

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.7691/Del/2018, A.Y. 2015-16
ITA No.8950/Del/2019, A.Y. 2016-17**

M/s. S S Group (P) Ltd. C/O RRA TAXINDIA D-28, South Extension Part-1 New Delhi-110049 PAN: AAPCS5288Q	Vs.	Assistant Commissioner of Income Tax, Circle-4(1) Income Tax Office, HSI IDC Building, Udyog Vihar, Gurgaon
(Appellant)		(Respondent)

Appellant by	Shri Somil Agarwal, Advocate Shri Deepesh Garg, Advocate
Respondent by	Ms. Jaya Chaudhary, CIT DR

Date of Hearing	18/12/2024
Date of Pronouncement	12/03/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

Since issues involved in these appeals were identical; hence, these cases were heard together. Accordingly, these appeals are being disposed off by this common order for the sake of brevity.

2. These appeals for the Assessment Years (hereinafter, the 'AY') 2015-16 and 2016-17 filed by the assessee are directed against orders dated 08.10.2018 and 16.10.2019 respectively passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon [hereinafter, the 'CIT(A)'].

3. The core issue raised in these appeals is in respect of the disallowance of depreciation on goodwill acquired/created as a result of amalgamation. Besides this issue, the assessee has also raised issues of the disallowance of Rs.41,08,304/- under section 40A(3) of the Act in AY 2015-16 and the chargeability of interest under section 234A, 234B, 234C and 234D of Income Tax Act, 1961 (hereinafter 'the Act') in AY 2016-17. However, no ground other than the disallowance of depreciation on goodwill was pressed in both years; hence, issues other than the disallowance of depreciation on goodwill stand dismissed. Resultantly, we are tasked to decide the sole issue of disallowance of depreciation on goodwill.

4. The relevant facts giving rise to these appeals are that the appellant assessee has claimed depreciation of Rs.30,12,79,256/- and Rs.35,18,94,170/- in AY 2015-16 and 2016-17 respectively on acquired/created goodwill pursuant to the scheme of amalgamation. In the AY 2015-16, three companies; namely, Sukh Realters Pvt. Ltd., Ma-Ganga Builders & Constructions Pvt. Ltd. and Belisma Buildcon Pvt. Ltd. amalgamated with North Star Apartments Pvt. Ltd. in pursuant of the orders dated 30.09.2014 and 10.11.2014 of the Hon'ble' Punjab and Haryana High Court. Later on, North Star Apartments Pvt. Ltd. amalgamated with the assessee company in pursuant of the order dated 07.03.2015 of the Hon'ble Punjab and Haryana High Court. During the course of amalgamation of North Star Apartments Pvt. Ltd. with the assessee company,

goodwill has arisen on account of amalgamation being the difference in value of shares issued over the net book value of all the assets transferred by the amalgamating company. The assessee has recorded the difference between the said liability and asset as a goodwill in its books of accounts and claimed depreciation thereon. However, the Assessing Officer (hereinafter, the 'AO') did not allow the depreciation on acquired/created goodwill in the relevant years. Aggrieved, the assessee filed appeal before the CIT(A), who dismissed both appeals on the reasoning that the cost of acquisition/creation of goodwill was NIL.

4.1 The Ld. CIT(A) also held that the issue in dispute in these appeals is that whether the depreciation is allowable on goodwill acquired/created pursuant to the scheme of amalgamation. The Ld. CIT(A), placing emphasis on the definition of written down value under section 43(6)(c) read with the Explanation 2 to Section 32(1) of the Act, held that the actual cost of the goodwill in the hands of the assessee was NIL as there was no goodwill in the books of account of the amalgamating company; i.e. North Star Apartments Pvt. Ltd. thus, the Ld. CIT(A) held that there cost of acquisition of goodwill in the hands of amalgamated company; i.e. the appellant assessee was NIL as there was no written down value of the goodwill in the books of accounts of amalgamating company; i.e. North Star Apartment Pvt. Ltd. Placing emphasis on the 6th proviso to Section 32(1) of the Act, the Ld. CIT(A) further held that the appellant

assessee could not claim depreciation on the assets acquired in the scheme of amalgamation more than the depreciation allowable to the amalgamating company; i.e. North Star Apartment Pvt. Ltd. While upholding the disallowance of depreciation of goodwill, the Ld. CIT(A) placed reliance on the decision of the ITAT Bangalore in the case of United Breweries Ltd. 76 taxman.com 103. Further, the Ld. CIT(A) held that the cases of Smifs Securities Ltd., (2012) 348 ITR 0302 (SC) and Areva T & D India Ltd. (2012) 345 ITR 0421 (Delhi High Court) were distinguishable on facts and law.

4.2 The Ld. Authorized Representative (hereinafter, the 'AR') contended that his case was squarely covered by the decision of the Hon'ble Delhi High Court in the Case of Eltek SGS Pvt. Ltd. in the ITA No. 475 & 476/2022 (order dated 01.08.2023). Hence, he contended that the claim of depreciation on goodwill should be allowed. Further, he submitted that the decision of the ITAT in the case of United Breweries Ltd. was not applicable in the case of the assessee because the value of the acquired/created goodwill pursuant to the scheme of amalgamation was in dispute in the said case, whereas there was no dispute in the valuation of goodwill in the present cases. The Ld. AR further submitted that the amalgamating company's books of accounts had already accounted for the value of goodwill in its books of accounts before amalgamating into the United Breweries Ltd., whereas it was not so

in the present cases. Thus, it was argued that the case of United Breweries Ltd. was distinguishable on facts as held in the cases of Keva Fragrances P. ltd.; ITA No. 334/Mum/2020 dated 02.08.2021 (Mum. ITAT), Mylan Laboratories Ltd. and Anr., (2020) 180 ITD 558 (Hyd. ITAT), Altimetrik India (P) Ltd. in IT(TP)A No. 2511/Bang./2019 dated 03.02.2022 (Bang. ITAT).

5. The Ld. CIT-DR, placing emphasis on various paras of the orders of lower authorities, argued the case vehemently and prayed for dismissal of these appeals.

6. We have heard both parties and have perused the material available on the record.

7. The sole issue is in respect of the disallowance of claim of depreciation of Rs.30,12,79,256/- and Rs.35,18,94,170/- on acquired/created goodwill pursuant to the scheme of amalgamation in AY 2015-16 and 2016-17 respectively. We find merit in the arguments/submissions/contentions of the Ld. AR. In the present cases, there is no dispute on the valuation of acquired/created goodwill pursuant to the scheme of amalgamation in the books of account of the appellant assessee as neither the AO nor the Ld. CIT(A) has ever questioned the valuation of the said goodwill though the Ld. CIT(A) has held that the value of goodwill in the hands of the appellant company should be NIL as there was no value assigned to the goodwill in the books of account of

amalgamating company; i.e. North Star Apartment Pvt. Ltd. Admittedly, the amalgamation has taken place in pursuant of the order dated 07.03.2015 of the Hon'ble Punjab and Haryana High Court. We are of the considered view that this case is squarely covered by the decision of the Hon'ble Delhi High Court in the case of Eltek SGS Pvt. Ltd. in the ITA No. 475 & 476/2022 (order dated 01.08.2023). We therefore, following the reasoning given by the Hon'ble Delhi High Court in its decision in the case of Eltek SGS Pvt. Ltd. (supra), hold that the claim of depreciation of Rs.30,12,79,256/- and Rs.35,18,94,170/- on acquired/created goodwill pursuant to the scheme of amalgamation in AY 2015-16 and 2016-17 respectively is justified. We therefore, set aside the impugned orders and direct the AO to allow the claim of depreciation of Rs.30,12,79,256/- and Rs.35,18,94,170/- on acquired/created goodwill pursuant to the scheme of amalgamation in AY 2015-16 and 2016-17 respectively. Thus, both appeals are allowed.

8. In the result, both appeals of the assessee are partly allowed as above.

Order pronounced in open Court on 12th March, 2025.

Sd/-

Sd/-

SATBEER SINGH GODARA)
JUDICIAL MEMBER

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 12th/03/2025

Binita, Sr. PS

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ITA No.7691/Del/2018
ITA No. 8950/Del/2019
S S Group P. Ltd.

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. CIT DR-ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI