



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, AM.**

**&**

**DINESH MOHAN SINHA, JM**

आयकरअपीलसं./ITA No. 110/RJT/2025

निर्धारणवर्ष / **Assessment Year: (2018-19)**

**(Hybrid Hearing)**

Assistant Commissioner of Income-tax, Circle- 1(1), Rajkot  Room No.502, Aayakar Bhavan, Race Course Ring Road, Rajkot 360 001	<b>Vs.</b>	Gandhi Realty (India) Private Limited Four Plus, SF-205, Sardarnagar Main Road, 150 - Feet Ring Road, Rajkot 360001, Pan No. AAACD7535Q
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri R. K. Doshi, Ld. AR  
Respondent by : Shri Praveen Verma, Ld. CIT. (DR)  
**Date of Hearing : 26/06/2025**  
**Date of Pronouncement : 25/ 08/2025**

**आदेश / ORDER**

**Per, Dr. Arjun Lal Saini, AM:**

By way of this appeal, the Revenue has challenged correctness of the order dated 27/12/2024, passed by the learned CIT(A), in the matter of assessment under section 143(3) r.w.s. 260 of the Income Tax Act 1961, for the assessment year 2018-19.

2.Grievances raised by the Revenue, are as follows.



- 1. The learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 20,18,52,087/-, on account of depreciation claim on goodwill for Rs. 20,18,52,087/-, for the year under consideration.*
- 2. Any other ground that the Revenue may rise before or during the proceedings before the Hon'ble ITAT.*
- 3. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the AO be restored to the above extent.*

## **Facts of the case**

3. Succinctly, the factual panorama of the case is that the assessee before us is a Private Limited Company. The assessee -company filed Return of Income on 30.10.2018, by declaring loss of Rs. 16,34,80,379/-. Subsequently, the assessee's case was selected for complete scrutiny under CASS. Accordingly, a notice u/s 143(2) of the Income Tax Act, 1961, dated 22.09.2019, was issued and the same was duly served on the assessee. Further notices u/s 142(1) of the I.T. Act, along with the questionnaire was issued on 03.02.2021. In response, the assessee furnished information, before the assessing officer. Since, the details submitted by the assessee were incomplete and as further details were mandated, another notice u/s 142(1), dated 03.02.2021, was issued to the assessee, calling various details. In response to same, the assessee furnished various details/documents, before the assessing officer. Subsequently, an Assessment Order u/s. 143(3) r.w.s 144B of the Income Tax Act was passed on 20.04.2021, assessing the total income at Rs. 5,44,09,708/-, against the returned Loss of Rs. 16,34,80,379/-. The variation of Rs. 21,78,90,087/-, between returned Loss and assessed Income was attributable to the addition of Rs. 20,18,52,087/-, made on account of disallowance of claim of Depreciation on goodwill and Unexplained Cash Credit of Rs.1,60,38,000/-. Against the said Assessment Order, the assessee filed Special Civil Application No. 7662 of 2021 before the Hon'ble Gujarat High Court, on the ground that the Assessing Officer passed the Assessment order without issuing any show cause notice on 20.04.2021, making addition of income on two issues totaling to Rs. 21,78,90,087/- (Rs.20,18,52,087 + Rs.1,60,38,000).



Consequently, the Hon'ble Gujarat High Court vide Order dated 05.10.2021, has quashed the Assessment Order dated 20.04.2021 and directed the Department to proceed with the assessment process under the provisions of Section 144B of the Act, after issuance of the prior show cause notice and on availing an opportunity to the Assessee. Accordingly, after issuing a fresh notice u/s 142(1) of the Act, dated 06/12/2022, and a show -cause notice dated 14/12/2022, were issued to the assessee, granting opportunity to explain its case and furnish the relevant details/documents.

4. During the course of scrutiny proceedings, on verification of the submission of the assessee it was observed by the assessing officer that the company, namely M/s Gandhi Realty (India) Pvt. Ltd, and M/s Crystal Organisers Pvt Ltd, were amalgamated with the company M/s J. B. Realties Pvt Ltd, vide order of National Company Law Tribunal vide Order No. CP(CCA) No. 95/230-232/NCLT/AHM/2018 in CA(CCA) No. 34/NCLT/AHM/2018 dated 22.10.2018. On perusal of facts on records, the following points were noticed by the assessing officer:

(i) During the year under consideration, earstwhile Gandhi Realty (India) Pvt. Ltd, having registered office at "Solotarie", Amin Marg, Junction, 150 ring Road, Nr. Pragati Complex, Rajkot 360005 and PAN No.AACCG5189K [the Transferor Company 1] and Crystal Organisers Pvt. Ltd, having registered office at Crystal Mall, Basement, Kalawad Main Road, Opp. Rani Tower, Rajkot- 360 005 and PAN No. AADCC2130R [the Transferor Company 2] (together known as the Transferor Companies), had been amalgamated with the assessee, vide a scheme of amalgamation ("the Scheme"), as per the provisions of section 230 to 232 of Companies Act, 2013. The Scheme was approved by the National Company law Tribunal (NCLT) vide its order dated 22nd October 2018 and



amalgamation was effective from the appointed date of 01st April 2017 (Appointed Date).

(ii). The assessee issued shares amounting to Rs.1,01,76,57,229/- based on the valuation of Transferor Companies, for acquiring the business and all the assets and liabilities of the Transferor Companies. The fair value of net assets acquired was Rs. 21,02,48,883/- and amount of Rs. 80,74,08,346/- was paid for goodwill.

(iii). The said consideration was issued and paid based on the valuation of Transferor Companies and share exchange ratio determined by the valuer.

(iv). Subsequently, the amalgamated company, M/s J. B. Realty Pvt Ltd, has changed its name to M/s Gandhi Realty (India) Pvt Ltd, vide Certificate of Incorporation, pursuance to change of name of MCA Gujarat (India), dated 23.01.2019.

5. The assessing officer noticed that assessee-company, that is, Gandhi Realty (India) Pvt Ltd, [PAN:No. AAACD7535Q), earstwhile, J.B. Realities Pvt Ltd, has claimed depreciation of Rs. 20,18,52,087/- (being 25% of Rs. 80,74,08,346), on intangible asset, that is, on Goodwill. The erstwhile M/s. Gandhi Realty (India) Pvt Ltd, (PAN AACCG5189K) and M/s Crystal Organisers Pvt Ltd. (PAN AADCC2130R) that existed, on 31.03.2017, got amalgamated into M/s. J.B. Realities Pvt. Ltd. (PAN: AAACD7535Q) as per the provisions of section 230 to 232 of Companies Act, 2013. The Scheme was approved by the National Company law Tribunal (NCLT) vide its order dated 22nd October 2018. Subsequently, the resultant entity, renamed itself as Gandhi Realty (India) Pvt. Ltd. [PAN: AAACD7535Q), by virtue of 'Certificate of Incorporation pursuant to change of name' dated 23rd January, 2019.

As a result of this amalgamation, the books of J.B. Realities Pvt. Ltd. (PAN AAACD7535Q) (which late got itself renamed as Gandhi Realty (India) Pvt. Ltd.



[PAN: AAACD7535Q) reported an addition of intangible asset in the form of Goodwill of Rs. 80,74,08,346/-, and Depreciation of Rs. 20,18,52,087/- has been claimed thereon. In the light of above facts and circumstances, details were called for to examine whether the claim of the assessee, regarding creation of Goodwill and its depreciation thereon is in accordance to provisions of Income Tax Act, 1961. In response to same assessee furnished various details and documents.

6. The assessing officer noticed that during the year under consideration (AY 2018-19), the Hon'ble NCLT, vide order, dated 22nd October, 2018, has approved the scheme of amalgamation of Gandhi Realty (India) Pvt. Ltd ('Transferor Company -1 having PAN- AACCG5189K) and Crystal Organisers Pvt Ltd (Transferor Company-2, having PAN-AADCC2130R) got amalgamated with J.B. Realties Pvt. Ltd. ('Transferee Company' having PAN- AAACD7535Q). Thereafter, the name of J.B. Realties Pvt. Ltd. was changed to Gandhi Realty (India) Pvt, Ltd with effect from 23rd January 2019. As a result of this scheme during the year under consideration, JB Realties Private Ltd ('Transferee Company' having PAN- AAACD7535Q) had issued 1,22,50,000 equity shares of Rs.10/- each at a premium of Rs. 72.43 per share totaling to Rs. 1,00,97,67,500/- against the share- holding of Gandhi Realty (India) Pvt Ltd. Besides, it has also issued 95,714, Equity Shares of Rs. 10/- each, at a premium of Rs. 72.43 per share totaling to Rs. 78,89,705/- against the shareholding of Crystal Organisers Pvt Ltd. The balance sheet of J.B. Realties Pvt Ltd (presently known as Gandhi Realty (India) Pvt. Ltd.) reflects that this entity has staked up an intangible asset in the form of Goodwill to the tune of Rs. 80,74,08,346/-, in its books of accounts by virtue of this scheme of amalgamation of Gandhi Realty (India) Ltd. ('Transferor Company' having PAN AACCG5189K) and Crystal Organisers Pvt Ltd (Transferor Company-2 having PAN-AADCC2130R)) with JB Realties Private Ltd. (Transferee Company). The excess consideration discharged by J.B. Realties



Private Limited, over book value of both the above mentioned transferor companies, has been recorded as Goodwill in the books of J B Realities Private Limited. Subsequently, J.B Realities Private Limited renamed as Gandhi Realty (India) Pvt Ltd (PAN: AAACD7535Q) and subsequently has claimed depreciation of Rs. 20,18,52,087/- of intangible asset in the form of Goodwill of Rs. 80,74,08,346/-.

7. While analyzing the aforesaid scheme of amalgamation, it was noticed by the assessing officer that there are pre-planned, sequence of events, have been adopted by the assessee, to create an artificial goodwill by usage of colourful device. To be precise, status of Gandhi Realty (India) Pvt Ltd (PAN - AACCG5189K) from a one corporate entity into Gandhi Realty (India) Pvt Ltd (PAN : AAACD7535Q), as another corporate entity was achieved in A.Y. 2018-19 itself. From the scheme of amalgamation, it was thus abundantly clear that Gandhi Realty (India) Pvt Ltd (PAN -AACCG5189K) converted to Gandhi Realty (India) Pvt Ltd (PAN: AAACD7535Q) in the same year via a dormant company M/s. J.B. Realities Pvt Ltd. Thus, the Assessee, following a going concern principle, has adopted a colourable device to create artificial goodwill without any actual financial pay-out in its books. In the light of this fact, the assessee vide show -cause of assessing officer dated 14.12.2022 was asked to explain as to why its claim of depreciation of Rs. 20,18,52,087/- on Goodwill should not be disallowed treating the transaction of creation of goodwill as colourful device. The said show sause notice of the assessing officer is reproduced in the assessment order, page number 4 to 8.

8. In response to the above notice of the assessing officer, the assessee- company submitted that assessee is in the business of construction and sale of properties, running of malls and development of warehouses on basis of works contracts.



The business activity involves carrying on the business as developers of land, builders, contractors, and to construct, build, develop, purchase, acquire, own, contract, lease and let on lease, hire, or let on hire, demolish, enlarge, erect, repair, sell, dispose of and deal in houses, bungalows, shops, flats, offices, tenements workshops, factory buildings, go-downs, warehouses, apartments, buildings, and civil works of all kinds. During the year under consideration, erstwhile Gandhi Realty (India) Private Limited having registered office at "Solitarie", Amin Marg Junction, 150 Ring Road, Nr. Pragati complex, Rajkot-360005 and PAN AACCG5189K (The Transferor Company 1" or "old GRIPL) and Crystal Organisers Private Limited having registered office at Crystal Mall, Basement, Kalawad Main Road, Opp. Rani Tower, Rajkot -36005 and PAN AADCC2130R (the Transferor Company 2) (together known as the Transferor Companies), had been amalgamated with the Assessee vide a scheme of amalgamation (the Scheme) as per the provisions of section 230 to 232 of Companies Act, 2013. The Scheme was approved by the Honourable National Company Law Tribunal (Hon'ble NCLT) vide its order dated 22 October 2018 and amalgamation was effective from the appointed date of 01 April 2017 (Appointed Date). Copy of the order of NCLT along with the Scheme of amalgamation were submitted before the assessing officer. The assessee submitted that it is in the business of real estate activities. Before amalgamation, it had income originating from real estate transactions. The Transferor Company -1 was actively engaged in the business of developing residential and commercial real estate projects, infrastructure facilities and operating commercial malls and Transferor company -2 was engaged in the business of maintenance and management of malls and commercial facilities There was a good opportunity by merging all the three companies to create financial and operational synergy in real estate sector.



9. The assessee submitted that since the Transferor Companies were owning and operating the real estate business and facility management services including various assets like malls, immovable properties and a running business along with various business contracts and the assessee was also engaged in the activities supplementing real estate sector transactions, the shareholders and directors of both transferor and transferee- company found a great value in consolidating and merging these Companies for group structure realignment and operational efficiency. Pursuant to amalgamation, all the businesses and all the assets (whether tangible or intangible) of the Transferor Companies comprising, amongst others, investments of all kinds and in all forms, cash balances, loans, advances, contingent rights or benefits, receivables, benefit of deposits, securitized assets, warehouses, leasehold improvements, FSI rights, transferrable development rights, building permission, building design, actionable claims, furniture and fixtures, computers, office equipment, telephones, telex, facsimile and other communication facilities and business licenses, trading licenses, permits, deposits, authorizations, approvals, insurance cover of every description, lease, tenancy rights, permissions, incentives, if any, and all other rights patents, know-how, trademarks, copy rights, service marks, trade secrets, brands, registrations marketing authorizations and other intellectual property rights including computer software, proprietary rights, title, interest, Contracts, consents, approvals and rights and powers of every kind, nature and description whatsoever of the Transferor Companies were acquired by the assessee on going concern basis. Based on the valuation of Transferor Companies, for acquiring the businesses and all the assets and liabilities of the Transferor Companies, the Assessee issued shares amounting to Rs. 1,01,76,57,229/-. The fair value of net assets to be recorded in books was Rs. 21,02,48,883/- and amount of Rs. 80,74,08,346/- was paid for goodwill.



10. The assessee submitted that there were various commercial reasons of the merger, like, as enumerated in para 1.1.3, all the companies were engaged in different activities but in relation to real estate sector. Hence even though doing different business activities the businesses of all the three companies complimented each other. There was a high scope of gaining financial and operational synergy by combining staff and resources of all the three companies. It was envisaged to create one single entity by encompassing different business operations in one legal entity, each company would leverage off of the other company's strengths. The merger would lead to creating a strong entity wherein fund raising would have been easier because of wealth consolidation under one roof which would also help the Assessee in pooling of resources to their common advantage, resulting in more productive utilization of the said resources. It was a cost-efficient decision to merge the three companies so as to save on certain fixed expenses like ROC filings, audit etc, which needs to be done for any legal entity. Such compliance burden would reduce resulting in resources being diverted to much productive use. The assessee submitted that the amalgamation was a transaction which was driven purely from commercial considerations and not by any lax considerations. Thus, the allegations that this transaction was a colorable device and Goodwill is artificially created is without any basis and purely based on surmises and conjectures. The transactions are within the group entities cannot lead to a conclusion that the same is a colorable device. As mentioned above, the transaction was driven purely from a commercial standpoint, Goodwill arising on such transaction was a mere consequence of the said transaction. All the three companies are active companies, and running and are paying-taxes in India and they are not solely created/established for the purposes of amalgamation.

11. The Assessee also submitted before the assessing officer that that no disallowance of depreciation on goodwill is warranted as the amalgamation was



undertaken for consolidation of three companies engaged in real estate sector businesses and commercial expediency. The Goodwill generation was not the principle purpose of the amalgamation. The rationale of the amalgamation is approved by Hon'ble NCLT also. The assessee relied on CBDT circular No F.NO 279/MISC/M-171/2013-ITJ, dated 11 April 2014 and on various judgements and stated that it is a settled principle that the rationale of amalgamation cannot be questioned once the scheme is approved if the revenue authorities chose to remain silent when sufficient opportunity was provided to them to represent any objections. In the present case, intimations were given twice by all the Companies involved in the Scheme of amalgamation to the income tax authorities to present their objections (if any) wherein no representation was received from them. The Assessee has acquired and recognized goodwill pursuant to scheme of amalgamation. It has paid consideration over and above the fair value of net assets acquired. Further the scheme with a strong commercial consideration cannot be disregarded only on the basis that tax savings are occurring. The same has been upheld by Gujarat High Court in the case of Vodafone Essar Gujarat Limited. Hon'ble Apex Court in the case of CIT-vs. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC) has categorically held that a reading of words 'any other business or commercial rights of similar nature' in clause (b) to Explanation 3 of Section 32(1) indicates that goodwill would fall under the expression 'any other business or commercial rights of similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

12. The Assessee also submitted before the assessing officer that the Amendments made by Finance Act, 2021 in relation to depreciation on Goodwill, being prospective in nature, makes it clear that the depreciation on goodwill



claimed by the assessee forming part of its block of assets, as on, March 31, 2018, should be allowed.

13. However, the assessing officer rejected the above contention of the assessee and noticed that the transferee- company is a dormant company with no business activities. The transferor company, Gandhi Realty (India) Pvt Limited and Crystal Organisers Pvt Ltd, are an established company with revenues and assets. All the companies belong to the same group, therefore, the Goodwill was artificially created by the company and depreciation is claimed to reduce the tax liability and avoid paying taxes. Therefore, the assessing officer held that the assessee, through colorable device had created artificial goodwill of Rs. 80,74,08,346/- pursuant to amalgamation of on-going business concern with a dormant company, and claimed undue depreciation of Rs. 20,18,52,087/-. Therefore, the amount of Rs. 20,18,52,087/- claimed by the assessee as 'Depreciation on Goodwill' was disallowed and added back to the total income of the assessee.

### **Findings of the learned CIT(A)**

14. Aggrieved by the order of the assessing officer, the assessee, carried the matter in appeal before the learned CIT(A), who has deleted the addition made by the assessing officer. The ld. CIT(A) observed that pursuant to the NCLT scheme, the transferee entity discharged consideration and passed necessary accounting entries in the books of accounts as per purchase method of Accounting Standard 14 "Accounting for Amalgamations" and recognized goodwill amounting to Rs.80,74,08,346/- and claimed depreciation thereon. The assessee has recorded difference between net value of assets taken over and purchase consideration paid and claimed depreciation on the same. Admittedly, the assessee incurred the cost more than the net book value of assets acquired by it in the scheme of amalgamation which has also been approved by the Hon'ble



Gujarat High Court. It was further observed by Id. CIT(A) that the Preamble of the Scheme, as filed by the assessee, with NCLT states the details with regard to the various reasons signifying rationale of the scheme of amalgamation which inter alia includes the following, viz: (a) Achieving operational and managerial efficiency;(b) Management focus and enhanced flexibility;(c )Bringing synergy in operations and optimum utilization of common resources; (d) Streamlining group structure and reducing number of companies in the group; (e ) Greater financial strength; and Enhancement of the value for all the relevant stake holders. The Id. CIT(A) noticed that the assessee as well as the transferor companies had intimated the income tax department and had invited representations in connection with the proposed scheme, vide letter dated 5<sup>th</sup> May 2018 and 28<sup>th</sup> August 2018. However, no objections in relation to the scheme were received from the assessing officer. In the absence of any objections, it is presumed that the same is accepted by the department. The assessee has relied upon circular dated 11th April 2014 issued by CBDT, in support of its contention. The Id. CIT(A) also relied on various judgements of Hon`ble Supreme Court, High Courts and Tribunals such as, Urmin Marketing (P.) Ltd. v. DCIT (2020) 122 taxmann.com 40 (Ahmedabad -ITAT),CIT v. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC), A.P. Paper Mills Ltd. v. ACIT (2010) 128 TTJ 596 (Hyd), DCIT v. M/s Krishna Drugs Ltd. (ITA 198/Hyd/2011), Zuari Cement Limited v. Assistant Commissioner of Income Tax, [TS-5823-ITAT-2016(Hyderabad)-0] and Cosmos Cooperative Bank Limited vs. DCIT (TS-47-ITAT-2014) (Pune Tribunal). The learned CIT(A) also observed that amendments made by the Finance Act 2021, in a relation to depreciation on goodwill, which is applicable from 1<sup>st</sup> April 2021, is not applicable to the assessee`s case under consideration, as the assessment year, involved in the assessee`s case, is the assessment year 2018–19, and these amendments are prospective in nature. Considering these facts and circumstances, the learned



CIT(A) deleted the disallowance of depreciation on goodwill, made by the assessing officer.

15. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

### **Arguments of learned DR for the revenue**

16. Learned DR for the revenue, vehemently, argued that transferee company is a dormant company with no business activities and the transferor company Gandhi Realty (India) Pvt Limited and Crystal Organisers Pvt Ltd, are an established company with revenues and assets, and all the companies belong to the same group. The major shareholders remain unchanged and the directors remain unchanged, further, no cash pay-out is involved in amalgamation. The control effectively vests with the directors of the transferor -company, therefore, the Goodwill is artificially created and depreciation is claimed by the assessee to reduce the tax liability and avoid paying taxes. Moreover, the valuation is done in a manner which is suitable to the company. Thus, for the creation of Goodwill without paying any consideration, and the assessee has amalgamated three companies and revalued its own intangibles without any financial outflow and claimed depreciation on the revalued intangibles and evaded the tax. The learned DR further pointed out that as per the scheme of Income Tax Act and Accounting Standards, depreciation is not allowable on goodwill arising on amalgamation.

17. The Id. DR also stated that the Finance Act, 2021 amended section 32 of the Income-tax Act, 1961 to specifically provide that **goodwill of a business or profession is not a depreciable asset and these provisions are retrospective in nature. Hence addition made by the assessing officer may be upheld.** The Ld. DR also relied on the same judgements, which were relied on by the assessing



officer, during the assessment proceedings and stated that addition made by the assessing officer may be upheld.

## **Arguments of learned Counsel for the assessee**

18. On the other hand, Shri R. K. Doshi, learned Counsel for the assessee pleaded that the scheme as filed by the Company with Hon'ble NCLT provided for the rationale of the scheme. Clause No.2 of the Scheme (Preamble) Details with regard to the various reasons signifying rationale of the scheme of amalgamation which *inter-alia* includes the following: (a). Achieving operational and managerial efficiency,(b). Management focus and enhanced flexibility,(c)Bringing synergy in operations and optimum utilization of common resources; (d). Streamlining group structure and reducing number of companies in the group.( e.) Greater financial strength; and(f). Enhancement of the value for all the relevant stake holders. The Id. Counsel submitted copy of the order of NCLT along with the Scheme of amalgamation, before the Bench. Pursuant to the approval by Hon'ble NCLT to the Scheme, consideration was discharged, and accounting treatment was given in accordance with clause 11.1 and clause 11.2 of the Scheme. The Id. Counsel submitted that the assessee is in the business of real estate activities. Before amalgamation, it had income originating from real estate transactions. The Transferor Company-1 was actively engaged in the business of developing residential and commercial real estate projects, infrastructure facilities and operating commercial malls and Transferor-company-2 was engaged in the business of maintenance and management of malls and commercial facilities. There was a good opportunity by merging all the three companies to create financial and operational synergy in real estate sector. M/s JB Realities Private Limited, that is, appellant company was incorporated since 1995 and the hence, the same has not been incorporated solely for the



purpose of amalgamation. Further, the assessee- company had Net worth of Rs. 9,48,57,854/-. Hence, the assessee- company cannot be considered as defunct company. Transferor Company No.1 was engaged in the business of developing residential and commercial projects, infrastructure facility and operating commercial malls. Transferor Company No. 2 was in the business of maintenance and management of malls & commercial facilities. Since the Transferor Companies were owning and operating the real estate business and facility management services including various assets like malls, immovable properties and a running business along with various business contracts and the Appellant was also engaged in the activities supplementing real estate sector transactions, the shareholders and directors of both transferor and transferee company found a great value in consolidating and merging these Companies for group structure realignment and operational efficiency.

19. The Id. Counsel further argued that pursuant to amalgamation, vide clause 4.1 of the scheme, all the businesses and all the assets (whether tangible or intangible) of the Transferor Companies, comprising, amongst others, investments of all kinds and in all forms, cash balances, loans, advances, contingent rights or benefits, receivables, benefit of deposits, securitized assets, warehouses, leasehold improvements, FSI rights, transferrable development rights, building permission, building design, actionable claims, furniture and fixtures, computers, office equipment, telephones, telex, facsimile and other communication facilities and business licenses, trading licenses, permits, deposits, authorisations, approvals, insurance cover of every description, lease, tenancy rights, permissions, incentives, if any, and all other rights, patents, know-how, trademarks, copy rights, service marks, trade secrets, brands, registrations, marketing authorisations and other intellectual property rights including computer software's, proprietary rights, title, interest, contracts, consents,



approvals and rights and powers of every kind, nature and description whatsoever of the Transferor Companies were acquired by the Appellant on going concern basis. Pursuant to amalgamation, the Company has recorded fair value of assets and liabilities taken over and recognized goodwill amounting to Rs. 80,74,08,346/-. The Post amalgamation, there has been consistent increase in earnings before interest, depreciation and amortisation (EBITDA) of the resulting company. The EBITDA of the company has been increased post-merger and the Assessee have been able to achieve greater financial strength. The Assessee company which was earlier a loss making company turned around into a profit making company due to the said merger. The Assessee company in accordance and compliance with the Scheme of Amalgamation as approved by the Hon'ble NCLT, discharged purchase consideration as per the exchange ratio derived by the independent valuer and recognized goodwill in the books of account as per approved scheme of Amalgamation by Hon'ble NCLT and claimed depreciation thereon as per the provisions of section 32 of the Act. Considering the above factual background, the contention of AO that the scheme is colorable device and there is creation of artificial goodwill, is completely vague and baseless.

20. The Ld. Counsel also submitted that assessee issued shares amounting to Rs. 1,01,76,57,229/- based on the valuation of Transferor Companies for acquiring the businesses and all the assets and liabilities of the Transferor Companies. The fair value of net assets acquired was Rs. 21,02,48,883 and amount of Rs. 80,74,08,346 was paid for goodwill. The said consideration was issued and paid based on the valuation of Transferor Companies and share exchange ratio determined by the independent valuer. The ICAI has issued Accounting Standard (AS)- 14 prescribing accounting treatment for amalgamation. The Assessee has complied with AS -14 and the statutory auditors have certified the compliance



with AS- 14. The Clause 11 of the Scheme, which provides the accounting treatment for the amalgamation. As provided therein, the amalgamation has been accounted with purchase method in accordance with Accounting Standard-14, "Accounting for Amalgamation" Accordingly, the assessee has recorded all the assets and liabilities of the Transferor- Company, transferred and vested in the assessee pursuant to amalgamation, at their respective fair values. The difference between- (i) the value of shares issued by the Assessee to the shareholders of the Transferor Company as a consideration of amalgamation; and (ii) the value of net assets of the Transferor Company transferred to and recorded by the assessee; was recognized as goodwill in accounts of the assessee. On the perusal of the Section 32(1) and Expl. 3(b) it can be seen that under the Act, depreciation is, inter-alia, allowed on intangible assets in the nature of know-how, patents, copyrights, trademarks, licenses, franchises 'or any other business or commercial rights of similar nature. The Goodwill arising on amalgamation, being in the nature of any other commercial or business right, falls under the category of an intangible asset and hence, eligible for depreciation under the Act. The learned Counsel, therefore submitted that learned CIT(A) has passed a detailed and speaking order, considering all these facts and circumstances narrated above, therefore, order passed by the learned CIT(A) may be upheld.

## **Analysis and conclusion**

21. We have heard both sides in detail and also perused the records of the case including the paper book filed by the assessee- company. We note that the Finance Act, 2021 amended section 32 of the Income-tax Act, 1961 to specifically provide that **goodwill of a business or profession is not a depreciable asset**. This amendment applies **with effect from 01.04.2021 (i.e., from AY 2021-22 onwards)**. The amendment is **prospective in nature and not retrospective**. This issue is no longer res-integra, as the Courts and CBDT have



clarified that depreciation on goodwill already claimed and allowed in earlier years **cannot be withdrawn**. However, **from assessment year (AY) 2021-22 onwards, no further depreciation is allowable** on goodwill. Thus, the amendment **does not undo past depreciation claims** but **disallows future depreciation** on goodwill from 01.04.2021 onwards. We note that in assessee's case under consideration, the assessment year involved, is the assessment year 2018-19, therefore, this amendment does not applicable to the assessee. Therefore, argument advanced by the learned DR for the revenue to the effect that **these provisions are retrospective in nature**, is rejected.

22. We note that it is not disputed by the assessing officer that the assessee as well as the transferor companies had intimated the Income Tax Department ( Revenue Authorities) and had invited representations in connection with the proposed scheme, vide letter dated 5<sup>th</sup> May 2018 and 28<sup>th</sup> August 2018. However, no objections in relation to the scheme were received from the assessing officer. In the absence of any objections, it is presumed that the same is accepted by the department. The intimations for final hearing, was again sent to the Income Tax Department( Revenue Authorities). The Department chose to remain silent the second time as well from which it can be clearly presumed that the Income Tax Authorities had no question regarding the scheme of amalgamation, under consideration. The Id. CIT(A) rightly observed that pursuant to the NCLT scheme, the transferee entity discharged consideration and passed necessary accounting entries in the books of accounts as per purchase method of Accounting Standard-14 "Accounting for Amalgamations" and recognized goodwill amounting to Rs.80,74,08,346/- and claimed depreciation thereon. The assessee has recorded difference between net value of assets taken over and purchase consideration paid and claimed depreciation on the same. Admittedly, the assessee incurred the cost more than the net book value of assets acquired by it in



the scheme of amalgamation which has also been approved by the Hon'ble Gujarat High Court. It was observed by Id. CIT(A) that the Preamble of the Scheme, as filed by the assessee, with NCLT, states the details with regard to the various reasons signifying rationale of the scheme of amalgamation which inter alia includes the following:

- (a). Achieving operational and managerial efficiency;
  - (b). Management focus and enhanced flexibility;
  - (c). Bringing synergy in operations and optimum utilization of common resources;
  - (d). Streamlining group structure and reducing number of companies in the group;
  - (e). Greater financial strength; and
  - (f). Enhancement of the value for all the relevant stake holders.
- (g). Other details such as appointed date, share capital, consideration, accounting treatment and change of name were also detailed in the scheme. It is not disputed that the aforementioned Scheme was approved by NCLT vide, its order dated 22 October 2018.

23. The assessee, during the appellate proceedings had relied upon circular dated 11th April 2014 issued by CBDT, in support of its contention. The CBDT circulated Letter F. No.279/MISC./M-171/2013-ITJ, dated 11th April 2014. The relevant portion is reproduced hereunder for ready reference:

*"In this connection Circular No 1/2014 dated 15-01-2014 has been issued by MCA to Regional Directors which lays down that while furnishing any report regarding reconstruction or amalgamation of companies under the Companies Act, comments and inputs from the Income-tax Department may invariably be obtained so as to ensure that the proposed scheme of reconstruction or amalgamation has not been designed in such*



*a way as to defraud the Revenue and consequently being prejudicial to public interest. It has further been said that the Regional Directors would invite specific comments from the Income-tax Department within 15 days of receipt of notice before filing response to the Court. It is emphasised that this is the only opportunity with the Department to object to the scheme of amalgamation if the same is found prejudicial to the interest of Revenue and therefore, it is desired that the comments/objections of the Department are sent by the concerned CIT to Regional Director, MCA for incorporating them in its response to the Court, immediately after receiving information about any scheme of amalgamation or reconstruction etc."*

24. The assessee submitted during the appellate proceedings, before the learned CIT( A) that assessee is in the business of real estate activities. Before amalgamation, it had income originating from real estate transactions. The M/s JB Realities Private Limited, that is, assessee- company has been incorporated since 1995 and hence, the same has not been incorporated solely for the purpose of amalgamation. Further, the assessee-company had Net worth of INR Rs.9,48,57,854/- before amalgamation. The assessee, also submitted before the learned CIT (A) that since the Transferor Companies were owning and operating the real estate business and facility management services including various assets like malls, immovable properties and a running business along with various business contracts and the assessee was also engaged in the activities supplementing real estate sector transactions, the shareholders and directors of both transferor and transferee -company found a great value in consolidating and merging these Companies for group structure realignment and operational efficiency. The assessee also submitted before Id. CIT(A) that post amalgamation, there has been consistent increase in earnings before interest, depreciation and amortisation (EBITDA) of the resulting company. Details of EBITDA till FY 2022-23 were provided which substantiate the above. The reason for the same as provided by the assessee are:(1). Achieving operational and managerial efficiency due to merger, (2). Management focus and enhanced flexibility due to merger; and (3). Bringing synergy in operations and optimum utilization of common resources due to merger;



25. The Id. CIT(A) noticed that these two companies were filing separate income tax returns. Both the companies being body corporate have a separate legal identity. All these details were duly disclosed in the scheme of amalgamation which was duly approved by the Hon'ble Gujarat High Court. It is also pertinent to mention here that all necessary details about the management of the both companies were disclosed in the scheme of amalgamation and nothing was hidden. Also, on reading of provisions of section 2(1B) and section 47, it would appear that the intent of the Legislature is to make amalgamation a tax neutral scheme for companies as well as for the shareholders. Accordingly, no inference can be drawn that the assessee has employed colorable device in order to record high value of purchase consideration which is resulting goodwill. Moreover, the transaction in the instant case, were within the ambit of the law as per the provision of section 2(1B) of the Act. There is no dispute to the fact that the payment was made by the assessee to the shareholders of the amalgamating company in the form of shares and not through the cash payment and the payment through the shares is valid mode of payment. The Assessing officer has also disputed the valuation report, that is, the Assessing officer has not substantial reason for not accepting the valuation report.

26. The Id. CIT(A) noticed that post-merger, there has been consistent and substantial increase in EBIDTA of the transferee- company. This proves that the merger did bring in operational efficiency and synergy. It is also to be noted that the valuation report has been accepted by the regulatory authorities / NCLT. Considering the above, the fact that the transferee company had paid for Goodwill and the amount paid by the Transferee- company for Goodwill pursuant to merger cannot be disputed. The Assessing officer has also raised the issues that ownership, control and management pre-merger and post-merger are with same



group. As per the provisions of section 2(1B) of the Act, at least shareholders holding 3/4th value of shares shall remain same. Further, it is very common in closely held private limited companies that when shareholders are common, the management and control usually remain with the same shareholders. Further, there have been various judicial precedents wherein courts have upheld the allowance of expenditure incurred due to commercial expediency. The Id. CIT(A) relied on the judgement of the Hon'ble Supreme Court in the case of Smifs Securities Ltd. reported in 348 ITR 302, wherein it is held that the goodwill falls within the definition of the assets under the category of any other business or commercial rights of similar nature. Further, considering the provisions of memorandum explaining the provisions of Finance Bill, 1996, introducing the sixth proviso (erstwhile fifth proviso) to section 32(1), it is clear that the intent of the legislature behind introduction of the proviso was to cover within its ambit only those assets which were recorded in the books of the predecessor company, and which are transferred pursuant to the amalgamation. In the instant case, it is worthwhile to note that Gandhi Realty (India) Private Limited and Crystal Organisers Private Limited did not carry any goodwill in its books of accounts and was only recorded in books of M/s J.B. Realties Private Limited after merger. Considering the above and the decision in the case of DCIT v. M/s Krishna Drugs Ltd. (ITA 198/Hyd/2011), sixth proviso to section 32(1) of the Act, Explanation 7 to section 43(1) and Explanation 2(b) to section 43(6)(c) cannot be invoked.

27. The Id. CIT(A) further noticed that the judgement of the Hon'ble Supreme Court in the case of CIT v. Mansukh Dyeing and Printing Mills [(2022) 145 taxmann.com 151] is not applicable to the facts of the assessee's case since the said decision is pertaining to reconstitution of Partnership Firm and revaluation of assets by the Partnership Firm whereas in the present case, Goodwill is recorded pursuant to scheme approved by NCLT. The said decision is pertaining



to capital gain taxability under section 45 with respect to revaluation of assets by the partnership Firm and credit of revaluation amounts of the partners in their profit-sharing ratio. However, the facts of the assessee's case refer to claim of depreciation on goodwill under section 32 of the Act, wherein such goodwill is recognized post approval of scheme of amalgamation by Honourable NCLT and there is no issue with respect to taxability of capital gains in assessee's case.

28. The Id. CIT(A) also relied on the following judgements, wherein based on similar facts the various courts have passed order considering the similar situation, in favor of assessee.

*(1). [TS-916-ITAT-2024(DEL)] Delhi ITAT holds that Assessee would be entitled to claim depreciation on the assets (PIAs) transferred to tower companies under the transfer scheme which was specifically transferred to Assessee (formerly Bharti Infratel) under merger Scheme w.e.f. April 1, 2009 for the sum of Rs 1334.19 Cr. The ITAT observes that the entire scheme of demerger has been accepted and approved by the jurisdictional HC which indeed contained the issue of gifts of assets; Asserts that Scheme once sanctioned by the competent Court is binding on all stakeholders which includes the Revenue; ITAT outlines that the Scheme cannot be challenged and questioned at the stage of implementation as it has attained statutory force not only between the transferor or transferee company but also between statutory authorities to whom the notices were issued by the Court; Emphasizes that every scheme of arrangement and amalgamation must provide for an 'appointed date' which is a date on which the assets and liabilities of the transferor company vest in, and stand transferred to the transferee company so that the scheme comes into effect from 'appointed date' unless the same is modified by the Court; Places reliance on Madras HC decision in Ponni Sugars (Erode) Ltd. wherein the HC determined that the order sanctioning scheme of arrangement by Company Court pursuant to Section 391 to 394 of Companies Act will have a statutory force binding on all and the sanction of the Court would operate as a judgment in rem; Enunciates that merging of both schemes by the CIT(A) is incorrect as the parties are different, and ITAT observes that the CIT(A) is trying to rewrite the scheme which is impermissible; Notes that the Delhi HC has only given liberty to the Revenue to examine if there is any possible tax evasion and the very basis of sanction of Scheme cannot be challenged or looked into by the Revenue at the time of the implementation; Highlights that the Revenue failed to challenge the scheme of arrangement when the opportunity was provided by the competent authority before the HC; Accedes to Assessee's submission that the first Scheme which contained the element of gift of assets has attained finality; ITAT Specifies that the initial transaction of PIAs without any consideration was duly affirmed by Delhi HC while approving the demerger Scheme for one of the tower company i.e. Vodafone Infrastructure Ltd and the same transaction qualifying as gift was confirmed by Gujarat HC in the case of Vodafone West Ltd. (earlier known as Vodafone Essar Gujarat Ltd.);*



*Places reliance on the coordinate bench decisions in Vodafone Idea Ltd. and Bharti Infratel and observes that the issue of gift stands accepted by the HC and the SC while dismissing the Special Leave Petition filed by the Revenue; Articulates that if benefit of depreciation is not provided to the Assessee at the value of assets which ultimately stood transferred, then none of the parties could have claimed depreciation on those assets; Therefore, holds that Assessee is eligible for allowance of depreciation.*

**(2). [TS-874-ITAT-2024(Mum)]- ITAT Mum**

*“In this decision Hon`able Mumbai ITAT holds, the Assessee to be entitled to claim depreciation on goodwill arising on account of amalgamation under section 32; observes that an entity, Rohm and Hass (India) Pvt. Ltd, was amalgamated with the Assessee and the difference between the fair value of assets taken over and consideration was recognised as goodwill for Rs. 67.52 Cr, along with other intangible assets in Assessee's books of accounts and accordingly, in the return of income, the Assessee based on the report from the independent valuer, claimed depreciation at 25% under section 32(1)(ii); Dismisses Revenue's submission that the amount of goodwill being merely the difference between the purchase consideration and the net assets acquired of the amalgamating company, therefore the goodwill was nothing but a balancing factor while merging the accounts of the amalgamating company into the accounts of the Assessee, thus the depreciation on the same shall not be allowed; notes that the Assessee followed 'purchase method' under AS-14 for accounting the amalgamation, which requires that any excess of the amount of the consideration over the value of net assets of the amalgamating company should be recognized in the amalgamated company's financial statements as goodwill on amalgamation. Thus opines that even though there is no intangible asset under the head "goodwill" in the books of the amalgamating company on the date of acquisition and the goodwill was not already recorded in the books of the amalgamating company, yet the value of the goodwill arose in light of the principles of AS-14 followed by the Assessee to account for the amalgamation in its accounts. Holds that once goodwill has been recognised by the Assessee in its financial statement pursuant to the amalgamation, in accordance of AS-14, the Assessee is entitled to claim depreciation on the same under section 32(1)(ii), by relying on SC judgment in Smifs Securities Ltd.; Thus, allows Assessee's appeal.”*

**(3). In the case of PCIT Vs. Eltek SGS Pvt Ltd (Delhi High Court) Appeal  
Number: ITA 475/2022 Date of Judgement/Order: 01/08/2023**

*"The Commissioner of Income-Tax (Appeals) upheld the claim for depreciation on goodwill, asserting that it was correctly claimed since goodwill was formed due to the merger. The Income Tax Appellate Tribunal, while dealing with the challenge, referred to the Supreme Court's decision in Commissioner of Income Tax, Kolkata vs. Smifs Securities Limited. This decision clarified that goodwill is an intangible asset falling within the ambit of Explanation 3 to Section 32(1) of the Income Tax Act, 1961, and is eligible for depreciation. The assessee argued that the provisions of Section 49 of the Act*



*apply, pointing out the definition of "cost of acquisition" in Section 55(2), and relied 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. The Court also highlighted that the provisions referred to by the assessee are in a Chapter related to "Capital Gains," whereas an approved scheme of amalgamation operates by law, as recognized in the Smifs case. In this case hon'ble delhi high court has held, that depreciation on goodwill resulting from an amalgamation can be allowed even if no actual cash payment is made. The Delhi High Court upheld the depreciation claim, aligning with the Supreme Court's precedent that goodwill is an intangible asset eligible for depreciation. This case reiterates the importance of understanding legal provisions and precedent to make informed decisions on tax matters."*

29. Considering the judicial precedents noted above, the Id. CIT(A) held that the claim of the assessee for the depreciation on the impugned goodwill is allowable. The Id. CIT(A) also noted that the assessee's claim of depreciation on goodwill is covered in favour of assessee by the following case law:

- (i)Urmin Marketing (P.) Ltd. v. DCIT (2020) 122 taxmann.com 40 (Ahmedabad -ITAT)
- (ii)CIT v. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC)
- (iii)A.P. Paper Mills Ltd. v. ACIT (2010) 128 TTJ 596 (Hyd)
- (iv)DCIT v. M/s Krishna Drugs Ltd. (ITA 198/Hyd/2011)
- (v)Zuari Cement Limited v. Assistant Commissioner of Income Tax, [TS-5823-ITAT-2016(Hyderabad)-0]
- (vi)Cosmos Cooperative Bank Limited vs. DCIT (TS-47-ITAT-2014) (Pune Tribunal)
- (vii)Areva T & D India Ltd. v. Dy. CIT [2012] 345 ITR 421 (Delhi HC)
- (viii)Toyo Engineering India Limited v DCIT, BOM (33 taxmann.com 560) (Mumbai)
- (ix)UOI vs. Azadi Bachao Andolan (263 ITR 706) (SC)
- (x)Vodafone International Holdings B.V. v. Union of India [2012] 341 ITR 1 (SC)
- (xi)CIT v. Motors & General Stores (P.) Ltd [1967] 66 ITR 692 (SC)



(xii) Dalmia Power Ltd. v. ACIT [2019] 112 taxmann.com 252 (SC)

(xiii) Vodafone Essar Gujarat Ltd. v. Department of income tax [2012] 24 taxmann.com 323 (Guj.)

30. We note that merger was not intended for providing any financial stability to the transferor companies' business prospects as alleged by the AO. Nowhere has the same been mentioned in the rationale of the scheme. What was intended by virtue of the scheme is "greater financial strength" and "optimum utilization of common resources". There were various commercial reasons of the merger, some of which are mentioned as follows, Viz:(a) All the companies were engaged in different activities but in relation to real estate sector. Hence, even though doing different business activities, the businesses of all the three companies complimented each other. There was a high scope of gaining financial and operational synergy by combining staff and resources of all the three companies. It was envisaged to create one single entity by encompassing different business operations in one legal entity. Each Company would leverage off of the other company's strengths,(b) The merger would lead to creating a strong entity wherein fund raising would have been easier because of wealth consolidation under one roof which would also help the assessee in pooling of resources to their common advantage, resulting in more productive utilization of the said resources and (c) It was a cost-efficient decision to merge the three companies so as to save on certain fixed expenses like ROC filings, audit etc. which needs to be done for any legal entity. Such compliance burden would reduce resulting in resources being diverted to much productive use. The business of Transferor Companies was acquired as a going concern. With this acquisition, the Appellant has not only acquired the Transferor Companies specialized business and tangible assets but also a host of intangible assets which are mandatory and necessary for carrying on the business.



31. We note that Section 230 (5) of the Companies Act requires notice to be given to Central Government and Regulatory Authorities. The Assessee as well as the transferor companies had intimated the income tax authorities and had invited representations in connection with the proposed scheme vide letter dated 5<sup>th</sup> May 2018. However, no objections in relation to the scheme were received from the income tax department. In the absence of any objections, it is presumed that the same is accepted by the Department. The intimations for final hearing was again sent to the income tax department vide letter dated 28 August, 2018. The department chose to remain silent the second time as well from which it can be clearly presumed that the income tax authorities had no question regarding the scheme of amalgamation. The Ministry of Corporate Affairs (MCA) had issued a circular no-1/2014 dated 15-01-2014, directing regional directors of Ministry of Corporate Affairs to invite comments and inputs from the Income-tax Department as well as from other regulatory department before the amalgamation. The above circular issued by the MCA was circulated by the CBDT among its officers vide F. No.279/MISC./M-171/2013-ITJ, dated 11th April 2014. The relevant portion is reproduced hereunder for ready reference

*"In this connection Circular No 1/2014 dated 15-1-2014 has been issued by MCA to Regional Directors which lays down that while furnishing any report regarding reconstruction or amalgamation of companies under the Companies Act, comments and inputs from the Income-tax Department may invariably be obtained so as to ensure that the proposed scheme of reconstruction or amalgamation has not been designed in such a way as to defraud the Revenue and consequently being prejudicial to public interest. It has further been said that the Regional Directors would invite specific comments from the Income-tax Department within 15 days of receipt of notice before filing response to the Court. It is emphasised that this is the only opportunity with the Department to object to the scheme of amalgamation if the same is found prejudicial to the interest of Revenue and therefore, it is desired that the comments/objections of the Department are sent by the concerned CIT to Regional Director, MCA for incorporating them in its response to the Court, immediately after receiving information about any scheme of amalgamation or reconstruction etc."*



We note that above-mentioned department circulars, are binding on the Assessing Officer. Relying on the abovementioned circular and judicial precedents, we find that it is settled principle that the Tax Department can raise objections (if any) when the opportunity is being provided to them during the course of approval of the Scheme. In the assessee`s case the notices were sent twice to the tax department and the department had adequate opportunity to oppose the Scheme. If the income tax department fails to evaluate an amalgamation when appropriate opportunity is provided, it is not at liberty to question the genuineness once the scheme is approved by the Hon'ble NCLT. If in its commercial wisdom, a company has decided to have a particular arrangement by which there may be even benefit of saving income-tax or other taxes, that itself cannot be a ground for coming to conclusion that sole object of framing scheme is to defraud Income-tax department.

32. We note that based on the principles of commercial expediency, various Courts have held that if an assessee incurs expenditure, as a prudent businessman and in the larger interest of his business, such expenditure should be allowable as tax deductible. In the assessee`s case also the amalgamation was done in the larger interest of business and hence depreciation should be allowable on the goodwill generated in the course of amalgamation. It is settled proposition that commercial transactions are in the domain of the businessman and tax authorities cannot intervene in realm of intricacies of commercial expediencies involved in these arrangements. It needs to be appreciated that while it is the function of tax authorities to examine the nature and related documents for the transaction, the commercial wisdom of the taxpayer to conduct the business should not be challenged.

### **33. Final word**



We note that the goodwill arose due to excess consideration paid over net assets taken, calculated on the basis of fair value. The scheme of amalgamation was legally approved under the Companies Act by the NCLT. The recognition of goodwill and claim of depreciation was as per Accounting Standard -14, issued by ICAI. The amalgamation had commercial rationale and led to operational and financial synergy. The assessee relied on judicial precedents including Smifs Securities Ltd(supra) and Urmin Marketing Pvt. Ltd(supra). In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. The CIT(A) in our view, has rightly allowed the depreciation on goodwill. We thus decline to interfere with the conclusion so drawn by the CIT(A) whose order is under challenge by the revenue. Thus, appeal of the revenue is dismissed.

34. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 25/ 08/2025.**

Sd/-

**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

Rajkot

दिनांक/ Date: 25/08/2025

Sd/-

**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot