आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य के समक्ष।
BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं/ **ITA No. 397/Ahd/2024**
निर्धारण वर्ष/**Assessment Year: 2016-17**

AIA Engineering Limited, 115, GVMM Estate, Odhav Road, Odhav, Ahmedabad-382415 PAN : AABCA 2777 J	**बनाम** Vs.	DCIT Circle-1(1)(1), Ahmedabad

आयकर अपील सं/ **ITA No. 532/Ahd/2024**
निर्धारणवर्ष/**Assessment Year: 2016-17**

ACIT, Circle-1(1)(1), Ahmedabad	**बनाम** Vs.	AIA Engineering Limited, 115, GVMM Estate, Odhav Road, Odhav, Ahmedabad-382415 PAN : AABCA 2777 J

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

निर्धारिती की ओर से / Assessee by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR
प्रत्यर्थी की ओर से / Revenue by :	Shri Pratik Sharma, Sr DR & Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 09.10.2024
घोषणा की तारीख /Date of Pronouncement: 21.10.2024

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

These are cross appeals filed by the assessee and the Revenue against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "CIT(A)" for short) dated 08.02.2024 passed u/s 250 of the Income-tax Act, 1961, (hereinafter referred to as "the Act" for short) for the Assessment Year (AY) 2016-17.

ITA No. 532/Ahd/2024 – Department's appeal

2. We shall first take up the Department's appeal in ITA No. 532/Ahd/2024. The grounds raised by the Revenue read as under:-

> *"1." Whether the CIT(A) has erred both on facts and in law in deleting the addition of Rs.245,62,09,850/- (revised figure Rs.60,71,37,893/- after rectification order u/s 154 dt. 06.02.2020) being taxable income of M/s Vega Industries (Middle East), FZC, UAE ("Vega ME") as proprietary concern of the assessee?"*
>
> *2. Whether the CIT(A) has erred both on facts and in law in deleting the disallowance of excess claim of depreciation of Rs. 29,19,355/- (revised figure Rs. 12,65,054/- after rectification order u/s 154 dt. 06.02.2020) on electrical fittings u/s 32 of the Act?"*
>
> *3. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*
>
> *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored".*

3. At the outset itself, it was common ground between both the parties that the issues raised by the Department in its appeal were decided in favour of the assessee by the ld. CIT(A) noting identical issues to have been decided in favour of the assessee by the ITAT in several preceding years consistently.

4. It was pointed out that the issue raised in Ground No.1 of the Revenue's appeal pertained to addition made to the income of the assessee on account of an offshore unit in Dubai by the name of 'Vega Industries (Middle East) F.Z.C. UAE', which was treated as a proprietary concern of the assessee and all its profits were held to be taxable in the hands of the assessee by the Assessing Officer. It was also pointed out from the order of the ld. CIT(A) that this issue had been consistently arising in the case of the assessee right from the Assessment Year 2006-07 and had been consistently ruled and decided in favour of the assessee by the ITAT. That the ld. CIT(A), taking note of these

facts, had accordingly decided the issue in favour of the assessee and directed deletion of the addition made.

5. Similarly, with respect to the issue raised in Ground No.2 of disallowance of excess depreciation claimed on furniture and fittings, it was pointed out that this issue was also consistently raised in assessment framed on the assessee right from Assessment Year 2010-11 to the immediately preceding year, i.e. AY 2013-14 and again had been consistently decided by the ITAT in favour of the assessee, which was taken a note of the ld. CIT(A) in the present case while deciding the issue in favour of the assessee and directing the deletion of disallowance made of excess deprecation.

6. Our attention was drawn to the findings of the ld. CIT(A) at paragraph Nos. 5.1-5.3 of his order dealing with the issue of addition made to the income of the assessee on account of the profits of company incorporated in outside India, treated to be the proprietary concern of the assessee as under:-

> *5.1 Ground No.1: The first ground of addition was subject to rectification order dated 06.02.2020 by the Assessing Officer. This addition of Rs.245,62,09,850/- was reduced to Rs.60,71,37,893/-. Therefore, the addition of Rs.184,90,71,957 was reduced being apparent mistake.*
>
> *5.2 The CIT(A)-1, Ahmedabad in his order for AY 2013-14 dated 28.09.2017 in Para 2.4 has held as under :*
>
> > *"2.4 I have carefully gone through the decision of the Hon'ble ITAT on this issue which is given in Para 9 to 14 of the order of the Hon'ble ITAT (supra) in which the ITAT has elaborately dealt with the facts regarding the incorporation of Vega ME and after detailed analysis of the said fact, the Hon'ble ITAT has reached to the aforesaid conclusion that Vega ME is a duly incorporated company. I have also gone through the orders of my predecessors in the case of the appellant for the earlier assessment. The CIT(A)-6 and CIT(A)-1 vide orders dated 27 February 2012 and 8 June 2012 for the AYs. 2007-08 and 2008-09, order dated 12 May 2015 for AYs.2009-10 & 2010-11, order dated 27/02/2017 for AY 2011-12 and order dated 30/05/2017 in case of the appellant for the immediately preceding Assessment Year i.e. 2012-13 have followed the decision of*

the jurisdictional Tribunal in the Appellant's own case for AY 2006-07 and has held that Vega ME is a separate company and accordingly its profit cannot be added to the income of the Appellant. In the instant case, the fact is similar to the previous years' and no other additional facts on this issue have been put up by the AO. The Hon'ble ITAT (supra) has held in concluding para that-

> *"It goes to show that Vega UAE is duly incorporated as a body corporate under the law of a country outside India which is a requirement of Section 2(17) of the Income tax Act, 1961, and , therefore, Vega UAE has to be accepted as a company within the definition of Section 2(17) of the Income-tax Act, 1961. Once it is accepted, the addition made by the AO by holding that Vega UAE is a sole proprietorship concern of the assesse company is not sustainable and hence, the addition made by the AO is to be deleted." Therefore, respectfully following the ratio of the Hon'ble ITAT's order on the identical issue decided and also following the orders of my predecessors, addition of Rs.46,19,59,000/- so made by the AO is held as unjustified and not sustainable. The AO is therefore, directed to treat Vega ME as a duly incorporated separate company and delete the additions so made. The appellant gets the relief accordingly. This ground of the appellant is allowed."*

5.3 Respectfully following the above orders, which is based on the decision of Hon'ble ITAT in appellant's own case for the following earlier years i.e. (ITA No.1766/Ahd/2012 for A.Y. 2008-09), (ITA No.2342/Ahd/2015 for A.Y. 2009-10), (ITA No.2343/Ahd/2015 for A.Y. 2010-11), (ITA No.1112/Ahd/2017 for A.Y. 2011-12), (ITA No. 1835/Ahd/2017 for A.Y. 2012 13), (ITA No. 2805/Ahd/2017 for A.Y. 2013-14), (ITA No. 1757/Ahd/2012 for A.Y. 2008-09), (ITA No. 2224/Ahd/2015 for A.Y. 2009-10), (ITA No. 2225/Ahd/2015 for A.Y. 2010-11), (ITA No. 1028/Ahd/2017 for A.Y. 2011-12), (ITA No. 1850/Ahd/2017 for A.Y. 2012-13) and (ITA No. 2726/Ahd/2017 for A.Y. 2013-14), order dated 04.01.2021, where tribunal has upheld the order of CIT(A), the Assessing Officer is directed to delete the remaining addition of Rs.60,71,37,893/-. This ground of appeal is allowed."

7. The issue of disallowance of excess depreciation dealt with by the ld. CIT(A) was pointed out at paragraph Nos. 5.4 to 5.5 of his order, which is as under:-

> *"5.4 Ground No.2: Ground No.2 is against the disallowance of additional depreciation of Rs.29,19,355/-. The Assessing Officer has reduced this amount*

in his order u/s.154, dated 06.02.2020 to Rs.12,65,054/- thereby granting a relief of Rs.16,54,301/-.

5.5 The Commissioner of Income Tax (Appeals) for AY 2013-14 in para 3.3 has upheld the addition to the extent of Rs.4,88,052/- out of Rs.9,52,934/-. However, the Hon'ble ITAT has dismissed the appeal of Revenue where Commissioner of Income Tax (Appeals) has allowed full and enhanced depreciation @ 15% instead of 10% in para 36 to 38 on Page 63 & 64 of its order. Further, the same view has been taken in Para 49 for A.Y. 2011-12, Para 56 for AY 2012-13 and Para 61 for AY 2013-14. In the same order, the appeal of assessee was dismissed, which has been rectified by Hon'ble ITAT on 04.01.2021. Therefore, respectfully following the decision of Hon'ble Tribunal, this ground of appeal is allowed."

8. The ld. DR was unable to distinguish the present case with that relating to the preceding assessment years decided in favour of the assessee by the ITAT, therefore we have no hesitation in confirming the order of the ld. CIT(A) directing deletion of both the additions/disallowances made in the hands of the assessee by the Assessing Officer.

Ground of appeal Nos. 1 & 2 of the Revenue's appeal are accordingly dismissed.

Appeal filed by the Revenue is accordingly dismissed.

ITA No. 397/Ahd/2024 – Assessee's appeal

9. Now we take up the appeal filed by the assessee. The grounds of appeal taken by the assessee read as follows:

"1. The Ld. CIT(A) has erred in law and on facts of the case in confirming disallowance of depreciation of Rs. 1,07,97,284/- claimed u/s. 32 of the Act on goodwill generated on amalgamation.

2. The Ld. CIT(A) has erred in law and on facts of the case in not appreciating that depreciation on goodwill has been allowed in the preceding years. It is well settled that no disallowance can be made for depreciation claimed on opening WDV of an asset.

3. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various

submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

4. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.

5. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s. 271(1)(c) of the Act."

10. The solitary issue in the present appeal relates to the disallowance of depreciation claimed by the assessee on goodwill. The contention of the ld. Counsel for the assessee before us was that:-

(i) The intangible asset of good-will had accrued to the assessee on account of amalgamation of its wholly owned subsidiary, i.e. DCPL Foundries Limited, in the assessee-company in a scheme of merger sanctioned by the Hon'ble High Court of Gujarat in the earlier year i.e. in FY 2014-15 pertaining to AY 2015-16. The impugned assessment year being AY 2016-17. That the acquisition of goodwill by the assessee in this manner was never in doubt and had been accepted by the Department also. That even claim of depreciation on the same in the preceding year had been allowed and accepted by the Department. That in the impugned year depreciation had been claimed on the written down value of good-will. That, therefore, once depreciation was allowed in earlier years, it could not have been disallowed in succeeding years. Reliance was placed on the following decisions:-

a. DCIT Vs. Gujarat Narmada Valley Fertilizers Co., (2014) 222 Taxman.com 30 (Gujarat);
b. Hindustan Coca Cola Beverages – ITA No. 6605/Del/2024 (Mumbai);
c. Bodal Chemicals Ltd Vs. ACIT, 180 ITD 313 (Ahd.)

(ii) That, following the principle of consistency, depreciation having been allowed consistently in the preceding years, i.e. AYs 2014-15 and 2015-16, depreciation could not have been disallowed in the impugned year. Reference was made to the following decisions:-

a. CIT Vs. Excel Industries, 358 ITR 295 (SC);
b. Radhaswoami Satsang Vs. CIT, 193 ITR 0321 (SC);
c. Bharat Sanchar Nigam Ltd – 283 ITR 273 (SC)

(iii) That, depreciation on goodwill arising consequent to the scheme of amalgamation approved by the Hon'ble High Court of Gujarat was allowable in view of the settled legal position. Reliance was placed on the following decisions:-

a. CIT Vs. Smifs Securities Ltd., (2012) 348 ITR 302 (SC)
b. PCIT Vs. Zydus Wellness Ltd., (2017) 87 taxmann.com 82 (Guj.)
c. PCIT Vs. Zydus Wellness Ltd., SLP 29859 of 2018 (SC)
d. Urmin Marketing P. Ltd., (2020) 122 taxmann.com 40 (Ahd.)

(iv) That, there was a basic fallacy in the approach of the Revenue Authorities for disallowing depreciation on goodwill on the premise that goodwill was ***transferred*** from the amalgamating company to the amalgamated company when the fact of the matter was that goodwill was the ***result of amalgamation*** and had come into existence only pursuant to the scheme of amalgamation duly approved by the Hon'ble High Court of Gujarat. That the provisions of law referred to by the Revenue Authorities, i.e. (i) 6th proviso to Section 32(1), (ii) *Explanation 7* to Section 43(1), (iii) *Explanation 2(b)* to Section 43(6)(c), (iv) Section 55(2)(a)(ii) and (v) Section 49(1)(iii)(e) relied upon by the Assessing Officer for disallowing the claim of depreciation related to assets transferred in

the scheme of amalgamation and goodwill being an intangible asset not transferred from the amalgamating company to the amalgamated company but resulting on account of amalgamation ,was unaffected by the provisions referred to by the Revenue Authorities for disallowing the claim of depreciation. That the decision of the Hon'ble ITAT in the case of Urmin Marketing Pvt. Ltd., (2020) 122 taxmann.com 40 (Ahd.) addressed all the issues raised by the Assessing Officer for disallowing the claim of depreciation on goodwill and decided it in favour of the assessee holding the assessee eligible to claim of depreciation on goodwill and that the claim was unaffected by the provisions of law referred to by the Assessing Officer.

(v). That, the ld. CIT(A) had passed a cryptic order without dealing with the exhaustive contentions made by the assessee before him countering every contention of the Assessing Officer while disallowing the depreciation on goodwill.

11. The ld. DR, however, relied on the order of the ld. CIT(A)/AO.

12. We have heard the rival contentions. As stated above, the issue for adjudication relates to disallowance of claim of depreciation on goodwill. As pointed out by the ld. Counsel for the assessee, it is a fact on record that this intangible asset of goodwill arose to the assessee on account of scheme of amalgamation of its wholly owned subsidiary "DCPL Foundaries Ltd." with the assessee company, which scheme was approved by the Hon'ble High Court of Gujarat vide order dated 04.04.2014. The appointed date as per the scheme of merger duly sanctioned by the Hon'ble High Court was 01.04.2013. These facts were pointed out to the Assessing Officer during assessment proceedings and are recorded at paragraph No. 6.4 of his order. The facts

were reiterated before the ld. CIT(A) and are recorded at paragraph Nos. 3.1.1 to 2.30 of his order as under:-

"3.1.1 The Assessee Company had acquired equity shares of DCPL Foundries Limited ('DCPL') (being 70% of the paid-up share capital) for a consideration of Rs. 70,00,000 on 13 December 2010 and subsequently, the Assessee Company had acquired the balance equity shares of DCPL for a consideration of on 5 September 2012. Thereby, DCPL became a wholly owned subsidiary of the Assessee Company w.e.f. 5 September 2012.

3.1.2 DCPL was the only company in south, which was manufacturing Grinding Media (similar to our Products). It was a competitor of the Assessee Company.

3.1.3 Subsequently, to gain synergy in its business and to eliminate the competition and increase our production capacity, the Board of the Assessee Company and DCPL had decided for amalgamation of DCPL with the Assessee Company effective from 1 April 2013 under a scheme of amalgamation.

3.1.4 The Hon'ble Gujarat High Court, vide order dated 4 April 2014, has approved the scheme of amalgamation of DCPL with the Assessee Company with the appointed date of 1 April 2013. Copy of the scheme of amalgamation and order passed by the Hon'ble High Court is attached herewith as per Annexure 11- and Annexure 12-respectively.

3.1.5 The business of DCPL, was merged with the business of the Assessee Company on a 'going concern basis' along-with all the employees as well as assets, liabilities including the concerned contracts, licenses, permits, consents, approvals with effect from 1 April 2013.

3.1.6 Pursuant to the scheme of amalgamation, the Assessee Company has recorded the goodwill in the financial year 2013-14 as under:

Particulars	*Amounts*
Liabilities taken over as on 1st April 2013	*34,10,72,714*
Less: Assets taken over as on 1st April 2013	*(27,43,17,031)*
Excess of liabilities over assets	*6,67,55,683*
Add: Cancellation of the investment in DCPL	*1,00,25,000*
Goodwill	*7,67,80,683*

3.1.7 To gain synergy in its business and to eliminate the competition and increase our production capacity, some more consideration was considered (More than Assets – Liabilities) and the same was accounted as Goodwill in

the books of the Assessee Company as per the Scheme of Amalgamation in addition to cash payment made by the Assessee Company for acquiring shares of DCPL of Rs.1,00,25,000 and balance towards discharging the liabilities of the said company of Rs. 6,67,55,683.

3.1.8 In all the earlier years, the said depreciation was claimed relying on the decision of Hon'ble Supreme Court in the case of CIT vs Smifs Securities Ltd, 348 ITR 302 (SC) and Hon'ble Jurisdictional Gujarat High Court in the case of CIT v. Zydus Wellness (2017) 87 Taxmann.com 82 (Guj).

3.1.9 The Assessee Company claimed depreciation under Section 32(1)(ii) on this amount at 25 percent p.a. in its return of income for AY 2014-15 and all subsequent years by treating the same goodwill as an intangible asset.

3.20 During the year under consideration, the Assessee Company has claimed depreciation of Rs.80,97,963 at the rate of 25% on the opening written down value of goodwill of Rs.3,23,91,850. However, in the impugned draft order, The learned A.O has inadvertently mentioned the opening WDV of goodwill as Rs.4,31,89,135 while correctly taken the depreciation of goodwill as Rs.80,97,963."

13. Therefore, the fact pointed out by the ld. Counsel for the assessee that the intangible asset of goodwill arose on account of the scheme of amalgamation approved by the Hon'ble High Court of Gujarat in the preceding year i.e. FY 2013-14 pertaining to AY 214-15 is a fact which is not disputed. The fact pointed out by the ld. Counsel for the assessee that depreciation on this goodwill was claimed and allowed to the assessee in the preceding two assessment years i.e. AYs 2014-15 and 2015-16 is also an uncontroverted fact. The claim of the depreciation on goodwill in the impugned year has been denied by the Assessing Officer for the reason that it was not tenable in law since, as per the Assessing Officer, the value of goodwill in the hands of the amalgamating company was nil and, therefore, in terms of the provisions of law as per various sections as noted above i.e. (i) 6th proviso to Section 32(1), (ii) *Explanation 7* to Section 43(1), (iii) *Explanation 2(b)* to Section 43(6)(c), (iv) Section 55(2)(a)(ii) and (v) Section 49(1)(iii)(e), as noted above, the assessee was not entitled to any depreciation on the same.

The contention of the ld. Counsel for the assessee is that goodwill was not acquired on transfer of the same from the amalgamating company to the amalgamated company, but it was a result of the amalgamation taking place. That the Sections referred to by the Assessing Officer, therefore, were not applicable for denying the claim of depreciation. It was also pointed out that this issue had been dealt with by the ITAT in the case of Urmin Marketing Pvt. Ltd. (supra). Ld. Counsel for the assessee pointed out that this fact was brought to the notice of the ld. CIT(A) also during the appellate proceedings and every sections relied upon by the Assessing Officer for denying the claim of depreciation was countered in the written submissions filed by the assessee to point out its inapplicability in the facts and circumstances of the present case. Our attention was drawn to the submissions of the assessee reproduced in the order of the ld. CIT(A) at paragraph Nos. 3.2.1 to 3.9, from page Nos. 18 to 41.

14. We have noted that, as rightly pointed out by the ld. Counsel for the assessee, the ld. CIT(A) has dismissed all the contentions raised by the assessee before him in a cryptic manner by simply stating that the Assessing Officer has rebutted all the submissions of the appellant diligently. The ld. CIT(A) has not passed a speaking order pointing out how all the contentions of the assessee are rebutted by the Assessing Officer. The fact we note is to the contrary. The assessee in his detailed submissions filed to the Ld.CIT(A) has countered every basis with the AO for holding the claim of depreciation not allowable as per law. And The Ld.CIT(A) without noting any fallacy in the contention of the assessee has upheld the order of the AO.

15. Having said so, the ld. Counsel for the assessee has also pointed out that the issue stands covered in favour of the assessee by the decision of the ITAT in the case of Urmin Marketing Pvt. Ltd. (supra), wherein identical

premise of the AO for denying depreciation on goodwill was rejected by the ITAT. Copy of the order of the ITAT in the said case was placed before us. The ld. DR was unable to distinguish the said case before us. We have gone through the decision of the ITAT in the case of Urmin Marketing Pvt. Ltd. (supra) where the issue is dealt with at paragraph Nos. 30 to 33.8. The pertinent discussion begins from paragraph No. 30.15 wherein the ITAT notes that once the scheme of amalgamation is approved by the Hon'ble High Court after receiving no objection from the Income Tax Department, the consideration for the value of goodwill cannot be taken as Nil in terms of 6th proviso to Section 32(1), *Explanation 7* to Section 43(1), *Explanation 2(b)* to Section 43(6)(c), Section 55(2)(a)(ii) and Section 49(1)(iii)(e), since they applied only to assets actually transferred from the amalgamating company to amalgamated company and goodwill resulting due to amalgamation was not an asset which was transferred from an amalgamating company to the amalgamated company. That such goodwill represents only the difference between the purchase consideration and the net asset value of the assets acquired by the amalgamated company and was not on account of any asset acquired by the amalgamating company or transferor-company. Therefore, the ITAT held that the provisions of 6th proviso to Section 32(1), *Explanation 7* to Section 43(1), *Explanation 2(b)* to Section 43(6)(c), Section 55(2)(a)(ii) and Section 49(1)(iii)(e) cannot be applied in such facts situation. The ITAT, therefore, held that depreciation on such goodwill, therefore, was allowable in view of the proposition laid down by the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (supra). The relevant paragraphs dealing with the above are at paragraph Nos. 30.15 to 32.7 of the order as under:-

> *"30.15 Now, the question arises whether the scheme once approved by the Hon'ble Gujarat High Court after receiving no objection from the Income-tax Department, the AO/revenue has authority to challenge the same. What is the inference that flows from a cumulative consideration of all the aforesaid*

contending facts is that the revenue cannot object the impugned scheme of amalgamation. It is because, it is implied that the revenue has given its consent in the impugned scheme of amalgamation by raising no objection in response to the letter issued by the regional director of the MCA as discussed above. Furthermore, had there been any grievance to the revenue, then it should have approached to the Hon'ble High Court through the regional director of the MCA. But it did not do so. As such the revenue on one hand is issuing circulars to its officers to object the scheme of amalgamation if it is found prejudicial to the interest of revenue but on the other hand it remains silent when such opportunity was afforded to it and raising the same issue during the assessment proceedings which in our considered view is not desirable.

30.16 There is also no dispute in the amount of the purchase consideration and the NAV determined between the companies, as available in the scheme of amalgamation, which was approved by the Hon'ble Gujarat High Court as well. However, the lower authority held the value of goodwill at NIL for the purpose of taxation during the assessment proceedings for the reasons as discussed above in their respective orders. But, in the backdrop of above discussion, we are not convinced with the orders of the authorities below on this preliminary issue.

31. Now, the next question arises for our consideration whether the value of goodwill should be taken at NIL under the provision of Income-tax Act in the books of amalgamated company as no such goodwill was available in the books of amalgamating company prior to amalgamation and such goodwill emerged in the books of amalgamated company were on account of valuation and revaluation of business as no cost incurred by the amalgamated company for such goodwill. In this connection, we are inclined to refer certain provisions of law in the context of the scheme of amalgamation as provided under section 2(1B) of the Act as detailed under:

> *Depreciation.*
> *32. (1) [In respect of depreciation of –*
> *(i)** ** ***
> *(ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,*
> *owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed –]*
> *(i)** ** ***
> *(ii) [in the case of any block of assets, such percentage on the written down value thereof as may be prescribed]*
> *** ** ***

[Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.]

** ** **

*Explanation 2.—For the purposes of this [sub-section] "written down value of the block of assets" shall have the same meaning as in clause *(c) of sub-section †(6) of section 43.]*

[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, trade marks, licences, franchises or any other business or commercial rights of similar nature.

The above provision of section 32 of the Act requires allowing the depreciation to the amalgamated company in the same manner which would have been allowed to the amalgamating company in the event had there not been any amalgamation.

32. Similarly, the actual cost of the assets acquired in the scheme of amalgamation in the hands of the amalgamated company will continue to be the same as it would have been in the hands of the amalgamating company in the event, had there not been any amalgamation. The relevant extract of the Explanation 7 to section 43(1) reads as under:

Definitions of certain terms relevant to income from profits and gains of business or profession.

43. In sections 28 to 41 and in this section, unless the context otherwise requires —

(1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met3 directly or indirectly by any other person or authority:

** ** **

[Explanation 7.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.]

32.1 We further note that the WDV of the assets acquired in the scheme of amalgamation in the hands of the amalgamated company will continue to be the same as it would have been in the hands of the amalgamating company in the event, had there not been any amalgamation. The relevant extract of the explanation 2 to section 43(6)(c) of the Act reads as under:

(6) "written down value" means—

** ** **

[Explanation 2.—Where in any previous year, any block of assets is transferred,—

*(a)** ** **

(b) by the amalgamating company to the amalgamated company in a scheme of amalgamation, and the amalgamated company is an Indian company,

then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the transferee-company or the amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.]

32.2 As per section 32(1) of the IT Act 'depreciation' is to be computed on 'actual cost'/'written down value of the block of assets' ascertained in accordance with section 43 of the Act. Further, a reading of the above provision shows that in respect of 'capital assets' transferred by the amalgamating company to the amalgamated company, the cost/written down value of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been had the amalgamating company continued to hold the capital asset for the purposes of its own business.

32.3 A combined reading of the above provisions reveals that the intention of the legislature behind the introduction of the amalgamation scheme was to

achieve tax neutrality. Besides the above, the intention of the legislature is also reflecting from the following provisions:

i. There is no capital gain in the hands of the amalgamating company on the transfer of capital assets in the scheme of amalgamation under the provisions of section 47(vi) of the Act.

ii. The cost of stock-intrade in the hands of amalgamated company shall remain the same as in the hands of amalgamating company either as capital asset or stock in trade as provided under section 43C of the Act.

iii. Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc under the provisions of section 72A of the Act.

iv. Exemption of capital gains in the hands of shareholders of amalgamating company on transfer of shares of amalgamating company in the scheme of amalgamation under the provisions of section 47(vii) of the Act.

v. Cost of capital assets to be the same as in the hands of previous owner where capital assets became the assets of the successor as a result of transfer under section 47(vi) r.w.s. 49(1)(iii)(e) of the Act.

vi. Cost of shares of amalgamated company in the hands of shareholders, received as consideration for transfer of shares of amalgamating company, to be same as the cost of shares of amalgamating company under section 49(2) of the Act.

32.4 From the above, it would appear that the intent of the Legislature is to make amalgamation a tax neutral scheme for companies as well as for the shareholders and not to provide a tax planning mechanism to either of them. However, a conjoint reading of the above provisions reveal that the assets which were transferred by the amalgamating company to the amalgamated company in the process of amalgamation were not made subject to the capital gain tax. Furthermore, the 6th proviso to section 32 of the Act has limited the amount of depreciation available to the amalgamated company post amalgamation to the extent of the amount of depreciation which would have been available to the amalgamating company, had there not been any amalgamation. Indeed there was no entry in the books of the transferor/amalgamating company for the intangible assets/goodwill being self-generated assets. However, we note that all the relevant provisions of the Act as discussed above deal with respect to the assets available/recorded in the books of the transferor/amalgamating company. In other words, the assets which have been acquired by the assessee in the scheme of amalgamation would continue at the book value in the books of the

amalgamated company. The question arises whether the goodwill shown by the assessee as discussed above was acquired in the scheme of amalgamation from the amalgamating company. The answer stands in negative. It is because there was no entry in the books of accounts of the amalgamating/transferor company reflecting the value of the goodwill. As such, the amount of goodwill as claimed by the assessee represents the difference between the purchase consideration and the NAV acquired by it. The purchase consideration paid by the assessee was based on the valuation report as discussed above after considering the various factors. Thus the assessee has not acquired any goodwill from the amalgamating/transferor company as alleged, accordingly the provisions of the Act i.e. 6 proviso to section 32, explanation 7 to section 43(1), explanation 2 to section 43(6)(c) of the Act cannot be applied to the case on hand.

32.5 Normally, the issue/question of the goodwill arises when one company is acquired by another company. In other words, when one company transfers its business to another company against the consideration, the difference between the net value of the assets acquired and the purchase consideration paid by the transferee is regarded as goodwill/capital reserve as the case may be. The succeeding question arises whether such goodwill acquired by the assessee is eligible for depreciation under the provisions of section 32 of the Act. In this connection, we are inclined to refer to the provisions of section 32(1) of the Act which reads as under:

32. (1) In respect of depreciation of –

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed –

32.6 On perusal of the above provisions, we note that the word goodwill has nowhere been mentioned. However we note that, the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (supra) reported in 348 ITR 302 has held that the goodwill falls within the definition of the assets under the category of any other business or commercial rights of similar nature. The relevant extract reads as under:

Explanation 3 to section 32(1) 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 of 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 rights of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b). (Para 4)*
> *In view of the above, it is opined that 'Goodwill' is an asset under Explanation 3(b) to section 32(1). (Para 5)*

In view of the above judgment, there remains no ambiguity that the goodwill is part and parcel of intangible assets. Hence, the assessee is eligible for depreciation on the goodwill.

32.7 Moving further, we note that for claiming the depreciation, among other conditions as provided under section 32 of the Act, one of the condition is that the assessee can claim depreciation on the goodwill being intangible asset if acquired on or after 1st day of April 1998. In other words, the assessee can claim depreciation on the goodwill acquired by it. Thus the controversy arises whether the goodwill generated in the scheme of amalgamation is acquired by the transferee company. Such controversy has been answered by the Hon'ble Supreme Court in the case of Smifs securities Ltd. (supra) by holding as under: 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 (Appeals) has come to the conclusion that the assessee had filed copies of the orders of the High Court ordering amalgamation of the above two companies; that the assets and liabilities of 'Y' Ltd. 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 Tribunal. There is no reason to interfere with the factual finding. (Para 6)

From the above, there remains no ambiguity that the goodwill generated in the scheme of amalgamation is acquired by the assessee. Thus, in our considered view the assessee has complied all the conditions provided under section 32 of the Act. Accordingly, we are not convinced with the finding of the authorities below."

16. Since the facts of the present case are identical to that in the case of Urmin Marketing Pvt. Ltd. (supra) and ld. DR has been unable to point out any distinguishing facts in the present case, we agree with the ld. Counsel for the assessee that the issue is squarely covered in favour of the assessee by the decision of ITAT in the case of Urmin Marketing Pvt. Ltd. (supra). In view of

the same, we hold that the assessee is entitled to claim of depreciation on goodwill and the Assessing Officer is accordingly directed to allow the depreciation on goodwill claimed by the assessee to the tune of Rs.1,07,97,284/-. The grounds appeal raised by the assessee are accordingly allowed.

In effect, the appeal of the assessee is allowed.

17. In the result, the appeal filed by the Revenue is dismissed, whereas the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 21/10/2024 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
(टी.आर. सेन्थिल कुमार, न्यायिक सदस्य)

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(□ न्नपूर्णा गुप्ता, लेखा सदस्य)

Ahmedabad; Dated 21/10/2024

**btk*

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

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

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad