

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON'BLE SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2941/Mum/2025
(Assessment Year: 2016-17)**

Assistant Commissioner of Income Tax Room No. 506, 5 th Floor, Aaykar Bhavan, M K Road, Churchgate, Mumbai- 400020	Vs.	Siyaram Silk Mills Limited B5, Trade World, Kamala City, Senapati Bapat Margf, Lower Parel West, Mumbai- 400013
PAN/GIR No. AAACS6995D		
(Applicant)		(Respondent)

Assessee by	Shri. Dharan Gandhi
Revenue by	Shri. R A Dhyani - CIT DR.

Date of Hearing	25.09.2025
Date of Pronouncement	26.11.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the revenue challenging the impugned order 05.02.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi (NFAC) for the assessment year 2016-17. The revenue has raised the following grounds of appeal:

Grounds of Appeal

1. *Depreciation on Goodwill (Rs. 4,01,99,836/-]* 1.1 *On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) erred in not appreciating the fact that goodwill is only recognized as an outcome of a genuine amalgamation involving a purchase of shares or an identifiable acquisition, whereas in the present case, the AO has identified it as self-generated goodwill arising from an internal restructuring and not from any external commercial transaction and hence the decision from 1 relied upon ie. Smifs Securities Limited is distinguishable the facts of the instant case?.* 1.2 *On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) erred in not appreciating the fact that Ind AS 38 discourages recognition of self-generated goodwill as an asset and Section 32(1) of the Income Tax Act, read with Explanation 3, contemplates depreciation on intangible assets that are acquired and recognized as such whereas intangible assets arising out of mere*

Ground2. Investment Written Off (Rs. 6,01,54,400/-)- Contribution to Tarapur Environment Protection Society (TEPS)- 2.1 On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) erred in not appreciating the 2 in the acquisition of a benefit of enduring nature is capital in character? 2.2 On the facts and in the circumstances of the case and in law, whether the LD.CIT(A) erred in not appreciating the fact that payment was initially shown as an investment whereas an internal reclassification or belated attempt to treat it as a revenue expense does not alter its true nature which was overlooked by the CIT(A) since the assessee itself recognized the transaction as an investment, indicating a capital approach? 2.3 On the facts and in t fact that assessee's contribution to Tarapur Environment Protection Society (TEPS)-although stated as mandatory-conferred an enduring advantage by ensuring long-term environmental compliance and hence the expenditure that results

Ground No.1 – Depreciation of Good will

2. This ground raised by the revenue relates to challenging the order of Ld. CIT(A) in deleting the addition made by the AO with regard to depreciation of Good will.

3. We have heard the counsels for the both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. From the records we noticed that during the course of the assessment proceedings, the AO observed that the assessee has claimed higher depreciation as per Income Tax of Rs. 57,53,02,390/- in revised -1, return filed on 24.03.2027 as compared to the same aggregating to Rs. 53,51,02,554/- as per original return of income, resulting in excess depreciation claimed to the extent of Rs. 4,01,99,836/-. Accordingly, the assessee was asked to show cause as to why the excess claim should not be disallowed. In response to the show cause notice the assessee has filed his reply which is reproduced herein below:

The difference of Rs. 4,01,99,836/- is on account of goodwill written off. It was further submitted that goodwill got created of Rs. 16,07,99,337/- in the books at Fair Market Value as per High Court Order on amalgamation (AS 14). The said goodwill has to be amortized in the books over the period of 5 years and at 25% under WDV method in the Income Tax. Being the first year of amalgamation, the assessee claimed Rs. 4,01,99,836/-

4. But AO was of the view that the goodwill was created in pursuance to scheme of amalgamation. This being the self generated good will and rejected the plea of the assessee by holding that co-joint reading as IND AS 38 & Section 32 of the IT Act makes it clear that internally

generated goodwill is not an asset and therefore, no depreciation can be allowed on the same.

5. However, Ld. CIT(A) while allowing the claim of assessee recorded his finding in para 7.3 of its order, the same is reproduced herein below:-

7.3.1 The issue involved in this ground is whether depreciation on goodwill upon amalgamation is allowable or not. The facts of the case are that as per scheme of amalgamation approved by Bombay High Court, M/s Balakrishna Synthetics Limited was acquired by the appellant w.e.f. 01.04.2015 for a total consideration of Rs.44,70,00,000/- which was over and above the book value of assets of the acquired company by Rs. 16,07,99,337/-. This excess of consideration paid by the appellant over the net worth of the assets was recognized as goodwill in the books of the appellant on which depreciation has been claimed @ 25% in the instant year.

7.3.2 Coming to the legal issue of allowability of goodwill upon amalgamation, Section 32 of the Act which provides for allowance of depreciation deals with both tangible and intangible assets. In respect of intangible assets, the section provides an inclusive definition of intangibles that are covered for the purpose of depreciation. The section covers Intangible assets, being know-how, patents copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. On perusal it would be noted that goodwill is not explicitly covered in the aforesaid definition of intangibles and therefore there was a controversy which was put to rest by the Hon'ble Supreme Court in the case of CIT v Smifs Securities Ltd.

(2012) 348 ITR 302 (SC) wherein it was held that goodwill arising at the time of merger is an intangible asset and is entitled to be depreciated u/s 32 of the Act. The facts of the case were that YSN Shares and Securities Pvt Ltd (YSN) amalgamated with the assessee company in accordance with a

scheme of amalgamation sanctioned by both the Bombay and Calcutta High Court. The excess consideration paid over the net assets acquired was treated as goodwill arising on amalgamation and depreciation was claimed by the assessee. The AO denied the depreciation holding that goodwill is not an asset by referring to explanation 3 to section 32. The question before the Apex Court was whether goodwill is an asset under section 32 and whether depreciation is allowable or not. The findings of the Apex Court were:

"The Commissioner of Income Tax (Appeals) ['CIT(A)', for short] has come to the conclusion that the authorized representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT', for short]. We see no reason to interfere with the factual finding.

The Hon'ble Court further held that

Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b). In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act."

7.3.3 Further the Act has been amended w.e.f. AY 2021-22 to explicitly prohibit claim of depreciation on goodwill, however for the instant AY the amendment will not be applicable. In view of the above and respectfully following the Apex Court decision in the case of Smif Securities, the addition of Rs.4,01,99,836/- done by the AO is deleted. This ground of appeal of the appellant is allowed.

6. After having heard the counsels for both the parties at length, we find that although the goodwill is no explicitly covered in the definition of intangibles but Hon'ble Supreme Court in the case **of CIT vs. Smifs Securities Ltd., (2012) 348 ITR 302 (SC)** had held that goodwill arising at the time of merger is an intangible asset and is entitled to be depreciated u/s 32 of the Act. The facts of the case were that YSN Shares and Securities Pvt Ltd (YSN) amalgamated with the assessee company in accordance with a scheme of amalgamation sanctioned by both the Hon'ble Bombay and Calcutta High Courts. The excess consideration paid over the net assets acquired was treated as goodwill arising on amalgamation and depreciation was claimed by the assessee. The AO denied the depreciation holding that goodwill is not an asset by referring to explanation 3 to section 32. The question before the Apex Court was whether goodwill is an asset under section 32 and whether depreciation is allowable or not. The findings of the Apex Court were:

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7. So, keeping in view the facts of the case and also relying upon the decision of the Hon'ble Supreme Court, we are also of the view that goodwill arising at the time of merger is an intangible asset and is thus entailed to be depreciated u/s.32 of the Act. Although the Act has been amended w.e.f. A.Y.2020-21 to prohibit the claim of

depreciation on goodwill, but the amendment will not be applicable for the year under consideration.

8. No new facts or circumstances have been placed on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the ground raised and by the revenue stands dismissed.

Ground No.2

9 This ground raised by the revenue relates to challenging the order of Ld. CIT(A) in deleting the addition of Rs. 6,01,54,400/- made by AO on account of investments in TEPS.

10. We have heard the counsels for the both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. From the records we noticed that during the course of assessment proceedings, the AO observed that assessee has claimed deduction on account of expenses of TEPS Ltd not taken in profit and loss now considered at Rs. 6,01,51,400/- in revised return -2 as compared to the same at nil in revised return -1.

10. In this regard assessee submitted to regularize the effluent discharged by the manufacturing unit at Boisar as per Supreme Court Order, Tarapur Environment Protection Society (TEPS) was formed in the year 2004 under section 25 of the Companies Act, 1956. In TEPS, Industrial owners became the members by investing in making Common Effluent Treatment Plant. The contributions were taken from members by way of shares. The assessee further submitted that amount spent on TEPS was out of compulsion without which the assessee was not able to operate its units. It was further submitted that as per opinion of KPMG, it was confirmed that these expenses are not of investment in nature but are revenue expenses. Accordingly, the same were claimed in return of income. But AO rejected the said contentions for the reason that the amount contributed by the assessee in TEPS is against issue of shares and has been shown as investment in the Balance Sheet of the assessee. The said investment has not been written off in the books of accounts in Assessment Year 2016-17 but is done in AY 2018-19. Further, the same was also not written off in the Original as well as Revised - 1 Return. The said investment of Rs. 6,01,54,400/- has been claimed for the first time in the Revised Return - 2 filed on 22.08.2017.

11. In view of the aforesaid discussion, since the assessee itself has not written off the amount of investment in its books but claimed expenses only in computation and that too in the revised return. Further, the assessee itself has treated the said amount as its investment in the books of accounts. Therefore AO held that the expense claimed by the assessee on account of write off of investment of Rs. 6,01,54,400/- cannot be allowed. Accordingly, the same is hereby disallowed and added to the total income of the assessee.

However, Id. CIT(A) allowed the claim raised by the assessee by holding as under:

8.3 Decision:

8.3.1 The facts of the case have been considered. The issue here is regarding treating an amount of Rs.6,01,54,400/- paid by the appellant on account of contribution made to Tarapur Environment Protection Society (TEPS) as revenue or capital, The AO has held that the said payment is in the nature of investment and even the appellant has recognised the same as investment in its books and has infact not written it off in the financials and only claiming it as an expense under the Income Tax Act and hence the said expense is capital in nature. The appellant on the other hand has submitted that though the payment was earlier classified as investment, the fact is that this contribution towards TEPS was mandatory on account of the directions of the Supreme Court and was a mandatory payment if its manufacturing unit was to continue functioning at Tarapur. As regards the finding of the AO that the appellant has not written it off in its financials, the appellant has submitted that the same could not be written off in this year as the books had already been finalised which could not be

amended as the appellant is a listed company. The appellant has further stated that the amount has been written off in the next year in the audited financials and has not been claimed under the Income Tax Act as it has been claimed in this year.

8.3.2

The The appellant owns a plot with manufacturing unit at Maharashtra Industrial Development Corporation (MIDC), Tarapur, Boisar, where MIDC had provided a Common Effluent Treatment Plant (CETP) for industrial effluent discharge. Over time, the increasing effluent exceeded CETP's capacity, leading to environmental degradation and pollution of drinking water, causing public protests. The Maharashtra Pollution Control Board (MPCB) and MIDC intervened, and the Supreme Court mandated regularization of effluent discharge by either closing non-compliant units or establishing additional CETPs. Consequently, MPCB issued a letter highlighting Supreme Court's concerns, and MIDC, in coordination with Tarapur Industrial Manufacturers Association (TIMA), assured land and maintenance support for new CETPs. This led to the formation of Tarapur Environment Protection Society (TEPS) in 2004, where industrial owners, including the appellant, became members by contributing funds through shares. TEPS, registered under Section 25 of the Companies Act, 1956, prohibits profit distribution among members and denies any residual claims upon dissolution. The contributions were obligatory for business continuity, initially misclassified as investments in FY 2015-16 (AY 2016-17). Recognizing the error, the appellant revised their income tax return within the permissible period under Section 139(5) to claim the contribution as revenue expenditure, given the absence of any asset creation or enduring advantage. Despite the revised return, the appellant couldn't amend published financials but rectified the classification in FY 2017-18 without double-claiming the expense. Expert opinions from KPMG affirmed that such contributions qualify as revenue expenditure under Section 37(1) of the Income Tax Act, irrespective of accounting treatment. The appellant argues that this expenditure was crucial for factory operations at Tarapur, aligning with case law

supporting business-related expenses, and requests the deletion of the disallowed amount of Rs.6,01,54,400/-, asserting that it was a necessary, revenue-natured business expenditure.

8.3.3 The CETP is designed to treat effluents from various industries in Tarapur, including chemical, pharmaceutical, textile, and engineering units. These effluents often contain hazardous chemicals, heavy metals, and organic pollutants that can harm the environment if discharged untreated. The CETP ensures that treated effluents meet the discharge standards prescribed by the Maharashtra Pollution Control Board (MPCB) and the Central Pollution Control Board (CPCB). This helps industries comply with legal and regulatory requirements. By treating effluents collectively, the CETP minimizes the environmental footprint of industrial activities in Tarapur. It prevents the contamination of local water bodies, soil, and groundwater resources, protecting ecosystems and public health. For small and medium-sized industries that may not have the resources to set up individual effluent treatment plants, the CETP provides a cost-effective alternative. Industries share the costs of construction, operation, and maintenance, making effluent treatment more affordable. It is also worthwhile to note that had the appellant directly constructed a CETP instead of making the contribution towards TEPS, the expense would have been allowed as depreciation @ 100%.

8.3.4 As regards the initial nomenclature of investment adopted by the appellant it is my considered view that the said investment is in the form of a mandatory requirement to meet statutory liability and is not expected to generate any return at all and hence is not really an investment. The appellant was required to make this payment for the reason that it has its manufacturing unit at Boisar, Tarapur and as per the directive of Supreme Court was either required to contribute towards the CETP or close down its manufacturing unit. The appellant cannot capitalise this payment as asset in the block of assets and claim depreciation @ 100% as the appellant is not the owner of the CETP. The fact of this payment is undisputed and the fact that the appellant could not have carried out its

manufacturing activity at the Tarapur Unit without this payment is also undisputed. This payment, in my considered view, is therefore in the nature of an essential business expenditure that is allowable u/s 37 of the Income Tax Act. The appellant has already demonstrated before the AO that it has written off this expense in its financials in the next year and there has been no double claim of this amount. Thus, I find no infirmity in the action of the appellant in claiming this amount of Rs.6,01,54,400/- as an expense in the instant AY. The addition of Rs.6,01,54,400/- done by the AO is deleted and this ground of appeal of the appellant is allowed.

12. After having gone through the facts of the entire case, we found that Revenue treated the amount of Rs.6,01,54,400/- paid by the assessee on account of contribution made to Tarapur Environment Protection Society (TEPS) as capital in nature as the said payment is in the nature of investment and even the assessee had recognised the same as investment in its books and had in fact not written off in the financials and only claiming it as expense under the I.T. Act. But assessee submitted that though the payment was earlier classified as investment, the fact is that this contribution towards TEPS was mandatory on account of the directions of the Supreme Court and was a mandatory payment if its manufacturing unit was to continue functioning at Tarapur. As regards the finding of the AO that the appellant has not written it off in its financials, the appellant has submitted and further submitted that the same could not be written same could not be written off in this year as the books had

already been finalised which could not be amended as the appellant is a listed company. The appellant has further stated that the amount has been written off in the next year in the audited financials and has not been claimed under the Income Tax Act as it has been claimed in this year therefore, Id. CIT(A) after analyzing in detail had passed a detailed order by holding investment is in the form of a mandatory requirement to meet statutory liability and was not expected to generate any return at all and hence was not really an investment. The assessee was required to make this payment for the reason that it had its manufacturing unit at Boisar, Tarapur and as per the directive of Supreme Court the assessee was either required to contribute towards the CETP or close down its manufacturing unit. The assessee cannot capitalise this payment as asset in the block of assets and claim depreciation @ 100% as the assessee is not the owner of the CETP. The fact of this payment is undisputed and the fact that the assessee could not have carried out its manufacturing activity at the Tarapur Unit without this payment is also undisputed. This payment, in our considered view, was therefore in the nature of an essential business expenditure that is allowable u/s 37 of the Income Tax Act.

13. No new facts or circumstances have been placed on record before us in order to controvert or rebut the

findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the ground raised and by the revenue stands dismissed.

14. In the result, the appeal filed by the revenue stands allowed.

Order pronounced in the open court on 26.11.2025

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 26/11/2025
KRK, Sr. PS.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai