

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.439/Bang/2024
Assessment Years : 2017-18

DN Solutions (India) Private Limited, No.82, Jakkur Village, Yelahanka, Hobli Bangalore-560 064. PAN – AAFCD 7715 F	Vs.	The Income Tax Officer, Ward – 2(1)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ashik Shah & Sri Vinay Jain, CAs
Revenue by	:	Shri Neha Sahay, Addl. CIT (DR)

Date of hearing	:	20.06.2024
Date of Pronouncement	:	24.06.2024

ORDER

PER SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

The present appeal of the assessee is arising from the order passed by the NFAC, Delhi dated 17/01/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1059828155(1) for the assessment year 2017-18.

2. The assessee, M/s DN Solution India Private Limited formerly known as Doosan Machine Tools India Private Limited is a company incorporated on July 05, 2016 and is engaged in the business of trading in parts and spares used in machine tools and other business support service activities.

3. The assessee fled its return of income for year under consideration on 29/11/2017 declaring an income of Rs.18,58,390/-. The case of the assessee was selected for scrutiny after issuing

statutory notices. During the course of assessment proceedings, the AO made 4 additions mentioned as under:-

S.No.	Nature of disallowances	Amount in INR	Grounds of appeal before the Hon'ble Tribunal
1.	Disallowance of depreciation on goodwill	1,20,46,911	Ground No. 2.1 to 2.5
2.	Disallowance of provision for inventory	1,13,63,638	Ground No. 3.1
3.	Disallowance of shared service cost	35,99,999	Ground No. 4.1 to 4.4
4.	Disallowance of legal and professional fees	11,56,754	Ground No. 5.1 to 5.2 – Not Pressed

4. So far as the addition of Rs.1,20,46,911/- i.e disallowance of depreciation on goodwill the AO took a view that assessee is not entitled for depreciation on goodwill because there was no valuation report on the date of transfer of the business. The AO also referred to the business transfer agreement dated 29/07/2016 and held that there is no mention of any good will in that agreement. The Ld AO has also alleged that M/s M/s Doosan Infraacore Construction Equipment India Private Limited (DICEIPL) and the assessee are related parties.

5. The second disallowance made by the AO is the disallowance on account of provisions for warranty. This amount has been disallowed by the AO on the ground that the transactions were between the related parties and hence provisions of 40A(2)(b) are applicable in this case.

6. The third disallowance has been made under the head shared service cost for this the AO observed that the assessee failed to prove the necessity of this high spending on professional and consultancy services in trading business. The AO was of the view that for the allowance of any expenditure one has to see whether services were actually needed for the business.

7. Aggrieved with the order of the AO, the assessee filed appeal before the CIT(A), however remain unsuccessful.

9. Now the assessee has come up before us and has raised total 5 grounds of appeal, which are further divided into sub grounds.

10. At the time of hearing, the Id. Counsel for the assessee did not press ground No.5 i.e. disallowance of legal and professional fees. With respect to ground No.3 and 4 the Id. Counsel for the assessee has averted that the matter may be restored to the file of the AO for examining afresh in the light of some additional evidences filed before us. It is pertinent to observe that assessee filed certain additional evidences, before the Bench under rule 29 of the ITAT vide letter dated 13/05/2024.

11. So far as ground No.2 is concerned i.e. depreciation on goodwill, the contentions of the assessee are that the assessee has taken over the business of (DICEIPL) vide transfer agreement dated 29/07/2016. The assessee submitted that M/s DICEIPL was rendering such services which akin to the assessee's business hence in the interest of business the assessee has purchased the business of the DICEIPL for an amount of Rs.11,93,57,990/-. The counsel for the assessee further pointed out that this purchase consideration was determined on the basis of valuation report obtained and the same was based on discounted cash flow method (DCF). The counsel for the assessee further submitted that the net asset value of the business was 7,04,85,661/- and the excess price amounting to Rs.48187642 was the price for the goodwill and

hence the AO was not correct in disallowing depreciation on goodwill. The counsel for the assessee further argued that the observation of the AO that excess consideration paid to the alleged related company does not pertain to any tangible and intangible asset is factually and legally incorrect. Lastly, the counsel for the assessee drawn the attention of the Bench towards the return of income filed by the DICEIPL for the year under consideration, he drew the attention of Bench to internal pg. 32 of the return of income column 2C, wherein the same amount of Rs.4,85,42,035/- has been shown by the DICEIPL as short term capital gain and it has been accepted by the Department. The Id. Counsel for the assessee relied upon the decision of Bangalore Bench of ITAT in the case of I&B Seeds Pvt. Ltd., Vs. DCIT reported in [2022] 142 taxmann.com 274 and contented that when the revenue has accepted the purchase price in the hands of recipient then it is not legally tenable to disallow in the hands of payee.

12. The Id. DR contended that there were no tangible or intangible assets with the assessee and hence the claim of the assessee i.e depreciation on goodwill is not allowable.

13. After considering the rival submissions, perusing the material on record and case law cited by the Bar, it is observed that the AO has basically gone by the presumption that the share holding pattern of the assessee company and of the seller company DICEIPL is same. It observed that this observation of the AO is factually incorrect as evident from the share holding pattern, submitted by assessee and the same is extracted herein below for the sake of reference:

Shareholding pattern of the Appellant	
Name of the shareholder	Number of shares
Doosan Machine Tools Co Ltd	12,02,579
Doosan Machine Tools Europe GMBH	1
Total	12,02,580
Shareholding pattern of DICEIPL	
Name of the shareholder	Number of shares
Doosan Infracore Co Ltd	45,93,307
Bobcat Corporation, Japan	1
Total	45,93,308

Directors of the Appellant	Directors of DICEIPL
Jong Sik Jun	Mr. Hyoung Hee Choi (w.e.f. February 11, 2016)
Young Sam Kim	Mr. Ki Bong Nam (w.e.f. March 28, 2016)

14. Perusal of the above chart would show that both the parties are not related parties and hence the AO has erred in making adverse comments.

15. The next observation of the AO that there was no intangible asset transferred to the assessee by the seller company is also not correct because law in this regard has already been settled by the Hon'ble Supreme Court in the case of CIT Vs. SIMS securities reported in 348 ITR 302, wherein the Hon'ble Supreme Court has held that excess amount paid over and above to the net asset value would be treated as goodwill. Hon'ble Supreme Court in this case has further held that goodwill is in the nature of any other commercial or business right under the category of intangible assets.

16. We further observe that the recipient company has offered the excess amount as short-term capital gain and the same has been accepted by the Revenue and in such a situation the ratio laid down by the coordinate bench in the case of I&B seeds cited supra squarely applicable to the facts of the present case. The relevant observations of the Bench are as under:-

“13.16 Further, it is also brought to our notice that the department accepted offer of capital gain by the individual assessee who has sold the goodwill i.e. in the case of Praveen Narayan Noojibail for the assessment year 201516, which is evident from the statement of income filed before us. Which is kept on record in assessee's paper book at page no. 65 and also accepted by the AO for the assessment year 2015-16 vide assessment order u/s 143(3) of the Act dated 31-12-2017, which is kept on record in assessee's paper book at page no. 89. Once the department accepted the capital, gain offered by individual assessee in the respective hand, the same transaction cannot be doubted in the hands of purchaser. On this count also, we find force in the argument of Ld, A.R. that AO not established that the main purpose of transfer of such asset was reduction of liability to income tax by claiming extra depreciation on enhanced cost. In order to establish aforesaid fact, it has to be established that apart from claiming additional depreciation on enhanced cost, there is other main purpose for acquiring the asset i.e. goodwill in question. The AO in the instant case wrongly invoked the explanation 3 to section 43 of the Act. Our above decision is also supported by the order of the Tribunal relied by the Ld. A.R. in the case of ACTT v. Dorma India (P.) Ltd., Chennai in [IT Appeal Nos.1664 to 1666 (Chny) of 2019 dated 20-11-2019]. Further, we also place reliance on the judgment of Hon'ble Karnataka High Court in the case of Padinini Products (P) Ltd v. Dy. CIT [2020] 121 taxmann.com 237/[202 I] 277 Taxman 22, wherein similar circumstances Hon'ble High Court has allowed the claim of the assessee.”

15. In view of the above discussion, we are of the view that the authorities below are not correct in disallowing the claim of the assessee on depreciation. We hold accordingly and direct the AO to allow appreciation on goodwill.

16. So far as ground and 3 and 4 are concerned, we restore the issue to the file of the AO for examining afresh in the light of the additional evidences filed before us under Rule 29 of the ITAT Rules,

17. In view of the above ground No.2 of the assessee is allowed and ground Nos. 3 and 4 are allowed for statistical purposes and ground No.5 is dismissed as not pressed.

18. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in court on 24th day of June, 2024

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(SHRI PRAKASH CHAND YADAV)
Judicial Member

Bangalore,
Dated:-24th June, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore