

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH

**Before Dr. BRR Kumar, Vice President
And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 785/Ahd/2023
Assessment Year 2016-17**

Bakeri Projects Pvt. Ltd. 1 st Sanskrit, Old High Court Road, Off Ashram Road, Ahmedabad Gujarat-380009 PAN: AAGCB1864L (Appellant)	Vs	The DCIT, Circle-1(1)(1) Ahmedabad (Respondent)
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Assessee by: Shri S.N. Soparkar, A.R.
Revenue by: Shri R.P. Rastogi, CIT-D.R.

Date of hearing : 02-09-2025
Date of pronouncement : 10-10-2025

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 11-08-2023 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2016-17.

2. The grounds of appeal are as under:-

“1. The order of the Learned CIT(A) dated 11.08.2023 (hereinafter referred to as the 'impugned order') is cryptic and passed without assigning any reasons.

2. The Learned CIT(A) and AO have erred in disallowing depreciation under Section 32 of the Act on goodwill recognized in the course of amalgamation scheme. The CIT(A) and AO failed to appreciate that goodwill is an asset under Explanation 3(b) to Section 32(1) of the Act.

3. *The Learned CIT(A) and AO have erred in holding that amalgamation is a colourable device through which goodwill has been created by entities of the same group, leading to consequent tax evasion, as no reasons are thereafter discussed for forming this conclusion. Said conclusion is derived only on the of assumptions and presumptions.*

4. *The learned CIT(A) and AO have failed to appreciate that in absence of goodwill forming part of assets in the books of the amalgamating company or in absence of goodwill forming part of block of assets as per tax records of the amalgamating company, Explanation (7) to section 43(1) and Explanation (2) to section 43(6) of the Act are not applicable in case of BPPL Therefore, the Learned CIT(A) has wrongly concluded that learned AO has rightly invoked the 5th Proviso (Now 6 Proviso) of Section 32(1) of the Act. Thus under section: 32 of the Act, depreciation should be allowable to BPPL on actual cost of good will recorded in its books of accounts, being excess of consideration over amount if net assets of BEIPL recorded in books of BPPL, since it reflects the actual cost incurred by BPPL towards goodwill.*

5. *The learned CIT(A) and AO have failed to consider that Goodwill does not indicate mere revaluation of an existing asset. It represents the excess consideration paid by BPPL over net assets of BEIPL taken over by BPPL on account of certain intangible benefits acquired by BPPL on acquisition of BEIPL's business under the Scheme (such as brand, loyal customer base, trust & quality, competent workforce, and decades of experience).*

6. *Initiation of Penalty proceedings under section 274 read with section 271(1)(c) is unjust, unreasonable and therefore, bad in law.*

7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

Total Tax Effect

Rs. 24,03,04,786/-"

3. Bakeri Projects Private Limited ("BPPL") had filed its return of income for AY 2016-17 on 7 October 2016 declaring total loss of Rs. 20,91,35,518. The case was selected for complete scrutiny under CASS and a notice for e-proceeding under section 143(2) was generated and duly served to the appellant. During the course of the assessment proceedings, the appellant filed

detailed submissions before the learned Assessing Officer ("AO") providing all relevant explanation/information sought by AO along with supporting documentary evidences. During the previous year under consideration, BPPL and Bakeri Engineering and Infrastructure Pvt. Ltd ("BEIPL") entered into scheme of arrangement ("the Scheme") for amalgamation of BEIPL with BPPL from appointed date of 1 April 2015 which was duly approved by the Honorable High Court of Gujarat vide order dated 29 October 2015. Pursuant to the Scheme, BPPL issued shares to the shareholders of BEIPL in consideration of net assets of BEIPL based on the valuation report obtained from an independent valuer. The assessee had accounted for the scheme of amalgamation in accordance with Purchase Method as per Accounting Standard 14 "Accounting for Amalgamations" ("AS 14"). As per the accounting treatment pre scribed in the scheme sanctioned by the High Court of Gujarat, the excess of consideration discharged by BPPL (being the shares issued to the shareholders of transferor company, i.e. BEIPL) over amount of net assets of BEIPL was recognised as goodwill in the books of BPPL in compliance with AS-14. Relying on various judicial precedents including that of Supreme Court and Gujarat High Court, assessee claimed depreciation of Rs. 24,03,04,786 under section 32(1)(ii) of the Income-tax Act, 1961 ("the Act") during the year under consideration on the goodwill of Rs. 96,12,19,145 recognized during the course of amalgamation. The AO has disallowed the said depreciation on goodwill at Rs. 24,03,04,786/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The ld. A.R. submitted that the Assessing Officer as well as CIT(A) erred in disallowing depreciation u/s. 32 of the Act on goodwill recognized in the course of amalgamation scheme. The goodwill is an asset under explanation 3(b) to section 32(1) of the Act. The conclusion of the Assessing Officer as well as CIT(A) that amalgamation is a colourable device through which goodwill has been created by entity of the same group leading to consequent tax evasion is not justified as it is based only on the assumptions and presumptions. The ld. A.R. submitted that the Assessing Officer as well as the CIT(A) failed to appreciate that in absence of goodwill forming part of the assets in the books of the amalgamating company or in absence of goodwill forming part of block of assets as per tax records of the amalgamating company Explanation (7) to Section 43(1) and Explanation (2) to Section 43(6) are not applicable in case of the assessee. Thus, the ld. A.R. submitted that the CIT(A) wrongly concluded that the Assessing Officer has rightly invoked the 5th proviso (now 6th proviso) of Section 32(1) of the Act. Under section 32 of the Act, depreciation should be allowable to BPPL on actual cost of goodwill recorded in its books of account, being excess of consideration over amount if net asset of BEIPL recorded in books of BPPL, since it reflects the actual cost incurred by BPPL towards goodwill. The ld. A.R. submitted that goodwill does not indicate mere re-valuation of an existing asset. But it represents the excess consideration paid by BPPL over net asset of BEIPL taken over by BPPL on account of certain intangible benefits acquired by BPPL on acquisition of BEIPL's business under the scheme such as brand, loyal customer base, trust and quality, competent workforce and decades of experience. The ld. A.R. relied upon the various decisions of the Tribunal as follows:

- a. ACIT vs. Intas Pharmaceuticals Ltd, ITA Nos. 281 & 222/Ahd/2021 order dated 21-05-2025
- b. Nirma Limited vs. DCIT, ITA Nos. 2007 & 2008/Ahd/2018 & others order dated 30-06-2025
- c. AIA Engineering Limited vs. ACIT ITA Nos. 397 & 532/Ahd/2024 order dated 21-10-2024
- d. Aculife Healthcare (P.) Ltd. 304/Ahd/2020 Ahmedabad
- e. Aculife Healthcare (P.) Ltd. 155 TC 283 Gujarat
- f. Urmin Marketing (P.) Ltd. 122 TC 40 Ahmedabad
- g. ZyduS Wellness Ltd. 76 TC 328 Ahmedabad
- h. ZyduS Wellness Ltd. 113 TC 154 Supreme Court
- i. Dalmic Power Ltd. 420 ITR 339 Supreme Court
- j. Purbanchal Power Company Ltd. 145 TC 215 Calcutta
- k. Gautam Sarabhai Trust No. 23 81 ITD 677 Ahmedabad
- l. Electrocast Sales India Ltd. 170 ITD 507 Kolkata
- m. TVS Motors Co. Ltd. 128 ITD 47 Chennai
- n. KIFS International LLP 682/Ahd/2023 Ahmedabad

6. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the issue of depreciation is well settled by the Hon'ble Apex Court in case of CIT vs. Smifs Securities Ltd. 348 ITR 302 (SC). The subsequent decisions by various High Courts and Tribunal including of Ahmedabad Tribunal in case of Nirma Ltd. vs. DCIT dated 30-06-2025 has categorically mentioned as follows:-

"6.2 We find that the Bangalore Tribunal in the case of United Breweries Ltd. v. Addl. CIT 76 taxmann.com 103 while appreciating the findings of the Supreme Court in the case of

Smifs Securities Ltd. (supra), held that goodwill acquired at the time of amalgamation is subject to explanation 3 to section 43(1) of the Act and if the Assessing Officer finds that the assessee has claimed excess depreciation by enhancing the cost of goodwill then actual cost of goodwill can be determined only by considering the actual cost of the other assets so acquired under amalgamation. It further held that the assessee company being amalgamated company cannot claim more depreciation on the assets acquired in the scheme of amalgamation than the depreciation which would have been allowable to the amalgamating company in view of the sixth proviso to section 32 of the Act.

6.3 We also find that in the case of *Aditya Birla Nuvo Ltd.*, the Hon'ble High Court of Mumbai has followed Hon'ble Supreme Court in the case of *Smifs Securities Ltd.* In the present case under consideration it is an accepted proposition that goodwill is an intangible asset on which the assessee can claim depreciation. In the case of *Zydus Wellness Centre Ltd. Vs. DCIT*, the ITAT allowed the claim of depreciation on goodwill arising on amalgamation claimed by the assessee during the course of assessment proceedings by filing revised computation of income and without filing revised return of income. In both the cases the authorities have relied upon the judgment of Hon'ble Supreme Court in the case of *Smifs Securities Ltd.* In the case of *Smifs Securities Ltd. (supra)*, paras 4 to 7 read as under.

“4. 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).

6.4 We find that Section 32(1)(ii) 'Goodwill of a Business or Profession' has been specifically excluded from the definition of assets on which depreciation shall be calculated. Explanation 3(b) of Section 32(1): 'Goodwill of a Business or Profession has been specifically excluded from the definition of intangible assets.

The Finance Act, 2021 has amended following provisions of the IT Act:

➤ Section 2(11): Definition of 'Block of Assets' has been amended to specifically provide that 'Goodwill of a Business or Profession'

shall not form part of block of assets comprising of 'Intangible Assets'.

➤ Section 32(1)(ii): 'Goodwill of a Business or Profession' has been specifically excluded from the definition of assets on which depreciation shall be calculated.

➤ Explanation 3(b) of Section 32(1): 'Goodwill of a Business or Profession' has been specifically excluded from the definition of intangible assets.

➤ Section 43(6) (c) (ii): Definition of WDV of the block of assets has been amended to provide that written down value of Goodwill is required to be reduced from the Opening WDV in such cases, where the Goodwill is already forming part of Block of Assets.

➤ Section 50: Computation of capital gains in case of depreciable assets has been amended to provide that where goodwill forms part of block of asset for assessment year 2020-21 and depreciation has been claimed, the written down value of the block and short-term capital gains would be determined in the prescribed manner. Rule 8AC has been prescribed for this purpose.

➤ Section 55: Meaning of 'Cost of Acquisition' in case of Goodwill of Business or Profession has been amended to provide that

- in case it is acquired from a previous owner, the cost would be the amount of purchase price paid.
- in case it is acquired as a result of gift, amalgamation etc. and goodwill was acquired by previous owner, cost will be the cost to the previous owner.
- all other cases-cost will be NIL

6.5 The reasoning given in the Memorandum explaining the Finance Bill, 2021 for excluding goodwill from the ambit of intangible assets is that the actual calculation of depreciation of goodwill is required to be carried out in accordance with various other provision of the Act. Once those provisions are applied, in some situations there could be no depreciation on account of actual cost being zero and the WDV of that asset in the hands of the amalgamating company being zero. It is further stated that goodwill, in general, is not a depreciable asset and it depends upon how the business runs, goodwill may see appreciation and in the alternative no depreciation to its value. Hence, for the said

reasons assesseees have been barred from claiming depreciation on goodwill.

6.6 Since the above amendments are applicable prospectively from the AV 2021-22, the appeal of the assessee on this issue for the AY 2012-13 is hereby allowed based on the judgment of the jurisdictional High Court in the case of Aculife Healthcare Pvt Ltd. (supra) and judgment of Hon'ble Supreme Court in the case of Smifs Securities Ltd. (supra).

In the result, the appeals of the assessee on this ground are allowed.”

Thus, the issue in the present appeal is identical to that of decision in case of Nirma Ltd. (supra) and thus the CIT(A) as well as the Assessing Officer was not right in disallowing the depreciation of goodwill. Hence, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10-10-2025

Sd/-
(Dr. BRR Kumar)
Vice President

Sd/-
(Suchitra Kamble)
Judicial Member

Ahmedabad : Dated 10/10/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद