

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&

SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.73/Mum/2013

(निर्धारण वर्ष / Assessment Year :2009-2010)

Mape Advisory Group Private Limited, 13/14 1 st Floor, Nirlon House, Abbie Besant Road, Worli Mumbai-400030	Vs.	DCIT, Rg.3(2), Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM 8193 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Kanchun Kaushal & Arpit Agrawal

राजस्व की ओर से /Revenue by : Shri Aarsi Prasad

सुनवाई की तारीख / Date of Hearing : **09/09/2015**

घोषणा की तारीख/Date of Pronouncement **08/12/2015**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A), Mumbai, dated 11-10-2012, for the assessment year 2009-2010.

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is mainly engaged in the business providing advisory services in relation to mergers, acquisition, capital raising, private equity, investment and financial services. Contention of Id. AR was that on 16-7-2007, MAPE Investments Private Limited (MIPL) merged with the assessee vide order of the Hon'ble Madras High Court dated 26-8-2008 and order of the Hon'ble Karnataka High Court dated 4-9-2008. On account of the amalgamation, as per the notes to accounts [Schedule 17, point 2(viii)] to the audited financial statements of the assessee for the

financial year ending 31st March 2008, goodwill was created in the books of account in accordance with the terms of the Scheme of Amalgamation. Id. AR further submitted that for the year ending on 31st March, 2009, the assessee had amortised goodwill of Rs.7,72,44,421/- in its books of accounts and added back the said amount in the return of income filed for the impugned AY 2009-2010. On August 2012, the Hon'ble Supreme Court in the case of Smif Securities Ltd., 348 ITR 302, held that goodwill created on account of merger is an asset under Explanation 3(b) to section 32(1) of the Income Tax Act, 1961 and depreciation on goodwill is allowable under the said section. In view of the above mentioned decision of Hon'ble Supreme Court, the assessee has raised this additional ground for claim of depreciation on the written down value of goodwill, first time before us.

3. We have considered rival contentions and found that neither in the return of income nor before AO nor before CIT(A), the assessee had made any claim for allowing depreciation on goodwill. Since the issue of allowing claim of depreciation on goodwill is purely legal issue, we admit the additional ground, and in all fairness, restore this issue to the file of AO to first examine the facts of the case as stated by Id. AR and to decide the same as per law keeping in view judicial pronouncements in case of Smif Securities Ltd.(supra). We direct accordingly.

4. Next grievance of Assessee relates to disallowance of Rs. 69.56 lakhs u/s.14A of the Income tax Act, 1961.

5. We have considered rival contention and found from record that the assessee has earned dividend income of Rs.4,71,879/- but offered no disallowance u/s. 14A therefore, AO applied Rule 8D and made disallowance of Rs. 69,56,242 out of which, Rs.1,09,191/- were disallowed on account of expenses and the balance on account of interest whereas assessee offered Rs. 4 lakhs for disallowance during assessment proceedings on account of interest. This disallowance has been disputed by the assessee claiming that its capital and reserves are more than the investments therefore no disallowance is required on account of interest.

6. By impugned order, CIT(A) confirmed the disallowance after observing that assessee has not maintained separate books of accounts and bank account for investment and other activities, it has not even established any nexus between the free funds and the investment and merely a claim on the basis of overall availability of funds has been made.

7. It was contended by the Ld. AR that assessee was having sufficient capital as well as reserves for investment made in tax free securities, our attention was also invited to the audited balance sheet. Accordingly, it was pleaded that no disallowance is warranted in view of decision of jurisdictional High Court in the cases of Reliance Utilities & Power Ltd. [(2009) 313 ITR 340 (Born.)] and CIT v. HDFC Bank Ltd, ITA 330 of 2012 dated 23rd July, 2014 .

8. We have considered the rival contentions and found that as per assessee's Balance Sheet, the assessee was having sufficient capital as

well as reserves for investment in tax free securities. In the interest of justice, we restore this matter back to the file of AO for deciding afresh by verifying the availability of own capital reserve and surplus vis-à-vis utilization in tax free securities in terms of judicial pronouncements laid down by the Hon'ble High Court in case of Reliance Utilities & Power Ltd. (supra). We direct accordingly.

9. Next grievance of the assessee relates to disallowance of Bad-debts. The facts of the case are that assessee has written off balance of Rs. 19,55,433/- standing in the name of MAPE Admisi Commodities Pvt. Ltd. and the same was claimed as bad debt, whereas no detail in this regard was filed by the assessee, despite specific queries by the A.O. Therefore the A.O. disallowed the claim of the assessee. The CIT(A) observed that the assessee was required to file the details regarding loan as mentioned in the assessment order whereas neither any details were filed during assessment proceedings nor during appellate proceedings and merely it is claimed that it is a loan to the subsidiary. In the absence of the reasons for giving loan, other details and the basis for claim u/s. 36(2), the CIT(A) held that the AO has rightly disallowed the claim. Contention of Ld. A.R. was that advance was given in the normal course of business, therefore, non-recovery of advance was correctly claimed as bad-debts.

10. The AO has also disallowed bad debts of Rs. 30 lakhs, which was written off being loan advanced to M/s. Quintegra Solutions Ltd. From the record we found that the assessee has claimed Rs.30,00,000/- as bad

debts regarding balance outstanding in the name of M/s. Quintegra Solutions Ltd. For this claim also, the assessee was required to file certain details as mentioned in the assessment order, but no such detail was filed, therefore A.O. rejected the claim.

11. It was contended by Ld. AR that letter requiring these details dated 26.09.2011 of the A.O. was sent to the old address of the assessee, therefore, details could not be filed whereas in appellate proceedings the assessee filed a photo copy of a letter dated 03.09.2012 in which M/s Quintegra Solutions Ltd. has asked the assessee to confirm the balance of Rs. 30,00,000/- but the same has not been confirmed by the assessee in the said letter claiming that it has already been written off.

12. The CIT(Appeals) confirmed the disallowance by observing that the assessee has claimed it as an advance but failed to prove that the said advance is on account of its business interest and relates to its business activities, therefore, it cannot be allowed as advance written off. Accordingly, he rejected the claim of the assessee.

13. We have considered rival contentions. It appears from record that query raised by the AO dated 26.09.2011 was sent to the old address of the assessee, therefore, details could not be filed, however, before the CIT(Appeals), assessee has filed the details, which was not accepted by the CIT(A). The letter so filed by the assessee before CIT(A) in the form of additional evidence goes to the root of the issue. Main object clause of assessee's business was also not brought on record which is necessary to decide the allowability of assessee's claim of bad-debts. Whether

advance was given in normal course of assessee's business is also not brought on record. Therefore, in all fairness, we restore the matter back to the AO for deciding assessee's claim of bad debts in respect of both the debts so written off after considering the additional evidence as well as nature of assessee's business in the course of which the alleged loan was given. The AO is to decide the matter afresh after giving due opportunity to the assessee. We direct accordingly.

14. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 08/12/2015.

**Sd/-
(SANDEEP GOSAIN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 08/12/2015

प्र.कु.मि/pkm, नि.स/ PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai