

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.568/Chny/2018

निर्धारण वर्ष /Assessment Year : 2012-13

The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 4(1),  
Chennai - 600 034.

v.

M/s Macmillan Publishers India  
Pvt. Ltd.,  
No.21, Pattulos Road,  
Chennai - 600 034.

PAN : AAFCM 5564 R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AR.V. Sreenivasan, JCIT

प्रत्यर्थी की ओरसे / Respondent by : Shri T. Suryanarayana, Advocate

सुनवाई की तारीख/Date of Hearing : 28.01.2019

घोषणा की तारीख/Date of Pronouncement : 07.03.2019

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -8, Chennai, dated 07.12.2017 and pertains to assessment year 2012-13.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee-company is engaged in the business of publication. During the year under consideration, according to the Ld. D.R., the assessee-company merged itself with Frank Brothers and Company Publishers Limited, which was a wholly owned subsidiary company of the assessee. As per the scheme of amalgamation between the assessee and the subsidiary company, the asset was valued. According to the Ld. D.R., the amalgamation of the assessee with its subsidiary company was approved by the Madras High Court and the Delhi High Court. According to the Ld. D.R., the subsidiary company was registered in Delhi, therefore, the Delhi High Court also approved the amalgamation.

3. Shri AR.V. Sreenivasan, the Ld. D.R. further submitted that the assessee claimed depreciation of ₹6,30,35,714/- on the goodwill taken on the books of the assessee-company to the extent of ₹25,21,40,218/-. Referring to the assessment order, the Ld. D.R. submitted that the assessee had not made any claim of depreciation in the return of income. However, the same was made in the course of assessment proceeding. According to the Ld. D.R., the

assessee claimed before the Assessing Officer that the claim for depreciation was made on the basis of judgment of Apex Court in CIT v. Smifs Securities Ltd. (2012) 348 ITR 302. In the case before Apex Court, according to the Ld. D.R., excess consideration was paid over and above the net asset value of the company, therefore, the excess consideration over and above the net asset value was treated as consideration for goodwill and depreciation was allowed by the Apex Court. The issue before the Apex Court was whether the goodwill is depreciable asset or not. The Apex Court found that the goodwill is a depreciable asset since it falls within the expression "any other business or commercial rights of similar nature". Therefore, according to the Ld. D.R., the Supreme Court has not found that the assessee is eligible for depreciation even in the case of amalgamation. In the present case, according to the Ld. D.R., the assessee has not paid any money. The assessee was holding 100% shares of subsidiary company and on amalgamation, the subsidiary company merged with the assessee-company and it formed part of assessee-company. According to the Ld. D.R., the entire liabilities and assets of the company were taken over by the assessee without any payment. Since no amount was paid as consideration over and above the net value of the shares of

subsidiary company, according to the Ld. D.R., the question of claiming depreciation on the goodwill does not arise. In other words, according to the Ld. D.R., there was no cost in the so-called goodwill, therefore, the CIT(Appeals) is not justified in allowing depreciation on the basis of the judgment of Apex Court in Smifs Securities Ltd. (supra).

4. On the contrary, Shri T. Suryanarayana, the Ld.counsel for the assessee, submitted that the assessee-company came into existence by demerger of M/s Macmillan India Limited. According to the Ld. counsel, the printing business of the parent company, namely, Macmillan India Limited remained with parent company. The publication business was hived off into Macmillan Publishers India Ltd. According to the Ld. counsel, the parent company purchased the shares of M/s Frank Brothers and Company Publishers Ltd. for a total consideration of ₹41,56,04,120/-. The shares of M/s Frank Brothers and Company Publishers Ltd. purchased by the parent company were assigned to the assessee-company at the time of demerger. Subsequently, according to the Ld. counsel, the assessee-company merged with 100% subsidiary company of M/s Frank Brothers and Company Publishers Ltd.

Consequent to the amalgamation, according to the Ld. counsel, M/s Frank Brothers and Company Publishers Ltd. became M/s Macmillan Publishers India Pvt. Ltd. The excess assets over the liabilities of M/s Frank Brothers and Company Publishers Ltd. were ₹16,34,64,782/-. The book value of investments is ₹41,56,05,000/-. Therefore, according to the Ld. counsel, the excess amount of ₹25,21,40,218/- was taken on book as goodwill.

5. Shri T. Suryanarayana, the Ld.counsel for the assessee, further submitted that even though initially the assessee failed to claim depreciation, since the goodwill is a depreciable asset, the assessee in the course of assessment proceeding claimed the same before the Assessing Officer. According to the Ld. counsel, the parent company before its demerger, invested in the shares of M/s Frank Brothers and Company Publishers Ltd. to the extent of ₹41,56,05,000/-. Therefore, according to the Ld. counsel, the amount invested by the assessee in the shares of M/s Frank Brothers and Company Publishers Ltd. over and above the value of asset has to be considered as consideration for the goodwill, hence, the CIT(Appeals) has rightly allowed the claim of the assessee on the basis of judgment of Apex Court in Smifs Securities Ltd. (supra).

6. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee-company came into existence due to demerger of M/s Macmillan India Ltd. being the parent company. In fact, M/s Macmillan India Ltd. invested in the shares of M/s Frank Brothers and Company Publishers Ltd. before demerger. The shares of M/s Frank Brothers and Company Publishers Ltd. were allotted to the assessee-company. Therefore, it is obvious that M/s Frank Brothers and Company Publishers Ltd. is 100% subsidiary company of the assessee. In other words, the assessee is holding company of M/s Frank Brothers and Company Publishers Ltd. Now M/s Frank Brothers and Company Publishers Ltd. merged with assessee-company. The assessee-company claims that the investment in the shares of M/s Frank Brothers and Company Publishers Ltd. was ₹41,56,05,000/-. The excess assets over the liabilities of M/s Frank Brothers and Company Publishers Ltd. were ₹16,34,64,782/-. Therefore, the excess amount of ₹25,21,40,218/- invested by the parent company initially has to be taken as goodwill eligible for depreciation.

7. No doubt, even though M/s Frank Brothers and Company Publishers Ltd. is subsidiary company of the assessee, it is an independent statutory entity owning its own assets and goodwill. The question arises for consideration is when the holding company or subsidiary company merged itself on account of amalgamation, whether there was any transfer of goodwill between them? This issue was not considered either by the Assessing Officer or by the CIT(Appeals). Moreover, how the valuation of the asset was done and how it was over and above the liabilities were not explained by the assessee. Admittedly, no consideration was paid by the assessee for acquisition of subsidiary company. The shares of M/s Frank Brothers and Company Publishers Ltd. continued to be with assessee-company. It is not known after the amalgamation, how the shares were distributed among the shareholders of assessee-company.

8. As rightly submitted by the Ld. D.R., the Apex Court in the case of Smifs Securities Ltd. (supra), found that goodwill is an asset under Explanation 3(b) to Section 32(1) of the Income-tax Act, 1961 and eligible for depreciation. Moreover, in the case before Apex Court, excess amount was paid over and above the net value of the

asset of the company. In the present case, during the course of amalgamation, no amount was paid. The assessee claims that the amount invested by the parent company in the shares of M/s Frank Brothers and Company Publishers Ltd. has to be taken as consideration and excess amount over the net value of the asset has to be treated as payment for goodwill. In other words, whether the excess amount invested by the parent company of the assessee in the share of M/s Frank Brothers and Company Publishers Ltd. has to be considered as consideration for the goodwill needs to be examined. Accordingly, the order of the CIT(Appeals) is set aside and the entire issue is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall re-examine the matter and bring on record whether there was any excess consideration paid by the assessee when the amalgamation took place and whether the amount invested by the parent company in the shares of M/s Frank Brothers and Company Publishers Ltd. has to be taken as consideration, if so to what extent and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.



Order pronounced in the court on 7<sup>th</sup> March, 2019 at  
Chennai.

sd/-  
(अब्राहमपी.जॉर्ज)  
(Abraham P. George)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 7<sup>th</sup> March, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.