

IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (Virtual) JODHPUR

BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER  
AND DR. S. SEETHALAKSHMI, HON'BLE JUDICIAL MEMBER

ITA No. 267/Jodh/2024  
(Assessment Year 2020-21)

Asstt. C.I.T., Circle-1, Jodhpur.	Vs.	Suncity Metals and Tubes Pvt. Ltd. E-421, M.I.A. 2 <sup>nd</sup> Phase, Basni, Jodhpur – 342001. PAN No. AAHCS3761Q
Assessee by		Shri Amit Kothari, C.A.
Revenue by		Shri Karni Dan, Addl. CIT (Sr. DR)
Date of Hearing		06.05.2025.
Date of Pronouncement		24.06.2025.

ORDER

DR. MITHA LAL MEENA, A.M.:

The captioned appeal has been filed by the revenue against the order of the Id. National Faceless Appeal Centre [NFAC/CIT(A)], Delhi dated 21.02.2024 in respect of Assessment Year: 2020-21 where the revenue has raised following grounds:

1. Whether the Id. CIT(A) is justified in facts and on law in deleting the addition of Rs. 4,00,78,257/- on account of disallowance of depreciation on goodwill, by not adjudicating on the finding of the ,ACIT that in the case of assessee the value claimed to have been assigned to Goodwill is the payment made over and above the value of the tangible assets and the same is therefore a balancing figure, which could be payment considering multiple aspects and cannot be taken as



specific value of the Goodwill on which depreciation could be allowed to the assessee.

2. Whether the Ld. CIT(A) has erred in and law in deleting addition of by not considering the fact that the decision of Hon'ble SC in CIT vs. Smiffs Securities Ltd. 252 CTR 233 (SC) has been considered by ITAT in ruling in united Beverages vs Add. Commissioner of Income Tax, Range- 12, Bangalore (2016) and held that the ruling of SC is limited to issue whether goodwill falls in the category of intangible assets. The ITAT held that judgment of Hon'ble SC does not override the provisions of 5th proviso to section 32(1), now 6th proviso which restricts the claim of depreciation in goodwill. It is clear that the depreciation claim in the hands of the assessee is subjected to the 5th (now 6th proviso) to section 32(1) of the Act.
3. Whether the Ld. CIT(A) has erred in fact and law in not appreciating that sixth proviso to section 32(1) restricts the total claim of depreciation to the amalgamating company and the amalgamated company in the case or amalgamation shall not exceed the deduction if the amalgamation has not taken place.
4. Whether the Ld. CIT(A) has erred in facts and law by not considering the fact that cost of acquisition of goodwill as a result of amalgamation in the hands of resulting company shall be deemed to be cost for the previous owner acquired it i.e. Nil in accordance with section 55(2)(a)(ii) r.w.s. 491 1 )(iii) (e) r.w.s. 47(vi) (vib).
5. Whether the Id. CIT(A) has erred in fact and law by not appreciating that explanation 7 to section 43(1) clearly states that goodwill to the successor company shall be the same as it would have been if the predecessor company had continued to hold capital asset which is zero in this case.
6. Whether the Ld. CIT(A) has erred in fact and law by not appreciating that the cases where the purchase or acquisition of goodwill merely represent general business rights or is merely residual of consideration or balancing figure, a claim of depreciation cannot be made in respect of the same within the meaning of provisions of section 32(1)(ii) in accordance with decision of honourable SC in Techno Shares and



Stocks v CIT (2010) of the act i.e. not only nature and character of the intangible asset should be clearly established but it is to be established akin to any asset.

7. Whether the Id. CIT(A) is justified in facts and law in deleting the addition of Rs.4,00,78,257/- by failing to appreciate the fact that the AO specifically pointed out in Assessment Order that assessee failed to provide specific value of intangibles for which the extra consideration was paid which was claimed to have been paid for goodwill.
  8. That the tax effect involved in this case is above the limit laid down in Circular No.05/2024 dated 15.03.2024 issued by the CBDT, New Delhi.
2. The Inter-related issues raised by the department in the grounds of appeals pertains to deletion of the addition made on account of disallowance of depreciation on goodwill, as in the case of assessee the value claimed to have been assigned to Goodwill was the payment made over and above the value of the tangible assets and the same was therefore a balancing figure, which could be payment considering multiple aspects and could not be taken as specific value of the Goodwill even in the decision of Hon'ble SC in CIT vs. Smiffs Securities Ltd. 252 CTR 233 (SC).
3. Briefly, the facts of the case are that the appellant company furnished return of income for the year under consideration on 29.1.2021 declaring total income of Rs. 14,09,89,472. The AO has disallowed the claim of depreciation on goodwill amounting to Rs. 4,00,78,257 on amalgamation of companies by observing that the amendment in relation to the depreciation on goodwill was made by Finance Bill 2021, i.e. from Assessment Year 2021-22, and therefore the



disallowance of depreciation in the current year was bad in law and bad on facts and was also contrary to the order of amalgamation passed by the Hon'ble NCLT. The Id. AO has observed regarding the amendment in the intent of legislature to be applied retrospectively in earlier year, while the assessee submitted that there is no application of such provisions from retrospective effect. The Id. AO being not satisfied with the reply and ignoring the decision of Hon'ble Supreme Court in the case of Smifs Securities Ltd. v. CIT, reported in (2012) 348 ITR 302 disallowed depreciation under section 32(1) (ii) of the Income Tax Act.

4. Being aggrieved with the assessment order, assessee went before the Ld. CIT (A)/NFAC who granted relief to the assessee by observing as under:

*"-----In conclusion, the appellant asserts that the claim for depreciation on goodwill is justified, and they request that it be allowed. Further, the appellant argues that the Assessing Officer erroneously took the returned income at Rs. 16,41,69,103/- instead of the correct returned income of Rs. 14,09,89,472/-. This error led to an apparent addition of Rs. 2,31 to the assessed income. It states that the return of income was filed correctly, declaring the total income of Rs. 14,09,89,472/-. The error in assessing the income occurred because the AO mistakenly considered the gross income as the returned income, resulting in an inflated assessment. 4.5 I have considered the above, the issue of depreciation on goodwill, in the case of amalgamation has been considered by Hon'ble Delhi High Court in the case of Eltek SGS Pvt Ltd and Valere Power India Ltd. In this case involving Eltek SGS Pvt Ltd and Valere Power India Ltd, the dispute arose from the Income Tax Department's challenge to the deletion of disallowance of depreciation on goodwill claimed by the appellant. The disagreement centered around whether depreciation on goodwill resulting from an amalgamation could be allowed.*



*The Commissioner of Income-Tax (Appeals) upheld the claim for depreciation on goodwill, stating that it was rightfully claimed since goodwill was formed due to the merger. The Income Tax Appellate Tribunal also supported this view, citing the Supreme Court's decision in Commissioner of Income Tax, Kolkata vs. Smifs Securities Limited. This landmark ruling clarified that goodwill is an intangible asset falling within the scope of Explanation 3 to Section 32(1) of the Income Tax Act, 1961, and is therefore eligible for depreciation.*

*The appellant, however, argued that the provisions of Section 49 of the Act should apply, particularly highlighting the definition of "cost of acquisition" in Section 55(2) and relying on Section 49(1)(e). However, the court emphasized that Section 47 excludes the transfer of a capital asset in an approved scheme of amalgamation. Ultimately, the Delhi High Court allowed the depreciation on goodwill created due to the amalgamation, affirming the decision of the Commissioner of Income-Tax (Appeals) and the Income Tax Appellate Tribunal. Following the ratio of the above said judgment the addition made by AO regarding claim of goodwill amounting to Rs. 4,00,78,257/- is deleted."*

5. The Ld. Addl. CIT (DR) presented the appeal for the revenue and placed reliance on the assessment order. He contended that he Id. CIT(A) was justified in facts and on law in deleting the addition of Rs. 4,00,78,257/- on account of disallowance of depreciation on goodwill, by not adjudicating on the finding of the ACIT that in the case of assessee the value claimed to have been assigned to Goodwill is the payment made over and above the value of the tangible assets and the same is therefore a balancing figure, which could be payment considering multiple aspects and cannot be taken as specific value of the Goodwill on which depreciation could be allowed to the assessee. He further



submitted that the Ld. CIT(A) has not considered the fact that the decision of Hon'ble SC in CIT vs. Smiffs Securities Ltd. 252 CTR 233 (SC) has been considered by ITAT in ruling in united Beverages vs Add. Commissioner of Income Tax, Range-12, Bangalore (2016) and held that the ruling of SC is limited to issue whether goodwill falls in the category of intangible assets. The ITAT held that judgment of Hon'ble SC does not override the provisions of 5th proviso to section 32(1), now 6th proviso which restricts the claim of depreciation in goodwill. Thus, it is clear that the depreciation claim in the hands of the assessee is subjected to the 5th (now 6th proviso) to section 32(1) of the Act. The Ld. DR further submitted that the Ld. CIT(A) has not appreciated that the cases where the purchase or acquisition of goodwill merely represent general business rights or is merely residual of consideration or balancing figure, a claim of depreciation cannot be made in respect of the same within the meaning of provisions of section 32(1)(ii) in accordance with decision of honourable SC in Techno Shares and Stocks v CIT (2010) of the act i.e. not only nature and character of the intangible asset should we clearly established but it is to be established akin to any asset. Thus, the CIT(A) is not justified in facts and law in deleting the addition of Rs.4,00,78,257/- by failing to appreciate the fact that the AO specifically pointed out in Assessment Order that assessee failed to provide specific value of intangibles for



which the extra consideration was paid which was claimed to have been paid for goodwill. He pleaded to restore the Assessment order.

6. The Ld. AR for the assessee has relied on the impugned order, by reiterating the submissions made before the Ld. CIT(A). He submitted that the Id. AO has failed in not following the binding decision of Hon'ble Supreme Court which has decided the question that whether goodwill is eligible for depreciation under section 32(1) (ii) of the Income Tax Act. The Hon'ble Supreme Court of India in the case of Smifs Securities Ltd. v. CIT, reported in (2012) 348 ITR 302 in which case it was held that pursuant to an amalgamation of another company with the assessee, the difference between the consideration paid by the assessee and the net value of assets of the amalgamating company was treated by the assessee as goodwill and depreciation was allowable. The Hon'ble Supreme Court had clearly held that Goodwill is an asset under Explanation 3(b) to section 32(1) and eligible for depreciation. Following such principles various courts had allowed the claim of depreciation on goodwill. The AR argued that the assessment order is contrary to such judicial decisions and is malice in law. The Ld. AR argued that the amendment made by the Finance Bill 2021, applies from Assessment Year 2021-22 onwards and does not have retrospective effect. Therefore, the disallowance of depreciation in the current year is unjustified. He pleaded that the impugned order may be upheld.



7. Heard rival contention, perused the material on record, impugned order and case law cited. Admittedly, the assessee has claim depreciation on goodwill amounting to Rs. 4,00,78,257 in the return of income and that the amendment in relation to the depreciation on goodwill was made by Finance Bill 2021, i.e. with effect from Assessment Year 2021-22. Therefore, the disallowance of depreciation in the current year was bad in law and bad on facts and was also contrary to the order of amalgamation passed by the Hon'ble NCLT. The Hon'ble Supreme Court of India in the case of "Smifs Securities Ltd. v. CIT", (Supra) it was held that pursuant to an amalgamation of another company with the assessee, the difference between the consideration paid by the assessee and the net value of assets of the amalgamating company was to be treated as goodwill in the hands of the assessee and Accordingly, the depreciation was allowable.

8. In the light of the judgment of the Hon'ble Supreme Court (Supra), we hold that in the present case of the appellant, the Goodwill is an asset under Explanation 3(b) to section 32(1) and eligible for depreciation. The Ld. CIT (A)' decision is based on correct judicious interpretation of law on the eligibility of depreciation on goodwill by following the principles laid down by various courts on the claim of depreciation on goodwill and therefore, we find no reason to interfere in the order of Id. CIT(A)/NFAC. Accordingly, we find no merit and



substance in the issued raised in the grounds of appeal by the department.

Therefore, the all the grounds of the department are rejected.

9. In the above view, we hold that the revenue grievance is devoid of merits as we find no infirmity or perversity in the impugned order. The Ld. CIT (A)/NFAC order is upheld.

10. In the result, the revenue appeal is dismissed.

Order pronounced on...../...../2025 in the open court.

- Sd / -

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 24 / 06 / 2025

- Sd / -

(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder  
Assistant Registrar,  
Income Tax Appellate Tribunal,  
Jodhpur Bench,  
Jodhpur.

