

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 4550/Mum/2024
(Assessment Year: 2018-19)

Vishal Furnishing Limited 211, Shiv Shakti Industrial Complex, Lower Parel, Mumbai – 400011.	Vs.	Assistant Commissioner of Income Tax, Circle 8(3)(1), Mumbai.
PAN/GIR No. AAACR2138K		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Rahul Hakkani
Respondent by	:	Shri Vivek Perampurna (CIT DR)

Date of Hearing	:	10.07.2025
Date of Pronouncement	:	01.10.2025

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) Delhi ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has raised the following grounds of appeal:

1) The learned CIT(A) failed to appreciate that the Assessment order was passed in violation of the principles of natural justice and contrary to the scheme of assessment and hence the Assessment order was a nullity and deserves to be quashed.

2) The Ld CIT(A) erred in confirming the order of AO disallowing depreciation on Goodwill of Rs 4,12,73,088/- (as claimed in Accounts) without appreciating that goodwill had arisen on amalgamation and was eligible for depreciation u/s 32 and hence the addition of Rs 4,12,73,088/- may be deleted.



3) *Without prejudice to above, addition of depreciation on goodwill may be restricted to Rs 3,85,43,520/- which is claimed u/s 32 and not Rs. 4,12,73,088 as claimed in the Accounts.*

4) *The Ld CIT(A) erred in confirming addition of Rs 1,02,450 u/s 36(1)(va) being employee contribution to provident fund on the ground of delay without appreciating that the due date was 15/4/2018 which was a Sunday and same was paid on next working day ie. 16/4/2018 and thus there was no delay and hence the addition of Rs 1,02,450 may be deleted.*

5) *The Ld CIT(A) erred in confirming addition of Rs 31,179/- u/s 36(1)(va) being employee contribution to ESIC on the ground of delay without appreciating that the same was paid before the due date of filing return and could not be paid before the due date on account of hardship and delay was reasonable and hence the addition of Rs 31,179/- may be deleted.*

6) *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”*

3. Brief facts of the case are that the assessee company is a public limited company engaged in the business of wholesale trading in fabrics, paper and garments and is also a commission agent in the field of textiles. The assessee company had filed its return of income dated 30.10.2018, declaring current year's loss at Rs. (-) 1,14,33,655/-. The assessee's case was selected for scrutiny for the reason that "high ratio of refund to TDS", "amalgamation or demerger during the year" and "large business loss set off against other heads of income". Notices u/s. 143(2) and 142(1) were duly issued and served upon the assessee. The learned Assessing Officer ('ld. A.O.' for short) observed that the assessee company was amalgamated with M/s. Seom Fabrics Limited and Siyaram Polycote Pvt. Ltd. w.e.f. 01.04.2016, where it was observed that an amount of Rs. 16,50,92,353/- has been shown in the balance sheet in schedule fixed asset as intangible asset out of which Rs. 4,12,73,088/- has been amortized during the year with



a balance of Rs.12,38,19,264/- as WDV. The ld. AO disallowed the depreciation claimed by the assessee amounting to Rs. 4,12,73,088/- by relying on the 5th proviso (now 6th proviso) to Section 32(1) of the Act by holding that the depreciation of the goodwill is allowable only to the extent if amalgamation has not taken place and had also relied upon the Tribunal's decision in the case of **United Breweries Ltd. vs. ACIT in ITA No. 722/18 and 1065/Bang/2014** stating that the said decision is not in conflict with the Hon'ble Apex Court decision in the case of **CIT vs Smiff Securities Ltd. (2012) 348 ITR 302**. The ld. AO then passed the assessment order dated 24.04.2021, thereby determining total income at Rs. 2,99,73,060/- after making addition/disallowance of 'income from profit and gains' and 'income from business or profession' amounting to Rs. 4,12,73,088/-.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the impugned addition along with various other grounds. The ld. CIT(A) vide order dated 03.07.2024 had partly allowed the assessee's appeal against which the assessee is in appeal before us, challenging the impugned order.
5. The learned Authorised Representative ('ld. AR' for short) for the assessee gave an undertaking at the Bar that the assessee intends not to press ground no. 1 of the appeal raised by the assessee and commenced his arguments on ground no. 2 pertaining to the addition/disallowance towards goodwill amounting to Rs. 4,12,73,088/-. The ld. AR contended that pursuant to the amalgamation the assets, liabilities and reserves of the amalgamating company was vested with the assessee and the same has been determined under the method of accounting for amalgamation (AS-14), where the assessee has



allotted its shares to the shareholders of the erstwhile amalgamating company as per the scheme sanctioned by the Hon'ble NCLT in which the excess of fair value of the shares of the assessee company over the fair value of the net assets acquired from the amalgamating company is the actual consideration paid and the excess of the consideration resulted in goodwill on amalgamation. The ld. AR further stated that the amalgamating company has not booked any goodwill in its accounts and that the same arises as a result of amalgamation and the excess consideration paid for the assets acquired are for acquisition of goodwill. The ld. AR further contended that the lower authorities have erred in determining the actual cost of goodwill to be zero for the reason that the goodwill in the case of amalgamating company was also zero is against the settled principles of law. The ld. AR further reiterated that goodwill was not acquired from the amalgamating company but was as result of amalgamation and hence, there was no actual cost of goodwill incurred in the transfer of capital asset to the assessee company. The ld. AR relied extensively on the decision of the coordinate bench in the case of *M/s. Keva Fragrances P Ltd. vs. DCIT in ITA No. 334/Mum/2020, dated 02.08.2021*, where on identical facts, the Tribunal had distinguished the coordinate bench's decision in the case of *United Breweries Pvt. Ltd. (supra)*, in which case the distinguishing factor was that the goodwill was already there in the books of the amalgamating company which is not the facts of the present case. The ld. AR also relied on the decision of the coordinate bench in the case of *Aricent Technologies (Holdings) Ltd. vs. DCIT (2019) 109 taxmann.com 47 (Del)(Trib.)*, and also relied on the decision of the Hon'ble Karnataka High Court in the case of *Padmini*



Products Pvt. Ltd. vs. DCIT [2020] 121 taxmann.com 237 (Kar)(HC), wherein it was held that the 5th proviso (now 6th proviso) to Section 32 is applicable only when both the amalgamated and the amalgamating company claimed depreciation for the same asset. The ld. AR also relied on the catena of other decisions in support of its contentions.

6. The learned Departmental Representative ('ld. DR' for short) for the revenue on the other hand controverted the said fact and relied on the order of the lower authorities.
7. We have heard the rival submissions and perused the materials available on record. It is observed that as per the “composite scheme of amalgamation and arrangement” sanctioned by the Hon'ble NCLT, vide its order dated 27.04.2017, the assessee company (amalgamated company) was amalgamated with M/s. Seom Fabrics Limited (SFL) amalgamating company no. 1 and Siyaram Polycote Pvt. Ltd. (SPPL) amalgamating company no. 2 and the same was filed before the Registrar of Companies (ROC) effective from 29.05.2017 and appointed date as per the order of amalgamation was 1st April, 2016. Thereafter, the assets, liabilities and reserves of the amalgamating company was vested with the assessee company and the same was recorded in its books under the purchase method of accounting for amalgamation, where the fair value was determined for the equity shares to be issued as per the scheme and security premium and goodwill on amalgamation was also determined. The details furnished by the assessee is tabulated hereinunder.

<i>Particulars</i>	<i>As at 1st April, 2016</i>	



<i>Liabilities</i>	<i>Seeom Fabrics Ltd [Amalgamating or Transfer Company 1]</i>	<i>Siyaram Polycote Pvt .Ltd. (Amalgamating or Transfer Company 2</i>	<i>Total</i>
<i>Capital Redemption Reserve</i>	8,00,000.00	-	8,00,000.00
<i>Long- Term Borrowings</i>	3,20,00,000.00	-	3,20,00,000.00
<i>Trade Payables</i>	1,35,071.00	-	1,35,071.00
<i>Other Current Liabilities</i>	7,03,752.00	15,302.71	7,19,054.71
<i>Short -Term Provisions</i>	3,64,312.00	1,04,42,335.93	1,08,06,647.93
<i>Total</i>	3,40,03,135.00	1,04,57,638.64	4,44,60,773.64
<i>Add:</i>			
<i>Equity shares issued of Amalgamated Company</i>	4,13,700.00	33,11,200.00	37,24,900.00
<i>Securities Premium on above equity shares issued</i>	3,09,65,362.26	24,78,42,678.58	27,88,08,040.84
<i>Total</i>	6,53,82,197.26	26,16,11,517.22	32,69,93,714.48
<i>Assets</i>			
<i>Fixed Assets</i>	2,65,04,296.00	-	2,65,04,296.00
<i>Non- Current Investments</i>	-	* 3,42,59,000.00	3,42,59,000.00
<i>Deferred Tax Assets (Net)</i>	27,58,215.00	-	27,58,215.00
<i>Long-Term Loans & Advances</i>	2,01,409.00	1,26,61,812.00	1,28,63,221.00
<i>Current Investments</i>	-	1,02,29,255.00	1,02,29,255.00
<i>Inventories</i>	12,34,187.00	-	12,34,187.00
<i>Cash and Cash Equivalent</i>	21,95,910.00	79,510.84	22,75,420.84
<i>Short-Term Loans and Advances</i>	7,02,222.19	-	7,02,222.19
<i>Other Current Assets</i>	-	600. 00	600.00
<i>Total</i>	3,35,96,239.19	5,72,30,177.84	9,08,26,417.03



Goodwill on Amalgamation at BOOK VALUE	3,17,85,958.07	20,43.81,339.38	23,61,67,297.45
Total	6,53,82,197.26	26,16,11,517.22	32,69,93,714.48
ADDITION TO ASSETS:			
Increase in value of investments on fair valuation	-	2,98,01,856.54	2,98,01,856.54
Goodwill on Amalgamation at FAIR VALUE	3,17,85,958.07	17,45,79,482.84	20,63,65,440.91

8. Subsequently, the assessee company allotted its shares to the shareholders of the amalgamating company as per the scheme, were the excess fair value of the amalgamating company over the fair value of the net asset in acquiring from the amalgamating company acquired was the actual consideration paid by the assessee company and had claimed the excess consideration paid as “goodwill on amalgamation”. The lower authorities have rejected the assessee’s claim of depreciation on the said goodwill which was amortized by the assessee on the ground that the 5th proviso (now 6th proviso) to Section 32(1) of the Act prevents the assessee to claim depreciation on the assets acquired in the scheme of amalgamation more than the depreciation which is allowable to the amalgamating company. The lower authorities had relied on the decision of the coordinate bench in the case of *M/s. United Breweries Pvt. Ltd. (supra)* and had also dealt with the decision of the Hon'ble Apex Court in the case of *CIT vs. Smiff Securities Pvt. Ltd. (supra)* relied upon by the assessee on the ground that the decision of the Apex Court was only to the extent of holding that goodwill would be categorized as intangible assets or business or



commercial rights of similar nature as per Section 32(1) of the Act. The lower authorities further held that the depreciation on goodwill is allowable only to the extent if such amalgamation had not taken place, thereby denying the assessee’s claim of depreciation on goodwill. Before dealing with the rival contentions, we deem it fit to peruse the provisions of the Act and the same is cited hereunder for ease of reference:

Depreciation.

32. (1) *In respect of depreciation of—*

- (i) *buildings, machinery, plant or furniture, being tangible assets;*
- (ii) *know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, not being goodwill of a business or profession,*

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—

- (i) *in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;*
- i) *in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:*

.....
.....
.....
.....
.....

Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiiib) and clause (xiv) of [section 47](#) or [section 170](#) or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.



Definitions of certain terms relevant to income from profits and gains of business or profession.

43. In [sections 28](#) to [41](#) and in this section, unless the context otherwise requires—

(1)

(2)

(3)

(4)

(5)

(6) “written down value” means –

(c) in the case of any block assets, --

(i) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,—

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year;

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

(C) in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced—

(a) by the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(b) by the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets,

so, however, that the amount of such decrease does not exceed the written down value;

(ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by,—



- (A) *the increase or the reduction referred to in item (i), not being increase on account of acquisition of goodwill of a business or profession;*
- (B) *the reduction by an amount which is equal to the actual cost of the goodwill falling within that block as decreased by—*
 - (a) *the amount of depreciation actually allowed to the assessee under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) for such goodwill in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and*
 - (b) *the amount of depreciation that would have been allowable to the assessee for such goodwill for any assessment year commencing on or after the 1st day of April, 1988 as if the goodwill was the only asset in the relevant block of assets,*

in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 2021, in a case where the goodwill of a business or profession was part of the block of assets on which depreciation was obtained by the assessee for the immediate preceding previous year, so, however, that the amount of such reduction does not exceed the written down value.

.....

Explanation 7.—For the purposes of this clause, where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head "Profits and gains of business or profession", for computing the written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "Profits and gains of business or profession" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.

9. From the above provision, it is evident that as per Section 32(1) of the Act, the assessee is entitled to claim depreciation on both tangible as well as intangible assets or any other business or commercial rights of similar nature were proviso allows both the predecessor and the successor i.e., the amalgamating and the amalgamated company in case of amalgamation which deduction shall not exceed the prescribed rates which



would prevail had the succession/amalgamation/demerger had not taken place and further the deduction shall be apportioned between the amalgamating and the amalgamated company in the ratio of the number of days for which the assets were used by them

10. On perusal of the provision, it is evident that the intension of the legislature was that there should not be a claim of depreciation by both the amalgamating as well as amalgamated company which would result in double claim. Further, the consideration paid by the assessee over and above the net asset value of the amalgamating company is to be taken as the cost of acquisition of goodwill as per the scheme of amalgamation. It is a settled proposition of law that goodwill is an asset within the meaning of Section 32(1) for which depreciation is allowable as held by the Hon'ble Apex Court in the case of *Smiff Securities Ltd. (supra)*. Therefore, the issue in dispute is narrowed down to the fact whether post amalgamation the amalgamated company which is the assessee is entitled to claim depreciation on the goodwill acquired from the amalgamating company. The revenue has not disputed the fact that the excess consideration paid over and above assets of the amalgamating company is towards goodwill and has merely relied on the decision of the coordinate bench in the case of *United Breweries Ltd. (supra)* which is distinguishable on the fact of the present case were in that the value of goodwill in the books of amalgamating company was in dispute. In the present case in hand, the valuation of goodwill is not in dispute and that goodwill was a result of the scheme of amalgamation where there was no goodwill in the books of the amalgamating company. On identical facts, this issue was decided in favour of the assessee in the case



of *Aricent Technologies (Holdings) Ltd. (supra)* and *M/s. Keva Fragrances P Ltd. (supra)* by the coordinate benches, where the said decisions had relied on the proposition laid down by the Hon'ble Karnataka High Court in the case of *Padmini Products Pvt. Ltd. (supra)*. We do not find any justification in deviating from the view taken by the coordinate benches in the above decisions. Therefore, by respectfully following the same, we deem it fit to allow ground no. 2 raised by the assessee.

11. In the result, the ground no. 2 is allowed.

12. Ground no. 3 is without prejudice to ground no. 2 and since we have allowed ground no. 2, ground no. 3 raised by the assessee requires no further adjudication and is rendered academic in nature.

13. In the result, the ground no. 3 is hereby dismissed.

14. Ground no. 4 is on addition of Rs. 1,02,450/- u/s. 36(1)(va) of the Act towards employee's contribution to provident fund which was paid belatedly after the due date prescribed under the relevant Acts. The assessee contends that the delay of 1 day was due to the reason that the due date i.e., 15.04.2018 was on Sunday and the assessee had paid the same on the next working day i.e., on 16.04.2018. The Id. CIT(A) had disallowed the same by relying on the decision of the Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. vs. CIT (in Civil Appeal No. 2833 of 2016 and others vide order dated 12.10.2022)*.

15. We have heard the rival submissions and perused the materials available on record. the assessee is said to have made the payment of the said amount on 16.04.2018 when the due date was on 15.04.2018 which was a public holiday being Sunday. As this ground



raised by the assessee is covered by the decision of the coordinate bench in the case of ***SREI Equipment Finance Ltd. vs. Commissioner of Income-tax (Appeals) [2025] 178 taxmann.com 427 (Kolkata - Trib.) [15-09-2025]***, wherein it was held that when the due date for depositing of PF and ESI falls on a Gazetted holiday, the delay can be condoned as per Section 10 of General Clauses Act. By respectfully following the said decision, we hereby allow ground no. 4 raised by the assessee

16. In the result, the ground no. 4 is allowed.

17. Ground no. 5 pertains to addition of Rs 31,179/- u/s 36(1)(va) towards employee contribution to ESIC on the ground that the same was paid before the due date of filing of returns and that the assessee was unable to pay within the due date prescribed under the relevant acts on account of hardships caused to the assessee.

18. We have heard the rival submissions and perused the materials available on record. This issue is squarely covered by the decision of the Hon'ble Apex Court in the case of ***Checkmate Services Pvt. Ltd. (supra)*** against the assessee and hence, we hereby dismiss this ground of appeal raised by the assessee by respectfully following the same.

19. In the result, the ground no. 5 is dismissed.

20. Ground no. 6 is general in nature and requires no separate adjudication.

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

Order pronounced in the open court on 01.10.2025

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER



Mumbai; Dated: 01.10.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai