

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 5436 & 5437/MUM/2025
Assessment Year: 2018-19 & 2020-21**

DCIT CC-8(2),
Room No. 658, Aayakar Bhavan,
M.K. Road,
Mumbai-400020.

Appellant

Echjay Industries Pvt. Ltd.,
83, Bajaj Bhavan, Bajaj Road,
Nariman Point,
Mumbai-400021.
PAN NO. AAACE 1157 B
Respondent

Assessee by : Mr. N.R. Rao, Adv.
Revenue by : Mr. Ritesh Misra, CIT-DR a/w
Mr. Hemanshu Joshi, Sr. DR

Date of Hearing : 28/10/2025
Date of pronouncement : 30/10/2025

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Revenue are directed against two separate orders, both dated 30.06.2025, passed by the Ld. Commissioner of Income-tax-50, Mumbai [in short 'the Ld. CIT(A)'] for assessment years 2018-19 and 2020-21 respectively. As common issue in dispute is involved in both these appeals, therefore, same were heard together and disposed off by way of this consolidated order for the sake of convenience.



2. Firstly, we take up the appeal for assessment year 2018-19. The grounds reproduced as under:

1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing depreciation u/s 32 of the Income Tax Act, 1961, on the goodwill arising out of a Scheme of Amalgamation approved by the Hon, ble Gujarat High Court, where such goodwill was created solely as a result of accounting adjustments and did not represent any self-generated or independently acquired intangible asset?

2. Whether, in view of the sixth proviso to Section 32(1) of the Income Tax Act, 1961, the assessee being the amalgamated company, was entitled to claim depreciation on goodwill, when the amalgamating companies themselves had not claimed or were not eligible to claim any depreciation on goodwill and therefore, the WDV was nil in their books?

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that goodwill created in the hands of the amalgamated company by virtue of excess consideration over book value of assets/liabilities qualifies as an intangible asset eligible for depreciation, despite there being no goodwill in the books of the amalgamating companies.

4. Whether on the facts and in the circumstances of the case and in law, the claim of depreciation of Rs. 10,71,71,705/ on goodwill amounting to Rs.42,86,86,820/- was allowable to the assessee, particularly when the said goodwill did not have an independent business value or use, and was created merely as an accounting entry without any actual cost incurred or business advantage acquired?

3. Briefly stated, facts of the case are that the assessee company is engaged in the manufacturing of automobile industry products. For the year under consideration, the assessee filed return of income for declaring total income of Rs.113,81,75,360/-. In the said return of income, the assessee claimed depreciation on the goodwill



however in the assessment completed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer disallowed said depreciation and assessed the total income at Rs.1,25,22,14,014/-.

4. Upon appeal, the Ld. CIT(A), after elaborate consideration of the material facts and the law declared by various judicial fora, held that the assessee was entitled to depreciation on goodwill arising out of amalgamation, and accordingly directed the Assessing Officer to grant such allowance. Aggrieved, the Revenue is in appeal by way of raising grounds as reproduced above.

5. We have heard rival submissions of the parties and perused the relevant materials on record. It emerges from the record that pursuant to a duly sanctioned scheme of amalgamation, five companies merged with the assessee. The excess of the consideration paid over the book value of the assets and liabilities so taken over was recognized as goodwill in the books of the assessee. The claim of depreciation on such goodwill was founded upon the authoritative pronouncement of the Hon'ble Supreme Court in *CIT v. Smifs Securities Ltd.* [(2012) 348 ITR 302 (SC)], wherein it was categorically held that goodwill constitutes an "intangible asset" within the meaning of Section 32(1)(ii) of the Act. The Assessing Officer, however, disregarded the said contention. The Ld. CIT(A), on the other hand, after an exhaustive analysis of the facts, accounting treatment, and the governing legal principles, including reliance upon the decision of the Hon'ble Bombay High



Court in *CIT v. Aditya Birla Nuvo Ltd.* [(2017) 246 Taxmann 202 (Bom)], concluded that the assessee was rightly entitled to such depreciation. The relevant observations of the Ld. CIT(A), which merit reproduction, read thus:

“6.18 I have carefully considered the facts of the case, heard the learned A/R on all aspects involved, gone through the documents placed before me by the A/R and the law analysis on facts of each case the Tribunals and Courts have rendered - especially the cases compiled shown in a table given in the Bangalore Tribunal's order in AMD India Private Limited under Paragraph 30.9 of the said order. The following facts observed from the records produced (i) the appellant has followed the legal procedures required for amalgamation of the companies; (ii) the Scheme for amalgamation has been duly sanctioned by the hon'ble Gujarat High Court; (iii) the valuation of assets and liabilities of all the companies have been valued on "Purchase" basis as stipulated by the Accounting Standards laid by the Institute of Chartered Accountants of India; the values of the movable properties have been on the fair market value basis and immovable properties on Government guidance value basis; that the consideration worked out and the ratio in respect of swap of shares were made and approved by the professionals; that upon accounting in effectuating the amalgamation, the consideration value paid was in excess of the value of assets and liabilities taken over; that the transferor companies did not have the "goodwill" in its books of account; that the surplus of consideration over the value of assets taken over at book value by the appellant was treated as 'goodwill' on which the appellant has claimed depreciation, that the appellant has claimed depreciation allowance in the books as well in its Return of income. Almost every decision considered above is in agreement with one aspect that, given the legal procedures for amalgamation followed, the valuation of assets and liabilities are on purchase basis, the assets and liabilities of Transferor companies are taken over on amalgamation by the Transferee company at book value and the consideration paid (by way of share issue by the Transferee company) is surplus over the said book value of the transferor companies which is accounted as goodwill, that such goodwill was not existing with the Transferor companies at the time of amalgamation, the assessee will be entitled to depreciation on such goodwill.



6.19. Further, the hon'ble jurisdictional Bombay High court in the case of *Toyo Engineering India Limited and Aditya Birla Novu Ltd.*, as referred supra also in favour of the appellant.

6.20. In view of the above discussions and humbly following the judicial precedence, I direct the AO to allow depreciation on goodwill. As it is decided in principle that the appellant's claim of depreciation on goodwill is allowable, the Ld. AO is directed to work out the WDV as per law and based on that calculate the depreciation on goodwill and accordingly recompute the total income.”

5.1 In essence, the Ld. CIT(A) found as a matter of record that—
 (i) the amalgamation had been sanctioned by the Hon'ble Gujarat High Court;
 (ii) valuation of assets and liabilities was undertaken on the purchase method in conformity with accounting standards;
 (iii) the surplus consideration over book value was accounted as goodwill not existing in the books of the transferor companies; and
 (iv) depreciation was duly claimed in accordance with law.

5.2 On these premises, the Ld. CIT(A) directed that depreciation be allowed and the total income recomputed accordingly.

6. Before us, the Learned Departmental Representative supported the order of the Assessing Officer but could not dispute that the issue in question stands squarely covered by the judgment of the Hon'ble Jurisdictional High Court in *Aditya Birla Nuvo Ltd.* (supra), which in turn follows the dictum of the Hon'ble Supreme Court in *Smifs Securities Ltd.* (supra).



6.1 We have heard rival submissions of the parties and perused the relevant materials on record. The facts are undisputed, and the legal position is settled. The principle of *stare decisis* obliges judicial discipline; where the jurisdictional High Court has spoken, *subordinate tribunals must bow to its authority*. The ratio of *Smifs Securities Ltd.* (supra) declares, in terms too clear to admit of doubt, that goodwill acquired on amalgamation constitutes an intangible asset eligible for depreciation under Section 32(1)(ii). The Hon'ble Bombay High Court in *Aditya Birla Nuvo Ltd.* (supra) has reaffirmed this position, holding that excess consideration over net assets acquired on amalgamation, being the reflection of commercial reputation and advantage, assumes the character of goodwill.

6.2 As the issue in dispute involved in this case is squarely covered in favour of the assessee by the binding precedent of the Hon'ble Bombay High Court in the case of *Aditya Birla Novu* (supra), accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed.

6.3 In Assessment Year 2020-21, the issue of depreciation on goodwill arising from the same amalgamation stands on identical footing. Following our decision in the present year, we hold *mutatis mutandis* that the claim is allowable and the appeal of the Revenue for that year also fails.



7. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 30/10/2025.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/10/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai