

TAX FLASH NEWS

16 February 2022

Consideration paid exceeding net assets of the amalgamating company is goodwill, eligible for depreciation

Recently, the Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Altimetrik India Pvt Ltd¹ (the taxpayer) dealt with the eligibility of claim of depreciation on goodwill arising on account of amalgamation. The Tribunal held that 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. The taxpayer is eligible to claim depreciation on such goodwill.

Facts of the case

The taxpayer is engaged in the business of rendition of software development services. During the Assessment Year 2015-16, an amalgamating company which was 100 per cent holding company of the taxpayer was amalgamated with the taxpayer. The Karnataka High Court approved the said amalgamation. Pursuant to the amalgamation, goodwill was recorded in the financials of the taxpayer and depreciation was claimed on the same.

The Assessing Officer (AO) disallowed the depreciation relying on the proviso to Section 32(1)(ii). The AO observed that the aggregate deduction in respect of depreciation on goodwill allowable to the taxpayer 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 taxpayer and amalgamating company in the ratio of period of usage of assets. The Dispute Resolution Panel (DRP) confirmed the order of the AO.

Contentions

The taxpayer relying on various decisions² contended that the goodwill arose for the first time in the books of the taxpayer as a result of the amalgamation. Therefore, the question of apportionment between the amalgamating company and the amalgamated company in the 'asset-usage' ratio does not arise. However, the tax department relied on the decision of United Breweries Ltd³ to disregard the claim of depreciation.

Tribunal decision

The decision relied on by the tax department does not support the case of the tax department for the reason that in the case of United Breweries, the taxpayer was an amalgamating company or the transferor company who had goodwill in its books of account prior to the merger. However, the taxpayer in the present case was the transferee company who did not have any goodwill in the books of account prior to amalgamation and post amalgamation taxpayer acquired the goodwill. This aspect has been very well explained by the Delhi Tribunal in the case of Aricent Technologies (Holdings) Ltd.⁴

The Supreme Court in the case of Smifs Securities Ltd. while dealing with a similar issue held that goodwill arising on amalgamation to be a capital asset eligible for depreciation. The facts in the case of Smifs Securities Limited were similar to that of the taxpayer in the present case. The consideration paid by the amalgamated company over and above the net assets

¹ Altimetrik India Pvt. Ltd. v. DCIT [IT(TP)A No. 2511/Bang/2019] – Taxsutra.com

² CIT v. Smiff Securities Ltd. [2012] 348 ITR 302 (SC), Aricent Technologies (Holdings) Ltd. [2019] 109 taxmann.com 47 (Del), Mylan Laboratories Ltd. [2020] 113 taxmann.com 6 (Hyd)

³ United Breweries Ltd. v. ACIT [ITA No. 722/Bang/2014, AY 2007-08]

⁴ Aricent Technologies (Holdings) Ltd. [2019] 109 taxmann.com 47 (Del)

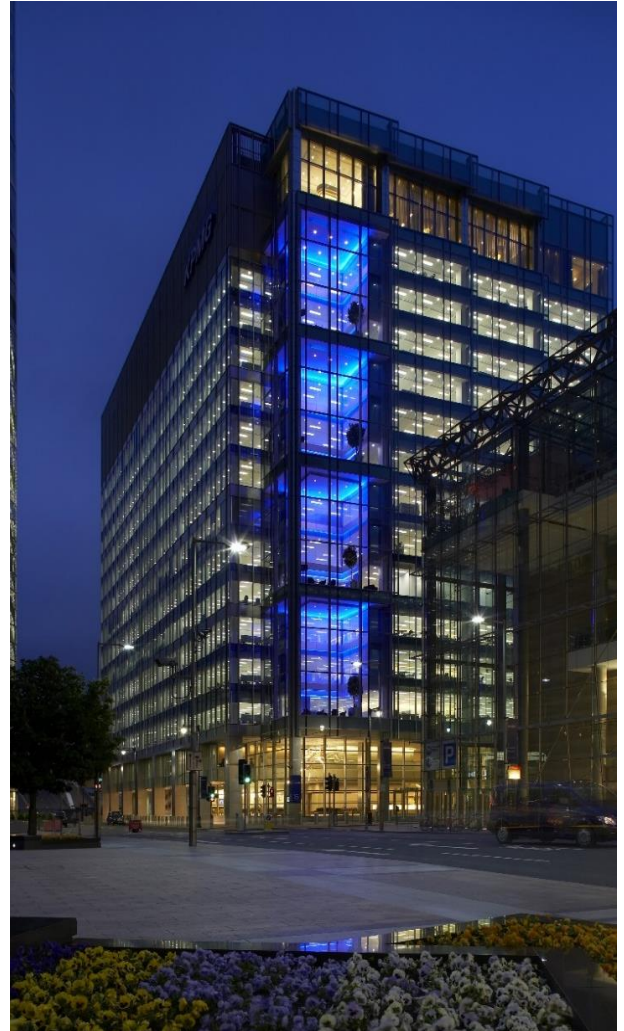
of the amalgamating company should be considered as goodwill arising on amalgamation. Accordingly, the depreciation claimed by the taxpayer on the acquired goodwill was allowed.

Our comments

The allowability of depreciation on goodwill has been a subject matter of debate before the Courts. The Supreme Court, in the case of Smifs Securities Ltd, had held that the goodwill of a business is an intangible asset eligible for depreciation. Subsequently, some of the Courts/Tribunal have allowed depreciation on goodwill.

The Bangalore Tribunal in the present case has held that 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. Accordingly, the depreciation claimed by the taxpayer on the acquired goodwill was allowed.

The Finance Act, 2021 has introduced various amendments under the Income-tax Act, 1961 to exclude 'goodwill of a business or profession' to be classified as a depreciable asset with effect from 1 April 2021.



KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills
Compound, N M Joshi Marg,
Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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