IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT&
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA NO. 7685/MUM/2019	**:**	**A.Y : 2015-16**
ITA NO.925/MUM/2021	**:**	**A.Y : 2016-17**

Culver Max Entertainment Private Limited. (formerly known as Sony Pictures Networks India Private Limited. Interface Building 7, 4th Floor, Off Malad Link Road, Malad (West) Mumbai – 400 064. **PAN :AABCS-1728-D** (Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle -13(2)(2), Mumbai/ National Faceless Assessment Centre, Delhi. (Respondent)

Appellant by : **Shri Percy Pardiwala with**
Shri Nitesh Joshi &
Ms. Mansi Chheda

Respondent by : **Shri Salil Mishra – CIT-DR**

Date of Hearing : **19/02/2024**
Date of Pronouncement : **02/05/2024**

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed these appeals challenging the orders passed by the AO for assessment years 2015-16 and 2016-17 u/s 143(3) r.w.s 144C of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP). Since common issues are urged in both these appeals, they were heard together and are being disposed of by this common order.

2. The facts relating to the assessee are discussed in brief. The assessment orders of both years have been passed in the name of M/s Sony Pictures Networks India P Ltd (SPN India). The name of the assessee company has been subsequently changed into "Culver Max Entertainment Private Limited." Accordingly, this order has been passed by the Tribunal in the

new name of the assessee. However, for the sake of convenience, we continue to refer the name of the assessee as "SPN India", as the said name has been referred to both by the AO and Ld DRP.

3. The assessee SPN India is having a wholly owned subsidiary company named MSM Satellite (Singapore) Pte Ltd (MSM Singapore). In March, 2005 the above said MSM Singapore had purchased a TV channel named "SAB TV" from a company named M/s Shri Adhikari Brothers for cash consideration. At that point of time, the cash consideration paid had exceeded the net asset value taken over by it by Rs.61.14 crores and hence the above said difference amount of Rs.61.14 crores (Rs.611.48 million) was accounted as "Goodwill" by MSM Singapore in its books of account.

4. Subsequently, during the financial year 2014-15 relevant for AY 2015-16, MSM Singapore demerged its broadcasting business and the same was taken over by SPN India, the assessee herein. The Ld A.R submitted that the demerger scheme was sanctioned by Hon'ble Bombay High Court on 10th Jan, 2014 and it came into effect from 01-04-2014. It was submitted that the demerger had no tax implication. Further, no consideration was paid to MSM Singapore for the demerger of broadcasting division, since net assets taken over by the assessee was netted off against the value of investment. The details of the same are given at pages 21 and 22 of assessment order and the same is summarized below:-

Fixed assets	-	10.28	(Rs. In Million)
Computer software	-	34.28	
Goodwill	-	611.48	
Other assets	-	37,180.18	
		37,836.22	
Liabilities		(21,799.91)	
Inter-Company Adjustment		(208.64)	
NET ASSETS		15,827.67	

Net Assets Adjusted as under:-

Reduction in book value of Investments in MSM Sing.	16,260.42
Debit to Securities Premium a/c	(432.75)
Total	15,827.67

The assets taken over by the assessee included "Goodwill" of Rs.61.148 crores. During the year relevant to AY 2015-16, the assessee claimed depreciation on all the assets including on the value of goodwill so taken over by it. It was submitted that goodwill is an intangible asset and accordingly depreciation was claimed thereon. The AO, referring to certain provisions of the Act, took the view that the depreciation could be allowed on the depreciated value of Goodwill only and not on its original value of Rs.61.148 crores. Accordingly, the AO arrived at the WDV of Goodwill as on 1.4.2014 by reducing notional depreciation @ 25% every year since FY 2005-06 (AY 2006-07). Accordingly, the WDV as on 31.03.2014/1.4.2014 was arrived at Rs.6,12,16,735/- and the AO allowed depreciation @ 25% on the above said WDV amount. The assessee had claimed depreciation of Rs.15.29 crores, while the AO has allowed depreciation of Rs.1.53 crores. Accordingly, the AO disallowed the difference amount in depreciation of Rs.13.76 crores. The Ld DRP, however, took the view that the goodwill amount has not been ascertained. The Ld DRP also took the view that the good will amount should be taken as NIL. Even though the ld DRP took the above said view, yet it upheld the disallowance made by the AO, i.e., the depreciation allowed by the AO was not interfered with.

5. The assessee debited its profit and loss account with "Provision for expenses" of Rs.156.38 crores and claimed the same as deduction. The Ld A.R submitted that the said claim of provision for expenses was related to the expenses accrued to the assessee as at the year end, for which payment has not been made. Since the assessee did not deduct TDS from the above

said expenditure so provided for, it voluntarily disallowed 30% of the expenses in accordance with the provisions of sec.40(a)(ia) of the Act. The AO, however, took the view that the provision for expenses created by the assessee are in the nature of unascertained liabilities and accordingly held that entire provision is not allowable as deduction. Accordingly, the AO disallowed remaining portion of 70% also. Since the Ld DRP has confirmed the same, the assessee is challenging the said disallowance also.

6. We shall first take up the issue relating to depreciation claimed on goodwill. We noticed earlier that the broadcasting business of MSM Singapore was demerged and acquired by the assessee. The assets acquired from MSM Singapore included the "Goodwill". In that process, the goodwill that was available with MSM Singapore in its broadcasting business came to be owned by the assessee. The demerger has become effective as on 1.4.2014 and hence the assessee has claimed depreciation on goodwill for the first time in AY 2015-16. Thus, we notice that the goodwill had arisen in the hands of MSM Singapore and the assessee has acquired it by way of acquisition of broadcasting business by way of demerger.

7. We noticed earlier that MSM Singapore had purchased a TV channel named "SAB TV" from Shree Adhikari Brothers in the year 2005 and at that point of time, "Goodwill" was created in its hands, being the difference between the purchase consideration paid and the net asset value. Obviously, the excess payment was made to acquire some intangible rights attached with the business acquired by MSM Singapore. The assessee herein has acquired the assets and liabilities of broadcasting business of MSM Singapore at its book values.The good will had already been accounted for in the year 2005 itself by MSM Singapore.It was stated that the MSM Singapore was sought to be assessed under Indian Income tax Act on the amount received by it as fees for technical services/royalty. There was no occasion to assess the profit earned by it under the head Income from

Business under the Indian Income tax Act. Hence, there was no occasion to claim depreciation u/s 32 of the Act under the Indian Income tax Act.

8. With the above said background, we shall examine the reasons cited by the AO for reducing the claim of depreciation on Goodwill. We notice that the AO has referred to the 6th proviso to sec. 32(1) of the Act and also Explanation 5 given under it to arrive at the conclusion that the depreciation could be allowed on WDV computed by deducting notional depreciation since AY 2006-07.We notice that the 6th proviso to sec. 32(1) is not applicable to the facts of the present case and we explain the same below. The said proviso reads as under:-

> *"Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them."*

A careful perusal of the above said proviso would show that the same is applicable to a case, where demerger has taken place in the middle of the year. In that kind of situation, the depreciation allowable on the assets shall be allocated between the demerged company and resulting company on pro-rata basis in the ratio of number of days for which the assets were used by them. In the instant case, the demerger has taken place as on 1.4.2014.

Hence the assessee herein has used the asset in the form of Goodwill for the whole of the year. Hence the question of allocating the depreciation on pro-rata basis between demerged company and resultant company will not arise in the facts of the present case. Hence, the AO was not correct in law in referring to the 6th proviso to sec.32(1) of the Act. In this regard, the Ld A.R placed his reliance on the decision rendered by Hon'ble Karnataka High Court in the case of M/s Padmini Products P Ltd vs. DCIT (ITA No.154 of 2014 dated 5th October, 2020), wherein it was held that the 6th proviso (earlier 5th proviso) does not apply, if in a particular year there is no aggregate deduction.

9. The AO has also relied upon the Explanation 5 to sec.32(1) and the same reads as under:-

> *"Explanation 5.—For the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income;"*

It states that the provisions of sec.32, which allow depreciation on assets used for the purpose of business, shall apply even if the assessee has not claimed deduction in respect of depreciation in computing his total income. The AO has applied this Explanation 5 in the hands of MSM Singapore and accordingly arrived at the written down value of goodwill as on 1.4.2014 by allowing notional depreciation since AY 2006-07. However, it is the case of the assessee that MSM Singapore is a Singapore based company and it was not assessed under the Indian Income tax Act in respect of its business profits. The Ld A.R stated that the Revenue had initiated assessment proceedings only to assessee certain fees received by MSM Singapore as Fees for Technical Services against which depreciation on goodwill is not allowable. Under these set of facts, there was no occasion for MSM Singapore to compute business income under the Indian Income tax Act and consequently, there was no occasion to avoid depreciation claim. Hence the question of application of Explanation 5 in the hands of MSM Singapore will

not arise at all. Hence, we are of the view that the Explanation 5 referred to by the AO is also not applicable to the present case.

10. We notice that the Ld DRP has referred to certain other provisions also. The Ld DRP has referred to Explanation 7 to sec.43(1) of the Act, which reads as under:-

> *"Explanation 7. - [Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business."*

The above said Explanation 7 is applicable to a case of amalgamation. Identical provision is available in Explanation 7A for cases of demerger and the same reads as under:-

> *"Explanation 7A. - [Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business:"*

Section 43(1) defines the expression "actual cost" for the purpose of Income tax Act. The Explanation 7 and 7A has been inserted in order to ensure that the assessees do not change the cost to their advantage in the cases of amalgamation/demerger. In the instant case, we notice that the MSM Singapore has demerged its broadcasting business and the value of goodwill was not changed at all, i.e., the very same value of goodwill as declared in the books of MSM Singapore was incorporated in the books of the assessee also. In the absence of any modification of value of good will, we are of the view that the Explanation 7A shall not apply in the instant case. Hence the Ld DRP was not right in law in applying the provisions of Explanation 7/7A to sec.43(1) of the Act to the facts of the present case. The Ld DRP also

referred to Explanation 2 to sec.43(6)(c) of the Act. According to this Explanation, if a subsidiary company transfers any block of assets to its holding company and if the conditions specified in sec.47(iv) and (v) are satisfied, then the "actual cost' of assets in the hands of transferee company shall be WDV of block of assets in the hands of transferor company as reduced by the amount of depreciation actually allowed in relation to said preceding previous year. The Ld A.R stated that MSM Singapore has not been allowed depreciation under the Indian Income tax Act on goodwill amount and hence this clause is also not applicable to the facts of the present case.

11. The Ld DRP has also referred to the decision rendered by Bangalore bench of Tribunal in the case of United Breweries Ltd vs. ACIT (2016)(76 taxmann.com 103)(Bang.) The facts available in the above said case would show that the above said assessee has amalgamated three of its Indian subsidiaries with it. Further, the AO had invoked Explanation 3 to sec.43(1), which allowed the AO to determine the "actual cost", if he is satisfied that the main purpose of transfer of asset was the reduction of liability to income tax. Thus, we notice that the facts available in the case of United Breweries Ltd (supra) are completely different. In this case, the assessee has acquired the broadcasting business of its foreign subsidiary. Further, the said acquisition was at the book value as held by the foreign subsidiary. Hence there was no modification of 'cost of assets' and there is no allegation that the main purpose of transfer of asset was the reduction of tax liability. It is an undisputed fact that the said foreign subsidiary had held intangible asset of "Good will" in its books and the same has become the asset of the assessee company. Hence, we are of the view that the decision rendered in the case of United Breweries Ltd (supra) shall not apply to the facts of the present case. The Ld DRP has also observed that the assessee has accounted the residual of consideration as goodwill and hence depreciation cannot be claimed thereon. However, the fact would remain that, it is the MSN Singapore which had accounted the residual

consideration as goodwill and not the assessee. Hence, above said observations of Ld DRP are also against the facts available on record. Accordingly, we are of the view that none of the reasons cited by the AO and ld DRP would justify the reduction of depreciation claimed on the amount of goodwill.

12. The Hon'ble Supreme Court has held in the case of CIT vs. Smiff Securities Ltd (2012)(348 ITR 302)(SC) that good will is eligible for depreciation, since it is in the nature of 'intangible assets". Hence the claim of the assessee is supported by the above said decision rendered by Hon'ble Apex Court. Since, it was submitted that MSM Singapore did not claim depreciation/was not eligible to claim depreciation on goodwill, the Explanation 5 to sec.32(1) will not apply and hence the question of arriving at WDV by allowing notional depreciation will also not arise.

13. In the preceding paragraphs, we have discussed the facts and circumstances of the case and the law governing the allowability of depreciation claimed by the assessee on the amount of Goodwill. With regard to the facts relating to goodwill, it is the submission of the assessee that its subsidiary, viz., MSN Singapore has not claimed/has been allowed depreciation under the Indian Income tax Act. It was also submitted that though the assessment has been carried out in the hands of MSN Singapore in India under Indian Income tax Act, yet the same pertained to royalty/fees for technical services only and there was no occasion to compute business income of the assessee. Since it is submitted that MSN Singapore has not claimed/has been allowed depreciation under the Indian Income tax Act, the depreciation claimed by the assessee on the amount of goodwill should be allowed on its original cost as per the law discussed by us. However, we notice that the above said facts narrated by the assessee are not emanating from the orders passed by the tax authorities, meaning thereby, the tax authorities did not examine the facts submitted by the assessee, which became the foundation in support of the claim of depreciation made by the

assessee. Hence, we are of the view that the facts narrated by the assessee needs to be verified at the end of the assessing officer. Accordingly, we restore this issue to the file of the assessing officer for the limited purpose of verification of the facts relating to depreciation on goodwill claimed by the assessee and in this regard, we give following directions: -

(a) If MSN Singapore has not claimed/has not been notionally allowed depreciation under sec. 32 of Indian Income tax Act for any of the years, then the assessee is eligible to claim depreciation on the cost of goodwill acquired from MSN Singapore by way of demerger.

(b) If MSN Singapore has claimed and/or has been allowed depreciation u/s 32 of Indian Income tax Act for any of the years, then the AO may compute depreciation on goodwill in accordance with the law.

Accordingly, this issue is disposed of.

14. The next issue contested by the assessee relates to the disallowance of Provision for Expenses. As noticed earlier, the assessee had provided for outstanding expenses as at the yearend in books of accounts. Since no TDS was deducted, it voluntarily disallowed 30% of Provision for outstanding expenses u/s 40(a)(ia) of the Act. The AO took the view that the assessee has not established that these expenses are crystallized expenses. He also observed that the assessee did not explain the method of accounting, when the actual expenses exceeded the provision amount. The AO also found fault with the provision made for Agency incentive, Channel placement charges etc. Accordingly, the AO came to the conclusion that the provision for outstanding expenses has been made on adhoc basis and there is no reasonable certainty of incurring expenses. Accordingly, the AO held that the provision for outstanding expenses is disallowable in toto. Since the assessee had disallowed 30% of expenses u/s 40(a)(ia) of the Act, the AO disallowed remaining 70% of the claim.

15. Before Ld DRP, the assessee submitted that it is following mercantile system of accounting and hence it is required to provide for all known expenses. The assessee also explained the methodology for determining the amount of provision for outstanding expenses. It also relied upon following decisions rendered by Hon'ble Supreme Court in order to reiterate its point that the provision for outstanding expenses is an accrued liability and hence allowable as deduction:-

(a) Bharat Earth Movers vs. CIT (2000)(245 ITR 428)(SC)

(b) Calcutta Co Ltd vs. CIT (1959)(37 ITR 1)(SC)

(c) Rotork Controls India P Ltd vs. CIT (2009)(314 ITR 62)(SC)

In view of the above, the Ld DRP called for a remand report from the assessing officer. However, in the remand report, the AO reiterated his earlier findings that the assessee has made provision on adhoc basis, since relevant bills were not received by it. Accordingly, the AO reiterated that the liability has not been crystallized. The Ld DRP also took the view that the assessee has not given any justification for creating provisions and precise basis for its quantification. Accordingly, the Ld DRP confirmed the disallowance made by the AO.

16. We heard rival contentions on this issue and perused the record. The details of provision for outstanding expenses claimed by the assessee are tabulated below:-

Expenditure wise break-up of provisions for expenses subject to disallowance under section 40(a)(ia) (SPNI standalone)

Nature of Expenditure	**Amount (Rs.)**
Channel Placement charges	26,31,73,947
Agency Incentives	55,61,05,380
Marketing Expenses	26,18,29,356
Program Cost	10,89,84,529
General and Administrative Expenses	
Housekeeping Expenses	26,70,314
Repairs & Maintenance	1,87,76,881
Security Charges	2,45,024
Car Hire Charges	25,16,439
Digital Licensing Expenses	87,00,000
Certification Charges	18,00,000
Legal Consultancy charges	97,95,928

Networking Expenses	14,53,500
Other Consultancy expenses	86,39,910
Web maintenance charges	1,13,93,348
Software Development Expenses	20,92,061
Statutory Audit	74,50,000
Miscellaneous Expenses	59,60,206
Total (A)	**1,27,15,86,822**

Expenditure wise break-up of provisions for expenses subject to disallowance under section 40(a)(ia) (MSMD standalone)

Nature of Expenditure	**Amount (Rs.)**
Distributor commission payable	24,77,03,831
Sales & Marketing expenses	1,97,65,382
Travelling expenses	84,24,686
General and Administrative Expenses	
Channel Mapping Fees	28,33,300
Courier Charges	4,50,351
File management charges	25,014
Housekeeping Expenses	3,40,000
Photocopy Charges	87,553
Printing & Stationery Charges	9,63,903
Rent expenses	5,20,937
Repair & Maintenance	17,02,417
Staff welfare expenses	4,27,530
Web hosting expenses	3,09,873
Legal & Professional charges	53,54,031
Payroll administration	30,500
Recruitment consultancy charges	3,00,000
Statutory & Internal Audit Fees	21,00,001
Miscellaneous Expenses	3,80,213
Service charges	5,21,324
Total (B)	**29,22,40,846**

Aggregate amount of (A) +(B) = Rs.156,38,27,668/-

17. There is no dispute with regard to the fact that the assessee is following mercantile system of accounting. Under the said system, it is required to provide for all known expenses and losses as at the yearend. Hence, it is required to make provision for all outstanding expenses and it is a routine exercise followed universally when mercantile system of accounting is followed. Making provision for expenses is based on “accrual”

concept. An accrual is a record of revenue or expenses that have been earned or incurred but have not yet been billed or bills not yet received. This can include things like unpaid invoices for services rendered, or expenses that have been incurred but not yet paid. Accruals are important because they help to ensure that a company's financial statements accurately reflect its true financial position, even if it has not yet received payment for all of the services rendered by it or paid for all of its expenses bills. Hence, in accrual-based accounting, revenue is recognized when it is earned, regardless of when the payment is received. This means that if a company provides a service to a customer in March, but does not receive payment until closure of the year, even then the revenue from that service would be recorded in the month of March itself, when it was earned. Similarly, expenses are recorded when they are incurred, regardless of when they are paid. For example, if a company incurs expenses in March and did not receive bill for the same, yet the amount payable for the said service is accounted for in March itself as outstanding expenses. Even if the exact amount of expenditure is not known, the accounting principle states that provision has to be made on estimated basis.

18. The above discussed accounting concept has been approved by Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT (2000)(245 ITR 428)(SC) as under:-

> "If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. **What should be certain is the incurring of liability.** It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."

The fact that the provision for outstanding expenses may be estimated and need not be accurate was recognized by Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd vs. CIT (2009)(314 ITR 62)(SC) as under:-

> "A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when
>
> (a) an enterprise has a present obligation as a result of past event;
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> (b) it is possible that an outflow of resources will be required to settle the obligation; and
>
> (c) a reliable estimate can be made of the amount of the obligation."

19. In the instant case, we notice that the AO has observed that the relevant bills for the expenses have not been received by the assessee and hence the liability has not crystallized during the year under consideration. Thus, the AO is of the view that the provision for outstanding expenses could be made/claimed only if the relevant bills are received by the assessee andthe payment for the same was not made. The above said observation of the AO is in total contradiction with the accounting principles explained by the Hon'ble Supreme Court in the above said cases. As observed by Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd (supra), what is required to be seen is that "whether the liability to pay the expenses has been incurred or not?". If the said liability has been incurred prior to the closure of the accounting year and if the payment has not been made, then the mercantile system of accounting mandates that the provision for outstanding liability towards expenses should be made. Besides the above, the AO has also made observations casting doubt about the method of accounting the provision for outstanding expenses, their payment etc. In our view, the same is unwarranted. First of all, making provision for known expenses and losses is a routine exercise followed universally, when mercantile system of accounting is followed. As noticed earlier, the amount of provision may be estimated and in a case, where the actual amount of

expenses varies, then the said variation will be accounted for as expenditure or reversal of expenditure in the succeeding year, which practice has also been accepted as a routine one. Next point is that the accounts of the assessee have been audited by the statutory auditors, who usually verify the quantification aspects of provision for outstanding expenses. The Ld A.R took us through the annual report of the assessee, wherein the details of outstanding expenses are given. He also pointed out that the statutory auditors have not qualified the audit report with regard to provision for outstanding expenses, meaning that the statutory auditors were satisfied with the quantification part.

20. The Ld DRP has taken adverse view of the matter, since the provision for outstanding expenses has exceeded the actual expenditure booked for that year, i.e., it was the case of the ld DRP that the assessee should have paid the expenses when the liability has already been incurred. In our view, the approach of Ld DRP is also not in accordance with the accounting principles explained by Hon'ble Supreme Court. What is required to be examined is, whether the relevant liability has been incurred or not. The said liability may pertain to whole of the year also. So long as the liability towards expenses has been incurred by the assessee and if the payment has not been made, then the same has to be provided for in the books, even if it relates to more than one month. For example, it may be usual practice to pay rent for an office premises in the succeeding month. Hence, usually, the March month rent would be paid in the month of April and hence the provision for outstanding rent is made for the month of March, i.e., for one month. It may so happen that the assessee might not have paid rent, say for October to March for some reason. Then the provision for outstanding rent for six months has to be provided for as per the accounting principles, since the liability to pay rent for six months has been incurred. Hence the period for which provision was made is not a relevant factor. Incurring of liability irrespective of duration of period is relevant. Accordingly, the various observations made by Ld DRP, in our view, would fail.

21. In view of the foregoing discussions, we are of the view that the provision for outstanding expenses claimed by the assessee is an ascertained liability only. Accordingly, we are of the view that the Ld DRP was not justified in confirming the disallowance made by the AO. Accordingly, the addition of 70% of expenses amounting to Rs.109,46,79,368/- made by the AO is liable to be deleted. We order accordingly.

22. The assessee has raised grounds with regard to non-granting of TDS to the tune of Rs.8,13,81,645/-. In this regard, the Ld A.R submitted that the TDS credit was not given by the AO for the reason that the TDS certificates are not in the name of assessee, but it was in the name of amalgamated/demerged company. He submitted that the relevant income has already been assessed in the hands of the assessee and hence the TDS deducted out of the said income should be allowed credit in the hands of the assessee. We notice that the co-ordinate benches have directed the AO to allow TDS credit on identical circumstances in the following cases:-

(a) Popular Complex Advisory P Ltd vs. ITO (ITA No.595/Kol/2023 dated 22nd August, 2023)

(b) Adani Gas Ltd vs. ACIT (ITA Nos.2241 & 2516/Ahd/2011 dated 18-01-2016)

(c) Ultratech Cement Ltd vs. DCIT (ITA No.1412/Mum/2018 & others dated 14.12.2021)

In these cases, the co-ordinate benches have held that the resulting company in case of demerger and transferee company in the case of transfer, are eligible to claim TDS credit, even if the TDS certificates are in the name of demerged company/transferor company. In the instant case, the assessee has offered the relevant income, even though the TDS certificates were in the name of amalgamated/demerged company.

Accordingly, following the above said decisions of co-ordinate benches, we direct the AO to allow TDS credit to the assessee after verifying that the relevant income has been assessed by the AO in this year.

23. The next issue relates to charging of interest u/s 234B of the Act. We restore this issue to the file of the AO for computing interest in accordance with law.

24. We shall now take up the appeal filed by the assessee for AY 2016-17. The first issue relates to the disallowance of Provision for outstanding expenses amounting to Rs.170,77,32,390/-. In this year also, the assessee had disallowed 30% of the amount claimed as provision for outstanding expenses, which amounted to Rs.51,23,19,717/-. For identical reasoning discussed in AY 2015-16, the AO treated the provision for outstanding expenses as unascertained liability and accordingly disallowed remaining 70% of the claim, which worked out to Rs.119,54,12,673/-. In this year, the assessee made an alternative submission before the AO. It was stated that the provision made as at the end of one year is reversed on the first day of succeeding year and credited to Profit and Loss account. Thereafter, the expenses shall be accounted for as when the bills are received. It was submitted that the reversal of provision would mean that the same was offered as income in that year. The provision for outstanding expenses claimed in AY 2015-16 was reversed by the assessee in AY 2016-17 and it would mean the same was offered as income. Since the AO had disallowed the provision for outstanding expenses to the tune of Rs.109,46,79,368/- in AY 2015-16, the assessee submitted that the reversal of provision, which was offered as income in AY 2016-17, willlead to double assessment of same income. Accordingly, it was prayed that the reversal of provision relating to AY 2015-16 be reduced from total income. The AO accepted the alternative prayer of the assessee and accordingly reduced the total income by Rs.109,46,79,368/-.

25. In AY 2015-16, we have held that the provision for outstanding expenses should not be disallowed and accordingly deleted the disallowance of Rs.109,46,79,368/- made by the AO. The decision rendered by us in AY 2015-16 is applicable to AY 2016-17 also. Accordingly, we delete the disallowance of Rs.119,54,12,673/-.

26. We noticed that the assessee had reversed the provision for outstanding expenses made in AY 2015-16 in the succeeding AY 2016-17 and accordingly offered the same as income in AY 2016-17. Since the AO had disallowed the provision for outstanding expenses in AY 2015-16, the assessee made an alternative plea before the AO that the income offered in AY 2016-17 by way of reversal of provision for outstanding expenses should be reduced from the total income. Said plea of the assessee was accepted by the AO in AY 2016-16 and accordingly reduced Rs.109,46,79,368/- from the total income. Since we have deleted the disallowance of Provision for outstanding expenses made in AY 2015-16, the reduction of Rs.109,46,79,368/- granted by AO in AY 2016-17 is no longer required. Accordingly, we direct the AO not to reduce the total income by Rs.109,47,79,368/-.

27. The next issue contested by the assessee in AY 2016-17 relates to the reduction of depreciation claimed on Goodwill.The decision rendered by us in AY 2015-16 on this issue shall apply to this year. Accordingly, the depreciation computed by the AO on the WDV by allowing notional depreciation is set aside. Following the decision rendered by us in AY 2015-16, we restore this issue to the file of Assessing Officer for deciding it in accordance with law by taking into account discussions made earlier.

28. The next two issues urged in AY 2016-17, viz., non-granting of credit of self-assessment paid, and charging of interest u/s 234B require verification at the end of Assessing Officer. Accordingly, we restore these two issues to

the file of AO for examining the claim of the assessee in accordance with law.

29. The next issue urged in AY 2016-17 relates to non-granting of TDS credit. In this regard, the Ld A.R submitted that the TDS credit was not given by the AO for the reason that the TDS certificates are not in the name of assessee, but it was in the name of amalgamated/demerged company. He submitted that the relevant income has already been assessed in the hands of the assessee and hence the TDS deducted out of the said income should be allowed credit in the hands of the assessee. We notice that the co-ordinate benches have directed the AO to allow TDS credit on identical circumstances in the following cases:-

(a) Popular Complex Advisory P Ltd vs. ITO (ITA No.595/Kol/2023 dated 22nd August, 2023)

(b) Adani Gas Ltd vs. ACIT (ITA Nos.2241 & 2516/Ahd/2011 dated 18-01-2016)

(c) Ultratech Cement Ltd vs. DCIT (ITA No.1412/Mum/2018 & others dated 14.12.2021)

In these cases, the co-ordinate benches have held that the resulting company in case of demerger and transferee company in the case of transfer, are eligible to claim TDS credit, even if the TDS certificates are in the name of demerged company/transferor company. In the instant case, the assessee has offered the relevant income, even though the TDS certificates were in the name of amalgamated/demerged company. Accordingly, following the above said decisions of co-ordinate benches, we direct the AO to allow TDS credit to the assessee after verifying that the relevant income has been assessed by the AO in this year.

30. The last issue urged by the assessee in AY 2016-17 relates to the claim for allowing deduction of foreign taxes u/s 37(1) of the Act. From the assessment order, we notice that the AO did not discuss this issue at all. The Ld A.R placed his reliance on the following decisions in support of his

contentions that the foreign tax, which is not eligible for double taxation relief, should be allowed as deduction u/s 37(1) of the Act:-

(a) Reliance infrastructure Ltd vs. CIT (2016)(76 taxmann.com 257)(Bom)

(b) Bank of India vs. ACIT (2021)(125 taxmann.com 155)(Mum-Trib)

Accordingly, we restore this issue to the file of the AO with the direction to examine the claim of the assessee in accordance with the decision rendered by Hon'ble Bombay High Court in the above cited case.

31. In the result, both the appeals of the assessee are treated as allowed.

Order pronounced in the open court on 2 May, 2024.

Sd/-	Sd/-
[Justice (Retd) C V Bhadang]	(B.R. Baskaran)
President	Accountant Member

Mumbai, Date : 2 May, 2024

VM.

Copy to :

1) The Appellant
2) The Respondent
3) The PCIT/CIT concerned
4) The D.R, "C" Bench, Mumbai
5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai