आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 1682/Chny/2024 &**
CO No.71/Chny/2024 (in ITA No.: 1682/Chny/2024)
निर्धारण वर्ष / **Assessment Year: 2015-16**

Assistant Commissioner of Income Tax, Corporate Circle-1(1) Chennai.	vs.	**FLSmidth Private Limited**, 34th Egatoor, FLSmidth House, Rajiv Gandhi Salai, Kelambakkam, Kanchipuram – 603 103.
(अपीलार्थी/Appellant)		[**PAN: AAACF-4997-N**] (प्रत्यर्थी/Respondent/ Cross Objector)

आयकर अपील सं./**ITA Nos.: 1731 & 1763/Chny/2024**
निर्धारण वर्ष / **Assessment Years: 2014-15 & 2017-18**

Assistant Commissioner of Income Tax, Corporate Circle-1(1) Chennai.	vs.	**FLSmidth Private Limited**, 34th Egatoor, FLSmidth House, Rajiv Gandhi Salai, Kelambakkam, Kanchipuram – 603 103.
(अपीलार्थी/Appellant)		[**PAN: AAACF-4997-N**] (प्रत्यर्थी/Respondent)

Assessee by	:	Shri. P.M.Kathir, Advocate and Shri S.P.Chidambaram, Advocate
Department by	:	Shri. A R V Sreenivasan, CIT.

सुनवाई की तारीख/Date of Hearing	:	15.12.2025
घोषणा की तारीख/Date of Pronouncement	:	21.01.2026

आदेश /O R D E R

PER BENCH:

These appeals filed by the Revenue and Cross objection filed by the assessee are arising out of order of the Commissioner of Income Tax

(Appeals)-16, Chennai (in short "ld.CIT(A)") against orders u/s.143(3) r.w.s. 92CA(3) r.w.s 144C of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment years 2014-15, 2015-16 and 2017-18 dated 29.03.2024, 29.03.2024 and 29.03.2024 respectively. The CO has been raised by the assessee for the A.Y.2015-16 only. Since the facts are common/identical and the issue of assessee's claim of depreciation on goodwill arising on amalgamation, is common for these three assessment years, for the sake of convenience, the appeals filed by the Revenue are being heard together and disposed of, by this consolidated order.

2. At the outset, we find that there is a delay of 2 days, 12 days and 16 days delay in filing the appeals by the Revenue in ITA.No.1682/Chny/2024, ITA.No.1731/Chny/2024 and ITA No.1763/Chny/2024 respectively. After hearing both the parties, we find that there is a reasonable cause for the revenue in not filing the appeals on or before the due date prescribed under the law and thus, in the interests of justice, we condone the delay in filing of appeals and admit the appeals filed by the revenue for adjudication. It is observed that there is also a delay of 87 days in the filing of the Cross-Objections by the assessee, for which the assessee has filed affidavit stating the reasons for delay. Upon due consideration of the submissions made by both the parties, and having regard to the facts and circumstances of the case, we are satisfied that the assessee was prevented by reasonable cause from filing the Cross-Objections within the time prescribed under the statute. Accordingly, in the interest of justice and equity, the delay in filing the Cross-Objections is hereby condoned, and the Cross-Objections are admitted for adjudication on merits.

3. The Revenue has raised the following grounds of appeal for the three assessment years, AY 2014-15, AY 2015-16 and AY 2017-18:

<u>ITA No.: 1682/CHNY/2024 AY 2015-16</u>

i. The order of the learned CIT(A) is contrary to the facts and circumstances of the case.

ii. The Ld. CIT(A) has failed to appreciate the contradictory stand of the assessee with respect to Good Will that was never recorded in the books of the assessee as such.

iii.The Ld. CIT(A) has failed to consider the relevance of findings of the Assessing Officer with respect to the pooling of Interest method followed in the assessee's case of merger, the result of which is that Good Will was never recorded in the books of the assessee as such

iv. The Ld. CIT(A) has failed to consider the fact that the claim of good will by the assessee is not justified in the light of the merging entity having business loss and also having already sold IPR.

v. The Ld. CIT(A) has failed to appreciate that the Assessee has failed to counter the Assessing officer's findings with respect to the value of investment in the shares of the said FPIL pre and post the merger.

vi. The Ld. CIT(A) has failed to appreciate that the decision of the Hon'ble Supreme Court in the case of CIT Vs Smirfs Securities Limited (2012) has only held that goodwill is a depreciable asset and not about the value of asset or written down value that is to be considered for the purpose of allowing the depreciation.

vii.The Ld. CIT(A) failed to consider the provision of Explanation 7 to section 43(1) rightly brought out by the Assessing officer in the Assessment Order, as per which, since the Goodwill was never recorded in the books, the assessee was not eligible for depreciation.

viii. The Ld. CITYA) has failed to consider the provisions of Explanation 2(b) to section 43(6) of the Act, as per which, since the Goodwill was never recorded in the books and therefore, the assessee was not eligible for depreciation.

ix. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

ITA No.: 1731/CHNY/2024 AY 2014-15

1. The order of Assessing Officer and/or the Transfer Pricing Officer (hereinafter referred to as the AO or the TPO) is contrary to law, facts and circumstances of the case.

2. TRANSFER PRICING ADJUSTMENT-General

2.1 The AO/TPO has erred in law and facts in making a downward adjustment of Rs. 3,71,56,870/- to the international transactions of the Appellant in the Project segment, u/s 92CA(3) read with section 92C(3) of the Income-tax Act, 1961 ('the Act').

3 Rejection of Transfer pricing analysis undertaken by the Appellant

3.1 The TPO erred in rejecting the benchmarking analysis performed by the Appellant and incorrectly undertook a fresh benchmarking analysis.

3.2. The TPO has erred in rejecting the benchmarking analysis prepared by the Appellant without appreciating the fact that a detailed and careful comprehensive search process was performed by the Appellant with respect to the Project segment after considering the comparability criteria for the purposes of the Transfer Pricing documentation.

4. Appellant's comparable companies to be accepted

4.1 The TPO has erroneously rejected the comparable companies (BEML Ltd., International Combustion (India) Ltd, Kabra Extrusiontechnik Lid., Rajoo Engineers Ltd, Windsor Machines Ltd.,) selected by the Appellant in its Transfer pricing documentation without providing any specific reasons for rejecting the same and without appreciating the fact that they are functionally comparable

5. TPO's comparable companies to be rejected

5.1 The TPO has erred in conducting a fresh benchmarking study and selecting fresh comparable companies (Elecon EPC Projects Ltd. [Merged], Jost'S Engineering Co. Ltd., McNally Bharat Engg. Co. Ltd.) without appreciating the fact that the said companies are functionally not comparable to the Appellant.

6. Threshold limit for RPT should be 10%

6.1 The AO/TPO have erred in considering 25 percent as the threshold limit for the Related Party Transactions ('RPT') filter and should have adopted a reasonable threshold of 10 percent while benchmarking.

7. Adjustment for differences between the Appellant and its comparable companies

7.1 The Appellant craves leave to reserve its rights to claim any economic adjustments for the differences between the Appellant and its comparable companies during the course of the appeal proceedings.

<u>CORPORATE TAX ADJUSTMENTS</u>

8. Disallowance under Section 14A of the Act read with Rule 8D

8.1 On the facts and circumstances of the case and in law, the AO erred in disallowing an amount of Rs.31,35,846/-under Section 14A being expenditure attributable towards exempt income by applying Rule 8D.

8.2 The AO ought to have appreciated the quantum of disallowance voluntarily made by the Appellant in the tax return was just and reasonbale and hence, there was no requirement to invoke Rule 8D.

8.3 The AO ought to have appreciated that the mere fact that some interest expenses were incurred cannot be a reason for disallowance unless the nexus between the expense and the exempt income is established.

8.4 The AO ought to have appreciated that the investments were not made from borrowed funds but were made out of internal accruals

8.5 Without prejudice to the above, the AO erred in including strategic investments in

wholly owned subsidiaries while computing the disallowance tender Rule 8D. The AO ought to have appreciated that strategic investments in wholly owned subsidiaries have not earned any dividend income and these subsidiaries have since merged with the Company. Therefore, such strategic investments should be excluded while considering investments for computing disallowance under Rule 8D.

8.6 Without prejudice to the above, the All-erred in disallowing an amount of Rs. 31,35,846/- which is substantially higher than the actual exempt dividend income of Rs. 9,24,960. The AO failed to appreciate that section 14A prescribes disallowance for expenditure incurred against the income which is claimed as exempt. Hence, the disallowance under section 14A against exempt income cannot be higher than the exempt income itself.

9. Rejection of claim of Depreciation on tangible assets pursuant to the merger of FLSmidth Pfister India Limited into FLSmidth Private Limited during the year

9.1. The AO erred in denying, in limine, the claim of Depreciation on Intangible assets pursuant to the merger of FLSmidth Pfister India Limited ('FPIL") into FLSmidth Private Limited, merely because the said claim was not made in the income tax retum filed by the Appellant.

Without prejudice to the above, the Appellant prefers the following grounds of appeal on merits of the claim

9.2. The AO ought to have appreciated that a bonafide/legitimate claim made during assessment proceedings should be examined on merits, irrespective of whether a revised return has been filed. Accordingly, the AO erred in not allowing the claim of depreciation on Intangibles, arising pursuant to the merger of FPIL with the Appellant, which is a bonafide claim under the provisions of the Act.

9.3 The AO erred in considering a derived value for the purpose of computing cost of investment in shares, without appreciating the fact and disputing the value adopted of Rs. 66,22,76,582, as provided in Note 43B to the Financial Statements for FY 2013-14

9.4 The AO erred in concluding that goodwill is applicable only in the case of purchase method where the transferee company is not a subsidiary company, and hence depreciation is not allowable.

9.5 The AO erred in holding that Cosmos Co-op Bank Ltd. (45 taxmann.com 13) and Smifs Securities Lid [2012] 24 taxmann.com 222 (SC) are not relevant to the facts and circumstances of the present case.

9.6 Without prejudice to the above, the Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT [2006] 157 Taxman 1 (SC), held that although the claim may not be allowed by the Assessing Officer, it does not stop the First Appellate authority from allowing it at the First Appellate Authority's level.

10. Short grant of TDS, TCS and Advance Tax credit

10.1 On the facts and circumstances of the case and in law, the AO erred in granting short credit of tax deducted at source, tax collected at source and advance tax credit against the TDS, TCS and advance tax claimed by the Appellant in its return of income.

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of objection either before or during the course of the CIT (Appeal) proceedings in the interest of natural justice.

ITA No.: 1763/CHNY/2024 AY 2017-18

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in excluding the comparable, Promac Engineering Industries Ltd., on the ground of functional dissimilarity even when the TPO had chosen the comparable as it satisfies qualitative and quantitative filters applied by the TPO for the relevant AY?

3. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in holding that the company Promac Engineering Industries Ltd., is engaged in manufacture of lifting and handling equipments, when the company Promac Engineering Industries Ltd., is in the business of engineering, manufacturing and supply of capital goods items on turnkey basis to cement and mineral industries?

4. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in not appreciating the fact that the assessee is engaged in the business of manufacturing and supplying of equipment for cement plants, supervision of erection and commissioning of cement plants and also undertakes turn-key projects (including erection and commissioning) for minerals processing industries while the comparable company Promac Engineering Industries Ltd., is also in the business of engineering, manufacturing and supply of capital goods items on turnkey basis to cement and mineral industries?

5. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in excluding the comparable, Eimco Elecon (India) Ltd., on the ground of functional similarity even when the TPO had rejected the comparable as it does satisfy qualitative and quantitative filters applied by the TPO for the relevant AY?

6. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in concluding that since the company caters to government companies it makes them operate under a profit making environment when profitability of any undertaking depends on cost management and project management

7. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in deciding since Eimco Elecon undertakes research and development activities they are not comparable eventhough the assessee themselves had paid a significant amount to its AE towards technical knowhow, patent and trademark and utilized and reaped the benefits of the research and development undertaken by the AE?

8. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in concluding that the comparable, Aqua Pumps Infra who is involved in construction activity in infrastructure projects like roads, bridges, tunnels, pipelines, runways and highway projects is comparable to the assessee who is engaged in the business of manufacturing and supplying of equipment for cement plants, supervision of erection and commissioning of cement plants and also undertakes tum-key projects (including erection and commissioning) for minerals processing industries?

9. Whether, under the facts and in the circumstances of the case and in law the CIT(A) erred in concluding that the comparable, Hercules Hosits Ltd., who is involved exclusively into manufacture of hoisting and lifting equipments like electric chain hoists, electric wire rope hoists, winches, cranes, overhead material handling equipment, storage & retrieval solutions and ergonomic handling solutions is comparable to the assessee who is engaged in the business of manufacturing and supplying of equipment for cement plants, supervision of erection and commissioning of cement plants and also undertakes turn-key projects (including erection and commissioning) for minerals processing industries?

10. The Ld. CITIA) has failed to appreciate the contradictory stand of the assessee with respect to Good Will that was never recorded in the books of the assessee as such.

11. The Ld.CIT(A) has failed to consider the relevance of findings of the Assessing Officer with respect to the pooling of Interest method followed in the assessee's case of merger, the result of which is that Good Will was never recorded in the books of the assessee as such.

12. The Ld.CIT(A) has failed to consider the fact that the claim of good will by the assessee is not justified in the light of the merging entity having business loss and also having already sold IPR.

13. The Ld. CIT(A) has failed to appreciate that the Assessee has failed to counter the Assessing officers's findings with respect to the value of investment in the shares of the said FPIL pre and post the merger.

14. The Ld.CIT(A) has failed to appreciate that the decision of the Hon'ble Supreme Court in the case of CIT Vs Smirfs Securities Limited (2012) has only held that goodwill is a depreciable asset and not about the value of asset or written down value that is to be considered for the purpose of allowing the depreciation.

15. The Ld.CITA) failed to consider the provision of Explanation 7 to section 43(1) rightly brought out by the Assessing officer in the Assessment Order, as per which, since the Goodwill was never recorded in the books, the assessee was not eligible for depreciation.

16. The Ld.CIT(A) has failed to consider the provisions of Explanation 2(b) to section 43(6) of the Act, as per which, since the Goodwill was never recorded in the books and therefore, the assessee was not eligible for depreciation.

17. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

4. The brief facts of the case emanating from the records are that the assessee is a member of the FLSmidth Group and is engaged in the manufacture and supply of machinery, parts and supervision of erection and

commissioning services to cement / minerals industries among other activities. The company has three segments, namely, project segment, engineering segment and financial shared services segment. The Assessing Officer ("AO", in short) issued the order of assessment for AY 2014-15, AY 2015-16 and AY 2017-18 wherein he made additions such as transfer pricing adjustments, disallowance u/s.14A of the Act and disallowance of depreciation on goodwill arising on amalgamation. The ld. CIT(A) has partially allowed the appeals of the assessee. Now the Revenue has filed appeals in ITA No.: 1731/CHNY/2024, ITA No.: 1682/CHNY/2024 and ITA No.: 1763/CHNY/2024 for AY 2014-15, AY 2015-16 and AY 2017-18 respectively. Further, the assessee has filed Cross objection grounds of appeal in relation to management charges for AY 2015-16.

4.1 Since the issue of allowability of depreciation on goodwill arising on amalgamation is common and present in all three department appeals for AY 2014-15, AY 2015-16 and AY 2017-18, we have heard the appeals together. We shall first take up the Revenue appeal for AY 2014-15.

ITA No.: 1731/CHNY/2024 AY 2014-15

5. The first ground of appeal is regarding the issue of allowability of depreciation on goodwill arising on amalgamation of FLSmidth Pfister India Limited with FLSmidth Private Limited during AY 2014-15. The brief facts are that FLSmidth Pfister India Limited (FPIL) is a wholly owned subsidiary of the assessee, and is engaged in the business of a wide range of industrial weighing equipment and batching systems. As summarized in Note 43B of the Audited Financial Statements of AY 2014-15 of the assessee, the Scheme of Amalgamation of FPIL with the assessee, with effect from 1 April 2013 (the Appointed Date) was approved by the Hon'ble High Court of Bombay on 27.06.2014. The parties to the Scheme of Amalgamation filed the certified copy of the said Amalgamation Order with the Registrar of Companies on

19.08.2014. Pursuant to the Hon'ble Bombay High Court Merger Order, the assets and liabilities of FPIL were transferred to the assessee as per the Scheme of Amalgamation. The Assessee took a stand that the Cost of investment in FPIL exceeding the Value of Net assets transferred from FPIL to the assessee in accordance with the Hon'ble Bombay High Court Merger Order, is in the nature of goodwill eligible for tax depreciation in the hands of the Assessee. Consequently, the assessee claimed tax depreciation at 25% on goodwill, arising on amalgamation of FPIL with the assessee. The AO disallowed the assessee's claim of depreciation on goodwill arising on amalgamation. The CIT(A) allowed the assessee's claim of depreciation on goodwill basis the view that on amalgamation of FPIL with the assessee as per scheme of Amalgamation approved by the Order of the Hon'ble Bombay High Court, the difference between the cost of investment on shares and net assets amounting to Rs.45,58,50,900/- constitutes goodwill and is eligible for depreciation at 25% on intangible assets. Presently, the Revenue has filed an appeal before us against the Order of the ld.CIT(A).

6. The ld.DR contended that the ld.CIT(A) failed to appreciate the findings of the AO with respect to pooling of interest method followed in the assessee's case of amalgamation, the result of which is that Goodwill was never recorded in the books of the assessee as such. Further, the ld.DR contended that the ld.CIT(A) failed to consider provisions of Explanation 7 to section 43(1) and Explanation 2(b) to section 43(6) of the Act, as per which, since the Goodwill was never recorded in the books, the assessee was not eligible for depreciation. In addition, the ld.DR heavily relied on the Hyderabad Tribunal in the case of Invesco (India) Private Limited (ITA No.111/Hyd/2022) and submitted that depreciation on goodwill is not allowable.

7. Per contra, Mr.S.P.Chidambaram, the ld.AR for the assessee invited our attention to the Audited Financial Statements of AY 2011-12 of the subsidiary

FPIL (Formerly known as Transweigh (India) Limited), wherein the assessee had paid a consideration of Rs. 66,22,76,582/- to a third party during AY 2011-12 to acquire all the shares of FPIL. Pursuant to the acquisition, FPIL became a wholly owned subsidiary of the assessee. Subsequently, a few years down the line, for business synergies and various other reasons, a Scheme of Amalgamation of FPIL with the assessee was filed and such Scheme was approved by the Hon'ble High Court of Bombay on 27.06.2014. Pursuant to the Hon'ble Bombay High Court Order, the assets and liabilities of FPIL were transferred to the assessee as per the Scheme of Amalgamation with effect from 01.04.2013 (the Appointed Date). The value of Net assets transferred from FPIL to the assessee amounted to Rs.20,64,25,682/-. The ld.AR pointed out that the excess of Cost of investment in shares of FPIL over the Value of Net assets transferred from FPIL to the assessee as per the Order of the Hon'ble Bombay High Court, amounted to Rs.45,58,50,900/- and the same is in the nature of Goodwill, eligible for tax depreciation at 25% on intangible assets.

8. Further, ld.AR also contended that the excess consideration paid i.e. Cost of investment in shares of FPIL over the net asset value of FPIL taken over, has been accounted as Deficit on amalgamation and reduced from the General reserves of the assessee as per the mandate of the applicable Accounting Standards. Such details of consideration paid (Cost of investment), net assets taken over and deficit on amalgamation has been duly disclosed in Note 43B of the Audited Financial Statements of AY 2014-15. The goodwill was not recorded in the books of the assessee prior to the amalgamation since goodwill arises only on amalgamation of FPIL with the assessee. However, for income tax purposes, such excess consideration paid is nothing but goodwill arising on amalgamation of FPIL with the assessee. The ld.AR also emphasized that the treatment of such excess consideration under the Income-tax Act may be different from the treatment adopted in the financials.

In other words, accounting treatment followed in the books of account need not be followed for tax deductions and tax claims as held by various Courts and Tax Tribunals. Under the Act, such excess consideration paid to the third party represents the amount incurred by the assessee with respect to the future enduring benefits of FPIL accruing to the assessee. With respect to the reference made to provisions of section 43 of the Act, ld.AR stated that in the present case, Goodwill is an asset that arises out of the amalgamation and therefore, prior to acquisition, there can be no existing book value for such goodwill in the assessee's books. Further, ld.AR argued that other benefits accruing on amalgamation such as business synergies, customer lists, patents, trained employees, know-how and other beneficial contracts continue with the assessee post-merger of FPIL and the excess consideration paid is towards such enduring benefits derived in the subsequent years. Accordingly, such excess consideration paid over and above the value of net assets taken over, represents goodwill and tax depreciation at 25% on goodwill is allowable.

9. In addition, ld.AR Mr.SP.Chidambaram stated that the objections of the ld.DR to the effect that the amalgamation is not accounted by way of purchase method but is accounted as by way of pooling of interest method, is not a tenable ground to deny the claim of the assessee. The ld.AR submitted that amalgamation can be accounted by way of two methods viz., One - Purchase method and Two – Pooling of interest method. Amalgamation is a form of transfer and in any transfer, consideration is to be necessarily paid. This is true for either of the two methods. In the present case, it is undisputed that the consideration paid for investment in shares of the amalgamating company, FPIL is over and above the net asset value of FPIL. The consideration being paid in excess, the same necessarily represents the consideration paid towards goodwill. The ld.AR placed reliance on the decision of the *Pune Tribunal in Cosmos Co-op Bank Ltd v. DCIT [2014] 45 taxmann.com 13 (Pune - Trib.)* wherein the Tribunal allowed depreciation on goodwill arising on

amalgamation by way of merger accounted under pooling of interest method. Therefore, in the instant case, when the amalgamation is accounted by way of pooling of interest method, wherein Goodwill is reduced from the reserves of the assessee and goodwill is not recorded in the books of the assessee, would not impact the treatment of goodwill as an intangible asset or the claim of depreciation on goodwill for tax purposes.

10. As far as the aspect of power of authorities to consider the claim of the assessee for depreciation on goodwill during appeal proceedings is concerned, the ld.AR placed reliance on the decision of the Hon'ble Apex Court in the case of *Goetze (India) Ltd. v. CIT* [2006] 284 ITR 323 (SC) wherein the Supreme Court held that there is no bar to consider the claim of the assessee for additional depreciation, made otherwise than by a revised return of income, by the appellate authorities.

11. At the outset, as far as the aspect of power of authorities to consider the claim of the assessee directly during assessment/appellate proceedings without filing a revised return of income is concerned, such an issue is no longer res integra and is covered by the decision of the Hon'ble Apex Court in the case of *Goetze (India) Ltd.* (*supra*). In the case of *Goetze* (*India*) *Ltd.* (*supra*), the question was whether the assessee could make a claim for deduction other than by filing a revised return, in an appeal against the findings of the High Court to the effect that the Revenue authorities were not justified in refusing to consider the taxpayer's claim for deduction on the grounds that such claim was not made in the original return or the revised return filed before the Assessing Officer. The High Court restored the matter to the ld.CIT(A) for fresh adjudication on the issues relating to deduction u/s.10B of the Act. The Hon'ble Apex Court affirmed the principle that the appellate authorities can consider additional claim even if the same is not raised by the taxpayer in the original or revised return and the appellate authorities have the power to

entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised. We are, therefore, of the considered opinion that there is no bar to consider the claim of the assessee for depreciation on goodwill arising on amalgamation, made before the appellate authorities, otherwise than by a revised return of income.

12. On merits, we have heard both the parties, perused the material on record and gone through the orders of the authorities below along with the judicial precedents relied on. There is no dispute with regard to the fact that FPIL is a wholly owned subsidiary of the asseesee. We find that as per the Scheme of Amalgamation approved by the Order of the Hon'ble Bombay High Court, the consideration paid by the assessee is much more than the net value of assets and liabilities taken over by the assessee. Such excess consideration paid by the assessee has been treated as goodwill and the assessee has claimed depreciation thereon at the applicable rate.

13. We find merit in the arguments of the ld.AR that as per the AY 2011-12 Audited Financials of the subsidiary FPIL (Formerly known as Transweigh (India) Limited), the assessee had paid a consideration of Rs.66,22,76,582/- to a third party during AY 2011-12 to acquire all the shares of FPIL. Pursuant to the acquisition, FPIL became a wholly owned subsidiary of the assessee. Subsequently, a few years down the line, the Assessee filed a Scheme of Amalgamation of FPIL with the assessee, and such Scheme was approved by an Order of the Hon'ble High Court of Bombay on 27.06.2014. Pursuant to the said Order, with effect from 01.04.2013 (the Appointed Date), the assets and liabilities of FPIL were transferred to the assessee as per the Scheme of Amalgamation. The value of Net assets transferred from FPIL to the assessee amounted to Rs.20,64,25,682/- as disclosed in Note 43B of the Audited Financial Statements of AY 2014-15 of the assessee.

14. We are of the view that the consideration of Rs.66,22,76,582/- paid for investment in shares of FPIL over the Value of Net assets of Rs.20,64,25,682/- transferred from FPIL to the assessee, pursuant to the Order of the Hon'ble Bombay High Court, amounting to Rs.45,58,50,900/-, is in the nature of Goodwill and is eligible for tax depreciation on intangible assets.

15. Adverting to the finding of the AO that the goodwill cannot be self-generated and that the claim of the assessee is on account of self-generated goodwill is not correct. The AO has relied upon Explanation 7 to section 43(1) and Explanation 2(b) to section 43(6) of the Act to hold that since goodwill was never recorded in the books, the assessee was not eligible for depreciation. But in the case before us, the goodwill on which depreciation is claimed by the assessee is arising out of the amalgamation scheme, and is not the self-generated goodwill as alleged by the AO. We find force in the submissions of the ld.AR that Explanation 7 to section 43(1) and Explanation 2(b) to Section 43(6) of the Act, does not affect the right of amalgamated company to claim depreciation, since the provisions of section 43 of the Act is applicable only where an existing block of asset is transferred from the amalgamating company to the amalgamated company. In the instant case, since goodwill comes into existence only for the first time subsequent amalgamation, the aforesaid Explanation do not apply. Explanation 7 to Section 43(1) and Explanation 2(b) to Section 43(6) of the Act do not affect the right of the amalgamated company to claim depreciation, as they would operate where an asset is acquired by amalgamating company, without incurring any financial outlay and such asset is transferred to amalgamated company without incurring any financial outlay. In the instant case, since excess consideration paid while initially acquiring the company prior to amalgamation and post amalgamation the net asset received is lesser than the purchase consideration, the differential consideration will constitute goodwill and as such

aforesaid Explanation in provisions of section 43 of the Act are inapplicable. Our above decision is also supported by the Orders of the Tribunal relied upon by the assessee, in the following decisions:

1. KIFS International LLP v. DCIT ITA No. 557/AHD/2022
2. S&P Capital IQ (India) (P.) Ltd. v. ACIT [2024] 158 taxmann.com 12 (Hyderabad - Trib.)
3. I & B Seeds (P.) Ltd. v. DCIT [2022] 142 taxmann.com 274 (Bangalore - Trib.)

15.1 Further, the Hyderabad Bench of the ITAT in the case of S&P Capital IQ (India) (P.) Ltd. (supra) and the Bangalore Bench of the ITAT in the case of I & B Seeds (P.) Ltd. (supra) held that by way of amendment through Finance Act, 2021 clause (b) of Section 2(11) of the Act was amended and the goodwill of the business or profession is excluded from the block of assets comprised in intangible assets. This amendment has come into force with effect from 01.04.2021 i.e. AY 2021-22. It follows that by way of this express provision, the Legislature excluded the goodwill of a business or profession from the block of intangible assets and till AY 2021-22, it shall be construed that goodwill was comprised in the block of intangible assets eligible for depreciation. Accordingly, the Hyderabad Tribunal and the Bangalore Tribunal in the said cases, held that goodwill is an intangible asset and is eligible for depreciation for the amalgamations/mergers prior to AY 2021-22.

16. Further, the Ld.DR also submitted that depreciation on goodwill is not allowable in cases of accounting done under pooling of interest method. In this context, we find that so far as accounting for amalgamation by way of pooling of interest method is concerned, the Pune Bench of the ITAT in the case of Cosmos Co-op Bank Ltd. (supra) held that amalgamation in question not by way of purchase but is an amalgamation by pooling of interest method, is no ground to deny the claim of the assessee. The relevant extract of the Pune Tribunal decision is reproduced below:

> *"The other objection of the CIT(A) to the effect that the amalgamation in question is not by way of purchase but is an amalgamation by merger, in our view, is no ground to deny the claim of the assessee, which is otherwise well-*

founded. Therefore, having regard to the aforesaid discussion, in our view, on facts and in law, the assessee is entitled for depreciation on the impugned sum for acquisition of business of commercial rights contemplated in section 32(1)*(ii) of the Act. Thus, on the Ground of Appeal No.3, assessee succeeds."*

17. Following the aforesaid decision and the judicial principles that an entry in the books of account does not determine taxability, we find force in the arguments of the ld. ld.AR that taxable income and income tax thereon must be computed according to the specific provisions of the Act, irrespective of the method of accounting used for financial statements. Accordingly, in our view, the amalgamation of FPIL with the assessee accounted by way of pooling of interest method, is no ground to deny a bona fide claim of the assessee and tax depreciation on goodwill arising on amalgamation is allowable. We are of the view that irrespective of the method of accounting i.e. pooling of interest method or purchase method is relevant only for the purpose of books/financials. However, as far as tax purposes is concerned, the guiding principle laid down by the Hon'ble Supreme Court in the case of Smifs Securities Ltd. [2012] 24 taxmann.com 222 gains more relevance. For the sake of clarity and ready reference, the relevant paras are reproduced hereunder:

"*Question No.[b]: "Whether goodwill is an asset within the meaning of Section 32 of the Income Tax Act, 1961, and whether depreciation on `goodwill' is allowable under the said Section?"*

Answer: In the present case, the assessee had claimed deduction of Rs.54,85,430/- as depreciation on goodwill. In the course of hearing, the explanation regarding origin of such goodwill was given as under:
"In accordance with Scheme of Amalgamation of YSN Shares & Securities (P) Ltd with Smifs Securities Ltd (duly sanctioned by Hon'ble High Courts of Bombay and Calcutta) with retrospective effect from 1st April, 1998, assets and liabilities of YSN Shares & Securities (P) Ltd were transferred to and vest in the company. In the process goodwill has arisen in the books of the company."

It was further explained that excess consideration paid by the assessee over the value of net assets acquired of YSN Shares and Securities Private Limited [Amalgamating Company] should be considered as goodwill arising on amalgamation. It was claimed that the extra consideration was paid towards the reputation which the Amalgamating Company was enjoying in

order to retain its existing clientele. The Assessing Officer held that goodwill was not an asset falling under Explanation 3 to Section 32(1) of the Income Tax Act, 1961 [`Act', for short].

We quote hereinbelow Explanation 3 to Section 32(1) of the Act:
"Explanation 3.-- For the purposes of this sub-section, the expressions `assets' and `block of assets' shall mean--[a] tangible assets, being buildings, machinery, plant or furniture; [b] intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature."

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.

One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. ***The Commissioner of Income Tax (Appeals) [`CIT(A)', for short] has come to the conclusion that the authorised 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.***

One more aspect which needs to be mentioned is that, against the decision of ITAT, the Revenue had preferred an appeal to the High Court in which it had raised only the question as to whether goodwill is an asset under Section 32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove. For the afore-stated reasons, we answer Question No.[b] also in favour of the assessee." (emphasis supplied).

18. Thus, it is clear that the Hon'ble Supreme Court has considered the circumstances and the process of amalgamation under which goodwill has arisen on which depreciation was claimed. Therefore, the judgement in the case of Smifs Securities Ltd. (supra) is applicable to the facts of the case

before us and the excess payment over the net book value of assets and liabilities acquired on account of amalgamation is in the nature of 'goodwill' and is eligible for depreciation u/s.32(1)(ii) of the Act.

19. Lastly, the Hyderabad Tribunal decision relied upon by the Ld.DR in the case of Invesco (India) Private Limited (supra) is distinguishable from the facts of the case before us. In the case of Invesco (India) Private Limited, for showing investment in shares the Company had adopted DCF method of valuation of shares and in order to record goodwill, the Company had adopted a different method of Fair Market Value of assets, both on the same date of 01.04.2016. Further, the Assessing Officer has brought out various defects in the DCF method followed by the Company to arrive at the intrinsic value of shares as on 31.03.2016. Therefore, the Tribunal in that case, held that since the assessee-company is unable to explain as to how a company can be valued on the very same day for different purposes, in their considered view, the argument of the Company that DCF method is the recognized method for the purpose of valuation of shares and the Company had acquired shares as per DCF method is devoid of merits and cannot be accepted. On the contrary, in the case of the assessee, the assessee had not followed two different methods of valuation and deficit on Amalgamation is recorded in Note 43B of the Audited Financial Statements of AY 2014-15 of the assessee. Therefore, the decision in the case of Invesco (India) Private Limited is distinguishable on facts and is not applicable to the case before us.

20. Further, the following decisions relied upon by the ld.AR also hold that goodwill is an intangible asset and tax depreciation on goodwill is allowable:

1. PCIT v. Zydus Wellness Ltd. [2020] 113 taxmann.com 154 (SC) and PCIT v. Zydus Wellness Ltd. [2017] 87 taxmann.com 82 (Gujarat)
2. Urmin Marketing (P.) Ltd. v. DCIT [2020] 122 taxmann.com 40 (Ahmedabad - Trib.)

21. In view of the above and respectfully following the above precedents

relied upon by the assessee on the issue, we are inclined to dismiss the grounds of appeal nos.*i to ix* raised by the Revenue in relation to depreciation on goodwill.

Disallowance under section 14A of the Act:

22. Next ground of appeal is regarding disallowance u/s.14A of the Act. The AO had contended that disallowance u/s.14A of the Act can be made even in cases where no exempt income was earned and that there is no provision to restrict the disallowance to the extent of exempt income earned. The ld.CIT(A) had followed the decision of the jurisdictional Hon'ble Madras High Court in Marg Ltd. vs. CIT [2020] 120 taxmann.com 84 (Madras) wherein it is held as under:

> *"We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under Rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year."*

23. Accordingly, the ld.CIT(A) partly allowed the assessee's ground by directing the AO to restrict the disallowance to the exempt income earned i.e Rs.9,24,960/-.

24. Both the parties have agreed that the disallowance can be restricted to the extent of dividend income. Accordingly, this ground of appeal raised by the Revenue is dismissed.

Transfer pricing issues:

25. The Ld.DR and Ld.AR contented as below in relation to exclusion/inclusion of comparable company:

McNally Bharath Engineering Co Ltd (McNally Bharat).

26. The Ld.DR relied upon the findings of the TPO and contended that

McNally Bharat performs functions similar to those of the Assessee, particularly in the domain of material handling equipment. It was further submitted that the annual report of the said company does not provide segmental information, and therefore, the company ought to be retained as a comparable.

27. Per contra, the Ld.AR for the Assessee submitted that McNally Bharat is functionally dissimilar and hence cannot be considered as a valid comparable. It was argued that the company is engaged in providing end-to-end turnkey solutions across diverse sectors including power, steel, coal and mining, ports, aluminum, water, oil and gas, as well as large-scale infrastructure projects such as buildings and townships, high-rise constructions, roads, metro, railways, etc. The assessee further submitted that McNally Bharat enjoys significant market presence and is largely insulated from market risks, as its operations are predominantly aligned with government-backed infrastructure projects. In light of these facts, it was contended that McNally Bharat Engineering Co. Ltd., being functionally dissimilar and risk-profile-wise incomparable with the assessee, was rightly excluded from the final set of comparables.

International Combustions (I) Ltd.:

28. The Ld.DR relied upon the relied upon the order of the TPO, which rejected International Combustions (I) Ltd. by stating that the comparable is not functionally similar to that of the Assessee.

29. The Ld.AR argued that the assessee had chosen the comparable company for the reason that it was also in the manufacturing industry specially feeders, bulk material handling equipment, grinding mills etc.

30. We have duly considered the rival submissions and examined the material available on record. It is noted that the Learned ld.CIT(A), in the impugned order, has observed that M/s.McNally Bharat Engineering Co. Ltd.

operates across multiple business segments which are fundamentally different from those of the assessee. Accordingly, the Ld.CIT(A) concluded that the said company is not functionally comparable with the assessee. In view of the foregoing and having regard to the functional dissimilarity, we uphold the said finding and direct that M/s.McNally Bharat Engineering Co. Ltd. be excluded from the final set of comparables.

31. As regards inclusion of the comparable company, International Combustion (India) Ltd., we observe that the Ld.CIT(A) has held the said company to be functionally similar to the Assessee. In the absence of any material placed on record to controvert such finding, we concur with the view taken by the Ld.CIT(A) and accordingly direct that International Combustion (India) Ltd. be included in the final list of comparable companies.

32. In the result the appeal of the Revenue is dismissed.

ITA No.: 1682/CHNY/2024 AY 2015-16

33. On the issue of allowability of depreciation on goodwill arising on amalgamation of FPIL with the assessee, we find that the facts of the case are identical to the earlier AY 2014-15, except that in the earlier AY 2014-15 the claim for depreciation on goodwill was made during assessment proceedings whereas in the subject AY 2015-16, the claim for depreciation on goodwill was made in the revised return of income. In view of our decision on the same facts for AY 2014-15 and respectfully following the above precedents relied upon by the assessee on the issue, we are inclined to dismiss the grounds of appeal nos.*i to ix* filed by the Revenue.

CO No.71/Chny/2024 AY 2015-16

34. The assessee has filed cross objection to the revenue's appeal for AY 2015-16 with respect to the transfer pricing grounds in relation to the downward

adjustment towards Controlling & Accounting and Legal Service fees paid to the Associated Enterprise amounting Rs.1,85,42,427/-. The Ld.AR submitted that the impugned downward adjustment made by the TPO has been erroneously confirmed by the ld.CIT(A), arbitrarily and without any basis.

35. The grounds of appeal raised in the CO is extracted hereunder:

1. Incorrect consideration of the Arm's length Price of Business Support Services fee with respect to Legal and Controlling & Accounting services as 'NIL'

1.1 The AO/CIT(A) erred in confirming the action of the TPO in holding the arm's length price of the Business support service fees paid to the AE as 'Nil' without appreciating the fact that the payment for such services has been made on defined and generally accepted parameters and allocation keys.

1.2 The AO / TPO/ CIT(A) has erred in disallowing an ad hoc proportion of payments attributable for certain category of services, which is based on mere surmise and conjecture.

1.3 The AO/ TPO/ CIT(A) erred in law by accepting five out of seven components of the Business Support Service fee to be at arm's length and by disallowing the remaining two components of the Business Support Fee without appreciating the fact that disallowing only a part of the transaction is not valid under law.

1.4 The AO/ TPO/ CIT(A) having accepted the payment for part of the Business Support Service fee at a mark-up of 5 per cent to be at arm's length basis, has erred in disallowing the other part of the Business support service fee where the same percentage of markup was charged.

1.5 The AO/ TPO/ CIT(A) erred in ignoring sufficient evidences provided by the Appellant to prove that it was in need of services, services were actually rendered and the benefit was actually derived from the services obtained from the AE.

1.6 Without prejudice to the above, the TPO erred in accepting the fact that, with the ongoing developments in compliance and regulatory frameworks, a legal team is inevitable and is not obligatory on the part of the appellant to provide any additional evidence to substantiate the same

1.7 The AO/TPO erred in segregating and separately benchmarking Business Support Services instead of aggregating the same and benchmarking the international transaction under TNMM.

1.8 Without prejudice to the above, the TPO erred in incorrectly applying/adopting other method/CUP method for benchmarking Business Support Services.

Background:

36. The Assessee is a member of the FLSmidth Group and is engaged in the manufacture and supply of equipment, machinery, parts and render supervision of erection and commissioning services to cement / mineral industries (Projects Segment). The Assessee also provides engineering services (Engineering Segment) and Financial shared services (FSS Segment) to its group companies. While the engineering segment and FSS segment renders services to the Group companies, the projects segment caters to external mineral and cement plants and process control companies.

37. The TPO has made a downward adjustment of Rs.1,85,42,427/- by disallowing part of the Business Support Service fees (i.e. fees for Legal and Controlling & Accounting) paid by the Assessee for want of evidence and proof of economic commercial benefit derived by the Assessee. The TPO benchmarked the transaction of 'payment for legal and controlling & accounting services' by adopting hypothetical CUP under other method as the most appropriate method and established the arm's length price to be NIL. The Assessing Officer accordingly confirmed the adjustment made by the TPO and passed the final assessment order by upholding the downward adjustment proposed.

38. The ld.CIT(A) confirmed the findings of the TPO. In para 3.5 of the ld.CIT(A) order, it was concluded that the TPO has rightly classified the expenses and identified that the arm's length price for the Legal, Controlling and accounting expenses is NIL.

39. The Ld.AR for the assessee invited our attention to the fact that the assessee had entered into a Business Support Services Agreement with its Associated Enterprise ("AE") for the receipt of various business support services, pursuant to which the assessee agreed to remunerate its AE on a

cost-plus markup of 5%. The agreement encompassed a bouquet of services. It was contended that the TPO has examined and accepted payments in respect of all other services rendered under the said agreement, but has selectively disallowed payments in relation to services in the nature of Legal, Controlling, and Accounting.

40. It was further submitted that the markup of 5% is uniformly applied to these services as well, in line with the terms of the service agreement and the group-wide cost allocation mechanism applicable across all group entities. The Ld.AR of the assessee has further highlighted that the TPO was satisfied with the evidence furnished for all other services, he has, without any cogent basis, disallowed only the Legal, Controlling, and Accounting services despite the assessee having furnished similar documentary evidence, such as email correspondence, reports, announcements, and other contemporaneous records. It was argued that the TPO has erroneously characterized such evidence as duplicative and, on that basis alone, proceeded to make an adjustment. The Ld.AR further submitted that the business support services received by the assessee are inextricably linked with the assessee's core operations and business activities and, therefore, cannot be benchmarked in isolation. Accordingly, it was contended that the assessee had correctly aggregated the transactions and benchmarked the same under the Transactional Net Margin Method ("TNMM"). It was emphasized that once the TPO has accepted the overall benchmarking under TNMM and acknowledged that the assessee's margins are substantially higher than those of the comparable companies, the TPO is precluded from making a separate and selective adjustment in respect of only the Legal, Controlling, and Accounting services, which admittedly form an integral part of the Business Support Services.

41. The Ld.AR further argued that the TPO has, in fact, allowed payment towards Legal and Controlling and Accounting charges (as part of Business Support Services) for Assessment Years 2016-17, 2017-18, and 2018-19. It was therefore contended that the TPO ought to have adhered to the principle of consistency, particularly in the absence of any change in facts or in the terms and conditions of the agreement. In support of this contention, the Ld.AR placed reliance on the decision of the Chennai Bench of the Tribunal in AVO Carbon India Private Limited (IT(TP)A No. 82/Chny/2024), wherein the Tribunal held as under:

> "*… We have noted that the rival parties have concurred that there has been no distinguishable change in the facts of the present case vis-à-vis those prevailing in AYs 2012-13 and 2015-16, for which this Tribunal had granted relief to the assessee. Accordingly, in adherence to the principle of consistency, as well as in respectful compliance with the decisions of the Hon'ble coordinate Benches of this Tribunal in the assessee's own case, discussed supra, we set aside the orders of the lower authorities and direct the Ld. AO to delete the impugned addition of ₹7,25,09,110/- on account of downward adjustment of payment of management fees. Consequently, all the grounds of appeal raised by the assessee on this issue are allowed.*"

42. The Ld.AR placed reliance on the decision of the Chennai Bench of the Tribunal in M/s.Haworth India Pvt Ltd Vs. DCIT, Chennai (IT(TP)A No.23/Chny/2024) for AY 2020-21 wherein the Hon'ble Chennai Tribunal had held that:

> "*We have noted the facts of the present case are akin to those available in judicial precedence discussed herein above. Thus, as the assessee's core business activity and sale is inextricably linked/dependent on the Global Account Management service from its AEs, the payment of these charges cannot be segregated and benchmarked separately. The judicial precedence discussed hereinabove also support this line of thinking. Accordingly, in respectful compliance to the same, we hold that the Assessee has rightly aggregated and benchmarked this transaction under TNMM. Accordingly, we hold that the TPO having accepted the overall TNMM analysis, was not right in excluding Global Account Management charges for separate benchmarking analysis. Accordingly, we set aside the order of lower authorities and direct the Ld.AO to delete the impugned addition of Rs.5,08,36,826/- on account of downward adjustment of payment of management fees towards global account management charges. All the grounds of appeal raised by the assessee on this issue are therefore allowed.*"

43. The Ld.AR placed reliance on the decision of the Chennai Bench of the Tribunal Bonfigioli transmissions Private Limited Vs. DCIT, ITAT Chennai for AY 2013-14 [ITA No. 2977/CHNY/2017] the ITAT had held that:

> "*Admittedly the business of the assessee is a consolidated one. The services referred under 'Corporate Services" are intrinsically linked to its manufacturing and sales activity. These two services cannot be separately demarcated. Corporate services are the services rendered, which has helped the assessee in generating the business in respect of marketing and trading. This being so, in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. EKL Appliances Ltd., referred to supra, the ld. Assessing Officer is directed to allow the assessee's claim of the Corporate Services expenditure incurred by assessee*"

44. Per contra, the Ld.DR relied upon the order of authorities below.

45. We have heard rival submissions in the light of materials available on records. The services which have been disallowed by the TPO and his decision affirmed by the ld.CIT(A) are integrally related to conduct of any business activity of the type undertaken by the assessee. It is not a case of any service or activity devised by the assessee, which is one of its type, over which any doubts can be caste. The mark up of 5% placed by assessee and its group companies also appears to be more or less reasonable. We have noted that rival parties have concurred that there has no distinguishment of facts of the present case viz a viz those available in AY 2016-17, AY 2017-18 and AY 2018-19 for which the TPO has completely allowed the business support services availed by the assessee. Accordingly, in adherence to the principles of consistency as well as in respectful compliance with the above judicial precedence, we hold that the assessee has rightly aggregated and benchmarked this transaction under TNMM. We set aside the order of lower authorities and direct the AO to delete the impugned addition of Rs.1,85,42,427/- on account of downward adjustment of payment of business support services fees. All the grounds of appeal raised by the assessee vide cross objection to the department appeal on the issue is therefore allowed.

46. In the result the Cross objection filed by the assessee is allowed.

ITA No.: 1763/CHNY/2024 – A.Y.2017-18

47. On the issue of allowability of depreciation on goodwill arising on amalgamation of FPIL with the assessee, we find that the facts of the case are identical to the earlier AY 2014-15, except that in the earlier AY 2014-15 the claim for tax depreciation on goodwill was made during assessment proceedings whereas in the subject AY 2017-18, the claim for tax depreciation on goodwill was made in the original return of income. In view of our decision on the same facts for AY 2014-15 and respectfully following the above precedents relied upon by the assessee on the issue, we are inclined to dismiss the grounds of appeal nos. 10 to 16 filed by the Revenue.

Transfer Pricing issues:

48. The Ld.DR and Ld.AR contented as below in relation to exclusion/inclusion of comparable company:

Promac engineering Industries Ltd (Promac)

49. The ld.DR relied upon the findings of the TPO and contended that Promac performs functions similar to those of the assessee.

50. Per contra, the Ld.AR submitted that Promac is functionally dissimilar as it is engaged in providing turnkey solutions in various areas such as manufacture of lifting and handling equipment, construction and maintenance of power plants, other than hydroelectric power plants and manufacture of cement machinery. The company thus functions in various sectors unlike the assessee, which functions in the cement and mining sector. Further the segemtnal information of Promac is unavailable, which justifies the exclusion as comparable company.

Eimco Elecon (India) Ltd:

51. The Ld.DR relied upon the findings of the TPO and contended that Eimco Elecon (India) Ltd performs functions similar to those of the assessee. It was submitted that the said company is engaged in providing technical engineering services comparable to those rendered by the assessee. The only distinction pointed out was that the company caters primarily to Government companies. However, it was contended that the receipt of Government orders does not, by itself, warrant exclusion of a company from being considered as a comparable.

52. The Ld.AR has argued that the assessee submitted that Eimco Elecon Ltd has significant market presence, largely due to the fact that it caters predominantly to government projects. The Ld.AR has relied upon the judgement in the case of ACIT vs Chemtex Global engineerings (P) Ltd [2014] 147 ITD 488 (Mumbai) wherein it was held as below:

> "*Even with regard to the comparable companies which are taken into consideration by the AO/ TPO the learned CIT(A) has correctly held that Rites Limited is a Government of India enterprise and considering the nature of the contracts and the implicit guarantee provided by the Government of India etc., Rites Limited cannot be taken as a comparable case and hence the learned CIT(A) was justified in excluding the same*"

53. We have duly considered the rival submissions and examined the material available on record on the above comparable companies and gone through the orders of the authorities. It is noted that the Ld.CIT(A), in the impugned order, has observed that Promac is engaged in manufacture of lifting and handling equipments and are fundamentally distinct from that of Assessee's business. In view of the foregoing and having regard to the functional dissimilarity, we uphold the said finding and direct that Promac Engineering Co. Ltd. be excluded from the final set of comparables.

54. As regards the comparable company, Eimco Elecon Ltd., we observe that the Ld.CIT(A) has held the said company it is observed that Eimco Elecon (India) Ltd. caters to Government companies/ projects which makes the company to operate under a profit making environment and further the company undertakes significant research and development activities.

55. In the absence of any material placed on record to controvert such finding, we concur with the view taken by the Ld.CIT(A) and accordingly direct that Eimco Elecon Ltd. be excluded in the final list of comparable companies.

Aqua Pumps Infra Venture Ltd.

56. The Ld.DR has objected to the inclusion of Aqua Pumps Infra Venture Ltd. as a comparable on the ground that the said company is not functionally similar to the assessee, as it is engaged in construction activities relating to infrastructure projects in other fields.

57. Per contra, the Ld.AR submitted that the company was selected as a comparable since it is engaged in providing EPC services for infrastructure projects and that the nature of activities as well as the risk profile are comparable to those of the assessee. It was contended that mere involvement in infrastructure projects in different sub-segments does not render the company functionally dissimilar.

Hercules Hoist Ltd.

58. Further, the Ld.DR also challenged the inclusion of Hercules Hoist Ltd. as a comparable, contending that the said company is engaged in the manufacturing of materials different from those of the assessee and is, therefore, functionally dissimilar. In response, the Ld.AR submitted that Hercules Hoist Ltd. is engaged in the manufacture of material handling equipment catering to various industries, including the cement and

infrastructure sectors, and that the assessee is also engaged in construction activities in the cement and mining industries. It was argued that the functions performed by the comparable are broadly aligned with those of the assessee.

59. We have heard the rival submissions and perused the material on record. We find no infirmity in the order of the ld.CIT(A) in this regard. Having regard to the nature of activities, functional profile, and risk assumptions, we hold that Aqua Pumps Infra Venture Ltd. and Hercules Hoist Ltd. are functionally similar to the assessee and, accordingly, are to be included in the final set of comparable companies. Therefore, grounds of appeal in this regard are dismissed. Hence, the appeal of the revenue is dismissed.

60. In the result, the appeals of the revenue in ITA. Nos:1682, 1731 & 1763/Chny/2024 are dismissed and the cross objection filed by the assessee in CO No.71/Chny/2024 is allowed.

Order pronounced in the open court on 21st January, 2026 at Chennai.

Sd/-	**Sd/-**
(मनु कुमार गिरि)	**(एस. आर. रघुनाथा)**
(MANU KUMAR GIRI)	**(S. R. RAGHUNATHA)**
न्यायिक सदस्य/**Judicial Member**	लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 21st January, 2026

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF