

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No. 1148/Hyd/2018		
Assessment Year:2014-15		
Dy. Commissioner of Income Tax, Circle 2(1) Hyderabad	Vs.	Blujay Solutions (India) Private Limited (<i>formerly known as Kewill India (P) Ltd</i>) Hyderabad PAN:AAECT7147E
(Appellant)		(Respondent)
Assessee by:	Shri Mithilesh Sai, CA	
Revenue by:	Shri KPRR Murthy, CIT(DR)	
Date of hearing:	20/03/2023	
Date of pronouncement:	16/05/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 9.3.2018 of the learned CIT (A)-2, Guntur relating to A.Y.2014-15.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of provision of software development services and distribution of parent company software products. It filed its return of income for the A.Y 2014-15 on 30.11.2014 admitting loss of Rs. 1,76,35,021/-. The return was processed u/s 143(1) on 22.4.2015 and refund of Rs.10,97,340/- was issued. Subsequently, the case was selected for scrutiny through CASS and statutory notices u/s 143(2) & 142(1) were

issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer from time to time and filed the requisite details.

3. During the course of assessment proceedings, the Assessing Officer noted that Kewill India Pvt. Ltd (herein after referred to as Kewill India) formerly known as Transport IT Solutions Pvt. Ltd. (IPL) was incorporated on 31.07.2013 as a wholly owned subsidiary of Kewill Limited headquartered in UK and ultimately owned by francisco partners, a US based private equity. Kewill India is primarily engaged in provision of software development services and distribution of software products of parent company.

4. He noted that during the year under consideration the assessee company Kewill India entered into a business acquisition agreement to acquire the business of Four Soft Limited (herein after referred to as Four Soft) as a going concern on a slump sale basis for a consideration of Rs.113,53,42,477/- and the acquisition was completed on 4th October 2013. The transaction was accounted as a business acquisition and purchase consideration was allocated to tangible, intangible assets and liabilities at fair value as determined by an independent valuer. The excess of purchase consideration over the fair value of net assets acquired has been recognized as Goodwill. The acquisition of tangible assets and liabilities was done on book value basis. As regards the intangible property, sale consideration was mutually agreed between parties based on valuation report obtained from independent valuer.

5. He noted that the assessee has considered excess of purchase consideration over the fair value of net assets as goodwill and has furnished the computation as below:

Particulars	Amount (in Rs.)
Net assets acquired (A)	8,11,32,473
Intellectual property(B)	62,40,77,295
Total value of net assets (C) C=A+B	70,52,09,768
Purchase consideration (D)	1,13,53,42,477
Goodwill (E = D-C)	43,01,32,709

6. He noted that the assessee has claimed depreciation of Rs. 5,37,66,588 @half of 25% on goodwill of Rs.43,01,32,709/-. He, therefore, asked the assessee to furnish the details as to how goodwill has been determined.

7. The assessee in response to the above submitted that during the FY 2013-14, the Company has entered into a business acquisition agreement to acquire the business of four Soft Limited (Four Soft'), as a going concern on slump sale basis for a consideration of Rs. 1,13,53,42,477. The purchase comprises of various tangible, intangible assets, and liabilities (including intellectual property rights for certain eProducts developed by Four Soft Limited). With respect to all the tangible assets and liabilities, acquisition was done on a book value basis. As regards the intangible property the sale consideration was mutually agreed between parties based on the valuation report obtained from an independent valuer. Accordingly, the value of goodwill was determined as the excess of purchase consideration over the fair value of net assets.

8. It was submitted that the company amortized the goodwill over the estimated useful life on a straight-line basis,

commencing from the date it was available to the Company for its use. The Company is of the view that goodwill would be able to generate future cash flows for the foreseeable future of at least 5 years and accordingly amortized is provided for a period of 5 years. The Provisions of section 32 were brought to the notice of the Assessing Officer. It was submitted that the Act does not specifically define the term "goodwill". Relying on various decisions, it was submitted that goodwill could be classified as an intangible asset. It was submitted that in the instant case also, Kewill India acquired Four Soft Limited's business pursuant to a business transfer agreement. The consideration paid in excess of the book value of the assets acquired represents the additional benefits accrued to Kewill India in the form of technical knowledge, designs, and other information available with Four Soft Limited, right to documents, business correspondence of business taken over and the right to enjoy all the advantages of established business of Four Soft Limited. Thus, the consideration paid in excess of the book value of the assets acquired inter alia consists of the attributes of goodwill. Accordingly, it was submitted that goodwill acquired by Kewill India pursuant to business transfer agreement is an "intangible asset" and is eligible for depreciation. Relying on the decision of the Hon'ble Supreme Court in the case of SMIFS Securities Ltd, it was argued that goodwill is an intangible asset and depreciation on goodwill is allowable. The assessee also relied on various other decisions to support his case that the excess amount paid over and above the asset acquired is to be treated as goodwill and the assessee is entitled to claim depreciation on the same.

9. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that in August

2013, Kewill announced its acquisition of the assets of Foursoft Limited, a publicly listed Solutions provider based in India. As part of the transaction, a newly established Indian subsidiary of Kewill (Kewill India) has been formed to acquire the assets, including intellectual property, largely software from Foursoft Ltd. The eproducts consisting of innovative and market-leading software solutions developed by Foursoft in-house on the-new technology platform for freight forwarders, custom brokers, warehouses, shipping liners and manufacturers. The products are 4S eTrans, 4S eLog, 4S Visilog and 4S visilog plus. It has been stated by the company in the submission that eProducts are the most valuable Intellectual Property in the acquired business. Subsequently these Intellectual Property Rights (eproducts) were transferred by the assessee to holding company Kewill Ltd. In effect the valuable assets i.e. eproducts available with the assessee has been transferred to parent company back to back immediately on purchase by the assessee.

10. The Assessing Officer referred to the provisions of section 32 and noted that as per the said section, the law has specified the following 6 categories of intangible assets eligible for depreciation:

- (i) Know-how
- (ii) Patents
- (iii) Copyrights
- (iv) Trademarks
- (v) Licences
- (vi) Franchises

11. Therefore, he held that all intangible assets are not eligible for depreciation. He noted that in any business concern the value or the reputation built in the organization represents

the Goodwill of a Business. In the instant case the valuable products in the company was the intangible assets i.e the eproducts which represent the maximum value as per the acquisition. These eproducts were immediately transferred by the assessee to the parent company leaving only a balancing entry in the books of the assessee which it is declaring as Goodwill in its books. So the underlying asset in this case i.e the valuable eproducts were transferred with no asset left in the books of the assessee except the balance figure. He noted that the assessee in the instant case has acquired intellectual property (eproducts) of Rs. 62,40,77,295/- and other assets of Rs. 8,11,32,473/- totaling net assets Rs.70,52,09, 768/- vide acquisition agreement dated 10.8.2013. Subsequently the assessee has transferred the intangible assets of Rs.62,40,77,295/-to its holding company Kewill UK at book value. He noted that intangible assets form around 90% of total assets acquired from company Four soft Ltd. The assessee company has transferred valuable underlying asset to the holding company and has retained assets worth Rs.8,11,32,473/- only. Therefore, the assessee has transferred the valuable assets and retained only the balancing figure in the asset schedule and claiming it as Goodwill. According to him, when the underlying asset itself is not available with the assessee then the question of existence of Goodwill doesn't arise in the instant case. Further since the holding company Kewill UK has acquired the asset to which Goodwill, if any, is attached then depreciation on Goodwill should be allowed, if applicable, in the hands of the holding company only and not to the assessee.

12. So far as assessee's reliance in case of CIT Vs Smifs Securities is concerned, he noted that the Hon'ble Supreme

Court has categorically mentioned that CIT(A) & the Tribunal held that the difference between the cost of an asset and the amount paid in the process of amalgamation constituted goodwill and this aspect was not challenged by department before the High Court. Therefore, the Hon'ble Supreme Court has not discussed the issue whether the difference between the cost of an asset and the amount paid in process of amalgamation constituted goodwill or not which is eligible for depreciation. Therefore, reliance placed by assessee on Hon'ble Supreme Court judgment in case of CIT vs Smifs Security was held by him as not tenable. Rejecting the various explanation given by the assessee, the Assessing Officer rejected the claim of depreciation of Rs.5,37,66,588/- on the goodwill of Rs.43,01,32,709/-.

13. In appeal, the learned CIT (A) deleted the disallowance made by the Assessing Officer on the ground that the assessee company acquired Four Soft Limited's business pursuant to a business transfer agreement. The Consideration paid in excess of the book value of the assets acquired represents the additional benefits accrued to Kewill India in the form of technical knowledge, designs and other information available with Four Soft Limited, right to documents, business correspondence of business taken over and the right to enjoy all the advantages of established business of Four Soft Limited. Thus, the consideration paid in excess of the book value of the assets acquired inter alia consists of the attributes of goodwill. Relying on the decision of the Coordinate Bench of the Tribunal in the case of Dr. Reddy's Laboratories, vide ITA No. 2229/Hyd/2011 & 85/Hyd/2013 order dated 02-01-2017 wherein it was held that Goodwill is also an intangible asset

eligible for depreciation thereon, the learned CIT (A) deleted the addition.

14. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

"1. Whether, on the facts and circumstances of the case, the CIT(A) is correct in allowing the difference of book value and purchase consideration as goodwill which has neither been purchased nor generated but is merely accounting entry?"

2. "Whether, on the facts and circumstances of the case and in law, the CIT(A) is correct in allowing the deprecation on so called good will when the underlying valuable asset (e products) itself is transferred to the holding company and the assessee is left with no valuable asset?"

3. "Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs Smifs Securities Ltd?"

4. Any other ground that may be urged during the course of appellate proceedings. "

15. The learned DR while strongly supporting the order of the Assessing Officer opposed the order of the learned CIT (A) in deleting the disallowance of depreciation on goodwill. He submitted that the business acquisition agreement dated 24.10.2013 to acquire the business of Four Soft Ltd as a going concern on a slump sale basis was for a consideration of Rs.113.53 crores. The assessee has considered the excess of purchase consideration over the fair value of the net assets acquired as Goodwill of Rs.43.01 crores and accordingly claimed depreciation proportionately on the goodwill. However, there was no asset of goodwill in the hands of the transferor company and subsequently there is no purchase of the same as an identifiable asset. The acquisition agreement dated 10.8.2016 also does not discuss about the goodwill or quantify the same. He submitted

that the assessee has not produced any other basis of valuation of goodwill. He submitted that goodwill is not populated as an identifiable asset in the books of account of Four Soft, goodwill has neither been quantified in the books of Four Soft Ltd or in the acquisition agreement. It is only appropriated that the price paid above the fair market value of assets of Four Soft is due to advantages arising from the assets of Four Soft Ltd. Therefore, the valuation of goodwill is to be apportioned to the most valued products of Four Soft i.e. 4S extra, 4S elog, 4S virilog and 4S virilog plus. He submitted that the Assessing Officer in the instant case has clearly mentioned that the assessee company has transferred the entire valuable assets of the company to its parent concern at book value and did not offer any capital gain. Under these circumstances when the underlying asset which contributes goodwill has been transferred with no asset left by the books of the assessee except balance figure of goodwill, therefore, the CIT (A) is not justified in allowing depreciation as goodwill.

16. The learned Counsel for the assessee, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that the business valuation is dependent on overall going concern and readymade business capability with the customer contracts, turnover of about Rs.20.00 crores, 346 employees set up and building altogether and not IP alone. He submitted that the IP transfer happened at cost-to-cost basis and there is no impact on goodwill calculation as such. For the above proposition, he drew the attention of the Bench to the following table:

Particulars	Acquired by Blujay Solutions India Private Limited ("Buyer") from Four Soft Limited ("Seller") as per Business Acquisition Agreement dated 04 October 2013	If Intellectual Property is directly acquired by Blujay Solutions Limited, UK ("Parent entity") from Four Soft Limited ("Seller") instead of routing it through Blujay Solutions India Private Limited ("Buyer")	
	Amount paid by Blujay India to Four Soft	Amount that would have been paid by Blujay UK to Four Soft	Amount that would have been paid by Blujay India to Four Soft
Net assets acquired (Pls refer <i>Page no 2 of Factual paper book - 1</i>)	8,11,32,472	-	8,11,32,472
Intellectual Property (\$10,256/INR62,40,77,295) (Pls refer <i>Page no 134 of Factual paper book - 1</i>)	62,40,77,295	62,40,77,295	-
Goodwill (Pls refer <i>page no 100 of factual paper book - 1</i>)	43,01,32,710	-	43,01,32,710
Total Consideration	1,13,53,42,478	62,40,77,295	51,12,65,182
Remarks	Goodwill of INR 43,01,32,710 paid by Blujay India to Four Soft for acquiring their business	Blujay UK would have paid INR 62,40,77,295 to Four Soft for buying Intellectual Property. The IP value is derived from the Valuation Report.	Goodwill of INR 43,01,32,710 would still have been paid by Blujay India to Four Soft for acquiring their business. This Goodwill paid is independent on the IP valuation.

17. He submitted that IP is licensed back and access is provided to Indian business. There is no scope of restriction and the parent entity always holds IP in TP structure. Further, there is no double claim of depreciation on goodwill and IP together. He submitted that the transfer (back-to-back) is done within 2 weeks of the Business Transfer Agreement.

18. The learned Counsel for the assessee submitted that even if the Intellectual Property of INR 62,40,77,295/- of Four Soft Limited ("Seller") is acquired directly by Blujay Solutions Limited, UK ("Parent entity"), the Appellant i.e., Kewill India Pvt Ltd ("Buyer") would have paid a consideration of INR 51,12,65,182 (Net assets of INR 8,11,32,472 and Goodwill of INR 43,01,32,710) to Four Soft India. Therefore, the Goodwill amount of INR

43,01,32,710 paid by Kewill India Pvt Ltd ("Buyer") to Four Soft India ("Seller") would have been the same.

19. The learned Counsel for the assessee referring to the Business Transfer Agreement submitted that Goodwill is not dependent on the Intellectual Property that is purchased by Appellant from Seller and sold to its Parent entity. Goodwill is the excess consideration paid and negotiation by the Appellant with the Seller for acquiring its business which has awarded the assessee with the following rights:

- a) Right to take over employees;
- b) Right to use technical knowledge, designs and other information available with Four Soft Limited;
- c) Rights to documents and business correspondence of business taken over; and
- d) Right to enjoy all advantages of established trade.

20. He submitted that the assessee has reduced the value of sale consideration of the Intellectual Property paid to Blujay Solutions Limited, UK from the block of fixed assets. Thereby there is no depreciation claimed on the Intellectual Property purchased from Four Soft India and sold to its Parent Company i.e., BluJay Solutions Ltd, UK. The assessee has transferred the Property of INR 62,40,77,295 at book value to its Parent Company i.e., BluJay Solutions Limited, UK and has not claimed any benefit of depreciation.

21. The learned Counsel for the assessee submitted that the assessee has transferred the Intellectual Property to its Parent Company because all the IP is held by the Group as per the Group Policy. This is the general structure in the MNEs, where

the Parent entity holds all the IP and not the captive service provider. The assessee which is the captive service provider will still have all the access to such Intellectual Property through the Group. In respect of the distribution of Parent Company Software Products, user licenses that are sold to external customers in India by the assessee, the assessee has earned a distribution margin and paid appropriate taxes on the same.

22. Referring to the decision of the Coordinate Bench of the Tribunal in the case of Avis Hospitals India Ltd vs. ACIT in ITA No.1390/Hyd/2019 dated 27.06.2022, he submitted that the Tribunal under identical circumstances has allowed the claim of depreciation on goodwill. Relying on various other decisions filed in the case law compilation, he submitted that since the learned CIT (A) while adjudicating the issue has given justifiable reasons, therefore, the same should be upheld and the grounds raised by the Revenue should be dismissed.

23. He also relied on the following decisions:

- 1) *ITAT Kolkata Bench in the case of ACIT vs. Shristi Infrastructure (P) Ltd in ITA No.881/Kol/2019*
- 2) *Hon'ble Supreme Court in the case of CI vs. Smifs Securities Ltd on the decision of Hon'ble Calcutta High Court in ITA No.642/2007*
- 3) *Hon'ble Delhi High Court in the case of Areva T & D India Ltd vs. Dy.CIT (2012) 20 Taxmann.com 29 (Del.)*
- 4) *Hon'ble Delhi High Court in the case of Triune Energy Services (P) Ltd vs. Dy.CIT (2016) 65 Taxmann.com 288 (Del.)*
- 5) *CIT vs. Hindustan Coca Cola Beverages (P) Ltd in ITA Nos.1391/2010, 1394/2010 & 1396/2010*

- 6) *Taj Sats Air Catering Ltd vs. CIT vide order No.743 of 2012.*
- 7) *M/s. CLC & Sons (P) Ltd vs. ACIT in ITA No.1976/Del/2006.*
- 8) *Hyderabad Bench of the ITAT in Mylan Laboratories Ltd vs. Dy.CIT in ITA No.2335/Hyd/2018.*
- 9) *Hyderabad Bench of the ITAT in Dr. Reddy's Laboratories Ltd vs. Add.CIT in ITA nos.2229/Hyd/2011 & 85/Hyd/2013.*
- 10) *Hyderabad Bench of the ITAT Apna Incable Broad Band Services (P) Ltd vs. Dy.CIT in ITA 800/Hyd/2016.*
- 11) *Dy.CIT vs. Zyduz Wellness Ltd (ITA 1959/Ahd/2013)*
- 12) *ACIT vs. Dorma India (P) Ltd (ITA Nos.1664 to 1666/Chny/2019*
- 13) *India Capital Markets (P) Ltd vs. DCIT (ITA No.2948/Mum/2010)*
- 14) *Skyline Caters (P) Ltd vs. Income Tax Officer (ITA 2965/Mum/2007)*
- 15) *Tam Media Research (P) Ltd vs. Income Tax Officer (ITA 6035/Mum/2009)*
- 16) *Dy.CIT vs. Toyo Engg. India Ltd (ITA 3279/Mum/2008)*
- 17) *Johnson Mathey Chemicals India (P) Ltd vs. Dy.CIT in ITA No.1507/PUN/2012.*
- 18) *CIT vs. RFCL Ltd (ITA 4, 12, 13 & 15 of 2014) Himachal Pradesh.*
- 19) *ITAT Delhi in Continental Device India Ltd vs. ACIUT (2015) 63 Taxmann.com 364 (Del.)*
- 20) *Hon'ble Kerala High Court in the case of B. Raveendran Pillai vs. CIT (ITA 1741 of 2009)*
- 21) *Hon'ble Bombay High Court in the case of CIT vs. Birla Global Asset Finance Co. Ltd (ITA 6835 of 2010)*
- 22) *ITAT Delhi in the case of Cyber India Online Ltd vs. ACIT (ITA 1299 of 2010)*
- 23) *ITAT Delhi in the case of Hindustan Coca Cola Beverages (P) Ltd vs. DCIT (ITA 1884 of 2006)*

24) *ITAT Ahmedabad in the case of Urmin Marketing (P) Ltd vs. DCIT (ITA 1806/Ahd/2019)*

24. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has entered into a business acquisition agreement to acquire business of Foursoft India Ltd as a going concern on a slump sale basis for a consideration of Rs.113,53,42,477/- and the acquisition was completed on 4th October 2013. The transaction was accounted as a business acquisition and purchase consideration was allocated to tangible, intangible assets and liabilities at fair value as determined by an independent valuer. The excess of purchase consideration over the fair value of net assets acquired was recognized as goodwill amounting to Rs.43.01 crores, the details of which are already given at Para No.5 of this order. The assessee claimed depreciation of Rs.5.37 crores which was disallowed by the Assessing Officer on the ground that no valuation was undertaken to compute the value of goodwill, the assessee could not prove the actual cost of goodwill and the underlying assets which constitute goodwill have been transferred with no asset left in the books of the assessee except balance figure of goodwill.

25. It is the submission of the learned Counsel for the assessee that the transfer of the assets took place as per the Business Transfer Agreement and the net difference between the purchase consideration and the WDV of the assets acquired is arrived as goodwill and no valuation report is required to validate the valuation of the goodwill. It is his submission that the

intangible assets i.e. business claims, business information, business records, contracts, employees and knowhow etc., are all assets in absence of which the transferee would have had to commence business from scratch and go through gestation period. According to him, the intangible assets claimed by the assessee are in the form of business commercial rights and are eligible for claim of depreciation. It is also his submission that even if the Intellectual Property of INR 62,40,77,295 Four Soft Ltd (Seller) is acquired directly by Blujay Solutions Ltd, UK (parent entity), the assessee i.e. Blujay Solutions India (P) Ltd (Buyer) would have paid a consideration of INR 51,12,65,182 (net assets of INR 8,11,32,472 and goodwill of INR 43,01,32,710 to Four Soft India. Therefore, the goodwill amount of INR 43,01,32,710 paid by Blujay Solutions India (P) Ltd (buyer) to Four Soft India (seller) would have been the same.

26. We find some force in the above arguments of the learned Counsel for the assessee. We find Blujay India acquired the business of Four Soft on slump sale basis through a Business Transfer Agreement. A perusal of the business transfer agreement, copy of which is placed at page 149 of the Paper Book filed by the Revenue shows that as per clause 6.2.2. the above acquisition has constituted transfer of entire business of Four Soft consisting of the following:

1. All the business assets
2. All the Business Contracts as on the date of acquisition
3. Existing Permits and support for fresh application for Permits
4. All the Employees
5. Registered Trademarks and Copyrights
6. Business Intellectual Property
7. Books and Records
8. Original Deeds and documents of title

9. Business Liabilities, duties and Obligations
 10. Insurance Policies

27. We therefore, find merit in the argument of the learned Counsel for the assessee that the purchase consideration of INR 113 crores was attributed to the business acquired from Four Soft which is a bundle of the components as listed above and described in Clause 6.2.2. of the BTA. We further find from the details furnished by the learned Counsel for the assessee in the paper book that with the above benefits accrued on transfer of business, the business of the assessee has increased substantially from financial year 2013-14 to 2020-21, the details of which are as under:

Year	Revenue from operations
2013-14	20,28,88,247
2014-15	41,23,17,354
2015-16	41,09,92,024
2016-17	39,53,90,897
2017-18	37,55,95,589
2018-19	38,93,10,570
2019-20	51,87,19,877
2020-21	58,73,44,657

28. In our opinion, the transfer of IP from Blujay India to Blujay UK cannot question the benefits accrued from the above bundle of assets transferred in the course of acquisition as IP was just a part of the assets acquired from Four Soft. Therefore, in our opinion, the argument of the Revenue that the underlying asset consisting goodwill is transferred cannot be accepted as IP in entirety did not result in creation of goodwill and the goodwill is a sum paid for acquisition of all the assets and rights i.e. the “Business Commercial Rights” acquired from Four Soft.

29. We further find from the details furnished by the assessee as per page 167 of the Paper Book that post transfer of

IP to Blujay UK, IP platform & licence access was provided back to Blujay India which is in turn providing software development support & distribution services in India to domestic third parties. Further, 50% of such income has also been offered to tax in India. From the details furnished by the assessee in the paper book page 97, we find it is only the ownership of the IP that is transferred to Blujay UK and Blujay India is still benefitting out of the other assets acquired namely business contracts, employees, business permits, policies, readymade business etc., We further find the transfer of IP to UK was on back-to-back basis without any capital gains and the assessee has not claimed any depreciation on the IP transferred during the year.

30. In view of the above, we find merit in the argument of the learned Counsel for the assessee that the net balance of purchase consideration paid, and the value of net assets acquired is Goodwill and the transfer of IP to BluJay UK cannot affect the value of goodwill as the Goodwill is rightly attributed to all the assets acquired from Four Soft and benefits accrued to BluJay India. Once the existence of Goodwill is established, Depreciation on such goodwill cannot be questioned further.

31. We find an identical issue had come up before the Tribunal in the case of M/s. Avis Hospitals India Ltd vs. ACIT in ITA No.1390/Hyd/2019 order dated 27.06.2022 and the Tribunal has allowed the claim of depreciation on goodwill by observing as under:

13. We have considered the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has acquired Hyderabad business of Beams Hospitals Private Limited as

a going concern and on a slump sale basis by paying a consideration of Rs. 7.94 crores as per the slump sale agreement between AVIS Hospitals India Limited and Beams Hospitals Private Limited dated 30.03.2015 copy of which is placed in the paper book at page at 78 to 99. We find the assessee in the return of income filed has taken the value of fixed assets at Rs. 3,31,23,000/- as per the depreciation schedule and the difference amount of Rs. 3,96,87,209/- after deducting the value of security deposits etc. was treated as goodwill on which depreciation @ 25% has been claimed. We find the AO rejected the claim of depreciation on goodwill by relying the provision of section 32 r.w.s. 43(1) and 43(6). We find the ld.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld.counsel for the assessee that when a purchaser acquires a business on a going concern basis by paying more than the fair market value of the net tangible asset, the difference in the purchase consideration and the net value of the assets and liabilities is attributable to the commercial benefit which is nothing but goodwill on which depreciation has to be allowed. It is also his argument that the intangible assets, i.e business claims, business information, business records, contracts, employees and know-how, are all assets in absence of which the transferee would have had to commence business from scratch and go through the gestation period. Therefore by acquiring the aforesaid business rights along with the tangible assets, the assessee got an up and running business and the specified intangible assets acquired under slump sale agreement are in the nature of "any other business or commercial rights of a similar nature" on which depreciation is allowable.

14. We find some force in the above arguments of the ld. counsel for the assessee. We find the Hon'ble Supreme court in the case of [CIT vs.Smifs Securities Ltd.](#) reported in 348 ITR 302 has held as under:-

6." One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax(Appeals)['CIT', for short] has come to the conclusion that the authorized representatives had filed copies of the Orders of the High court ordering amalgamation of the above two companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal['ITAT', for short]. We see no reason to interfere with the factual finding.

7. One more aspect which needs to be mentioned is that, against the decision of ITAT, the Revenue had preferred an appeal to the High court in which it had raised only the question as to whether goodwill is an asset under section 32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove.

8. For the afore-stated reasons, we answer Question No.[b] also in favour of the assessee.

15. We find the Hon'ble Supreme Court in the case of *PCIT vs. Zydus Wellness Ltd.*(supra) has observed as under:-

3. The remaining questions no. (E) to (I) relate to the assessee's claim of depreciation. In the return filed for the assessment year 2010-11, the assessee had not raised such a claim. However, during the course of assessment proceedings, the assessee presented revised computation which included the assessee's claim of depreciation of Rs.7.19 crores on the goodwill expanded at the time of amalgamation of the companies. The assessee pointed out that such claim would be allowable by virtue of the judgement of the Supreme Court in case of *Commissioner of Income-Tax, Kolkata vs. Smifs Securities Ltd.* reported in 348 ITR 302. The Assessing Officer disallowed the claim on two grounds. Firstly, that the claim was not made in the original return nor did the assessee file the revised return. The second ground was that the claim was fictitious and the goodwill has been accounted as a balancing factor in the hands of the assessee without acquisition of an intangible asset as contemplated under Section 32 of the Act.

4. The assessee carried the matter in appeal. The CIT(Appeals) as well as the Tribunal both ruled in favour of the assessee. With respect to raising an additional claim without revising the return the Tribunal relied on the decision of the Bombay High Court in case of *Commissioner of Income Tax vs. Pruthvi Brokers & Shareholders (P.) Ltd.* reported in [2012] 349 ITR 336. With respect to the claim of depreciation on acquisition of goodwill, the Tribunal relied on the decision of the Supreme Court in case of *Smifs Securities Ltd.* (supra).

5. Having heard learned learned counsel for the parties and having perused the orders on record, we see no reason to interfere. The issue of tenability of a claim though not raised in the original return is examined by the Courts in various decisions. This Court in case of *Commissioner of Income- taxmann.com 30 (Gujarat)* referred to and relied on several judgements of the Supreme Court and High Courts including the judgement of Bombay High Court in case of *Pruthvi Brokers & Shareholders (P.) Ltd.* (supra) and observed as under:

"38. It thus becomes clear that the decision of the Supreme Court in the case of *Goetze (India) Ltd vs. Commissioner of Income-tax* (supra) is confined to the powers of the assessing officer and accepting a claim without revised return. This is what Supreme Court observed in the said judgment while distinguishing the judgment in the case of *National Thermal Power Co. Ltd. vs. Commissioner of Income-tax* (supra) and that is how various High Courts have viewed the dictum of the decision in the case of *Goetze (India) Ltd. vs. Commissioner of Income-tax* (supra). When it comes to the power of Appellate Commissioner or the Tribunal, the Courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or

contention, the Courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the assessing officer. Income Tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income.

39. This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the assessing officer.

40. Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the ITA 1390/Hyd/2019 situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor HC-NIC Page 5 of 6 Created On Sat Oct 07 09:32:50 IST 2017 O/TAXAP/779/2017 ORDER did they travel beyond the materials already on record, in order to examine the claims of the assesseees for deductions under section 80IB and 80HHC of the Act."

6. With respect to the claim of depreciation, the decision of Supreme Court in case of Smifs Securities Ltd. (supra) would squarely apply. There is no material referred to by the Assessing Officer to hold that the claim of depreciation was fictitious. If we read his entire expression in this respect, he seems to be suggesting that being an intangible asset acquisition thereof would not qualify for depreciation. If that be so, the view of the Assessing Officer was opposed to the decision of the Supreme Court in case of Smifs Securities Ltd. (supra). On the other hand, if the observations of the Assessing Officer can be seen as his findings that the claim itself was baseless, there was no discussion or reference to any material to enable him to come to such a conclusion."

16. We find the Hon'ble Delhi High Court in the case of Triune Energy Services (P.) Ltd. (supra) has observed as under:-

15. From an accounting perspective, it is well established that 'goodwill' is an intangible asset, which is required to be accounted for when a purchaser acquires a business as a going concern by paying more than the fair market value of the net tangible assets, that is, assets less liabilities. The difference in the purchase consideration and the net value of assets and liabilities is attributable to the commercial benefit that is acquired by the purchaser. Such goodwill is also commonly understood as the value of the whole undertaking less the sum total of its parts. The 'Financial Reporting Standard 10' issued by Accounting Standard Board which is applicable in United Kingdom and by Institute of Chartered Accountants of Ireland in respect of its application in the Republic of Ireland, explains that "the accounting requirements for goodwill reflect the view that goodwill

arising on an acquisition is neither an asset like other assets nor an immediate loss in value. Rather, it forms the bridge between the cost of an investment shown as an asset in the acquirer's own financial statements and the values attributed to the acquired assets and liabilities in the consolidated financial statements".

16. The abovementioned Financial Reporting Standard 10 also provides for accounting of purchased goodwill as "the difference between the cost of an acquired entity and the aggregate of the fair values of that entity's identifiable assets and liabilities. Positive goodwill arises when the acquisition cost exceeds the aggregate fair values of the identifiable assets and liabilities. Negative goodwill arises when the aggregate fair values of the identifiable assets and liabilities of the entity exceed the acquisition cost."

17. At this stage, it is also relevant to refer to Accounting Standard 10 as issued by the Institute of Chartered Accountants of India. The relevant extract of which reads as under:-

ITA 1390/Hyd/2019 "16.1 Goodwill, in general, is recorded in the books only when some consideration in money or money's worth has been paid for it. Whenever a business is acquired for a price (payable either in cash or in shares or otherwise) which is in excess of the value of the net assets of the business taken over, the excess is termed as 'goodwill'. Goodwill arises from business connections, trade name or reputation of an enterprise or from other intangible benefits enjoyed by an enterprise."

18. It is also relevant to note that Smifs Securities Ltd. (supra) was a case where assets of company - YSN shares and Securities (P.) Ltd. were transferred to Smifs Securities Ltd. under a scheme of amalgamation. And, the excess consideration paid by the Assessee therein over the value of net assets of YSN Shares and Securities (P.) Ltd. acquired by the Assessee, was accounted as goodwill.

19. In view of the above, we are inclined to accept the contention advanced on behalf of the Assessee that the consideration paid by the Assessee in excess of its value of tangible assets was rightly classified as goodwill.

20. In the facts of the present case, the ITAT has rejected the view that the slump sale agreement was a colourable device. Once having held so, the agreement between the parties must be accepted in its totality. The Agreement itself does not provide for splitting up of the intangibles into separate components. Indisputably, the transaction in question is a slump sale which does not contemplate separate values to be ascribed to various assets (tangible and intangible) that constitute the business undertaking, which is sold and purchased. The Agreement itself indicates that slump sale included sale of goodwill and the balance sheet drawn up on 22nd September, 2006 specifically recorded goodwill at Rs.40,58,75,529.40/-. As indicated hereinbefore Goodwill includes a host of intangible assets, which a person acquires, on acquiring a business as a going concern and valuing the same at the excess consideration paid over and above the value of net

tangible assets is an acceptable accounting practice. Thus, a further exercise to value the goodwill is not warranted.

21. In view of the aforesaid, the question framed is answered in the negative, that is, in favour of the Assessee and against the Revenue. The Assessee's appeal (ITA 40/2015) is, accordingly, allowed.

17. So far as the decision relied on by the Id.CIT-DR in the case of Signode India Ltd.(supra) is concerned, the same in our opinion is distinguishable and not applicable to the facts of the present case. In that case, the Tribunal while rejecting the claim of depreciation on goodwill has given certain observations, which are not present in the instant case. The Tribunal in the said case has reproduced the valuation made by an independent valuer, who have given their report based on the information provided by the client and have not independently verified or checked the accuracy or timeliness of the same as per para 7.4 of the order. Similarly, the Tribunal at para 7.13 of the order has observed that the basis for transfer price is in the individual knowledge of the transferor and transferee and both the parties are under the control of same management, which indicate that the claim of fictional goodwill is nothing but deriving undue benefit out of oneself at the cost of the revenue. Similarly, the Tribunal observed at para 7.14 of the order that the parent company appointed the valuer and not the assessee and there is unfair fixation of transfer price to benefit the transferor at the cost of the assessee, the matter being an affair between parent of the assessee and the assessee. At para 7.18 of the order, the Tribunal had given a clear finding that clause 10.2 of the second valuation report clearly indicate that the purchase consideration is for acquisition of 100% equity. Therefore, the price is paid for 100% control of equity and more in the nature of premium for acquisition of 100% equity control and therefore, the balancing charge is not in the nature of goodwill. It has observed that allowing depreciation on fictional goodwill in such a case would be a case of one making profit/loss out of oneself. In such circumstances, the Tribunal held that it was wholly unreal and artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional sale introduce a fictional profit which in truth and in fact is non- existent. The Tribunal further observed that the valuation report is faulty and in contradiction to the "Business Transfer Agreement" in working out a fictional goodwill and the mentioning the same at Rs. 792.79 crores by assigning the same to certain intangibles in arbitrary manner without any valuation which in that cannot be fixed as per the Business Transfer Agreement. Finally, the Tribunal observed that when there is no transfer of the asset as well as there is no valuation of the asset, there cannot be any claim of ownership or claim of depreciation.

18. However, in the case before us, these facts are missing and the transfer is not between same group concerns or related concerns. Therefore, the decision relied by the Id.CIT-DR is not applicable to the facts of the present case. In view of the above discussion and respectfully following the decisions cited(supra), we hold that the Id.CIT(A) is not justified in denying the claim of depreciation on goodwill claimed by the assessee. We, therefore set aside the order of

the ld.CIT(A) and allow the claim of depreciation on goodwill for the impugned assessment year. The grounds raised by the assessee on this issue are accordingly allowed.”

32. In view of the above discussion and following the decision of the Coordinate Bench of the Tribunal in the case of Avis Hospitals India Ltd vs. ACIT (Supra) (to which both of us are parties), we are of the considered opinion that the assessee is entitled to claim depreciation on goodwill. Accordingly, the order of the learned CIT (A) is upheld and the grounds raised by the Revenue are dismissed.

33. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 16th May, 2023.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 16th May, 2023

Vinodan/sps

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3	Pr. CIT-2, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order