

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

**BEFORESHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.3263/Del/2023  
Assessment Year: 2016-17

M/s. Oriental Buildtech Private Limited, H-65, Connaught Circus, New Delhi-1100 01 <b>PAN:AAACO7640K</b>	Vs.	The Principal Commissioner of Income Tax-7, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Sudesh Garg, Ms. Bhavya Garg & Shri Shubham Sharma, Advs.
Respondent by	Ms. Amisha S. Gupta, Sr. DR

Date of Hearing	22/05/2025
Date of Pronouncement	22/05/2025

**ORDER**

**PER VIMAL KUMAR, JUDICIAL MEMBER**

The appeal filed by the assessee is against order dated 31.10.2023 of Learned Principal Commissioner of Income-Tax (Appeals)-7, Delhi (hereafter referred to as "Ld. PCIT under Section 263 of the Income-Tax Act, 1961 (hereinafter referred to as "the Act") arising out of order dated 23.02.2023 of ITAT in ITA No.911/Del/2021 challenging the order under Section 263 of the Act

dated 31.03.2021 of Ld. PCIT regarding assessment order dated 22.12.2018 for assessment year 2016-17.

2. Brief facts of case are that the assessee e-filed return of income for assessment year 2016-17 on 16.10.2016 declaring loss of Rs.4,18,84,590/-. Assessment order under Section 143(3) dated 22.12.2018 at the returned loss of Rs.4,18,84,590/- was passed. The Ld. PCIT invoked revisionary jurisdiction under Section 263 vide order dated 31.03.2021 and directed the Ld. AO to conduct due verification of claim made in return of depreciation on goodwill and pass appropriate order. Assessee filed ITA No.911/Del/2021 before ITAT which was decided through order dated 23.02.2023. As per directions of ITAT, Ld. PCIT passed order dated 31.10.2023.

3. Being aggrieved, appellant/assessee preferred present appeal.

4. Learned Authorized Representative for the appellant/assessee submitted that in original proceedings under Section 263 of the Act, Ld. PCIT issued show cause notice dated 08.03.2021 ( pages 21 and 22 of the paper books ). The reasons stated for invoking jurisdiction under Section 263 of the Act was “inability of the Ld. AO to disallow depreciation on goodwill on account of technical issues”. The Assessee filed detailed reply dated 19.03.2021 (pages 23 to 37 of the paper books) which

was not considered while passing original order under Section 263 dated 31.03.2021. Hon'ble ITAT set aside the order dated 31.03.2021 of Ld. PCIT and directed Ld. PCIT to pass fresh order. Ld. PCIT in order dated 31.10.2023, made out a new reason that "the assessee has not followed INDAS103 which was applicable w.e.f. 01.04.2016". Ld. PCIT failed to appreciate that the case of assessee pretend to financial year 2015-16. INDAS103 were not, therefore, applicable to the case of assessee.

4.1 The Learned Authorized Representative for for appellant submitted that Finance Act 2021, clarifies Finance Act 2021 as under:

"Depreciation on Goodwill

**In view of above discussion, it has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as a cost of acquisition for the purpose of computation of capital gains under Section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.**

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**These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years."**

4.2 Learned Authorized Representative for the appellant submitted that Hon'ble Supreme Court in of CIT Vs. Smifs Securities Ltd. [2012] 24 taxmn.com 2422 (SC) held as under:

“Explanation 3 to s.32 states that the expression “asset” shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature. The words “**any other business or commercial rights of similar nature**” in clause (b) Of explanation 3 indicated that goodwill would fall under the expression “**any other business or commercial rights of a similar nature**”. The principle of **ejusdem generis** would strictly apply while interpreting the said expression which finds place in explanation 3(b). Consequently, “goodwill” is an asset under explanation 3(b) to s. 32(1) & eligible for depreciation.”

5. Learned Authorized Representative for the Revenue, relied on the impugned order of Ld. PCIT.

6. From the examination of record in light of aforesaid rival contentions, it is crystal clear that Ld. PCIT in original proceedings under Section 263 of the Act in show cause notice dated 08.03.2021 mentioned the reason “inability of the Ld. AO to disallow depreciation on goodwill on account of technical issues” (pages 21 & 22 of the paper books). Assessee filed detailed reply dated 19.03.2021 (pages 23 to 37 of the paper books). Ld. PCIT without considering the reply the reply passed order dated 31.03.2021. In ITA No.911/Del/2021, ITAT vide order 23.02.2023 set aside the order dated 31.03.2021 and directed the Ld. PCIT to pass fresh order after

giving due consideration to the submissions made by the assessee. In order dated 31.10.2023, Ld. PCIT invoked jurisdiction under Section 263 of the Act for a new reason that “the assessee has not followed INDAS103 which was applicable w.e.f. 01.04.2016”. Finance Act, 2021 clarifies that the position with regard to treatment of depreciation on goodwill is not applicable for assessment year 2016-17.

7. In view of above material facts and well settled legal position, the exercise of jurisdiction under Section 263 of the Act by Ld. PCIT, the assessee not following IND AS103 for assessment year 2016-17 was not legal. Therefore, the impugned order dated 31.10.2023 of Ld. PCIT being unsustainable is set aside.

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

**Order pronounced in open Court on 22.05.2025.**

Sd/-

**( SHAMIM YAHYA )  
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

Dated: 26/05/2025

*\*Mohan Lal\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI