

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखक सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2288/Chny/2025
&
C.O No.76/Chny/2025
(Arising in ITA No.2288/Chny/2025)
निर्धारण वर्ष /Assessment Year: 2013-14

The Income Tax Officer,
Corporate Ward-2(1),
Chennai.

Vs. Doosan Bobcat Pvt. Ltd.,
HTC Towers, 6th Floor,
No.41, GST Road,
Guindy Industrial Estate S.O.,
Guindy, Chennai – 600 032.
PAN: AACCD 65291

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से/Assessee/Cross
Objector by
प्रत्यर्थी की ओर से /Revenue by

: Mr. Ashik Shah, C.A
: Mr. Praveen.S, JCIT

सुनवाई की तारीख/Date of Hearing

: 07.01.2026

घोषणा की तारीख /Date of Pronouncement

: 23.01.2026

आदेश / ORDER

PER PADMAVATHY.S, A.M:

This appeal by the Revenue and the Cross Objection (C.O) by the assessee are against the order of the Commissioner of Income Tax (Appeals), Chennai-16 (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") dated 30.05.2025 for Assessment Year (AY) 2013-14.

The grounds of appeal raised by the Revenue are as under:

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

:- 2 -:

2. *The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in allowing the assessee's claim of depreciation under Section 32(1)(ii) of the Act on the intangible assets of Dealer Network, Vendor Relationship, Customer Database & Relationship and Trained Employee Base, without appreciating that these assets do not fall within the scope of "intangible assets" as defined in Explanation 3(b) to Section 32(1)(ii) of the Income Tax Act, 1961.*
3. *The Ld. CIT(A) failed to appreciate that the assets claimed by the assessee are not identifiable, transferable or enforceable proprietary rights akin to know-how, patents, copyrights, trademarks, licenses or franchises, and hence, do not qualify as "business or commercial rights of similar nature" eligible for depreciation under the said section.*
4. *The Ld. CIT(A) erred in holding that a dealer network or vendor/customer relationship constitutes a depreciable intangible asset, without any evidence of a legal right, contractual enforceability, or independent transferability of such network/relationships to the assessee.*
5. *The CIT(A) erred in law in treating 'trained employee base' as a depreciable asset despite the settled position that human capital does not confer any enduring or proprietary benefit to the assessee and cannot be capitalized or transferred independently.*
6. *The decision of the Ld. CIT(A) is contrary to the provisions of Section 32(1)(ii) and the intent of the Legislature, which requires that only certain specifically enumerated intangible assets and those of similar nature having legal ownership and commercial exploitability are eligible for depreciation.*
7. *The Department respectfully submits that in view of the facts and legal position, the order of the Ld. CIT(A) is liable to be set aside to the extent it relates to deletion of disallowance of depreciation on the above intangible assets.*
8. *Whether the LD.CIT(A) is correct in allowing amortization of goodwill as an non operating expense when the merger which resulted in the amortization of goodwill has impacted the profits of the assessee.*
9. *Whether the Ld.CIT(A) is correct in allowing amortization of goodwill as an extra ordinary expense when the amortization of goodwill claimed for five years pertains to the regular business operation of the assessee."*

2. The grounds of cross objections raised by the assessee are as under:

“The Respondent submits that the following grounds of cross-objections, on the facts and in the circumstances of the case and in law, are without prejudice to one another:

1. GENERAL GROUND

1. The Ld. CIT(A), Ld. TPO and the Ld. AO (hereinafter collectively referred as 'lower authorities') erred in finalizing an order of assessment which suffers from legal defects such as being contrary to the provisions of the Act, devoid of merits, contrary to facts on record and applicable law, and is therefore erroneous and invalid to the extent it is prejudicial to the Respondent and is liable to be quashed as such,

II. DISALLOWANCE OF DEPRECIATION ON INTANGIBLE ASSETS

The lower authorities ought to have alternatively treated the consideration attributable towards dealer network as goodwill and allow depreciation under section 32 of the Act on the same.

3. The lower authorities erred in not treating the consideration attributable towards vendor relationship and customer database as goodwill and allowing depreciation on the same.

4. The lower authorities ought to have alternatively treated the consideration attributable towards trained employee base as goodwill and consequently, allow depreciation on the same.

III. TRANSFER PRICING ADJUSTMENT

5. The lower authorities erred in making a transfer pricing adjustment, as a result of misapplying the provisions of the Act and adopting faulty assessment procedure to finalize the adjustment, such as but not limited to, computation of profit margins of the Respondent, allowance of appropriate adjustments, and inappropriate consideration of the information, arguments and evidence provided by the Respondent.

6. The Ld. TPO erred in disregarding the forex fluctuation adjustment made by the Respondent and treating the foreign exchange loss as operating cost in nature in computing margins of the Appellant.

The Respondent prays that directions be given to grant all such relief arising from the grounds of cross-objections mentioned supra and all consequential relief thereto. The Respondent craves leave to add and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this cross-objection.”

3. The assessee is a private limited company incorporated on 19.06.2007 and is engaged in the business of manufacture of compressors, portable power equipment and machines used in infrastructure and construction industry. The assessee is also engaged in trading of construction equipment, loader machines and related spares. The assessee the return of income for A.Y 2013-14 on 30.11.2013 declaring total income of Rs. 1,64,04,220/-. The return was selected for scrutiny and the statutory notices were duly served on the assessee. A reference was made to the TPO who made a TP adjustment of Rs.96,24,000/-. The A.O passed the assessment order incorporating the transfer pricing adjustment. The A.O also made disallowance of depreciation on intangible assets claimed by the assessee to the tune of Rs. 1,76,08,007/-. The assessee preferred an appeal before the CIT(A) against the final assessment order passed by the A.O. the CIT(A) after considering the various submissions of the assessee allowed the grounds of appeal raised by the assessee to the extent of disallowance of depreciation on intangibles and partly allowed the TP adjustment by directing the TPO to treat the amortization of goodwill as a non operating expenditure. The Revenue is in appeal before the Tribunal against the order of CIT(A).

DEPRECIATION ON INTANGIBLES:

4. The Ld. Departmental Representative (DR) submitted that the intangibles on which the assessee has claimed depreciation does not fall within the Explanation to Section 32(1) of the Act. The Ld. DR drew our attention to the various intangible assets on which depreciation is claimed by the assessee such as dealer network, vendor relationship, customer data base and relationship, trained employee base, non-compete fee etc. The ld. DR further submitted that these intangibles do not provide any right to the

company and there is no ownership attached to the same. The Ld. DR also submitted that the assessee could not produce the documentary evidences with regard to these intangible assets and therefore, the A.O has correctly disallowed the depreciation. The Ld. DR argued that the CIT(A) without conduction any independent enquiry has merely relied on judicial precedence to allow the claim of the assessee. Accordingly, the Ld. DR relied on the order of the A.O.

5. The Ld. Authorized Representative (AR) of the assessee, on the other hand, submitted that pursuant to the scheme arrangement Doosan International, which is engaged in the business of trading in compressors and loading machines used in infrastructure and construction industries merged with the assessee w.e.f 01.04.2011. The merger was approved by the decisions of the Hon'ble Madras High Court and Hon'ble Karnataka High Court. Consequent to the merger, all assets including the intangible and liabilities of Doosan International were transferred to the assessee. The Ld. AR submitted that prior to merger Doosan International had acquired certain businesses on slum sale basis from Ingersoll-Rand (India) Ltd. for lumpsum consideration. The slum sale purchase resulted in acquisition certain intangible assets which were classified as good will in the books of Doosan International. The Ld. AR further submitted that the valuation was based on the value determined by independent valuer and prior to merger Doosan International has been claiming depreciation on intangibles and no disallowances have been made. The Ld. AR drew our attention to the fact that pursuant to the merger, assets and liability of Doosan International was transferred at their book value in the assessee's books and as per provisions of Explanation 7 to Section 43(1) of the Act, the assessee had claimed

depreciation on the written down value as recorded in the books of account post merger. The Ld. AR submitted that the Co-ordinate Bench in assessee's own case for A.Y 2012-13 has considered the identical issue (ITA No.2137/Chny/2025 dated 28.10.2025) has allowed the depreciation on the intangibles and accordingly submitted that the issues stands covered.

6. We have heard the parties, and perused the material available on record. The assessee got merged with Doosan International w.e.f 01.04.2011 and as part of merger the assets and liabilities of the merged entity had recorded in the books of account of the assessee-company at book value. Doosan International had certain intangible assets in the books of account acquired as part of a slump sale and has been claiming depreciation on the same. In the books of the assessee-company, the intangible assets are recorded post merger at the written down value and the assessee has been claiming depreciation on the same from A.Y 2012-13. We in this regard notice that the Co-ordinate Bench in the first year of claim of depreciation by the assessee i.e., A.Y 2012-13 has considered the issue of allowability and held that:

“6. After hearing both the parties and perusal of the material available on record, it is noted that pursuant to the merger, all assets & liabilities of Doosan International India Private Limited were transferred to the assessee at their book values with effect from appointed day. The said assets include intangible assets acquired by Doosan International. It is noted that said Doosan International India Private Limited claimed depreciation prior to merger on the aforementioned intangible assets and the assessee, in the present case also claimed depreciation post merger. We find the details of dealer network, vendor relationship, customer database & relationship and trained employee base in pages 10 & 11 of the impugned order. To verify the genuineness of the issue, the Id. CIT(A) examined the business transfer agreement and found satisfied the comprehensive schedules regarding distributors/dealers contract, share distributor/dealer contract, list of intellectual properties, etc. According to the Id. CIT(A), the above said intangible assets, were taken into the books of Doosan International India Private Limited in FY 2007-08 [AY

2008-09] and observed that the said assets were forming part of transfer and taken into books of accounts with the assessee in FY 2011-12 relating to the AY 2012-13, which is the year under consideration before us after merger as per the approved scheme of amalgamation. We find the Id. CIT(A) discussed the issue in detail from para 5.3.4 of the impugned order with supporting case law and on perusal of the same, we find no infirmity in the order of the Id. CIT(A) by holding that the assessee is entitled to claim depreciation on dealer network, vendor relationship, customer database & relationship and trained employee base and accordingly, we hold so. Thus, the grounds raised by the Appellant-Revenue fails and dismissed.”

7. During the year under consideration, the assessee has claimed depreciation on the written down value of the same set of intangible assets and there is no change to the facts. During the course of hearing, the Ld. DR did not bring any new facts for us to take a contrary view and therefore, respectfully following above decision of Co-ordinate Bench, we hold that there is no infirmity in the order of the CIT(A) in allowing the deprecation on the intangibles. The grounds raised by the Revenue in this regard are dismissed.

TREATMENT OF AMORTIZATION ON GOODWILL AS NON OPERATING EXPENSE:

8. The TPO held that the goodwill is nothing but incremental consideration paid by the company to acquire the business prospects of another company and therefore, amortization of goodwill has a direct impact on the profitability of the assessee. The TPO therefore did not except the adjustment made by the assessee treating the amortized amount of goodwill as an extraordinary item to be excluded from operating expenses. The CIT(A) relied on the following decisions and directed the TPO to exclude amortization of goodwill to be treated as non operating expense in the computation of PLI:

:- 8 :-

- i. ST Ericsson India (P.) Ltd. v. Dy. CIT [IT Appeal No.609 (Del) of 2015, dated 03.07.2018;
- ii. Continental Automotive Components (India)(P.) Ltd. [2022] 139 taxmann.com 187 (Bangalore-Trib.) and
1. Ametek Instruments India (P.) Ltd. [2022] 135 taxmann.com 312 (Bangalore-Trib.)

9. The Ld. DR made the written submissions contending the CIT(A) decision and the same is extracted below:

BEFORE THE HON'BLE ITAT 'D' BENCH – CHENNAI BENCH
WRITTEN SUBMISSION IN THE CASE OF
M/s. DOOSAN BOBCAT PRIVATE LIMITED
ITA 2288/CHNY/2025
AY 2013-14

On the issue of adjustment to profit level indicator by excluding goodwill, the following submission is made for your kind consideration: -

While granting relief, the CIT(A) in para 5.5.1 of her order has mentioned that “*amortization of goodwill is an extraordinary item and does not pertain to regular business operation of the appellant. In the instant case, it is seen that the appellant has claimed depreciation of goodwill which was allowed by the AO. Thus amortization of goodwill appearing in the books cannot be considered as an operating item.*”

In this regard, the following observation is submitted for kind consideration :-


As the result of the merger the assessee has expanded its business portfolio and started additional line of business, namely, trading of heavy equipment, which indicates that the merger is having a direct impact on the profit making apparatus, resulting in markable changes in revenues, operating profit, profit before tax, etc. The same is tabulated as below:-

Sl. No.	Line Item	FY 2010-11(In Cr.)	FY 2011-12 (In Cr.)	FY 2012-13 (In Cr.)
1	Revenue from operation	198.85	448.63	451.3
2	Profit before Tax	3.17	13.27	5.24

Therefore, it would be incorrect to state that the merger is an extraordinary item, which does not pertain to regular business operation of the appellant. When the operating revenue is positively impacted 125% by merger, to state that goodwill needs to be ignored for ascertaining comparable profit levels (for PLI purposes) is cherry picking line items convenient to the appellant.

PRAYER:

Thus, it is prayed that the order of the CIT(A) be quashed and that of the AO be restored.


(PRAVEEN S)
Addl. Commissioner of Income Tax (Sr. AR-4)
ITAT, Chennai

10. The Ld. AR, on the other hand, submitted that:

- *The Respondent submits that the amortization of goodwill must be considered as an extraordinary item and excluded from the operating expenditure for computing the arms' length margin of the Respondent. In this regard, the Respondent submits as follows:*
 - *The merger between two companies is a capital transaction and the goodwill, so generated or transferred pursuant to a merger is amortized in the books as per the requirement of the prescribed accounting standards. The goodwill which arose pursuant to the slump sale of IGIL to Doosan International represents a payment made by Doosan International in anticipation of future economic benefits. These benefits are not immediate but generally accrues over a period of time.*
 - *It may also be noted that the prescribed accounting standards mandate that the difference between market value and book value of the assets must be recorded as goodwill and amortized over a specific prescribed period of time, and such period does not necessarily coincide with the actual period over which the business will reap benefits from such payment.*
 - *Amortization of goodwill on account of acquisition therefore, is extraordinary in nature (purely considered for accounting purposes); and hence, must be excluded from operating expenses.*
 - *It is also relevant to note that this transaction of goodwill amortization is unique to the Respondent and the same does not exist in the case of comparable companies (Refer relevant extracts of asset schedules of comparable companies in Page 373 to 404 of paperback).*
- *On account of the above, in order to make an equitable comparison of the profit margins of the Respondent Company as against the comparable companies, such amortization, being extraordinary in nature must be considered as a non-operating item.*
- *Even during FY 2011-12, the amortization of goodwill has been considered as a non-operating expense in computation of the Net Operating Profit Margin ('NPM') earned by the Respondent Company from the manufacturing function. The same was accepted during the course of assessment proceedings of AY 2012-13 (refer page 371 of paperback).*
- *The requirement to exclude extraordinary items for benchmarking and determination of ALP is a well settled law. Even the Safe Harbour Rules allow for exclusion of extra-ordinary items while computing the operating expenses and the same is also provided in the OECD TP Guidelines 2010, as extracted below:*

"2.80. Non-operating items such as interest income and expenses and income taxes should be excluded from the determination of the net profit indicator. Exceptional and extraordinary items of a non-recurring nature should generally also be excluded..."

11. The Ld. AR also placed reliance on the decision on the Coordinate Bench in the case of Hospira Healthcare India Pvt. Ltd. vs. DCIT [ITA No.469/Chny/2017 dated 22.07.2024].

12. We have heard the parties, and perused the material available on record. The assessee in the TP study has treated the amortized amount of goodwill as an extraordinary item and treated the same non-operating. The TPO did not except the treatment by the assessee and held that the same is to be treated as operating item for the purpose of computing the PLI. The CIT(A) directed the TPO to allow the claim of the assessee by placing reliance on various judicial pronouncements. In this regard, we notice that an identical issue has been considered by Mumbai Tribunal in the case of Novateur Electrical and Digital Systems Pvt. Ltd. vs. DCIT [2025] 178 taxmann.com 54 (Mum-Trib.), where it has been held that:

"11. We have heard both the parties and perused the material on record. We have given our thoughtful consideration on the submissions made. In the present case, as we have already noted goodwill represents the payment made by the assessee while acquiring the business of switchgear division which is in excess of net assets acquired by it. This excess payment is in anticipation of future economic benefits. The goodwill so arisen is claimed as a depreciation year on year basis and not an operating expense in the regular course of business but is the cost of acquisition and an extraordinary item which cannot be considered as operating in nature for computing the margin on cost. It is a one-time extraordinary expense, not an asset actively employed in the business operations. Further, profit level indicator is a function of different items of income and expenditure which are accounted for in the financial statements, both for the tested party and the comparable. From the factual data tabulated above for the comparable, we note that for a like to like comparison between the assessee and the comparable companies, the amortisation of intangibles asset was not considered while computing the operating margin. Calculation of PLI enables comparability with other similar companies on the basis of margin

earned. Objective of calculating PLI is to get the best comparability possible. Non inclusion of depreciation on goodwill and non-compete fees in operating expense is nothing but an adjustment to increase the comparability between the two comparable.

11.1 Considering the facts on record and elaborate discussion made above, we find that goodwill accounted for by the assessee is arising out of the acquisition of switchgear division under a slump sale transaction which is not a self generated one. This is a one time extraordinary expense which cannot be said to be an asset actively employed in the business operations of the assessee. Even though the depreciation on this goodwill has been held to be allowed for the purpose of computation of net profit as reported by the assessee in its profit and loss account, however, for the purpose of benchmarking the transactions with the AEs, the same cannot be considered as an operating cost to compute the PLI for comparability. Accordingly, we hold that depreciation on goodwill and amortisation of non-compete fees is to be excluded by treating it as non-operating cost, being an extraordinary item for the purpose of margin computation and determination of ALP. Accordingly, corresponding grounds raised by the assessee are allowed and those raised by the Revenue are dismissed.”

13. We further notice that the similar view has been held by the Coordinate Bench in the case of Hospira Healthcare (India) Pvt. Ltd. (supra). With regard to the increase in revenue and profitability having direct nexus to goodwill, we are of the considered view that Doosan International an entity which was carrying on separate business got merged with the assessee and the revenue and the profits of the assessee post merger includes the business of the merged entity. Further, the ratio laid down by the Coordinate Bench in the above case is that the amortization of goodwill is not arising out of the regular course of business and that same is arising due to acquisition of business which is an extraordinary item. Therefore, respectfully following the judicial precedence, we see no reason to interfere with the decision of the CIT(A) in directing the TPO to treat the amortization of goodwill as an operating expense. The grounds raised by the Revenue in this regard are dismissed.

C.O No.76/Chny/2025:

14. Ground No.1 is in general and does not warrant separate adjudication. Grounds No. 2 to 4 are in support of the order of CIT(A) and in view of our decision in Revenue's appeal, these grounds are become academic. Grounds No.5 & 6 pertain to the TP adjustment confirmed by the CIT(A). The Ld. AR during the course of hearing submitted that these grounds are not pressed considering the quantum of the addition. Accordingly, these grounds are dismissed as not pressed.

15. In the result, the appeal of the Revenue is dismissed and the CO of assessee is dismissed as not-pressed.

Order pronounced on 23rd day of January, 2026 at Chennai.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(पदमावती यस)
(Padmavathy.S)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 23rd January, 2026.
EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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