

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFOR SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 976/Mum/2021 - A.Y. 2013-14

ITA No. 977/Mum/2021 - A.Y. 2014-15

Teleperformance Global Services Private Limited, Teleperformance Towers, Plot CST No.1406, A/28, Mindspace Goregaon West, Mumbai Suburban-400 064 PAN: AABCV2572L	vs	The Principal Commissioner of Income-tax-5, Room No.515, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

ITA No.1484/Mum/2024 - A.Y. 2014-15

ACIT 5(3)(1), Mumbai Room No.573, Aayakar Bhavan, M.K. Road, Mumbai-400 020	vs	Teleperformance Global Services Private Limited, Teleperformance Towers, Plot CST No.1406, A/28, Mindspace Goregaon West, Mumbai Suburban-400 064 PAN: AABCV2572L
APPELLANT		RESPONDENT

ITA No 1451/Mum/2024 - A.Y. 2014-15

ITA No 1452/Mum/2024 - A.Y. 2013-14

&

C.O. No.87/Mum/2024

(Arising out of ITA No.1484/Mum/2024- AY 2014-15)

Teleperformance Global Services Private Limited, Teleperformance Towers, Plot CST No.1406, A/28, Mindspace Goregaon West, Mumbai Suburban-400 064 PAN: AABCV2572L	vs	ACIT 5(3)(1), Mumbai Room No.573, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri J.D. Mistry a/w
Shri Madhur Agrawal
Respondent by : Shri Ritesh Misra, CIT DR
Date of hearing : 09/07/2025
Date of pronouncement : 16/07/2025

ORDER

Per Bench:

These are five appeals and a cross objection. 4 appeals and the cross objections are filed by the assessee and one appeal is filed by the revenue. ITA Nos. 976 & 977/Mum/2021 are filed by the assessee against the independent orders of the Learned Principal Commissioner of Income-tax, Mumbai-5 [for brevity, 'Ld.PCIT'] passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') for A.Ys 2013-14 & 2014-15, both dated 30/03/2021. These orders emanated from the orders of the Ld. Assistant Commissioner of Income-tax-12(2)(2), Mumbai passed under section 143(3) read with section 144C(13) of the Act dated 26/10/2017 for A.Y. 2013-14 and under section 143(3) read with section 144C(3) of the Act dated 30/01/2018 for A.Y. 2014-15. Whereas the appeals of the assessee

in ITA Nos. 1484, 1451 & 1452/Mum/2024 and CO 87/Mum/2024 are filed against the orders of the National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years 2013-14 and 2014-15, date of orders 30/01/2024. Assessment orders in ITA No.1451, 1452 & 1484/Mum/2024 and CO 87/Mum/2024 emanated from the orders of the Additional / Joint / Deputy / Assistant Commissioner of Income Tax / Income-tax Officer, National Faceless Assessment Centre, Delhi [in short, the "Ld. AO"] passed under section 144 read with section 263 read with section 144B of the Act, all dated 31/03/2022.

2. All the appeals have same nature of facts and common issue. So all the appeals were taken together, heard together and are disposed of by this common order. **ITA No.976/Mum/2021** is taken as lead case.

ITA No.976/Mum/2021

3. This appeal was previously fixed and adjudicated by the co-ordinate bench of ITAT-Mumbai and passed a common order related to Assessment Years 2013-14 & 2014-15, date of pronouncement 04/01/2023 pertaining to issue U/s 263 of the Act. Out of the three grounds, the bench decided two issues in favour of the assessee and one issue was decided against the assessee. The relevant observations of the ITAT at paragraph 12 is extracted as below:-

"12. We find that, as per the amalgamation of SKR BPO and IG SPL all the assets and liabilities of these companies are merged with the assessee company and due to the excess value of the assets over liabilities has resulted in goodwill and was recorded in the balance sheet for the A.Y 2012-13

and the assessee has claimed the depreciation. The contentions raised by the Ld.AR that the AO has allowed the depreciation on goodwill on amalgamation in the A.Y 2012-13 and only on the Written down value, the assessee has claimed the depreciation as per the provisions of law. Further for A.Y 2015-16 there is no disallowance of depreciation but for A.Y 2016-17 the AO has made disallowance of claim of depreciation. The contentions of the Ld. AR are based on the accounting standards, submissions and merits of case on allowability of claim. Whereas, the Issues envisaged in the present case, to find that the AO has verified, examined and applied his mind on these aspects in the assessment proceedings has to be considered. On perusal of the information in the paper book, we found that the assessee in compliance to notice u/s 142(1) of the Act has filed a reply placed at Page 290 to 330 of the paper book to mention that the submissions are also in respect of depreciation on goodwill along with other information vide letter dated 06.12.2016 placed at Page 290 of the paper book in particular on details of depreciation as under:

b) Details of Depreciation The prime reason for increase in depreciation amount was due to merger of SKR BPO Services Pvt. Ltd, Intelenetglobal services pvt ltd. with Serco BPO Pvt. Ltd. in the previous year. Pursuant to merger all Fixed Assets of amalgamating entities are added to SBPO. IGSP, an operating entity had huge Fixed Assets in its audited accounts which was transferred to SBPO pursuant to merger.

In view of above, the claim of depreciation is higher in comparison with previous assessment year of SBPO. Moreover, we would also like to state that SBPO has not claimed depreciation at rates higher than what is prescribed under the Income Tax Act, 1961 or additional depreciation during the year under consideration. The details of additions to fixed assets are attached herewith as Annexure 2.

The assessee has submitted the statement of additions to the assets, prima-facie we found that the issue with respect of claim of depreciation on goodwill has been not considered or dealt in the course of hearing by the AO and shall have a far reaching effects though in some years the claim

was allowed and was disallowed in other years. We found that the Pr.CIT has dealt on the facts to prove that the AO has not applied his mind or made enquiries on the issue. Whereas, the assessee has filed the details of claim of depreciation along with the list of additions in response to notice u/s 142(1) of the Act as referred above. But in the assessment proceedings though the AO has called for the information there is no examination or verification of facts or findings by AO on the claim of depreciation on goodwill and subsequent carry forward of WDV. Accordingly, the matter needs to be examined and verified and we do not find infirmity in the directions issued by the Pr.CIT to the Assessing officer for verification of claim of depreciation on goodwill.”

4 Against the order of the Tribunal, the assessee filed a miscellaneous application and challenged that the bench has not decided the pertinent issue related to jurisdiction of setting aside assessment order in connection with depreciation claimed on goodwill and after verification of the said order, the Bench restored the matter on a specific ground and the relevant observations of the bench in M.A. Nos 382 to 383/Mum/2023, date of pronouncement 05.09.2024 at paragraph 6 is extracted below:-

“6. We heard the rival submissions and perused the material on record. We find that there is no clarity available from the information submitted by the revenue and the assessee on the claim of depreciation on goodwill allowed in the earlier years and also non consideration of judicial decisions cited before the bench is a mistake apparent from the record. Accordingly, in the interest of principles of natural justice, we recall the Hon’ble Tribunal order dated 4-01-2023 to the extent of examination and verification of claim of depreciation on goodwill and direct the registry to post the appeal for regular hearing on this issue and inform both the parties.”

The coordinate bench restored the issue, and the matter is fixed for adjudication before us.

5. The assessee, during the hearing, submitted the written submissions and the relevant part of the submissions is extracted below:-

"Assessment Years: 2013-14 and 2014-15

1. Brief background:

Pursuant to a scheme of merger under sections 391 to 394 of the Companies Act 1956, SKR BPO Services Pvt. Ltd. ("SKR BPO") and Intelenet Global Services Pvt. Ltd. ("pre-merger IG SPL) amalgamated with Serco BPO Pvt. Ltd with effect from 7 July 2011 vide the High Court's order dated 5 March 2013.

Post-merger, the name of the resultant entity viz. Serco BPO Pvt. Ltd. was changed to Intelenet Global Services Pvt. Ltd. ("post-merger IG SPL") with effect from 11 January 2016

Post-merger IG SPL's name was changed to Teleperformance Global Services Private Limited ("TG SPL") with effect from 12 February 2019.

Vide another scheme of amalgamation approved by the National Company Law Tribunal, TG SPL merged with Teleperformance Global Business Private Limited ('TGBPL) with effect from an appointed date of 05 April 2023

2. Return of income filed for AV 2012-13:

Filed by post-merger Serco BPO Pvt. Ltd. [now TGBPL as successor of TG SPL holding PAN - AABCC6211B (erstwhile PAN-AABCV2572L)]:

- During financial year 2011-12, prior to the merger of SKR BPO and pre-merger IG SPL., Serco BPO Pvt. Ltd. had acquired the business of HYIT Knowledge Systems Pvt. Ltd. ("HYIT-acquisition") vide an asset purchase agreement dated 28 August 2010, pursuant to which goodwill of Rs. 5,81,83,825 was recognized in the books of account.*
- The original Form 3CD of Serco BPO (prior to merger) was filed on 26 November 2012. As may be noted from the schedule "Depreciation admissible as per the IT Act of the original Form 3CD (page 75 of the compilation), tax depreciation on goodwill and other intangibles was claimed as follows:*

Particulars		Depreciation (Rs.)
Opening WDV of Rs.35,98,55,533	@25% on 35,98,55,533	8,99,63,883
Goodwill of rs.5,81,83,825 on the HYIT-acquisition	@50% of (25% on Rs.5,81,83,825) [as used for <180 days]	72,72,978
Depreciation as per original Form 3CD and ITR		9,72,36,861

Further the original ITR of Serco BPO (prior to merger) was filed on 30 November 2012 (Ack. No 535781531301112). As may also be noted from "Schedule DOA" and "Schedule DEP of the original ITR (pages 68-69 of the compilation), the tax depreciation as detailed above was claimed on the goodwill/other intangibles arising on the HYIT-acquisition.

- Subsequently, pursuant to the amalgamation of SKR BPO and pre-merger IG SPL with Serco BPO, a revised Form 3CD was filed on 24 March 2014 by Serco BPO. As may be noted from the schedule "Depreciation admissible as per the IT Act" of the revised Form 3CD (page 78 of the compilation), tax depreciation was claimed in respect of the goodwill arising on the HYIT-acquisition and the SKR BPO and pre-merger IG SPL-amalgamation as follows:

Particulars		Depreciation (Rs.)
Opening WDV of Rs.35,98,55,533	@25% on 35,98,55,533	8,99,63,883
Goodwill of Rs.5,81,83,825 on the HYIT-acquisition	@50% of (25% on Rs.5,81,83,825) [as used for < 180 days]	72,72,978
<u>Intangible assets acquired on the SKR-BPO and merger IG SPL amalgamation:</u>		
<ul style="list-style-type: none"> Goodwill of Rs.1146,08,86,631 	@215% on 1146,08,86,631	286,52,21,658
<ul style="list-style-type: none"> Customer contracts of Rs.241,36,99,166 	25% on 241,36,99,166	60,34,24,791
<ul style="list-style-type: none"> Customer relationships of Rs.110,28,47,586 	25% on 110,28,47,586	27,57,11,897

- Further, pursuant to the SKR BPO and pre-merger IG SPL-amalgamation with Serco BPO, a revised ITR was filed on 31 March 2014 by Serco BPO (Ack. No. 167561691310314). As may be noted from "Schedule DOA" and "Schedule DEP" of the revised ITR (pages 71-72

of the compilation). tax depreciation as detailed above, was claimed on the goodwill/other intangible assets.

3. Assessment made for AY 2012-13:

In the case of post-merger Serco BPO Pvt. Ltd. [now TGBPL as successor of TGSPIL holding PAN - AABCC6211B (erstwhile PAN-AABCV2572L)]:

- Draft assessment order dated 23 March 2016:
- Passed u/s 143(3) r.w.s. 144C of the IT Act.
- By DCIT Circle-4, Gurgaon [R.P. Jolly].
- The opening para of the draft order (page 80 of the compilation) observes that original and revised ITRs were filed respectively on 30 November 2012 and 31 March 2014.
- As may be noted from the draft assessment order (page 81 of the compilation), disallowance was made only in respect of depreciation of Rs.72,72,978 on the goodwill arising on the HYIT acquisition.
- Disallowance was not made in respect of the goodwill arising on the SKR-BPO amalgamation as well as the opening WDV of goodwill.

Subsequently, Serco BPO Pvt. Ltd.'s case was transferred from DCIT, Circle-4, Gurgaon to ACIT-12(2)(2), Mumbai due to a change in the company's registered office post-merger, and also upon restructuring of the tax department. Accordingly, the final assessment order was passed by the AO in Mumbai.

b. Directions of Dispute Resolution Panel-1. New Delhi (DRP), dated 23 December 2016:

- Passed u/s 144C(5).
- By CIT 2, DRP-1 of the IT Act.
- The objections (Volume 1) against the draft assessment order dated 23 March 2016 were filed with the DRP accompanied by the supporting documents and details in paper books (Volumes II to V). The assessing officer was also notified about the objections filed before the DRP.
- Volume II of the objections filed before the DRP (pages 93-101 of the compilation) includes all the basic documents viz. audited financial statements, Form 3CEB, revised tax audit report, revised ITR, etc.

c. Final assessment order dated 31 January 2017:

- *Passed u/s 143(3) r.w.s. 144C (13).*
- *By ACIT Circle 12(2)(2), Mumbai [Rishi Kumar].*
- *The opening para of the final assessment order (page 84 of the compilation) observes that original and revised ITRs were filed respectively on 30 November 2012 and 31 March 2014.*
- *Para 2 of the final order notes about the change in the assessee's jurisdiction from Gurgaon to Mumbai upon restructuring of the tax department.*
- *Based on the DRP's directions dated 23 December 2016, the disallowance of depreciation of Rs.72,72,978 on goodwill arising on the HYIT-acquisition was confirmed (page 89 of the compilation). However, unlike the draft order dated 23 March 2016, the final assessment order does not contain any discussion that the said depreciation related to the goodwill arising on the HYIT-acquisition.*
- *The company's appeal against the final assessment order dated 31 January 2017 was allowed vide the ITAT's order dated 22 December 2023 wherein the ITAT quashed the assessment on the basis that the mandatory procedure laid down u/s 144C of the IT Act was not followed.*

4. Summary:

- *In the case of Serco BPO Pvt. Ltd. [now TGBPL as successor of TGSPL holding PAN AABCC6211B (erstwhile PAN- AABCV2572L)]:*
 - *Depreciation of Rs. 72,72,978 was claimed on the goodwill arising on the HYIT-acquisition both in the original and revised Form 3CD and ITR.*
 - *Depreciation on goodwill arising on the SKR BPO and pre-merger IGSP- amalgamation was claimed vide the revised Form 3CD and revised ITR.*
- *The fact that revised ITR (claiming depreciation on goodwill arising on the SKR BPO and pre-merger IGSP- amalgamation) was filed, was taken note of both in the draft and final assessment orders dated 23 March 2016 and 31 January 2017 for AY 2012-13 passed in the case of post-merger Serco BPO Pvt. Ltd. [now TGBPL as successor of TGSPL holding PAN AABCC6211B (erstwhile PAN-AABCV2572L)].*
- *However, the only disallowance made in the aforesaid orders was relating to the claim depreciation of Rs. 72,72,978 on goodwill pertaining to the HYIT-acquisition.*
- *The above demonstrates that depreciation on goodwill arising on the SKR BPO and pre-merger IGSP- amalgamation was not disallowed in the assessment made for AY 2012-13 i.e., the year in which the said goodwill arose for the first time.*
- *In the show-cause notice dated 09 March 2020 issued u/s 263 of the Act, question was raised only with respect to the depreciation claimed on the goodwill, customer contracts*

and customer relationships acquired pursuant to the SKR-BPO and pre-merger IG SPL-amalgamation.”

- *Despite depreciation on goodwill arising on the HYIT-acquisition not being a part of the proceedings under section 263, in the assessment orders dated 31 March 2022 for AYs 2013-14 and 2014-15 passed pursuant to the orders passed under section 263, depreciation has been disallowed on the:*
 - *Goodwill arising on the HYIT-acquisition*
 - *Goodwill arising on the SKR BPO and pre-merger IG SPL-amalgamation*
- *It is hence submitted that as depreciation was allowed on the goodwill arising on the SKR-BPO and pre-merger IG SPL-amalgamation in AY 2012-13 and the said goodwill was already forming part of the block of opening intangible assets as on 1 April 2013, the claim for depreciation thereon, ought not to be disturbed in the subsequent years i.e., in AYs 2013-14 and 2014-15.”*

In argument, the Ld.AR submitted that through revised return the assessee claimed the depreciation on goodwill. During the assessment proceedings, the assessee brought the facts before the Ld.AO by a letter dated 16/04/2015 where the depreciation claimed on the goodwill due to amalgamation @25% related to customer contracts, customer relationships and the said depreciation claimed under section 32(1)(iii) of the Act and assessee relied on the order of **Smiff Securities Ltd 348 ITR 302 (SC)** where the Hon'ble Supreme Court held that goodwill is an intangible asset under Explanation 3(b) of section 31(1) of the Act, which is eligible for depreciation in law and the facts finding Ld. AR stated that the assets and liabilities of the amalgamated company were transferred to the assessee company for a consideration and that difference between the cost of the asset and the amount paid is goodwill which was a capital right acquired by it. The assessee relied on a number of judgements of Hon'ble jurisdictional High Court. The Ld.AO had considered these submissions and there is no further enquiry made. In

argument, the assessee further stated that in the revised return for impugned assessment year, the said depreciation on goodwill is duly reflected in the Schedule 'DOA' and the said table is duly annexed in **APB page 71**. The said table is reproduced below: -

1	Block of assets	Building			Furniture and fittings	Intangible assets	Ships
		5	10	100	10	25	20
2	Rate (%)	(i)	(ii)	(iii)	(iv)	(v)	(vi)
3	Written down value on the first day of previous year	0	0	0	215950886	359855533	0
4	Additions for a period of 180 days or more in the previous year	0	19153655	0	794828552	14977433383	0
5	Consideration or other realization during the previous year out of 3 or 4	0	0	0	20628240	0	0
6	Amount on which depreciation at full rate to be allowed (3 + 4 -5)	0	19153655	0	990151198	15337288916	0
7	Additions for a period of less than 180 days in the previous year	0	0	0	85821943	58183825	0
8	Consideration or other realizations during the year out of 7	0	0	0	0	0	0
9	Amount on which depreciation at half rate to be allowed (7-8)	0	0	0	85821943	58183825	0
10	Depreciation on 6 at full rate	0	1915366	0	99015120	3834322229	0
11	Depreciation on 9 at half rate	0	0	0	4291097	7272978	0
12	Additional depreciation, if any, on 4	0	0	0	0	0	0
13	Additional depreciation, if any, on 7	0	0	0	0	0	0
14	Total depreciation (10+11+12+13)	0	1915366	0	103306217	3841595207	0
15	Expenditure incurred in connection with transfer of asset/ assets	0	0	0	0	0	0
16	Capital gains/ loss under section 50* (5 + 8 -3-4 -7 -15) (enter negative only if block ceases to exist)	0	0	0	0	0	0
17	Written down value on the last day of previous year* (6+ 9 -14)	0	17238289	0	972666924	11553877534	0

6. The Ld.AR respectfully relied on the order of the co-ordinate bench of ITAT, Mumbai Bench in the case of **Bhavani Gems Pvt Ltd in ITA No.766/Mum/2021**, date of pronouncement **29/04/2022**. The relevant paragraph No.16 is reproduced as below:-

“016. Coming to the second issue of depreciation on goodwill, the fact shows that the assessee company has acquired all assets and liabilities including goodwill from one partnership firm M/s Bhavani Gems for consideration of ₹ 230 crores out of which ₹ 26 crores were paid towards goodwill. The goodwill entered into the block of assets on 27th of March 2012 and depreciation on the same has been claimed till assessment year 2015 – 16 approximately of ₹ 6.5 crores resulting into an operating block of assets as on 1 April 2015 of ₹ 19.50 crores. The assessee has been allowed depreciation on this goodwill in assessment year 2015 – 16 in the order passed u/s 143 (3) of the act for that year. The assessment year 2015 – 16 has neither been reopened u/s 147 of the act or any remedial action initiated u/s 263 of the act. Therefore it is apparent that in the first year itself wherein depreciation was claimed by assessee in assessment year 2015 – 16, the claim was allowed in scrutiny assessment which is not disturbed by revenue. This is the second year the claim of the depreciation on goodwill. Ld AR has also stated that it is not a self generated goodwill but arising on acquisition of above partnership firm. The learned authorised representative has placed before us the decision of the coordinate bench in case of Bodal chemicals Ltd versus additional Commissioner of income tax ITA number 139/Ahd/2011 dated 16/10/2019 wherein in paragraph number 10 it has been held that revenue once allowed the deduction for the depreciation claimed by the assessee then it is debarred to reject the claim of the assessee in the subsequent year on the written down value carried forward from the earlier assessment year. Therefore, we fully agree that on this issue the learned principal Commissioner of income tax could not have invoked the provisions of Section 263 of the act. Even otherwise, claim of depreciation on goodwill is a debatable issue on which provisions of Section 263 could not be invoked.”

The Ld.AR further relied on the decision of the co-ordinate Bench of Ahmedabad Bench "A" in the case of **Bodal Chemicals Ltd vs ACIT, Ahmedabad (2019) 112 taxmann.com 217 (Ahm Trib)**. The relevant paragraphs 12 to 15 are extracted below:-

"12. Now coming to the present facts of the case we note that Indeed there was no entry in the books of the transferor company for the intangible assets/goodwill being self generated assets. Thus in the backdrop of the above stated facts we are of the view that impugned transaction for claiming the deduction on account of the depreciation is an arrangement for claiming the higher depreciation which is unwanted under the provisions of law.

Before parting, we are conscious to the fact that the assessee was allowed for depreciation in respect of such goodwill in the 1st year of amalgamation i.e. AY 2006-07. There was no action either under section 263 or 147 of the Act by the revenue. Therefore we can safely presume that the claim of the depreciation of the assessee in the 1st year has attained finality. Admittedly the 1st year is the base assessment year from where the issue of depreciation is emanating.

13. *The question arises once the depreciation has been allowed in the 1st year then the same can be disturbed in the subsequent year without having any change in the facts and circumstances. In our considered view, in such a case the principles of consistency shall be applied as held by the Hon'ble Bombay High Court in the case of Pr. CIT v. Quest Investment Advisors Ltd. [2018] 96 taxmann.com 157/257 Taxman 211/409 ITR 545 wherein it was held as under:*

"Once this principle was accepted and consistently applied and followed, the revenue was bound by it. Unless of course it wanted to change the practice without any change in law or change in facts therein, the basis for the change in practice should have been mentioned either in the assessment order or atleast pointed out to the Tribunal when it passed the impugned order. None of this has happened. In fact, all have proceeded on the basis that there is no change in the principle which has been consistently applied for the earlier

assessment years and also for the subsequent assessment years. Therefore, the view of the Tribunal in allowing the respondent's appeal on the principle of consistency cannot in the present facts be faulted with, as it is in accord with the Apex Court decision in Bharat Sanchar Nigam Ltd. v. Union of India [2006] 282 ITR 273. [Para 9]"

In view of the above, the assessee succeeds on the principle of consistency. Accordingly we set aside the order of the learned CIT (A) and direct the AO to allow the depreciation to the assessee. Hence the ground of appeal of the assessee is allowed."

7. The Ld. DR argued and stands in favour of the revenue authorities. The Ld.DR relied on relevant paragraph of revisional order, which are extracted below:-

"As per the assessee company's submission, the opening WDV included assets taken over during amalgamation and the WDV was net of depreciation which would be taken on revision of the return of AY 2012-13. Considering the above, the figures given in the asset schedule in Form 3CD and value of additions made in the above two categories in the depreciation schedule as per Companies Act can be reconciled as under:

Class of asset	Additions made during the year in AY 2012-13	Rate of depreciation	Opening WDV in AY 2013-14 to be taken after allowing depreciation	Opening WDV as per Form 3CD and ITR in AY 2013-14	Excess WDV taken	Excess depreciation taken
Goodwill			8595664973	8916467470	320802497	80200624
i. On amalgamation	11460886631	25%				
ii. Customer contracts	2413699166		1810274374	1810274374	0	
iii. Customer relationships	1102847586		827135690	827135690	0	
Furniture and fixtures	210465127	10%	189418614	291211776 (991627934-700416158)	101793162	10179316
TOTAL					422595659	90379940

From the above it can be seen that the assessee had availed excess depreciation amounting to Rs.9,03,79,940/- with resultant short levy of tax of Rs.2,93,23,771/-.

These facts and figures were not properly examined and verified by the AO before passing the said assessment order

Similarly, the Assessing Officer should have properly inquired into and verified the WDV of other class of assets and ascertained the correctness of the depreciation claimed on addition to fixed assets on amalgamation.

6.3. It may further be noted that in this case there were certain facts and figures which needed proper enquiries and verification before passing the assessment order. It has further been found that M/s. IntelNet Global Services Pvt. Ltd (PAN AAAC17387P) which has subsequently merged with M/s Serco BPO Pvt Ltd and presently renamed as M/s IntelNet Global Services Pvt. Ltd (the assessee) that the said entity had filed Service Tax Return showing receipts of Rs. 1/369.23 crores. Interest receipt of Rs. 10.67 crores and had also shown remittances of Rs. 5.23 crores to a foreign company. Moreover, there is credit card payment of Rs. 19.35 lakhs and payments to hotels and restaurants at Rs. 6.51 lakhs However, no return of income was filed by the said entity. From the records it is seen that these transactions were also not verified or examined by the Assessing Officer before passing of the said relevant Assessment Order

6.4. In view, of the above said facts, the assessment order dated 26.10.2017 passed u/s 143(3) rws 144C(13) of the IT Act for AY 2013-14 is erroneous and prejudicial to the interest of revenue. Moreover it is seen that the said issue was not a subject matter of appeal as the said issue did not emanate from the assessment order and are based on examination of Accounts and records which the AO failed to properly inquire into and verify the same before passing the assessment order

6.5. Thus, the details on record clearly indicate that the said issues and discrepancies were neither properly verified nor properly inquired upon and the effect of the same has not been brought on

the record and in the absence of express consideration and reflection of same in the assessment order, it is clear that the Assessing Officer has not properly caused the necessary enquires and verification of the minute facts and figures and also failed to examine the correctness of claim of the assessee with regard to the amalgamation and the claim of depreciation on the amount shown as goodwill and the revalued amount of the intangible assets existing in the books of the companies stated to have been merged with the assessee company. The Assessing Officer has also not verified whether the conditions specified in the fifth proviso to Section 32(1) of the depreciation being restricted to the extent eligible to both the amalgamating and amalgamated company for the year has been complied with pursuant to the said amalgamation. It is also seen that the Assessing Officer has not verified the existence of goodwill in the books of the assessee prior to the amalgamation and the claim of huge brought forward losses/unabsorbed depreciation.

6.6. The contention of the assessee company that the assessing officer has passed the assessment order after examining all the details on the aforesaid issues and such order cannot be revised. In this regard, it is observed that the assessment order is found to be erroneous in so far it is prejudicial to the interest of revenue on law as well as facts, as discussed in the proceedings paras. The power of revision of section 263 empower the commissioner to call for and examine the records of proceeding under the act and if he considers that any order passed therein by the assessing officer is erroneous in so far it is prejudicial to the interest of revenue, the order can be revised. In the instant case, the assessment order is found to be erroneous in so far it is prejudicial to the interest of revenue. Therefore, the assessment order is subject to the revision under section 263 of the act.”

8. We have heard the rival submissions and perused the material available on record. The issue before us pertains to the validity of the revisional order passed by the Ld. PCIT under section 263 of the Act, in relation to the assessee's claim of

depreciation on goodwill arising out of a merger. The said merger and the consequent goodwill were duly reflected in the block of assets from AY 2012-13 onwards. The depreciation claimed in the relevant assessment year is only on the WDV brought forward. It is pertinent to note that in earlier years, the goodwill and the corresponding claim of depreciation were duly accepted by the department, and in the impugned year, depreciation has been claimed merely on the WDV of the same. However, the Ld. PCIT observed that the assessment order passed by the Ld. AO was erroneous and prejudicial to the interest of the revenue on the ground that the AO failed to verify the depreciation claim of Rs.9,03,79,940/-, resulting in a short levy of tax to the extent of Rs.2,93,23,771/-.

Upon examination, we find the observations of the Ld. PCIT to be factually incorrect. The assessee had filed a revised return of income, which was duly considered by the Ld. AO in the draft assessment order. During the assessment proceedings, the assessee furnished complete details of depreciation, including a detailed explanation regarding the claim of depreciation on goodwill at the applicable rate of 25%. The assessee also relied on the judgment of the Hon'ble **Supreme Court in CIT v. Smifs Securities Ltd. [2012] 348 ITR 302 (SC)**, in support of the claim.

The Ld. AO, after due consideration, accepted the depreciation claim of Rs.8,99,63,883/-, which included depreciation at the rate of 25% on WDV of Rs.35,98,55,533/-. The only disallowance made was with respect to depreciation of Rs.72,72,978/-, being 50% of 25% on the WDV of Rs.5,81,83,825/-, as the asset was used for less than 180 days. This amount was added back to the total income of the

assessee. It is thus evident that the Ld.AO had duly examined and verified the depreciation claim, and there is no finding that the Ld. AO had failed to apply his mind.

Further, the depreciation claim was also duly disclosed in the revised return of income in Schedule “DOA” (Details of Depreciable Assets). The reliance placed by the Ld. AR on the decision of the Coordinate Bench of ITAT, Mumbai in the case of **Bhavani Gems Pvt. Ltd.** (supra) and of the ITAT, Ahmedabad in **Bodal Chemicals Ltd.** (supra) supports the assessee’s stand that depreciation on goodwill already recognized and brought forward in the block of assets cannot be treated as an erroneous claim.

The Ld. DR has not brought to our notice any contrary judicial decision to rebut the legal position relied upon by the assessee.

In view of the above facts and legal position, we find that the twin conditions required for invocation of jurisdiction under section 263—namely, that the order is erroneous and prejudicial to the interest of the Revenue—are not satisfied. The AO has made due verification and application of mind on the issue, and the claim of depreciation is not erroneous in law.

Accordingly, the revisional order passed by the Ld. PCIT under section 263 of the Act is quashed.

9. In the result, the appeal of the assessee bearing **ITA No.976/Mum/2021** is allowed.

10. The facts and circumstances in the appeal **ITA No. 977/Mum/2021** is identical to the facts and circumstances narrated above, therefore, the decision arrived at above, shall apply mutatis mutandis to this appeal also.

ITA No.1451, 1452 & 1484/Mum/2024 & CO 87/Mum/2024

11. The Ld. AR informed the Bench that all the appeals pertain to the Order Giving Effect (OGE) to the revisional order passed under section 263 of the Act, by the Ld. PCIT. The said OGE was challenged by the assessee before the Ld. CIT(A), who granted partial relief. Aggrieved by the said order, both the assessee and the Revenue have preferred appeals before us.

In view of the fact that the underlying revisional order passed under section 263 of the Act has been quashed by us, the consequential OGE and all related proceedings lose their legal substratum. Accordingly, the appeals filed by the assessee and the cross-objection are allowed, and the appeal filed by the revenue stands dismissed.

12. In the result, **ITA No.976 & 977/Mum/2021** are allowed; **ITA Nos 1451 & 1452/Mum/2024 & CO 87/Mum/2024** are allowed; **ITA No.1484/Mum/2024** is dismissed.

Order pronounced in the open court on 16th day of July, 2025.

Sd/-

sd/-

(SMT. RENU JAUHRI)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 16/07/2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**