a Demerger such as the court approved process, issue of shares to the existing shareholders as part of demerger etc., are not present in the impugned

transaction and the claim of AO is unsubstantiated. As per the claims of the assessee, the impugned transaction has resulted in goodwill in the hands of the assessee since the business acquired consists of many intangible assets some identifiable and some general goodwill. Further it is a settled position that under slump sale no value is attributed to the individual assets and the difference between the net book value as per the vendor's books of accounts and the consideration paid by the purchaser is recorded as good will in the books of the purchaser. Now coming to the issue of depreciation in goodwill we notice that the claim of depreciation on goodwill / intangible has not been disputed by the revenue which is substantiated by the observations of the CIT(A) in para 3.21 (page 57 of CIT(A)'s order) where the CIT(A) has given a categorical finding that the depreciation on goodwill is not allowable w.e.f.01.04.2021 and prior to that depreciation is allowable on all intangible assets including goodwill. We further notice that the Hon'ble Supreme Court in the case of CIT, Kolkata vs. Smifs Securities Ltd. [2012] 348 ITR 302 (SC) 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.

13. Considering the categorical finding of the Hon'ble Supreme Court that the goodwill also falls under the expression 'any other business or commercial right of a similar nature' and thus would be an asset under Explanation 3(b) to section 32(1) of the Act, we hold that the assessee is entitled to the claim of depreciation on goodwill / intangible assets arising out of the slump sale whereby the assessee has acquired the business of JPFFP.

14. We will now consider the issue of what is the amount of goodwill / intangible asset on which the assessee is entitled to claim depreciation. It is relevant to consider the provisions of section 50C of the Act which reads as under

—

Special provision for computation of capital gains in case of slump sale.

50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the

purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form³⁷ along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :

***Provided** that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.*

Explanation 2.—For computing the net worth, the aggregate value of total assets shall be,—

- (a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;*
- (b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and*
- (c) in the case of other assets, the book value of such assets.*

15. Section 50C provides that the difference between the consideration paid as part of slump sale and the net worth of the undertaking transferred shall be taxed as capital gains in the hands of the vendor. In the books of the purchaser the assets and liabilities acquired as part of slump sale are recorded at book value and the additional consideration paid in excess of net asset value is recorded as goodwill. On perusal of records including the notes forming part of the accounts (refer relevant part extracted in the earlier part of this order), we notice that the for the purpose of arriving at the value of goodwill the net asset i.e. Assets less Liabilities, have not been considered based on the value as per the books of M/s.Jet Airways India Limited but includes the value of some intangible assets as per the valuation

report. In other words, the value of goodwill has not been computed as a difference between the value of net assets as in the books of the vendor and the purchase consideration paid by the purchaser. To quote an example Commercial Agreement valued at Rs. 448,71,00,000/- as per the valuation report (page 259 of paper book) has been included for the purpose of computing the net asset and similarly Liabilities towards legacy miles valued at Rs. 3,90,36,00,000/- has also been included for arriving at negative net asset value which is the basis for arriving at the value of goodwill. We are not in agreement with this computation done by the assessee since it is a settled position that the assets and liabilities acquired in slump sale will be recorded at book value in the books of the purchaser and the excess consideration paid over the net asset will be recorded as goodwill. Though there may arise an argument that the removal / adjustment of the above intangibles considered by the assessee for arriving at net asset will have a compensating impact in the amount of goodwill, we are of the view that it is important to arrive at the correct value of overall goodwill / intangible assets acquired by the assessee in the purchase of JPFFP more so in the light of the contention of the revenue that the basis of arriving at the purchase consideration is not submitted by the assessee. Once the assessee is able to submit the valid basis on which the purchase consideration is arrived, then arriving the overall goodwill / intangible assets is a simple math of working out the difference between the book value of net assets as per the books of M/s.Jet Airways Limited and the consideration. 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.

16. From the plain reading of the above provisions it is clear that 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 it is important for the assessee to identify the assets and liabilities pertaining to the JPFFP business and consider only those assets and liabilities while arriving at the overall value of goodwill. However from the perusal of records / workings submitted to us, it is not coming out clearly what is the book value of the assets and liabilities pertaining to JPFFP that are transferred by M/s.Jet Airways India Ltd since the assessee has included value certain intangibles based on the valuation report while arriving the net asset value. Without examining the correct net asset value, computing the value of goodwill / intangible asset arising out the slump sale may not give the right results. Therefore in our view the same needs to be examined thoroughly to arrive at the correct amount of goodwill / intangible assets acquired by the assessee on which depreciation is to be allowed.

17. In the process of examining what would be the correct the amount of overall goodwill (which includes identified intangible considered in valuation report) on which depreciation is required to be allowed, we notice the following facts which in our considered view need to be examined along with the working of goodwill computation of the assessee

- (i) The impact of "Target Net Asset Value" (page 165 of paper book) which defined to mean negative net assets of Rs.136,58,22,075/- as per the Slump Sale agreement dated 19.11.2024 on the over all assets and liabilities transferred
- (ii) Miles purchase agreement receivable considered at Rs.78,90,38,400 whether is already accounted in the books of M/s.Jet Airways India Ltd and transferred to assessee as part of slump sale
- (iii) Whether there has been any adjustment to the consideration of as per clause 5.5 r.w.s. Schedule 4 (Page 169 and 220 of paper book) of the slump sale agreement and the impact of the same in the computation of value of overall goodwill
- (iv) Book value of tangible and intangible assets as per Schedule 2 Part 1 (page 191 to 198 of paper book) of slump sale agreement and the capitalisation of the same on the books of the assessee post acquisition of JPFFP.

18. As already stated, the computation of correct amount of overall goodwill / intangible asset eligible for depreciation in assessee's hands needs examination of above facts. Further it is noticed that the AO has simply stated that the purchase consideration is unsubstantiated i.e. without any basis, and did not call for relevant details to understand the basis. We also notice that the AO has not examined the

valuation report of identifiable intangible assets which are part of the overall goodwill / intangible assets acquired by the assessee for the purpose of capitalisation in the books of accounts. Therefore we are inclined to remit the limited issue of computing the value of overall goodwill / intangible assets (which includes identified intangible considered in valuation report) back to the AO with a direction to call for any further details as may be required in this regard and arrive at the amount of goodwill eligible for depreciation in accordance with law. Assessee is directed to submit the relevant details before the AO as may be called for. It is ordered accordingly.

19. The assessee raised one more contention with regard to CIT(A) adjusting the liabilities while allowing the depreciation on certain identified intangibles. In this regard, we hold that the goodwill is arising out of the difference between the purchase consideration and the net asset value and that net asset value is arrived at after adjusting the liabilities taken over by the assessee against the gross assets taken over. Therefore there is merit in the said contention of the assessee that the liability once again cannot be adjusted while allowing depreciation on goodwill. Accordingly we direct the AO not to make any adjustment towards liabilities once again while arriving at the value of goodwill eligible for depreciation.

20. In result the appeal of the assessee for AY 2015-16 is allowed for statistical purposes.

ITA.No.2162/Mum/2023 – Revenue's appeal - AY 2015-16

21. The grounds raised by the revenue pertain to the partial relief given by the CIT(A) towards certain intangible assets. We have while adjudicating the

assessee's appeal, have held that the assessee is entitled to claim depreciation on goodwill acquired as part of the slump sale agreement for purchase of JPFFP from M/s.Jet Airways India Ltd. Therefore the contentions of the revenue on CIT(A) allowing depreciation on intangible is dismissed. Further with regard to the ground raised contenting that the impugned transaction is a demerger within the meaning of section 2(19AA), we have already held that the said contention is not tenable and that the transaction entered into by the assessee with regard to acquisition of JPFFP is a slump sale. According the grounds pertaining to the said contention are dismissed. However with regard to the quantum of goodwill on which assessee is entitled to claim depreciation we have remitted the limited to issue back to the AO while considering appeal of the assessee. Accordingly the grounds raised to the extent of the amount on which the depreciation is allowed by the CIT(A) are allowed for statistical purposes.

22. In result the appeal of the revenue are allowed for statistical purposes.

C.O No.98/Mum/2023 – Assessee's for AY2015-16

23. The cross objections raised by the assessee are against the appeal filed by the revenue. In view of our findings given with regard to the appeal filed by the revenue, the cross objections are disposed of accordingly.

24. In result the cross objections of the assessee are allowed for statistical purposes.

AY 2016-17

25. The grounds raised by the assessee, revenue and the cross objections of the in the appeal filed for AY 2016-17 are with regard to the denial of depreciation on goodwill / intangible assets acquired by the assessee as part of slump sale entered into with M/s.Jet Airways India Ltd., towards purchase of JPFFP. The impugned issue arose for the first time in AY 2015-16 and for AY 2016-17, the AO has denied the benefit of depreciation on the carried forward balance of the same goodwill. Therefore our decision with regard to the appeal of both the assessee and the revenue and the cross objections of the assessee for AY 2015-16 are mutatis mutandis applicable for AY 2016-17 also.

26. In result the appeal of the assessee, revenue and the cross objections of the assessee for AY 2016-17 are allowed for statistical purposes.

AY 2017-18

27. The grounds raised by the assessee, revenue and the cross objections of the in the appeal filed for AY 2017-18 are with regard to the denial of depreciation on goodwill / intangible assets acquired by the assessee as part of slump sale entered into with M/s.Jet Airways India Ltd., towards purchase of JPFFP. The impugned issue arose for the first time in AY 2015-16 and for AY 2017-18, the AO has denied the benefit of depreciation on the carried forward balance of the same goodwill. Therefore our decision with regard to the appeal of both the assessee and the revenue and the cross objections of the assessee for AY 2015-16 are mutatis mutandis applicable for AY 2017-18 also.

28. Besides the issue of depreciation on goodwill, the assessee is contending the issue of addition made on account of difference in billing amount as per books of

account viz-a-viz Form 26AS and addition made on account of miles difference between CRIS and SAP.

Addition made on account of difference in billing amount as per books of account viz-a-viz Form 26AS

29. Facts pertaining to the issue is that the Assessee's revenue model is such that miles/points are issued to members who are in turn flyers on Jet Airways / users of credit/debit cards. In the said business model, the Assessee issues miles to its members. As soon as, such miles are issued by the Assessee to members, the Assessee raises invoice on its customers such as Jet Airways/ credit card companies/banks/etc which is in the nature of advance billing and recorded as a liability but not directly considered as an income. Since, in the books of account of the Assessee the liability for redemption will fall upon the Assessee in subsequent years. The Assessee's customers, being Jet Airways/ credit card companies/banks/etc., deduct tax at source on the aforesaid invoices which are a source of revenue for the Assessee. However this revenue is recognised by the Assessee when the miles are redeemed by the members, or such miles expire. The AO vide letter dated 30 December 2019 (refer page no. 334 of the Paperbook) directed the Assessee to get its books of account audited under section 142(2A) of the Act by the special auditor (M/s Shah & Taparia, CAs) and furnish a copy of the Special Audit Report in Form 6B. The special auditor submitted a copy of the Special Audit Report in Form 68 dated 25 June 2020 directly to the AO (refer page no. 335 to 367 of the Paper book). The special auditor in the special audit report had provided party wise reconciliation of the billing in the books of account of the Assessee (as per SAP Billing register) viz-a-viz the payment/credit reported in

Form 26AS (refer page no. 362 to 363 of the Paperbook). Based on the said report the AO made an addition of Rs.33,80,04,124 being difference between the income recognized and Form 26AS.

30. The primary contention of the Id AR is that the special auditor has only considered parties in respect to whom the amount disclosed in the books of account was less than Form 26AS. The Id AR further submitted that there are parties where the amount in the books of account was more than Form 26AS to the tune of Rs.39,47,32,357 which has been completely ignored. The Id AR also submitted that if this is also considered, then the difference would reduce to Rs.5,67,28,234. It is submitted that no addition can be made to the income merely on the basis of the amount disclosed in form 26AS by third parties and that it is not open to the AO to make such addition without conducting any enquiry from the third parties. The Id AR submitted a detailed explaining the reasons for the difference such as service tax element, timing difference in accounting etc. The Id AR placed reliance in this regard on the decision of TUV India (P.) Ltd vs. DCIT [2019] 110 taxmann.com 175 (Mum Trib.)

31. We heard the parties and perused the material on record. From the details submitted by the Id AR, we notice that the AO while making the addition has considered only the cases where the amount disclosed in the books of account was less than Form 26AS and failed to consider the vice versa cases. Further it is settled position that the AO cannot make the addition merely based on the difference in Form 26AS without verifying the facts more so when the revenue has all the information and data base in its possession and control to examine the issue. One of the submissions of the assessee is that the transaction wise details of the

additions made by the AO have not been shared to enable the assessee to discharge the onus of providing a reconciliation to the best of its efforts. Considering these facts we are of the view that the issue should be remitted back to the AO for the reason that the basis on which the AO made the addition is without verification of details and without calling for any reconciliation from the assessee. The AO is directed to consider the issue afresh on merits by calling for relevant details and give relief to the assessee in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

Addition made on account of miles difference between CRIS and SAP

32. The contention of the assessee in this regard is that assessee is using CRIS software system which provides real time details of miles accrued and redeemed/lapsed during the year and the details from CRIS software are then used to raise invoice, redemption documents, etc on the basis of which the transaction is then recorded in the accounting software (SAP system). As CRIS system works on real time basis whereas SAP is on the basis of the invoicing of the document, there would be some minuscule difference at any given point of time between the two softwares. The Id AR submitted a reconciliation of CRIS data with the SAP software since inception to submit that the difference is insignificant and that the timing difference between the two systems is the primary reason for the difference. The Id AR also submitted the addition made towards difference in revenue between books and Form 26AS will have an overlapping effect on this addition also. Since the addition made by the assessee requires factual verification of the reconciliation submitted by the assessee, we are remitting the issue back to the AO. The AO is directed to call for required details and examine the issue on merits to

decide in accordance with law after giving a reasonable opportunity of being heard to the assessee.

AY 2018-19

33. The grounds raised by the assessee, revenue and the cross objections of the in the appeal filed for AY 2018-19 are with regard to the denial of depreciation on goodwill / intangible assets acquired by the assessee as part of slump sale entered into with M/s.Jet Airways India Ltd., towards purchase of JPFFP. The impugned issue arose for the first time in AY 2015-16 and for AY 2018-19, the AO has denied the benefit of depreciation on the carried forward balance of the same goodwill. Therefore our decision with regard to the appeal of both the assessee and the revenue and the cross objections of the assessee for AY 2015-16 are mutatis mutandis applicable for AY 2018-19 also.

34. Besides the grounds on goodwill, the assessee also contended the issue of addition on account of miles difference between CRIS and SAP. The Id AR presented a reconciliation statement for the year under consideration in this regard. We have while adjudicating the identical issue for AY 2017-18, have remitted the issue back to AO for examining the issue on merits by calling for required details. Considering that the facts are identical, we remit the issue for AY 2018-19 also back to the AO with similar directions. It is ordered accordingly.

AY 2021-22

35. The grounds raised by the assessee, revenue and the cross objections of the in the appeal filed for AY 2021-22 are with regard to the denial of depreciation on

goodwill / intangible assets acquired by the assessee as part of slump sale entered into with M/s.Jet Airways India Ltd., towards purchase of JPFFP. The impugned issue arose for the first time in AY 2015-16 and for AY 2021-22, the AO has denied the benefit of depreciation on the carried forward balance of the same goodwill. Therefore our decision with regard to the appeal of both the assessee and the revenue and the cross objections of the assessee for AY 2015-16 are mutatis mutandis applicable for AY 2021-22 also.

36. For AY 2021-22, the assessee raised additional grounds with regard to the following issues –

- (i) Double taxation of provision for 'remeasurement of miles' disallowed in earlier years credited to the Profit & Loss Account under the head 'revenue from operations'
- (ii) Double taxation of reversal of provision for rebranding disallowed in earlier years credited to the Profit & Loss Account

37. The additional grounds raised do not require investigation of any new facts and therefore placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit the additional grounds.

38. Facts with respect to the **issues (i) & (ii) above** as submitted in the written submissions are that

- (i) The Assessee undertook a valuation exercise during the previous year relevant to AY 2020-21 to determine whether the expected cost assumed in the year of sale of miles is a fair estimate and debited an amount of INR 327,35,72,450 to the Profit & Loss Account as an Exception Item under the

head Remeasurement of miles. In the ROI for the AY 2020-21 out of abundant caution the Assessee has disallowed the aforesaid 'remeasurement of miles and the same was accepted by the AO. However, subsequently the Assessee has raised an additional ground for claiming deduction of the same before the CIT(A) which is pending for disposal. Further, even during the captioned AY, the Assessee has inadvertently omitted to claim deduction of reversal out of the said provision of INR 327,35,72,450. Accordingly, the assessee submits that as presently, the provision which has been created in AY 2020-21 has not been allowed as deduction, the reversal of the same should not be taxed as income. The Assessee further submits that if claim of the Assessee for allowing deduction of re-measurement of miles is accepted by the Appellate authorities in AY 2020-21 then any write-back/ reversal in AY 2021-22 credited to the Profit & Loss Account may be taxed at that stage.

(ii) The Assessee undertook the exercise to re-brand its frequent flyer program and accordingly created a provision amounting to INR 1897 20 lakhs towards the cost of replacing its co-brand credit and debit cards of its members during the previous year relevant to AY 2020-21 which was claimed as deduction. The AO while passing the assessment order for AY 2020-21, has disallowed the deduction claimed by the assessee. Against the said assessment order, the assessee has filed an appeal before the CIT(A) which is pending for disposal. During the previous year relevant to AY 2021-22, the Assessee has credited an amount of Rs. 1857.95 lakhs on reversal of the aforesaid provision which was omitted to be excluded from income chargeable to tax. The assessee prays that since presently the provision which has been created in AY 2020- 21 has not been allowed as deduction, the reversal of the same should not be taxed as income for AY 2021-22.

39. Considering the facts as elaborated herein above on both the issue, we deem it fit to remit the issue back to the CIT(A) to decide the issue based on the decision in the appeal filed by the assessee for AY 2020-21 which pending before the

CIT(A). Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

40. In the result, the appeals for AY 2015-16 to 2018-19 & 2021-22 of the assessee, revenue, and Cross Objections of the assessee are allowed for statistical purposes.

Orders pronounced in the open court on 11-11-2024.

Sd/-
(ANIKESH BANERJEE)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai