IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 28 OF 2012

Chowgule & Company Private Limited
chowgule House, Mormugao
Harbour, Goa 403803,
Represented through its
Managing Director Vijay chowgule, … Appellant

V e r s u s

Addl. Commissioner of Income-tax
Circle-2, Blessings Pioneer Complex,
3rd floor, Margao Range,
Margao, Goa, 403601. … Respondent

Mr. Mihir Naniwadekar and Ms. V. Palyekar, Advocates for the Appellants.

Ms. Asha Desai, Advocate for the Respondents.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **12th January, 2016**

ORAL JUDGMENT *(Per F. M. Reis, J.)*

Heard Mr. Mihir Naniwadekar, learned Counsel appearing for the Appellants and Ms. Asha Desai, learned Counsel appearing for the Respondents.

2. The above Appeal came to be admitted by an Order dated 26.03.2012 on the following substantial questions of law :

> (1) Whether on the fact and in the circumstances of the case, the Appellate Tribunal is right in disallowing Appellant's claim for depreciation on intangible asset by way of 'Goodwill' representing business and/or commercial rights acquired in the course of amalgamation of a company duly approved by the High Court ?

(2) Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in dismissing the appeal based on incorrect appreciation of facts and law, which could be called perverse ?

3. The learned Counsel appearing for the Appellants, in support of the first substantial question of law, has pointed out that the question as to whether depreciation can be allowed on Goodwill in cases of amalgamation of Companies is no longer resintegra in view of the Judgment of the Apex Court reported in ***[2012] 24 taxmann.com 222 (SC)*** in the case of ***Commissioner of Income-tax, Kolkata vs. Smifs Securities Ltd.*** The learned Counsel has further pointed out that the Tribunal whilst passing the impugned Order has come to the conclusion that there can be no depreciation on account of Goodwill in cases of amalgamation of Companies in terms of Section 32 of the Income-tax Act, 1961. Learned Counsel has thereafter taken us through the said Judgment to pointed out that this finding of the learned Tribunal is erroneous and, as such, on this ground alone, the first substantial question of law is to be answered in favour of the Appellant. Learned Counsel further pointed out that the Tribunal whilst passing the impugned Order has also gone to the extent of holding that in the present case, there was no amount paid on account of Goodwill as, according to him, such finding has been arrived at by misappreciating the evidence on record. Learned Counsel further pointed out that in the subsequent Assessment year 2006-07 of the Appellant, in similar circumstances, the learned Tribunal has come to the conclusion that such amounts were paid and in fact depreciation has been allowed in the subsequent Assessement year. Learned Counsel further pointed out that the said Order passed by the learned Tribunal for the subsequent Assessment year has been

accepted and given effect to by the Revenue Authorities and, as such, it is not open to the Respondents to take a contrary stand as far as the present Appeal is concerned. Learned Counsel has also brought to our notice a Judgment of the Division Bench of this Court dated 30.10.2012 passed in ***Income Tax Appeal (L) No. 1330 of 2012,*** wherein relying upon the Judgment of the Apex Court in the case of ***Commissioner of Income Tax vs. Smifs Securities Limited*** (supra), this Court has remanded the matter to the learned Tribunal to decide the Appeal filed by the Assessee afresh. Learned Counsel, as such, pointed out that the matter may be remanded to the learned Tribunal to decide afresh in the light of the Judgments referred to herein above.

4. On the other hand, Ms. Asha Desai, learned Counsel appearing for the Respondents, has submitted that though the question of law has been answered by the Apex Court, nevertheless, in the facts of the present case, such principles are not applicable. Learned Counsel further pointed out that the learned Tribunal whilst passing the impugned order has come to the conclusion that there was no amount paid towards Goodwill and, as such, the question of seeking depreciation on account of Goodwill in cases of amalgamation of Companies under Section 32 of the Income-Tax Act, 1961, would not arise. Learned Counsel has taken us through the findings of the Tribunal to point out that there was no misappreciation of evidence. Learned Counsel further pointed out that the reliance placed by the Appellants in the Order passed by the learned Tribunal for the subsequent year 2006-07, is not at all acceptable as, according to the learned Counsel, the facts which were available in the present case were not considered by the learned Tribunal whilst passing such Order. Learned Counsel as such pointed

out that the Appeal be rejected.

5. We have given our thoughtful considerations to the rival contentions and we have also gone through the records. On perusal of the Judgment of the Apex Court in the case of ***Commissioner of Income-tax, Kolkata vs. Smifs Securities Ltd.*** (supra), it has been observed at Paras 4 and 5 thus :

> "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).
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> 5. In the circumstances, we are of the view that 'Goodwill'[is an asset under Explanation 3(b) to Section 32(1) of the Act."

6. Taking note of the observations of the Apex Court, we find that the first substantial question of law framed by this Court has to be answered in favour of the Appellant herein. The Apex Court has clearly come to the conclusion that depreciation on Goodwill paid upon amalgamation is a permissible deduction in terms of Section 32 of the Income-tax Act, 1961. Hence, the first substantial question of law is answered accordingly.

7. As far as the second substantial question of law is concerned, taking note of the rival contentions and the Judgments relied upon by the learned Counsel appearing for the Appellants, we find that it would be appropriate in the interest of justice to quash and set aside the impugned Order passed by the learned Tribunal and remand the matter to the learned Tribunal to decide the Appeal preferred by the Appellants afresh in the light of the observations made herein above and the Judgments relied upon by the learned Counsel appearing for the Appellants. The second substantial question of law is answered accordingly.

8. In view of the above, I pass the following :

O R D E R

(i) The Appeal is partly allowed.

(ii) The impugned Order passed by the learned Tribunal dated 24.01.2011 is quashed and set aside.

(iii) The Tax Appeal is restored to the file of the learned Tribunal.

(iv) The learned Tribunal is directed to decide the Appeal afresh in the light of the observations made herein above in accordance with law.

(v) All contentions of the parties are left open.

K. L. WADANE, J. **F. M. REIS, J.**

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