

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>IT(TP)A No. 2511/Bang/2019</b>
<b>Assessment Year : 2015-16</b>

M/s. Altimetrik India Pvt. Ltd., SY. No. 7(P) & 93(P), Electronics City, Phase II, Industrial Area, Begur Hobli, Bangalore – 560 100. PAN: AABCE2733L	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle 1 (1) (1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sharath Rao, Advocate
Revenue by	:	Shri Pradeep Kumar, CIT (DR)

Date of Hearing	:	08-12-2021
Date of Pronouncement	:	03-02-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against the final assessment order dated 30.10.2019 passed by Ld.DCIT, Circle – 1(1)(1), Bangalore u/s. 143(3) r.w.s. 92CA r.w.s. 144C(5) of the Act for Assessment Year 2015-16 on following grounds of appeal:

*“Based on the facts and circumstances of the case, Altimetrik India Private Limited ("the Appellant"), respectfully submits the following grounds of appeal before your Honours:*

*1. The directions of the Hon'ble Dispute Resolution Panel ("DRP") and the order of the learned Assessing Officer ("AO"), to the extent prejudicial to the Appellant, are bad in law and on facts.*

***2. Disallowance of depreciation on Goodwill***

*2.1. That on the fact and circumstances of the case, the Hon'ble DRP and the learned AO erred in law in*

*disallowing the depreciation on goodwill by placing reliance on the sixth proviso to section 32(1)(ii) of the Income-tax Act, 1961 ("the Act").*

*2.2. The Hon'ble DRP has erred in law in holding that the Appellant's claim of depreciation on Goodwill is not in accordance with the provisions contained in Explanation 7 to section 43(1), read with Explanation 2 to section 43(6)(c) read with sixth proviso to section 32(1)(ii) of the Act.*

*2.3. The Hon'ble DRP and learned AO has erred in not appreciating the fact that the sixth proviso to section 32(1)(ii) has been inserted with the intent to restrict the depreciation allowance on assets to the extent the said assets have been used for the business of the amalgamating company and the amalgamated company.*

*2.4. The Hon'ble DRP and learned AO has erred in not appreciating that a proviso is normally in the nature of a qualification or exception to the main provision to which it is a proviso and therefore it does not wholly nullify the main provision.*

*2.5. The Hon'ble DRP has erred in stating that the Appellant has not furnished any information to prove that the assets said to be acquired are in the nature of business or commercial rights and has not submitted valuation report for valuing the intangible assets ie goodwill, without appreciating the facts of the case.*

*2.6. The Hon'ble DRP erred in not appreciating the fact that the goodwill on amalgamation is nothing but the actual share purchase price paid on purchase of shares from its original shareholders, who were unrelated to the Appellant.*

### **3. Short Grant of credit of taxes deducted at source**

*3.1 The learned AO has erred in granting short credit of tax deducted at source amounting to INR 2,89,74,184.*

*3.2 The learned AO has erred in not granting credit of taxes deducted at source under the PAN of erstwhile Synova Innovative Technology Private Limited now merged with the Appellant.*

*Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Honourable Income Tax Appellate Tribunal to decide this appeal according to law.”*

**2. Brief facts of the case are as under:**

The assessee was incorporated as a private company and is engaged in rendition of Software Development Services. It is noted by the Ld.AO that the *Hon'ble High Court of Karnataka* vide order dated 06<sup>th</sup> November, 2013 approved the amalgamation of Synova Innovative Technologies Private Limited ("Synova India") which was 100% holding company with assessee. In the year of merger, the assessee recorded goodwill of Rs 27,13,05,301, on account of amalgamation.

Pursuant to the merger, goodwill of Rs 27,13,05,301/- was recorded in the financials of the assessee. The computation of goodwill by assessee is as under:

Particulars	Amount in Rs	Remarks
Investment in equity shares		33,13,55,566
Less: Net Assets taken over		
Assets	65,28,50,761	
Less: Liabilities	52,18,16,176	
	13,10,34,585	
Less: Capital issued (equity shares - Rs 1,83,33,340 + preference shares - Rs 5,27,50,780)	7,10,84,120	5,99,50,465
Goodwill on merger		27,13,05,101

On the goodwill recorded on amalgamation, the assessee claimed tax depreciation of Rs 6,08,69,744/- as per the provisions of the

Act. The return was processed under section 143(1) of the Income Tax Act, 1961 ("Act") and was subsequently selected for scrutiny assessment.

**3.** In the draft assessment order the Ld.AO disallowed depreciation claimed by relying on as per proviso to section 32(1)(ii) of the Act. In view of the Ld.AO as per the said proviso, the aggregate deduction in respect of depreciation on goodwill allowable to the assessee ought not to exceed the deduction calculated at the prescribed rates as if amalgamation had not taken place and such deduction ought to have been apportioned between the assessee and Synova India (amalgamating company) in ratio of period of usage of assets.

Aggrieved by the addition proposed in the DOA, the assessee filed its objections before the Dispute Resolution Panel.

**4.** The DRP held that the assessee's claim is not in accordance with the provisions contained in *Explanation 7 to section 43(1) read with Explanation 2 to section 43(6)(c)* of the Act read with sixth proviso to section 32(1) of the Act.

The DRP however considered the submission of the assessee that the disallowance ought to be restricted to Rs 6,08,69,744/- as claimed in the Return of income and directed the Ld.AO to verify the same.

**5.** The Ld.AO passed the final assessment order on 30.10.2019 to give effect to the directions of the DRP. The Ld.AO after verification disallowed the depreciation on goodwill amounting to Rs 6,08,69,744/-.

Aggrieved by the final assessment order, the assessee preferred appeal before this *Tribunal*.

**6.** Before us the Ld.AR contended that the said proviso to section 32 do not apply, as in the present facts it was not a case where the amalgamating company (Synova Innovative Technologies Pvt Ltd) had goodwill as an asset. Goodwill arose in the hands of the assessee company for the first time on account of the merger.

**7.** The Ld.AR submits that the entire proviso stipulates that the depreciation claimed after amalgamation should not exceed the deduction calculated at the prescribed rate in respect of the assets, and the apportionment of depreciation between the amalgamating and amalgamated company can be in the ratio of the number of days for which the assets were used by them.

It is submitted that in the facts of the current case, the intangible asset in the form of goodwill was acquired by the assessee as a capital right on amalgamation and was valued at Rs.27,13,05,301/-.

**8.** He thus submitted that the goodwill arose for the first time in the books of the assessee as a result of the amalgamation. Therefore, the question of apportionment between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them does not arise. He placed reliance on the following decisions in support.

1. *Smifs Securities Ltd. (2012) 348 ITR 302 (SC).*
2. *Aricent Technologies (Holdings) Ltd. [2019] 109 taxmann.com 47 (Delhi -Trib.)*
3. *Mylan Laboratories Ltd. (2020) 113 taxmann.com 6 (Hyderabad-Trib.)*

The Ld.DR placed reliance on the orders passed by authorities below.

The Ld.DR relied on the decision of *Coordinate Bench* of this *Tribunal* in case of *M/s. United Breweries Ltd.* by order dated 30.09.2016.

We have perused the submissions advanced by both sides in the light of records placed before us.

**9.** The decision relied by the Ld.DR does not support the case of revenue for the reason that in the case of *M/s. United Breweries (supra)*, the assessee therein being the United Breweries was an amalgamating company or the transferor company who had goodwill in its books of account prior to the merger and the assessee in the present case is the transferee company who did not have any goodwill in the books of account prior to amalgamation and post amalgamation assessee acquired the goodwill. This aspect has been very well explained in the decision of *Hon'ble Delhi Tribunal* in the case of *Aricent Technologies (Holdings) Ltd. (supra)* as under:

*“60. The DR further emphasized that if the 6th proviso to [section 32](#) (i) is considered the depreciation under this provision is to be restricted to the amount considering that amalgamation has not taken place and since in the hands of the amalgamating companies the depreciation on goodwill would have been zero there cannot be depreciation in the hand of the amalgamated company. In support reliance was placed on the decision of the coordinate bench of the Tribunal Bangalore in ITA No.722, 801 and 1065/ Bang/ 2014. Once again the DR is not appreciating the facts of the case in hand in their true perspective. It has to be understood that there was no goodwill in the books of amalgamating companies and only after the scheme of amalgamation, when the amalgamating companies amalgamated, goodwill came into existence being the difference between the consideration paid by amalgamated company over and*

*above the net asset value of the amalgamating companies. The reliance placed on the judgment of coordinate bench is misplaced in as much as in that case the value of the goodwill in the books of amalgamating company was only Rs.7.45 crores which has been shown by the assessee at Rs.62.30 crores and on this it was held by the appellate authority that the assessee has failed to justify the valuation of goodwill at Rs.62.30 crores. The facts of the case in hand clearly show the valuation of goodwill as per the valuation report and there is no quarrel in so far as the net asset value of the amalgamating companies is concerned.*

*The same has the sanction of the Hon'ble High Court.*

*61. Another argument of the DR is that the assessee has not paid anything for the goodwill acquired in business reconstruction. No consideration can be ascribed to acquisition of goodwill. There was no goodwill before amalgamation. Hence, it is not a case that goodwill has been bought or purchased and therefore, the cost of acquisition of such goodwill in the hands of the assessee should be taken as nil. Once again the DR has erred in not understanding the scheme of amalgamation. In the order of the Hon'ble High Court itself it is clearly mentioned that anything paid over and above the net asset value of the amalgamating companies shall be towards goodwill.*

*62. The DR further referred to the decision relied upon by the counsel in the case of Smifs Securities 348 ITR 302 and stated that the Hon'ble Supreme Court has only laid down the ratio that goodwill is an intangible asset and eligible for depreciation but has nowhere the Hon'ble Supreme Court has given any finding in respect of depreciation on goodwill in the case of amalgamation. We do not find any merit in this contention of the DR. A conspectus reading of the Judgment of the Hon'ble Supreme Court clearly show that the Hon'ble Supreme Court was seized with the facts of amalgamation of one company with the assessee company and has held that the excess consideration paid by it over value of net asset acquired of the amalgamating company amounted to goodwill for which the depreciation was to be allowed. The Hon'ble High Court of Delhi in the case of Hindustan Coca Cola Beverages Private Limited 331 ITR 192 has upheld the findings of the Tribunal that payments made towards business acquired on slum price and a part of the price so paid was allocated to the intangible asset covered under the head goodwill.”*

**10.** *Hon'ble Supreme Court* in the case of *Smifs Securities Ltd. (supra)* while considering an identical issue, held that goodwill arising on amalgamation to be a capital asset eligible for depreciation. The facts in the case of *Smifs Securities Limited (supra)* were similar to that of the present assessee.

The consideration paid by the amalgamated company over and above the net assets of the amalgamating company should be considered as goodwill arising on amalgamation.

**11.** Based on the above, we are of the opinion that the depreciation claimed by the assessee on goodwill acquired deserves to be allowed in accordance with law. Ld.AO is directed to compute depreciation in accordance with the principles laid down in case of *Smifs Securities Ltd. (supra)*.

**Accordingly, ground no. 2 raised by assessee stands allowed.**

**12.** In **Ground no. 3**, the assessee is raising the issue of short credit of tax deducted at source. The Ld.AO is directed to verify and grant credit in accordance with the law.

**Accordingly, ground no. 3 raised by assessee stands allowed.**

**In the result appeal filed by the assessee stands allowed.**

Order pronounced in the open court on 03<sup>rd</sup> February, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 03<sup>rd</sup> February, 2022.  
/MS /



**Copy to:**

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore