

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

BEFORE SHRI R.S. SYAL, VP AND  
SHRI S.S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No. 3030/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Coventya India Private Limited  
Gat No.520 B, Shelkewadi,  
Rihe Andhale Road,  
Ghotawade Mulshi,  
Pune-412 115  
PAN : AAEC5710A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-1(3), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishore Phadke  
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 29.04.2021

घोषणा की तारीख / Date of Pronouncement : 29.04.2021

**आदेश / ORDER**

**PER R.S. SYAL, VP :**

This appeal by the assessee is directed against the order dated 29.09.2017 passed by the ld. CIT(Appeal), Pune-1 in relation to the assessment year 2014-15.

2. The assessee has filed modified grounds of appeal. The only issue raised through the original and modified grounds is the confirmation of

disallowance of depreciation amounting to Rs.2,01,68,047/- on Intangible assets.

3. Succinctly, the facts of the case are that the assessee, during the previous year relevant to the assessment year 2012-13, acquired electroplating business of Chemetall Rai India Ltd. (CRIL) vide agreement dated 15.12.2011 for a total consideration of Rs.11.80 crore including payment towards Intangible assets of Rs.11.51 crores and Tangibles assets amounting to Rs.29 lac. The assessee claimed depreciation of Rs.2,01,68,047/- for the year under consideration in respect of such Intangible assets with opening written down value as on 01.04.2013 as increased by an addition of Rs.1 crore made during the year. The Assessing Officer noticed the break-up of Rs.11.51 crore: Non compete fees of Rs.11,09,00,000/-; Goodwill of Rs.44,10,000/-; Distribution net work rights of Rs.5.50 crore; and Customer list of Rs.4.17 crore. Addition of Rs.1 crore made during the year was in Non compete fees. The Assessing Officer did not find any difficulty in allowing depreciation on Goodwill by relying upon the judgment of the Hon'ble Supreme Court in the case of *CIT Vs. Smifs Securities Ltd. (2012) 348 ITR 302 (SC)*. He, however, held that other items: Non compete fees, Distribution net work rights and Customer list included by the assessee under the head 'Intangible assets' for claiming depreciation u/s.32(1)(ii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were not of the nature as specified in the section. He, therefore, held that no depreciation was eligible on such assets. However, while computing disallowance of depreciation in the computation of total income, he also included amount of depreciation on Goodwill, on which he had principally agreed. The ld. CIT(Appeals) countenanced the view taken by the Assessing

Officer, against which the assessee has come up in appeal before the Tribunal.

4. We have heard the rival contentions through Virtual Court and perused the relevant material on record. It is seen that the assessee entered into agreement with CRIL for acquiring their electroplating business in the previous year relevant to the assessment year 2012-13. Out of the total consideration of Rs.11.80 crore, the assessee paid Rs.11.51 crore towards Non compete fees, Goodwill, Distribution net work rights and Customers list. When the issue of granting depreciation came up for consideration before the Assessing Officer for the first time in the proceedings for the assessment year 2012-13, he disallowed such depreciation. Similar course was followed in the succeeding year as well. The instant assessment year is third year in line. Against the disallowance of depreciation for the immediately two preceding years i.e. 2012-13 and 2013-14, the assessee approached the Tribunal. Vide order dated 17.02.2020 in ITA Nos.974 &975/PUN/2017, a copy of which has been placed on record, the Tribunal allowed depreciation on Intangible assets of Non compete fees, Distribution net work rights and Customer list (depreciation on Goodwill was *suo motu* allowed by the AO). The authorities below have relied on their respective orders for the earlier years, which have been adjudicated by the Tribunal. In absence of any distinguishing facts having been brought to our notice by the Id. DR, respectfully following the precedent, we hold the assessee entitled to depreciation u/s.32(1)(ii) of the Act on the opening written down value of Non compete fees, Distribution of net work rights and Customer list.

5. We have observed that albeit the Assessing Officer, in principle, held the assessee to be entitled to depreciation on goodwill, but inadvertently made

disallowance of depreciation on Goodwill as well. The Hon'ble Supreme Court in *Smifs Securities Ltd. (supra)* has allowed depreciation on goodwill. Respectfully following the same, we direct to allow depreciation on Goodwill also. The impugned order is overturned *pro tanto* resulting into grant of depreciation on opening written down value of the intangible assets.

6. The assessee made an addition of Rs.1 crore during the year under consideration to the Intangible asset of Non compete fees and claimed depreciation thereon also. On a pointed query from the Bench as to the nature of this increase in the value of Non compete fees, the Ld. AR submitted that the assessee, while entering into original agreement with CRIL, agreed for certain more payment in future years on the basis of a formula. The said amount of Rs.1.00 crore was stated to be pursuant to such formulae. However, no calculation in accordance with the formula has been placed on record. In these circumstances, we set aside the impugned order on this score and remit the matter to the file of the Assessing Officer for examining true nature of Rs.1 crore. If the same is found out to be correct in accordance with the terms of the agreement as to the quantum and nature, then deprecation on such additional amount of Rs.1 crore should also be granted. In the otherwise scenario, the AO is free to decide the issue as per law. Needless to say, the assessee will be granted reasonable opportunity of hearing.

7. In the result, appeal is partly allowed.

Order pronounced on 29<sup>th</sup> day of April, 2021

Sd/-  
**S.S. VISWANETHRA RAVI**  
**JUDICIAL MEMBER**

Sd/-  
**R.S. SYAL**  
**VICE-PRESIDENT**

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> April, 2021  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Pune-1
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

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		Date	
1	Draft dictated on	29.04.2021	Sr.PS/PS
2	Draft placed before author	29.04.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		