

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, (JUDICIAL MEMBER) &
SHRI PRABHASH SHANKAR, (ACCOUNTANT MEMBER)

I.T.A. No.2740/Mum/2025
Assessment Year: 2017-18

Agricom Foods Private Limited Plot Mo. 14, 5 th Floor, Sidhwa House, N. A. Sawant Marg, Near Colaba Fire Station, Colaba, Mumbai – 400001. PAN: AABCA3230A	Vs.	DCIT, Central Circle 4(4), Mumbai
(Appellant)		(Respondent)

Appellant by	Shri. Dharan Gandhi & Shri Apurva Shah
Respondent by	Shri. Rajesh Kumar Yadav (CIT-DR)

Date of Hearing	10.06.2025
Date of Pronouncement	16.06.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dated 11.03.2025, passed u/s. 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals), 52, Mumbai ('Ld. CIT(A)'), for the

assessment year 2017-18. The assessee has raised the following grounds of appeal:

“The CIT(Appeals) -52, Mumbai has erred as under:

1. In holding that the Appellant was not entitled to claim depreciation of Rs. 7,55,00,000 on Intangible assets - whereas there was no depreciation that was claimed at all during the year. Hence, he erred in adjudicating the issue of allowability of Depreciation and it is prayed that all those findings on whether or not depreciation is allowable of Intangibles may be directed to be deleted for the year under appeal.

2. In not appreciating that the Assessing Officer had before him an Income Tax Return which was filed, and which was to be examined as being correct or not and it was evident from the same that depreciation claimed in that return was NIL and hence no further findings were needed on the issue of Depreciation being allowable or otherwise regardless of submissions made before him. Pertinent to note that the Assessing Officer himself had vide an order dated 12th February 2025 passed u/s 154 accepted that no claim for depreciation was made during the year.

3. In ignoring that the Appellant had duly pointed out that it had claimed depreciation on intangibles in FY 2017-18 and the statement had been extracted and reproduced in the assessment order itself-page 10, reply to Q12.

4. In adjudicating a matter that was not even pleaded for by the Appellant and hence in doing so without having adequate facts on his record.

5. In mistakenly relying upon several judgments dealing with amalgamation of group companies and concluding that depreciation was not allowed on self created goodwill. The Appellant's case did not deal with amalgamation, and it was a purchase of a running undertaking on a lump sum price basis from an unrelated entity and purchase consideration was thereafter allocated amongst tangible assets and intangible assets largely being licenses, permits and approvals.”

2. The brief facts of the case are that the assessee is a partnership Firm. The assessee had filed its return of income u/s. on 31/10/2017, declaring total income at Rs. Nil. The same was processed u/s 143(1) of the Act. Notice u/s. 153A of the Act was

issued to the assessee on 20/09/2019. In response, the assessee filed his return of income on 28/09/2019, declaring total income at Rs. Nil/-. Notices u/s. 143(2) and 142(1) were issued and served upon the assessee. At the very outset, we noticed that the assessment order in this case was passed on 30/09/2021, thereby disallowing the depreciation of goodwill.

3. Aggrieved by the said order, assessee preferred appeal before the Ld. CIT(A) and also filed rectification application before the AO u/s. 154 of the Act on the ground that for the year under consideration, the assessee has not claimed any depreciation on goodwill. However, during the course of pendency of the appeal before the Ld. CIT(A), the AO after examining the facts, allowed the application for rectification u/s. 154 of the Act, vide order dated 12.02.2025 by holding that during the year no such claim on account of depreciation on goodwill was made by the assessee in its return.

4. However, Ld. CIT(A) while deciding the appeal vide its order dated 11.03.2025 mentions *“That AO was right in not allowing depreciation of such goodwill”*.

5. In our view, the said part/portion of finding of Ld. CIT(A) are unwarranted, when vide rectification order dated 12.02.2025, the

AO himself has concluded that during the year, no such claim on account of depreciation of goodwill was made by the assessee. Therefore, in our view, the above portion of Ld. CIT(A) will cause unnecessary prejudice to the rights of the assessee, therefore, we expunge the said portion of the impugned order and the appeal filed by the assessee is partly allowed in terms indicated above.

6. Accordingly, the grounds raised by the assessee is partly allowed.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 16/06/2025

Sd/-
(PRABHASH SHANKAR)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Mumbai:
Dated: 16/06/2025
Karishma J. Pawar, Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai