

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER &  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**1. ITA No. 6580/Mum/2025  
(Assessment Year: 2012-13)**

**2. ITA No. 6578/Mum/2025  
(Assessment Year: 2013-14)**

**&**

**3. ITA No. 6579/Mum/2025  
(Assessment Year: 2014-15)**

<b>Kovalam Resort Private Limited</b> The Leela, Sahar, Andheri East, Mumbai-400 059	Vs.	<b>DCIT 2(1)(1),</b> 561, Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAECK4804H		
(Applicant)		(Respondent)

Assessee by	Shri Dharan Gandhi & Shri Ravi Gupta, Ld. ARs
Revenue by	Shri Ritesh Misra, Ld. DR

Date of Hearing	22.01.2026
Date of Pronouncement	30.01.2026

आदेश / ORDER

**PER MAKARAND VASANT MAHADEOKAR, AM:**

These three appeals are filed by the assessee against separate orders passed by the Commissioner of Income-tax

(Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] arising out of assessment orders passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "the Act"]. Since the issues involved in all the three appeals are identical and arise out of a common set of facts, they were heard together and are being disposed of by this consolidated order for the sake of convenience and consistency.

2. We take up the appeal in ITA No. 6580/Mum/2025 for Assessment Year 2012-13 as the lead year.

### **Facts of the Case**

3. The assessee is a company engaged in the business of owning and operating a five-star hotel at Kovalam Beach, Thiruvananthapuram, known as "Kovalam Leela Raviz Hotel". The assessee acquired the hotel undertaking of M/s Hotel Leela Venture Ltd. on a going concern basis by way of slump sale under a Scheme of Arrangement sanctioned by the Hon'ble Bombay High Court under sections 391 to 394 of the Companies Act, 1956, vide order dated 24.02.2012, with the appointed date as 01.09.2011, for a lump sum consideration of Rs. 500 crores. The assessee also took over liabilities amounting to Rs. 2 crores.

4. For Assessment Year 2012-13, the assessee filed its return of income on 25.09.2012 declaring total income of Rs. 39,14,740/- under the normal provisions of the Act and book profit of Rs. 2,34,93,701/- under section 115JB of the Act. The

return was processed under section 143(1) of the Act. The case was selected for scrutiny and notice under section 143(2) dated 23.09.2013 was issued. Notice under section 142(1) along with questionnaire was also issued. The assessee furnished details through its authorised representatives from time to time. The assessment was completed by the Dy. Commissioner of Income-tax, Circle 10(1)(2), Mumbai, under section 143(3) vide order dated 30.03.2015.

5. During the course of assessment proceedings, it was noticed that the assessee had acquired Hotel Leela, Kovalam as a going concern under slump sale from M/s Hotel Leela Ventures Ltd. The assessee claimed depreciation aggregating to Rs. 25,86,15,073/- on the assets so acquired. The Assessing Officer then examined the written down values of the same assets in the books of M/s Hotel Leela Ventures Ltd. as on the date of transfer, which were as under:

<b>Particulars</b>	<b>WDV as on 01.04.2011</b>	<b>Additions till date of sale</b>	<b>Disposals till date of transfer</b>	<b>WDV as on 01.09.2011</b>
Building	31,25,79,075	-	-	31,25,79,075
Plant & Machinery	10,68,18,935	43,47,276	3,46,500	11,08,19,711
Furniture & Electrical Installation	1,60,25,569	61,75,364	-	1,66,42,933
Computer & Software	10,68,775	1,30,718	-	11,99,493
Vehicles	1,68,00,283	14,58,754	50,000	1,82,09,037
<b>Total</b>	<b>5,97,51,637</b>	<b>1,21,12,112</b>	<b>3,96,500</b>	<b>6,09,23,249</b>

6. The Assessing Officer further noted that the assessee had allocated the slump sale consideration on the basis of valuation report of M/s BDO & Co., as under:

<b>Asset</b>	<b>Value (Rs.)</b>
Value of 25.78.40 hectares of land	2,58,00,00,000
Valuation of building	<b>2,17,95,82,895</b>
Value of furniture and fixtures	9,13,38,016
Value of plant and equipment	13,20,42,067
Value of vehicles	2,39,28,712
Value of office equipments	29,75,702
Value of computer hardware	9,91,965
Value of computer software	20,40,911
<b>Total</b>	<b>5,02,18,27,954</b>

7. When questioned, the assessee submitted that the values were apportioned based on enterprise valuation carried out by M/s BDO Consulting (P) Ltd., and that the transaction was a genuine slump sale. It was submitted that the scheme of arrangement had been approved by the Hon'ble Bombay High Court and the consideration was based on fairness report of a merchant banker. The Assessing Officer further required the assessee to explain why depreciation in excess of the WDV of the transferor should not be disallowed. In response, the assessee furnished another valuation report by Shri N. Rajkumar and revised its depreciation claim.

<b>Sl. No.</b>	<b>Asset</b>	<b>Amount (Rs.)</b>
1	Buildings	1,59,72,05,000
2	Computers	47,11,637
3	Furniture & Fixtures	14,45,61,943
4	Plant & Machinery	24,41,35,609
5	Vehicles	1,42,00,830

<b>Total Additions</b>	<b>2,00,48,15,021</b>
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8. Based on the revised valuation, the assessee revised its depreciation claim from Rs. 25.86 crores to Rs. 21.53 crores. The revised depreciation schedule was as under:

<b>Asset</b>	<b>Total</b>	<b>Rate</b>	<b>Depreciation</b>	<b>WDV as on 31.03.2012</b>
Building	1,59,72,05,000	10%	15,97,20,500	1,43,74,84,500
Computer software & data processing equipments	47,11,637	60%	25,96,091	21,15,546
Furniture & Fixtures & office equipment	1,44,56,19,943	10%	14,44,15,515	1,30,12,04,428
Plant & Machinery	2,44,13,56,909	15%	36,54,0879	2,07,59,47,730
Vehicles	1,42,00,832	15%	20,42,537	1,21,58,295
<b>Total</b>			<b>21,53,41,522</b>	<b>1,78,94,73,499</b>

9. The assessee further submitted that allocation of total consideration among assets was made on a fair and reasonable basis having regard to market values and professional valuation reports. Reliance was placed on the judgment of the Hon'ble Kerala High Court in Commissioner of Income-tax v. Federal Bank Ltd. and the judgment of the Hon'ble Punjab and Haryana High Court in Shreyans Industries Ltd. v. JCIT.

10. After considering the submissions of the assessee and examining the valuation reports relied upon by it, the Assessing Officer rejected the claim of depreciation based on the revalued figures adopted by the assessee. The Assessing Officer observed

that the assessee itself had revised its depreciation claim from Rs. 25.86 crores to Rs. 21.53 crores on the basis of a second valuation report, which indicated that the original valuation was not reliable. He further noted that the major portion of the slump sale consideration had been allocated to land and building and that the building, being a depreciable asset, could not be valued at an amount higher than its written down value in the hands of the transferor.

11. The Assessing Officer held that depreciation under the Income-tax Act is intended to account for wear and tear and obsolescence and, therefore, the value of a depreciable asset necessarily declines over time. In the present case, the written down value of the building in the books of M/s Hotel Leela Venture Ltd. on the date of transfer was Rs. 31.25 crores, whereas the assessee had adopted values of Rs. 217.95 crores and Rs. 159.72 crores based on valuation reports. The Assessing Officer held that such revaluation of depreciable assets was contrary to the basic principle of depreciation and would result in allowance of double depreciation on the same asset, since the cost of construction and subsequent capital expenditure had already suffered depreciation in the hands of the transferor.

12. The Assessing Officer further rejected the methodology adopted by the valuer based on replacement cost, holding that the replacement rate of Rs. 6,000 to Rs. 6,500 per sq. ft. was unrealistic and unsupported by facts. He observed that the cost of construction, even with modern amenities, would not exceed

Rs. 2,000 to Rs. 2,500 per sq. ft. and that, after factoring depreciation, the value of the building would be equal to or lower than its written down value.

13. On the other hand, the Assessing Officer held that land is an appreciating asset and that any increase in the overall value of the undertaking over time would necessarily be attributable to land and not to depreciable assets. He examined the valuation of land and, on the basis of market enquiries and the revaluation carried out by the transferor company in March 2009, wherein the land was valued at about Rs. 488 crores, concluded that the fair value of land at the time of transfer was around Rs. 490 crores. Accordingly, he held that the excess consideration paid over and above the written down value of depreciable assets should be attributed to land alone.

14. In this view of the matter, the Assessing Officer adopted the written down value of depreciable assets in the books of M/s Hotel Leela Venture Ltd. as on the date of transfer, amounting to Rs. 60,92,34,250/-, as the actual cost of such assets in the hands of the assessee under section 43(1) of the Act. The balance amount of the slump sale consideration, amounting to Rs. 439,07,65,750/-, was treated as attributable to land.

15. The details are tabulated below:

<b>Particulars</b>	<b>WDV on date of transfer (Rs.)</b>	<b>Rate</b>	<b>Depreciation (Rs.)</b>	<b>WDV after depreciation (Rs.)</b>
Building	31,25,79,075	10%	3,12,57,907	28,13,21,168
Plant &	11,18,79,203	15%	1,67,81,880	9,50,97,323

Machinery				
Furniture & Fixtures	16,67,20,518	10%	1,66,72,052	15,00,48,466
Computers & Computer Software	19,69,130	60%	11,81,478	7,87,652
Vehicles	1,42,00,832	15%	21,30,125	1,20,70,707
<b>Total depreciable assets</b>	<b>60,92,34,250</b>		<b>6,80,23,443</b>	
Land (non-depreciable)	43,90,76,57,51	Nil	Nil	43,90,76,57,51

16. Thus, the Assessing Officer reduced the actual cost of buildings from Rs. 217,95,82,895/- as claimed by the assessee to Rs. 31,25,79,075/- and restricted depreciation on buildings to Rs. 3,12,57,907/-. On this basis, depreciation was recomputed at Rs. 6,80,23,443/- as against the depreciation of Rs. 25,86,15,073/- claimed by the assessee, resulting in a disallowance of Rs. 19,05,91,629/-.

17. The assessee carried the matter before CIT(A), who noted the facts from the order of Assessing Officer and further noted that multiple valuation reports were on record in respect of the same property, which showed widely divergent values. These were summarized as under:

<b>Basis of valuation</b>	<b>Land (Rs. crores)</b>	<b>Buildings (Rs. crores)</b>	<b>Total (Rs. crores)</b>
Assessee (return)	258.00	217.97	502.26
Approved valuer (Rajkumar & Bose)	309.40	159.72	509.46
Approved valuer (J.J. Kikani & Associates)	102.58	217.42	480.00
Assessing Officer (WDV of seller)	439.07	31.26	499.99

Executive Engineer / DVO	122.55	86.01	213.12
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18. Before the learned CIT(A), the assessee contended that the Assessing Officer had erred in adopting the written down value of assets in the hands of the transferor as the actual cost in the hands of the assessee. It was submitted that the transaction was a genuine slump sale approved by the Hon'ble Bombay High Court and the consideration was fixed on the basis of enterprise valuation carried out by independent professionals. It was argued that under section 43(1) of the Act, the actual cost of assets in the hands of the assessee was the consideration actually paid, which had been apportioned among various assets based on valuation reports of approved valuers. The assessee submitted that the written down value in the books of the seller had no relevance for determining the actual cost in the hands of the purchaser in a slump sale. The assessee further submitted that in a slump sale, the excess consideration paid over and above the fair market value of tangible assets represented goodwill and depreciation was allowable thereon under section 32 of the Act in view of the judgment of the Hon'ble Supreme Court in Smifs Securities Ltd.

19. The assessee also filed additional grounds before the learned CIT(A), contending that the difference between the total consideration of Rs. 502 crores and the value of tangible assets ought to be treated as goodwill of Rs. 441,25,93,704/- and depreciation should be allowed thereon. In the alternative,

depreciation was claimed on goodwill valued at Rs. 156 crores as per a subsequent valuation report.

20. It was further submitted that ICDS-V required apportionment of composite consideration among individual assets and, therefore, the action of the Assessing Officer in attributing the entire excess to land was contrary to law.

21. The learned CIT(A) held that the Assessing Officer was not justified in mechanically adopting the written down value of assets in the hands of the transferor as the actual cost in the hands of the assessee. He observed that section 43(1) does not mandate adoption of the transferor's written down value in a case of slump sale and that the Assessing Officer had not established that the consideration paid by the assessee was inflated or colourable. However, the learned CIT(A) also found that the allocation of consideration made by the assessee was not acceptable in its entirety, as there were wide variations in the valuation reports and the assessee had failed to demonstrate with cogent evidence that the values adopted by it correctly reflected the fair market value of the respective assets.

22. The learned CIT(A) held that land could not be valued at the figure adopted by the assessee, as the assessee was in possession of only 16.47 hectares out of 25.78 hectares and the entire land was subject to Coastal Regulation Zone restrictions, severely limiting its commercial exploitation. He further observed that the guideline value prescribed by the Government of Kerala for the

land in possession of the assessee worked out to only Rs. 67.86 crores, whereas the assessee had adopted a value of Rs. 258 crores. Similarly, with regard to buildings, the learned CIT(A) held that the value adopted by the assessee was excessive and unsupported by reliable evidence, particularly in view of the fact that the buildings were old structures and the replacement cost method adopted by the valuers did not properly account for depreciation and obsolescence.

23. On the question of goodwill, the learned CIT(A) held that the assessee had not demonstrated the existence of any commercial or business advantage in the nature of goodwill, distinct from land and building, which could justify capitalization and depreciation. He held that the mere excess of consideration over the value of tangible assets could not automatically be treated as goodwill.

24. The learned CIT(A) thus concluded that neither the allocation made by the assessee nor the allocation made by the Assessing Officer was fully acceptable. He, therefore, rejected the assessee's claim for depreciation based on its valuation and also rejected the alternative claim for depreciation on goodwill. The learned CIT(A) upheld the action of the Assessing Officer in restricting depreciation to the amount computed on the basis of the written down value of depreciable assets in the hands of the transferor and sustained the disallowance of Rs. 19,05,91,629/-.

25. Aggrieved by the order of CIT(A) the assessee is in appeal before us raising following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in upholding the action of learned Assessing Officer in denying the claim of depreciation to the extent of ₹19,01,35,791/--*

2. *The Ld. CIT(A) erred in applying the erstwhile fifth (presently sixth) proviso to section 32(1) of the Income-tax Act, 1961 (the Act), for computing the depreciation allowable in the year under consideration.*

*a. The Ld. CIT(A) has erred in not considering the fact that fifth proviso which is currently sixth proviso to section 32(1) of the Act is not applicable to a transaction of slump sale.*

3. *The Ld. CIT(A) has erred in not admitting, dealing and disposing the additional grounds raised by the appellant that in the alternative the difference between the value of the assets acquired under slump sale and the total consideration paid should be apportioned towards goodwill and depreciation on such goodwill should be allowed under section 32 of the Act.*

*a. The Ld. CIT(A) has erred in not considering the fact that the valuation of all the assets acquired by the Appellant was directed to be referred to Department's Valuation Officer by the Ld. CIT(A) himself. Once, that is the case, he cannot refuse to admit the additional grounds raised.*

*b. The Ld. CIT(A) erred in not considering the fact that the issues raised in the additional grounds were completely legal issues and all the relevant documents / material and facts were already available before him, before passing the impugned order.*

*c. The reasons given by Ld. CIT(A) in dismissing the additional grounds of appeal are completely baseless, in contravention of the provisions of the Act and the binding precedents in this regard.*

4. *In the alternate and without prejudice to the other grounds the Ld. AO be directed to treat the excess of consideration paid over and above the value of the assets acquired under slump sale to be attributed towards goodwill and depreciation on such goodwill should be allowed in terms of section 32 of the Act;*

5. *In the alternate and without prejudice to the other grounds, the ld. CIT(A) erred in not following the decision relied upon i.e., in case of Archroma India Pvt Ltd, completely and by ignoring the decision in the said case on the aspect of goodwill and depreciation thereupon.*

6. *The Ld. CIT(A) erred in disregarding the claim for allowance of depreciation on the value of landscaping done in the hotel project by treating such landscape area as hotel buildings.*

7. *The Ld. CIT(A) erred in disregarding the claim for allowance of depreciation on the value of internal roads constructed within the hotel project by treating the same as hotel buildings.*

8. *The Ld. AO erred in levying interest u/s 234A, 234B and 234C of the Act.*

9. *The Ld. AO erred in initiating penalty u/s 271(1)(c) of the Act.*

10. *All the above grounds are strictly independent and without prejudice to each other.*

11. *The Appellant craves liberty to add/modify/alter/amend or delete any grounds of appeal.*

26. During the course of hearing before us, the learned Authorised Representative reiterated the facts and contentions as advanced before the Assessing Officer and the learned Commissioner of Income-tax (Appeals). It was submitted that the acquisition of the Kovalam hotel undertaking was effected through a genuine business transaction wherein Kollam Royal Parks Ltd. discharged the consideration by issuance of cheques and, therefore, the entire purchase consideration stood actually paid in monetary terms. It was contended that the acquisition was not a mere book adjustment or internal restructuring, but a real commercial transaction based on enterprise valuation carried out by M/s BDO Consulting (P) Ltd.

27. The learned AR submitted that, in view of such actual payment of consideration, the book values of the assets of the Kovalam undertaking in the hands of M/s Hotel Leela Venture Ltd. prior to transfer were wholly irrelevant for determining the actual cost of the assets in the hands of the assessee. It was argued that the Assessing Officer erred in law in importing the written down value of the transferor's assets into the books of the assessee, despite the fact that the assessee had incurred an independent and real cost for acquiring the undertaking.

28. It was further contended that the valuation adopted by the Assessing Officer on his own was not permissible in law. The learned AR submitted that the Assessing Officer is not an expert valuer and cannot substitute his own estimate of value in place of valuation arrived at by qualified professionals, particularly when the transaction is supported by enterprise valuation and fairness report. It was argued that if the Assessing Officer doubted the correctness of the valuation, the only course open to him was to make a reference to the Departmental Valuation Officer in accordance with law.

29. In this connection, the learned AR pointed out that during the appellate proceedings, the learned CIT(A)-17 had, in fact, directed the Assessing Officer to refer the matter of valuation to the Departmental Valuation Cell for determination of the fair market value of all the assets as on 01.09.2011. Pursuant thereto, the Departmental Valuation Officer submitted his report vide letter No. F. No. DVO/MDS/CG(03)/2018-19 dated

03.01.2019. It was further submitted that the Executive Engineer, Valuation Cell, Chennai, had also furnished his valuation report dated 31.01.2018.

30. The learned AR further submitted that without prejudice to the primary contention that depreciation is allowable on the actual cost incurred by the assessee, even on the alternative footing, the excess of slump sale consideration over the fair market value of tangible assets necessarily represents goodwill or commercial rights. It was argued that such goodwill is an intangible asset eligible for depreciation under section 32(1)(ii) of the Act, as held by the Hon'ble Supreme Court in Smifs Securities Ltd. [2012] 348 ITR 302.

31. In support of the above alternative plea, the learned Authorised Representative placed on record the working of goodwill furnished before the learned CIT(A), based on both the approved valuer's report and the Departmental Valuation Officer's report, as under:

### **Calculation of Goodwill**

(Amount in Rs. Crores)

<b>Particulars</b>	<b>As per Approved Valuer</b>	<b>As per DVO</b>
(A) Value of Land and Buildings	102.58	122.55
(B) Value of Buildings	217.32	86.01
(C) Value of other movable assets as declared by the assessee	26.20	4.57
(D) Total value of assets (A+B+C)	346.10 (rounded to 346.00)	213.13 (rounded to 213.00)
(F) Total value of land, buildings	346.00	213.00

and other movable assets		
(G) Slump sale consideration paid	502.00	502.00
<b>Value of Goodwill (G – F)</b>	<b>156.00</b>	<b>289.00</b>

32. It was submitted that if the approved valuer's valuation is adopted, the goodwill works out to Rs. 156 crores, and if the Departmental Valuation Officer's valuation is adopted, the goodwill works out to Rs. 289 crores. It was contended that in either situation, the existence of goodwill stands established and depreciation thereon is allowable in terms of section 32(1)(ii) of the Act.

33. The learned AR further submitted that, even assuming without admitting that the fifth proviso to section 32(1) is applicable to slump sale transactions, the learned CIT(A) has misapplied the ratio of the decision in **Archroma India (P.) Ltd. (124 taxmann.com 432)** by relying only on that portion of the judgment which holds that depreciation on tangible assets is to be computed with reference to the written down value in the hands of the transferor, while completely ignoring **para 26** of the same order, which squarely supports the assessee on the issue of goodwill. It was pointed out that in para 26 of the said decision, the Tribunal has categorically held that the excess amount paid over and above the value of tangible assets acquired under slump sale constitutes goodwill and is eligible for depreciation. The relevant ratio laid down therein is that the balancing figure between the slump sale consideration and the value of tangible assets qualifies as goodwill and depreciation thereon is allowable.

Thus, even if the cost of tangible assets is restricted to the written down value of the transferor, the difference necessarily assumes the character of goodwill.

34. The learned AR submitted that the learned CIT(A), while invoking the fifth proviso to section 32(1), has not considered this vital part of the coordinate Bench decision and has mechanically upheld the restriction of depreciation without examining the legal consequence flowing from the very same decision relied upon by him. It was contended that such selective reliance on judicial precedent is impermissible and that the decision must be applied in its entirety and not in fragments. It was further argued that the Supreme Court in ***CIT v. Smifs Securities Ltd. (24 taxmann.com 22)*** has held that goodwill is an intangible asset eligible for depreciation under section 32(1)(ii). In slump sale transactions, the excess of consideration over the value of tangible assets represents commercial rights and business advantages and necessarily partakes the character of goodwill. Therefore, once the Department itself relies upon *Archroma India (P.) Ltd.*, it is bound to accept the corollary laid down in para 26 thereof that such excess constitutes goodwill and depreciation thereon must be allowed.

35. The learned Authorised Representative further placed reliance on paragraphs 6 and 7 of the decision of the co-ordinate Bench ***ACIT v. Siyaram Silk Mills Ltd., ITA No. 2941/Mum/2025***, wherein the Co-ordinate Bench, after considering the judgment of the Hon'ble Supreme Court in *CIT v.*

*Smifs Securities Ltd.(supra)*, held that goodwill arising out of a genuine commercial transaction is an intangible asset eligible for depreciation under section 32(1) of the Act.

36. The learned AR, in his final submissions, contended that the learned CIT(A) has committed an error in law and on facts in not admitting, dealing with and adjudicating the additional grounds of appeal raised by the assessee, wherein an alternative plea was taken that the difference between the total consideration paid under slump sale and the value of the assets acquired ought to be treated as goodwill and depreciation thereon ought to be allowed under section 32 of the Act. It was submitted that the additional grounds raised by the assessee did not require investigation of any new facts and were purely legal in nature, arising from the same set of facts already available on record. The learned AR pointed out that the learned CIT(A) himself had directed the Assessing Officer to refer the valuation of the assets to the Departmental Valuation Officer. Once such a direction was issued and valuation reports were obtained, the learned CIT(A) could not have refused to admit or consider the additional grounds relating to goodwill, as the very foundation of such grounds was based on the valuation exercise initiated at his instance. It was further submitted that the learned CIT(A) failed to appreciate that the issue raised in the additional grounds went to the root of the matter, namely, determination of the correct cost of assets and the treatment of excess consideration paid under slump sale. It was argued that the learned CIT(A) ought to

have adjudicated the said grounds, particularly when all the relevant material and facts were already before him and no further enquiry was required.

37. The learned Departmental Representative, on the other hand, supported the orders of the Assessing Officer and the learned CIT(A).

38. We have carefully considered the rival submissions, perused the orders of the lower authorities and the material placed on record. The controversy before us, in substance, relates to the correct basis for allowance of depreciation in the hands of the assessee on acquisition of an undertaking by way of slump sale, and, in the alternative, the allowability of depreciation on goodwill arising as a balancing figure.

39. At the outset, there is no dispute on the following foundational facts that the assessee acquired the Kovalam hotel undertaking as a going concern under a scheme sanctioned by the Hon'ble Bombay High Court, with appointed date 01.09.2011, for a lump sum consideration of Rs. 500 crores, with liabilities of Rs. 2 crores. The assessee claimed depreciation on the assets acquired by allocating the composite consideration to individual assets based on valuation reports. The Assessing Officer rejected the allocation and restricted depreciation by adopting the written down value (WDV) of depreciable assets in the hands of the transferor as on the date of transfer and attributed the balance to land, resulting in disallowance of Rs. 19,05,91,629/-.The learned

CIT(A), while disagreeing with the Assessing Officer's "mechanical" approach in principle, ultimately sustained the disallowance and further declined to adjudicate the assessee's additional grounds on goodwill. With these admitted facts, we deal with each aspect of the assessee's submissions.

40. The learned AR emphasised that the acquisition was a genuine commercial transaction and the consideration was discharged through banking channels, and therefore the historical book values/WDV of the assets in the hands of the transferor have no relevance for the assessee.

41. We find merit in the submission to the limited extent that "book values" by themselves cannot be decisive of "actual cost" in the hands of a purchaser in every case. However, the controversy here is not merely about book value, but about the statutory framework governing depreciation when a business/undertaking is transferred and succeeded by another person. Where the statute, or a binding precedent interpreting the statute, restricts depreciation on transferred assets, the fact that consideration is paid through banking channels cannot by itself override such restriction. The genuineness of payment establishes the bona fides of the acquisition, but the allowance of depreciation must still conform to the scheme of section 32. Therefore, while we accept the assessee's submission that the acquisition is genuine and for real consideration, we hold that this by itself does not conclude the computational mechanism of depreciation. That

computation must be governed by section 32, including the proviso regime, as applicable.

42. The learned AR argued that the Assessing Officer was not permitted to arrive at valuation “on his own” and, if he doubted the assessee’s allocation, he ought to have referred the matter to the Departmental Valuation Officer (DVO). It was also pointed out that the CIT(A) had in fact directed reference to valuation cell, and valuation reports were received from the DVO and the Executive Engineer, Valuation Cell, Chennai.

43. On the facts recorded, we agree that the Assessing Officer’s approach is internally inconsistent. On the one hand, he rejected the assessee’s valuation on the ground that it was arbitrary and inflated. On the other hand, he proceeded to adopt values by making broad assumptions, such as a generic construction rate range and conclusions about land rates from websites and other material, and then attributed almost the entire surplus consideration to land. Such an approach is not an acceptable substitute for a statutory valuation exercise, particularly when departmental valuation reports were ultimately available on record pursuant to the CIT(A)’s direction. Once the departmental valuation mechanism was set in motion and reports were received, the adjudication of depreciation consequences ought to have been aligned with the valuation material on record, rather than resting on assumptions. This aspect assumes greater significance because the departmental valuation, even on the assessee’s showing, results in a large “balancing figure”, which

the assessee claims as goodwill. Accordingly, we hold that the matter cannot be sustained on the Assessing Officer's stand of attribution based on his assumptions, especially when departmental valuation reports exist and are part of the appellate record.

44. The learned CIT(A) invoked the proviso to section 32(1) (erstwhile fifth, presently sixth) relying upon the co-ordinate Bench decision in *Archroma India (P.) Ltd.(supra)*. The assessee contends that the CIT(A) applied the decision selectively and ignored the portion favourable to the assessee on goodwill. So far as computation of depreciation on tangible assets taken over on transfer of a business is concerned, we note that the CIT(A) has proceeded on the basis that the proviso regime applies. In principle, where a co-ordinate Bench decision of the jurisdictional Tribunal is directly on point, judicial discipline requires its application. We therefore proceed on the same legal footing as adopted by the CIT(A), namely, that depreciation on transferred tangible assets is governed by the proviso framework as interpreted in *Archroma India (P.) Ltd.(supra)*.

45. However, the assessee's grievance is that the CIT(A) stopped at that point and did not carry the logic to its necessary conclusion regarding goodwill. This is the core of the assessee's alternative plea. The assessee placed on record a working of goodwill before the CIT(A) showing that, whether one adopts the approved valuer's values or the departmental valuation, there remains a substantial difference between the slump sale

consideration and the aggregate value of identifiable tangible assets, and such difference represents goodwill/commercial rights. The working placed is as under:

Goodwill computation (Rs. in crores)

<b>Particulars</b>	<b>As per Approved Valuer</b>	<b>As per DVO</b>
Total value of land, buildings and other movable assets	346.00	213.00
Slump sale consideration paid	502.00	502.00
<b>Goodwill (balancing figure)</b>	<b>156.00</b>	<b>289.00</b>

46. On these facts, we find force in the assessee's submission that once the statute/precedent constrains depreciation on tangible assets in such transactions, the excess consideration does not disappear. In a commercial acquisition of a running undertaking, such excess ordinarily represents business and commercial rights, being the advantage of acquiring an operating business, brand pull, location premium as a commercial bundle, assembled workforce, systems, vendor relationships, licences, and the capacity of the undertaking to generate earnings. In accounting and commercial terms, this is the very substance of goodwill.

47. Further, the Hon'ble Supreme Court in *Smifs Securities Ltd.* has recognised goodwill as an eligible intangible asset for depreciation under section 32(1)(ii). On the facts before us, the assessee has demonstrated, at the minimum, the existence of a

balancing figure between the consideration and the tangible assets' values as per valuation material.

48. We also find merit in the assessee's specific submission that the learned CIT(A), while relying upon the co-ordinate Bench decision in *Archroma India (P.) Ltd.* to invoke the proviso regime for tangible assets, could not have ignored the part of the same decision (as pointed out by the learned AR) which treats the balancing figure as goodwill and recognises depreciation eligibility thereon. A precedent cannot be applied in parts to accept only what supports the conclusion and reject what follows as its corollary. Judicial application must be complete and consistent.

49. Additionally, reliance placed by the assessee on the co-ordinate Bench decision in *ACIT v. Siyaram Silk Mills Ltd.* (para 6 and 7) reinforces the proposition that depreciation on goodwill is allowable for years prior to the statutory change applicable from A.Y. 2021-22 onwards. The assessment years before us are prior to that change. Therefore, the assessee's claim for depreciation on goodwill is not barred merely because goodwill is not a tangible asset.

50. Accordingly, we accept the assessee's alternative plea on principle: the excess of slump sale consideration over the value of identifiable tangible assets is to be treated as goodwill/commercial rights and depreciation thereon is allowable under section 32(1)(ii) for the years under appeal.

51. The assessee specifically challenged the CIT(A)'s refusal to admit/adjudicate additional grounds on goodwill. We find that the additional grounds raise a pure legal contention arising from facts already on record, more so when the CIT(A) himself directed reference to the valuation cell. In such circumstances, non-adjudication of a material ground going to the root of the matter cannot be approved. We therefore admit the additional grounds and adjudicate them on merits as above in favour of the assessee.

52. Accordingly, the orders of the lower authorities, insofar as they restrict the depreciation by adopting the written down value of the depreciable assets in the hands of the transferor and by attributing the entire balance of the slump sale consideration to land, are set aside. We further hold that the alternative plea of the assessee deserves to be accepted in principle. The balancing figure between the slump sale consideration and the value of identifiable tangible assets represents goodwill or commercial rights in the nature of an intangible asset, and depreciation thereon is allowable under section 32(1)(ii) of the Act for the assessment years under appeal.

53. Since the valuation of the assets has already been carried out by the Departmental Valuation Officer pursuant to the directions of the learned Commissioner of Income-tax (Appeals), and such valuation has been brought on record, we hold that the fair market value of the tangible assets as determined by the Departmental Valuation Officer shall be adopted for the purpose of computing depreciation. The Assessing Officer is, therefore,

directed to recompute the depreciation by adopting the values of land, building and other tangible assets as per the Departmental Valuation Officer's report and by treating the balance of the slump sale consideration as goodwill, and to allow depreciation on such goodwill at the rate applicable to intangible assets under section 32(1)(ii) of the Act.

54. The Assessing Officer is further directed to verify and adjudicate the claims of the assessee relating to depreciation on landscaping and internal roads in accordance with law, after affording reasonable opportunity of being heard to the assessee.

55. The additional grounds raised by the assessee on the issue of goodwill are admitted and allowed in the above terms.

56. The grounds relating to levy of interest under sections 234A, 234B and 234C of the Act are consequential. The ground relating to initiation of penalty proceedings under section 271(1)(c) of the Act is also consequential and does not call for separate adjudication at this stage.

57. In the result, the appeal of the assessee for Assessment Year 2012-13 is allowed in the above terms.

**ITA No. 6578/MUM/2025 for A.Y. 2013-14 and ITA No.**  
**6579/MUM/2025 for A.Y. 2014-15**

58. Since the Assessing Officer has disallowed the depreciation in the these assessment years only by following the disallowance made in Assessment Year 2012-13, and the assessee is also in

appeal before us for those years, the controversy in the subsequent years is entirely consequential to and dependent upon the decision for the lead year. We further note that the grounds of appeal raised by the assessee in the subsequent assessment years are identical in substance to those raised for Assessment Year 2012-13, except for the variation in the quantum of disallowance.

59. In view of our findings and directions rendered for Assessment Year 2012-13, by which the issue has been decided in favour of the assessee, the same principle and ratio shall apply mutatis mutandis to the subsequent assessment years as well. Accordingly, the disallowance of depreciation made by the Assessing Officer and sustained by the learned CIT(A) in the subsequent years is also set aside, and the Assessing Officer is directed to recompute the depreciation for those years on the same basis as directed for the lead year, subject only to the difference in the respective amounts involved.

60. In the combined result, all the three appeals filed by the assessee are allowed in the above terms.

Order pronounced in the open court on 30.01.2026.

**Sd/-**  
**(ANIKESH BANERJEE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 30/01/2026  
*Dhananjay, 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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