आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.725/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Johnson Matthey Chemicals India Private Limited,
Plot No. 6A, MIDC Industrial Estate,
Taloja, Distt.-Raigad-410208

PAN : AABCJ1620M

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Panvel Circle, Panvel

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri Shivraj B. Morey

सुनवाई की तारीख / Date of Hearing : 12-07-2021
घोषणा की तारीख / Date of Pronouncement : 30-08-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the final assessment order dated 30-01-2017 passed by the AO u/s. 143(3) r.w.s. 144C(13) of the Act for assessment year 2012-13.

2. Ground Nos. 1 and 2 raised by the assessee are general in nature, hence, require no adjudication.

3. Ground No. 3 raised by the assessee against the transfer pricing adjustment of Rs.1,88,58,689/- on account of international transaction of payment for CCR Divisional Cost treating at Nil.

4. The brief facts of the case are that the assessee is Johnson Matthey Chemicals India Pvt. Ltd. (in short "JMCIPL") and its Associated Enterprise is Johnson Matthey Plc (in short "JMP"). The assessee is a domestic company engaged in the business of manufacture and sale of Nickel hydrogenated catalysts, Naptha reforming catalysts and Gas reforming catalyst. The AO/TPO asked the assessee to produce the details of services availed, the date of availing of services, the allocation key used by the assessee and the evidence in support of its claim of utilization of services and also to furnish the benefit test i.e. whether the services requested, when and how such services for rendered by the AE, at what rate these are available in the local market and justification of using these services. The assessee filed its submissions dated 12-01-2016 and the relevant portions were reproduced by the TPO in its order. On examination of such submissions, the TPO proposed upward adjustment by holding that the assessee did not prove receipt of services, quantification of such services and determination of arm's length price. The AO/TPO made upward transfer pricing adjustment of Rs.1,88,58,689/- on account of CCR services. Before the DRP, the assessee filed additional evidences in support of its claim. The DRP sought remand report from the TPO and based on such remand report as submitted by the TPO, the DRP upheld the action of TPO in determining the ALP of CCR services cost as Nil, in

consequence of which, the AO passed final assessment order to that effect which is impugned before us.

5. Heard both parties and perused the material available on record. We note that the Group Consultancy Services Agreement was executed on 29-03-2010 between the assessee and its AE. The said agreement is in effect from 01-04-2009 which is place at page No. 495 of the paper book. The assessee has been shown as recipient and its AE has shown as provider. It is observed that the provider (AE) agreed to provide the recipient (assessee) with the consultancy services described more detail in Schedule-1 and the said schedule is at page No. 501 of the paper book. The consultancy services are predominantly provided from the UK, by telephone / teleconference, email or written correspondence, with occasional business trips to the recipient's premises as required. The said AE in order to provide such consultancy services employees personnel in the UK with substantial experience in the provision of specialist consultancy services in relation to areas including but not limited to production, finance, treasury, administration, legal, intellectual property sales and marketing. It is also noted the recipient avails such consultancy services for its own commercial benefit, offered by the provider so as to better carry on its business, impression gross revenue/reduce cost. The description of consultancy services which are provided in Schedule No. 1 Page No. 501 of the paper book discloses the categories of such consultancy services as Strategy, HR matters, EHS matters and Financial. The invoice for services will be annual and the provider will send an invoice to recipient with full details of services provided and the charges relating to each service. The budgeted costs of each activity will be allocated according to budgeted employees numbers/net revenue/users etc. The ld. AR submits that though the

agreement was entered on 29-03-2010 and its effective date is being 01-04-2009 no payment was made in the year concerning from 01-04-2009. In the second year i.e. A.Y. 2010-11 no reference was made to TPO. We note that the list of licenses provided and the IT services rendered by the AE in software license were provided at Page No. 306 of the paper book. On perusal of the same which shows the visit of overseas team to India for the purpose of SAP project and PI configuration. The names of team members were also reflected in the said details. Further, in the same way the details of names of software details of IT services are also reflected. Further, the list of ID created for Panki Plant and Taloja are placed on record from Page Nos. 308 to 311 of the paper book. The screenshot displaying of general data of customers of SAP at placed at Page No. 316 and 317 of the paper book. The details of plant application of WINLIMS Lab application are put up from Page Nos. 328 to 336 of the paper book. The visitors itinerary also provided from Page Nos. 348 to 355 of the paper book wherein correspondence between Mr. Alister Scott regarding group health audit and recommendation are at Page No. 353 of the paper book. Further, Mr. Terry Symington visited India for the purpose of implementation of SAP Prana project. In Page No. 362 we find the correspondence between Mr. Rowan Ian and Mr. Ajay Goel and others regarding Emerson FAT package. The said Mr. Rowan Ian arrived in India on 12th April, 2011 and returned to UK on 21-04-2011. Screenshot at Page No. 405 of the paper book reveals emails from Mr. Garry Tobiss regarding the procedures for authorizing security changes on the PGMCat SAP system. Further, the ld. AR also referred to Page Nos. 422, 423 and 448 of the paper book and submitted that all the details regarding the services rendered and availed were filed before the DRP as additional evidences and the DRP sought remand report from the TPO. The

contention of ld. AR is that having filed evidences in support of services availed and rendered the TPO held that the assessee failed to furnish evidences for the cost incurred by the AE for providing such services to the assessee. We note that the remand report is at Page Nos. 471 to 478 of the paper book. The TPO discussed regarding the additional evidences filed by the assessee in respect of CCR Division Cost and information substantiating the services received and benefit derived from various employees from Johnson Matthey UK which is evident in Para No. 3.2 of remand report but however the TPO held that the assessee failed to furnish information regarding the cost incurred by the AE for providing such services to the assessee. Therefore, it is clear that the TPO on one hand admitted that the assessee availed services from its AE and rendering of services by the AE to the assessee. In our opinion the said services were in terms of agreement as discussed above and evidences also on record substantiating the said services which clearly demonstrate that the assessee availed services from its AE. Therefore, we hold that the assessee proved the receipt of services from its AE. The ld. DR reported no objection in remanding the matter to the TPO for determination of arms length price. Therefore, we deem it proper to remand the issue to the file of TPO for its fresh adjudication to determine the ALP of international transaction in respect of CCR Division Cost. Thus, the ground No. 3 raised by the assessee is allowed for statistical purpose.

6. The ld. AR submits that the assessee has no interest to prosecute ground No. 4. Accordingly, the same is dismissed as not pressed.

7. Ground No. 8 raised by the assessee questioning the disallowance of depreciation on goodwill.

8. We note that in assessee's own case for A.Y. 2003-04 in ITA No. 7547/PN/2010 vide order dated 01-01-2016 this Tribunal granted allowance of depreciation on goodwill. For ready reference the relevant portion of the said order in A.Y. 2003-04 is reproduced here-in-below :

> *"14. The next issue raised in the appeal of the assessee is with regard to disallowance of depreciation claimed on goodwill u/s. 32(1)(ii) of the Act. In the case of Commissioner of Income Tax Vs. Smifs Securities Ltd. (supra) one of the question before the Hon'ble Apex Court for adjudication was:*
>
> > *"Whether goodwill is an asset within the meaning of section 32 of the Income Tax Act, 1961, and whether depreciation on goodwill is allowable under the said section?"*
>
> *The Hon'ble Supreme Court of India answered the question in affirmative as under:*
>
> > *"Answer: In the present case, the assessee had claimed deduction of Rs.54,85,430/- as depreciation on goodwill. In the course of hearing, the explanation regarding origin of such goodwill was given as under:*
> >
> > > *"In accordance with Scheme of Amalgamation of YSN Shares & Securities (P) Ltd with Smifs Securities Ltd (duly sanctioned by Hon'ble High Courts of Bombay and Calcutta) with retrospective efect from 1st April, 1998, assets and liabilities of YSN Shares & Securities (P) Ltd were transferred to and vest in the company. In the process goodwill has arisen in the books of the company."*
> >
> > *It was further explained that excess consideration paid by the assessee over the value of net assets acquired of YSN Shares and Securities Private Limited [Amalgamating Company] should be considered as goodwill arising on amalgamation. It was claimed that the extra consideration was paid towards the reputation which the Amalgamating Company was enjoying in order to retain its existing clientele.*
> >
> > *The Assessing Officer held that goodwill was not an asset falling under Explanation 3 to Section 32(1) of the Income Tax Act, 1961 [`Act', for short].*
> > *We quote hereinbelow Explanation 3 to Section 32(1) of the Act:*
> >
> > > *"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, trademarks, licences, franchises or any other business or commercial rights of similar nature."*
> >
> > *Explanation 3 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 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 right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

In the circumstances, we are of the view that `Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act.

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(A)', for short] has come to the conclusion that the authorised 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 assesseeCompany 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.

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.

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

Following the decision rendered in the case of Commissioner of Income Tax Vs. Smifs Securities Ltd. (supra), the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Birla Global Asset Finance Co. Ltd. (supra) and in the case of Toyo Engineering India Limited Vs. The Dy. Commissioner of Income Tax (supra) held that depreciation in respect of intangible assets constituting goodwill is allowable.

15. In view of the law laid down by the Hon'ble Supreme Court of India with respect to claim of depreciation on goodwill, we are of the considered view that the authorities below have erred in disallowing the claim of depreciation on goodwill. Accordingly, ground Nos. 4 to 6 raised in the appeal on this issue is allowed and impugned order is set aside."

9. In the light of the above orders of this Tribunal in assessee's own case for A.Y. 2003-04 it is clear that the allowance of depreciation on goodwill is granted. There was no contrary view placed by the ld. DR before us. Thus, the ground No. 8 raised by the assessee is allowed.

10. Ground No. 9 raised by the assessee questioning the action of AO/TPO in disallowance of depreciation on non-compete fees.

11. We note that in assessee's own case for A.Y. 2003-04 in ITA No. 7547/PN/2010 vide order dated 01-01-2016 this Tribunal granted allowance of depreciation on non-compete fees. For ready reference the relevant portion of the said order in A.Y. 2003-04 is reproduced here-in-below :

> *"12. We have heard the submissions made by the representatives of rival sides and have perused the orders of authorities below. We have also perused the decisions on which the rival sides have placed reliance. The first issue in the appeal of the assessee is disallowance of claim of depreciation on non-compete payment. The Hon'ble Karnataka High Court in the case of Commissioner of Income Tax Vs. Ingersoll Rand International Ind. Ltd. (supra) had occasion to decide this issue. The question before Hon'ble High Court was:*
> *"Whether the Tribunal was correct in holding that non-compete fee being in the nature of capital expenditure, depreciation is to be allowed on the non-compete fee as it constitutes a commercial or a business right under Sec. 32(1)(ii) of the Act?"*
>
> *13. The Hon'ble High Court after considering and discussing various judgments cited by the rival sides held as under:*
>
> > *"7. Section 32 has been widened by the Finance Act No.2 (Act of 1998) whereby depreciation is allowed on intangible assets acquired on or after 1st April 1998. As per Sec.32(1)(ii), depreciation is allowable in respect of know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature. The assets which are included in the definition of intangible assets includes along with other things expressly enumerated, any other business or commercial rights of similar nature. Therefore the expression 'business or commercial rights of similar nature' need not answer the description of know-how, patents, copyrights, trade marks, licences, franchises, but must be of similar nature as the specified assets. The fact that after 'the specified intangible assets', the words 'business or commercial rights of similar nature' have been additionally used, clearly demonstrates that the legislature did not intend to provide for depreciation only in respect of specified intangible assets, but also to other categories of intangible assets which were neither feasible nor possible to exhaustively enumerate. The words 'similar nature' is a significant expression. The Apex Court in the case of Nat Steel Equipment (P.) Ltd. (supra) explaining the meaning of the word 'similar', held that it does not mean identical but it means corresponding to or resembling to in many respects somewhat like or having a general likeness. The statute does not contemplate that goods classified under the words of similar*

description, shall in all respects be the same. If it did, these words would be unnecessary.

8. Therefore what is to be seen is, what are the nature of intangible assets which would constitute business or commercial rights to be eligible for depreciation. In this regard, it is necessary to notice that the intangible assets enumerated in Sec.32 of the Act effectively confer a right upon an assessee for carrying on a business more efficiently by utilizing an available knowledge or by carrying on a business to the exclusion of another assessee. A non-compete right encompasses a right under which one person is prohibited from competing in business with another for a stipulated period. It would be the right of the person to carry on a business in competition but for such agreement of non-compete. Therefore the right acquired under a non-compete agreement is a right for which a valuable consideration is paid. This right is acquired so as to ensure that the recipient of the non-compete fee does not compete in any manner with the business in which he was earlier associated. The object of acquiring a know-how, patents, copyrights, trade marks, licences, franchises is to carry on business against rivals in the same business in a more efficient manner or to put it differently in a best possible manner. The object of entering into a non-compete agreement is also the same ie., to carry on business in a more efficient manner by avoiding competition, atleast for a limited period of time. On payment of non-compete, the payer acquires a bundle of rights such as restricting receiver directly or indirectly participating in a business which is similar to the business being acquired, from directly or indirectly soliciting or influencing clients or customers of the existing business or any other person either not to do business with the person who has acquired the business and paid the non-compete fee or to do business with the person receiving the non-compete fee to do business with a person who is directly or indirectly in competition with the business which is being acquired. The right is acquired for carrying on the business and therefore it is a business right. The word 'commercial'' is defined in Black's Law Dictionary as related to or connected with trade and commerce in general', 'commerce' is defined as 'the exchange of goods, productions or property of any kind; the buying, selling and exchanging of articles'. A right by way of non-compete is acquired essentially for trade and commerce and therefore it will also qualify as a commercial right. A right acquired by way of non-compete can be transferred to any other person in the sense that the acquirer gets the right to enforce the performance of the terms of agreement under which a person is restrained from competing. When a businessman pays money to another businessman for restraining the other businessman from competing with the assessee, he gets a vested right which can be enforced under law and without that, the other businessman can compete with the first businessman. When by payment of non-compete fee, the businessman gets his right what he is practically getting is kind of monopoly to run his-business without bothering about the competition. Generally, non-compete fee is paid for a definite period. The idea is that by that time, the business would stand firmly on its own footing and can sustain later on. This clearly shows that the commercial right comes into existence whenever the assessee makes payment for non-compete fee. Therefore that right which the assessee acquires on payment of non-compete fee confers in him a commercial or a business right which is held to be similar in nature to know-how, patents, copyrights, trade marks, licences, franchises. Therefore the commercial right thus acquired by the assessee unambiguously falls in the category of an 'intangible asset'. Their right to carry on business without competition has an economic interest and money value. The term 'or any other business or

commercial rights of similar nature' has to be interpreted in such a way that it would have some similarities as other assets mentioned in Cl.(b) of Expln.3. Here the doctrine of ejusdem generis would come into operation and therefore the non-compete fee vests a right in the assessee to carry on business without competition which in turn confers a commercial right to carry on business smoothly. When once the expenditure incurred for acquiring the said right is held to be capital in nature, consequently the depreciation provided under Sec.32(1)(ii) is attracted and the assessee would be entitled to the deduction as provided in the said provision i.e., precisely what the Tribunal has held."

[Emphasis applied by us]

In view of the above judgment of Hon'ble High Court it is unambiguously clear that non-compete payment is capital in nature and falls in the category of an intangible asset. Thus, non-compete payment is eligible for depreciation u/s. 32(1)(ii) of the Act. Accordingly, ground nos. 1 to 3 raised in the appeal of the assessee are allowed."

12. In the light of the orders of this Tribunal in assessee's own case for A.Y. 2003-04 it is clear that the allowance of depreciation on non-compete fees is granted. There was no contrary view placed by the ld. DR before us. Thus, the ground No. 9 raised by the assessee is allowed.

13. Ground No. 10 raised by the assessee regarding the disallowance of depreciation on technical know-how and other assets.

14. We note that in assessee's own case for A.Y. 2004-05 in ITA No. 1507/PUN/2012 vide order dated 12-12-2017 this Tribunal granted allowance of depreciation on technical know-how and other assets. For ready reference the relevant portion of the said order in A.Y. 2004-05 is reproduced here-in-below :

"35. Coming to the next stand of the learned Departmental Representative for the Revenue that know-how was owned by ICI India Ltd. and could not be transferred. He pointed out that the CIT(A) in para 6.4.1 at page 31 has held that know-how was not ascertainable. Referring to the definition of slump sale in section 2(42C) of the Act, where the cost of assets were not known, then the steps to be taken. He also referred to the definition of excluded assets which does not include know-how. Referring to para 6.4.5 of CIT(A)"s order, the learned Authorized Representative for the assessee pointed out that business was taken over by the assessee and not the plant

& machinery and plot of land at Panki; hence the know-how had to be taken, otherwise, how the business would go on. In para 6.4.7, the CIT(A) refers to the Toll Agreement and license to be given to ICI India Ltd. to manufacture on assessee‟s behalf. The assessee became the owner of know-how under the BTA and that is how it could give same to ICI India Ltd. under Toll Agreement.

36. The learned Authorized Representative for the assessee distinguished the reliance placed upon by the learned Departmental Representative for the Revenue. He further pointed out that for period of four years after perusing the details given by the assessee, the Assessing Officer was satisfied and no addition was made. In the fourth year, the Commissioner exercised jurisdiction under section 263 of the Act and the CIT(A) thereafter, exercised his jurisdiction in the second year itself. Objecting to the comments of learned Departmental Representative for the Revenue on the report of Ernst & Young Pvt. Ltd., he pointed out that there was due diligence in valuation report. He further pointed out that no fault was found with the Valuer. In respect of reliance of the learned Departmental Representative for the Revenue on the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Nirbheram Deluram (1997) 91 Taxman 181 (SC), the learned Authorized Representative for the assessee in reply pointed out that the Full Bench of Hon‟ble High Court of Delhi in CIT Vs. Sardarilal and Co. (supra) had covered the said decision. He concluded by saying that whether after allocation of value to assets, the balance is taken is know-how or goodwill, there is no difference as the depreciation on same is allowable in the hands of assessee, in view of the decision of the Hon'ble Supreme Court in CIT Vs. Smifs Securities Ltd. (supra).

37. We have heard the rival contentions and perused the record. The assessee was carrying on the manufacturing and sale of catalysts. The worldwide catalysts business of ICI India Ltd. was purchased by Johnson Matheys, consequent to which Business Transfer Agreement (BTA) was entered into on 02.12.2002 for the purchase of catalysts business from ICI India Ltd. as going concern. The assessee claimed that it had acquired goodwill of Rs.10.73 crores from ICI India Ltd. Further, the assessee had also entered into non-compete agreement with ICI India Ltd., under which sum of Rs.3.51 crores was paid. The assessee had claimed depreciation on both the said items on the ground that the same were capital assets. The first such claim was made in assessment year 2003-04. The Assessing Officer denied depreciation claimed on both goodwill and non-compete fees. However, the Tribunal (supra) allowed the claim of assessee. The Assessing Officer following his earlier order denied depreciation on goodwill claimed at Rs.1.49 crores and depreciation on non-compete fees at Rs.81,45,129/- totaling Rs.2.30 crores. The CIT(A) while deciding the appeal for instant assessment year observed that where the entire business was taken over by the assessee as going concern, with all assets and liabilities, there would remain no competition from the seller and hence, so-called payment of non-compete fees at Rs.3.51 crores was nothing but part of composite price paid for acquisition of entire business of ICI India Ltd., which had to be clubbed with total slump sale price of Rs.153.18 crores. The second observations of the CIT(A) was that there was no explicit payment for goodwill as per the BTA and/or the payment towards non-compete fees, hence the assessee was not eligible to claim depreciation on goodwill; since it was not specifically mentioned in the list of intangible assets under section 32(1)(ii) of the Act, which talked about know-how, patents, copyrights, trademarks, license, franchise, etc. Further goodwill was also not covered by the expression „any other business or commercial rights‟ of similar nature. The CIT(A) thus, denied the depreciation on goodwill and non-compete fees. Further, during the appellate proceedings, the CIT(A) issued enhancement notice to the assessee under section 251 of the Act vis-à-vis claim of

depreciation on knowhow, trademark and patents, which was allowed by the Assessing Officer. The objection of CIT(A) was that two-fold that it was neither owned nor used by the assessee and the cost of acquisition of intangible assets was also incorrectly taken for the purpose of depreciation. The CIT(A) thus, show caused as to why sum of Rs.21.93 crores claimed as depreciation on knowhow, trademarks and patents, should not be withdrawn. The basis for making the aforesaid disallowance was that the assessee had not purchased the same as per BTA. Further, there was no material available on record to show that the said know-how had been used for the purpose of assessee"s business. The next objection of CIT(A) in this regard was that where no value was attributed to the land at Panki and Taloja, which were the premises on which ICI India Ltd."s business was being carried out, hence cost of intangible assets was not correctly shown. The explanation of assessee vis-à-vis allocation of no value to the land at Taloja and Panki, as the same were not transferred by ICI India Ltd. and hence, adoption of Nil value, was not accepted by the CIT(A). The CIT(A) elaborately considered the takeover of assets both movable and immovable and the intangible assets and also the trademarks, patents and know-how and held that slump price paid by the assessee at best would take care of the value of the land at Taloja and Panki and hence, no part of it could be attributed to any other asset. Another linked aspect which was taken note of by the CIT(A) was the failure of assessee to file evidences to show that know-how, patents and trademarks, etc. were used for the purpose of business. In this regard, the first plank of observation of CIT(A) was that where the assessee was not new in the line of business of manufacturing catalysts and also where the parent company of assessee was speciality chemical company with its core focus on precious metal, catalyst and fine chemicals, there was no merit in the plea that the purpose for acquiring ICI India Ltd."s business was to acquire know-how, patents and trademarks, etc. He was of the view that acquisition was primarily with a view to increase its market share i.e. of Johnson Matheys. Another linked observation of the CIT(A) was that as per Toll Conversion Agreement (TCA), the business was first purchased from ICI India Ltd. and then given back to ICI India Ltd. for the purpose of manufacturing of its products, was not acceptable. Referring to the terms of BTA, the CIT(A) held that there was no segregation of assets both tangible and intangible in the same. His main plank of decision was the value of assets i.e. lands at Panki and Taloja. After deliberations, he was of the view that the purchase price of Rs.153.18 crores paid by the assessee included consideration paid for the rights in land and hence, after working out the market value of identifiable tangible assets, he was of the view that where the market value of said tangible assets worked out to Rs.231.85 crores as against slump price of Rs.153.18 crores, then no balance amount was left to be allocated to intangible assets. He was of the view that the assessee had not acquired any intangible assets in consolidated slump price of Rs.153.18 crores. Accordingly, he did not accept the working of asset vis-à-vis value allocated to intangible assets including know-how, patents, trademarks, etc. and rejecting the report of the Valuer who was assigned this job of bifurcating value of tangible and intangible assets, the CIT(A) held that the assessee was not eligible for any depreciation on knowhow, trademarks and patents. Accordingly, he made enhancement of Rs.21.93 crores. The second issue for enhancement which was considered by the CIT(A) was the depreciation on assets acquired in the slump sale. He was of the view that as apparent from the terms of BTA, no specific cost was paid by the assessee for purchase of specific assets and the value which was assigned to the assets was merely guess work and at best an estimated cost of particular assets. He was of the view that slump price paid for acquiring bundle of rights / assets could not be apportioned amongst the individual assets for the purpose of depreciation. At best, since the assessee had acquired certain identifiable fixed assets, the value of which was shown in the chart of depreciation, depreciation was allowable

on same. He was of the view that balance value has been accounted for in the books as goodwill, on which the assessee was not entitled to claim of depreciation. Hence, he directed the Assessing Officer to disallow the depreciation on all the assets acquired in slump sale. In this regard, since depreciation on goodwill at Rs.1.59 crores and on non-compete fees at Rs.81,45,129/- was already disallowed by the Assessing Officer, the CIT(A) enhanced the assessment by Rs.24.83 crores in this account. However, since the income was already enhanced by Rs.21.93 crores by disallowing depreciation on know-how, patents and trademarks, further enhancement of assessment was restricted to Rs.2.90 crores."

15. In the light of the orders of this Tribunal in assessee's own case for A.Y. 2004-05 it is clear that the allowance of depreciation on technical know-how and other assets is granted. There was no contrary view placed by the ld. DR before us. Thus, the ground No. 10 raised by the assessee is allowed.

16. In view of our decisions in ground Nos. 8, 9 and 10 in the above paragraphs, the ground Nos. 5, 6 and 7 becomes academic. Hence, requires no adjudication.

17. Ground No. 11 raised by the assessee regarding the short grant of credit of taxes deducted at source.

18. The ld. AR filed details of annual tax statement in Form No. 26AS and prayed to give a direction to the AO/TPO for examination of the same afresh. Upon hearing both the parties, we deem it proper to remand this issue to the file of AO/TPO for fresh adjudication by examining the details provided in Form No. 26AS at Page Nos. 975 and 976 of the paper book and to decide the issue giving an opportunity to the assessee. Thus, ground No. 11 raised by the assessee is allowed for statistical purpose.

19. In view of our decisions in the above paragraphs, the Ground No. 12 is a consequential and we direct the AO/TPO to examine the same.

20. In ground No. 13 the assessee has assailed initiation of penalty proceedings u/s. 271(1)(c) of the Act. Challenge to penalty proceedings at this stage is pre-mature. Accordingly, ground No. 13 raised in the appeal is dismissed.

21. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 30th August, 2021.

Sd/-	Sd/-
(R.S. Syal)	(S.S. Viswanethra Ravi)
VICE PRESIDENT	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2021.
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Dispute Resolution Panel-1, Mumbai
4. The Pr. CIT, Panvel
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune