Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2657 OF 2018

Pr. Commissioner Of Income Tax-6 …Appellant

Versus

Franklin Templeton Asset Management(India) Pvt Ltd. …Respondent

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Mr. Akhilesh Kumar Sharma, for the Appellant-Revenue.

Mr. Nishant Thakkar with Mr. Hiten Thakkar, A. Hasan i/b Mint & Confers, for the Respondent.

CORAM: SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

DATED: 1st OCTOBER, 2026.

PC:-

1. Heard Mr. Akhilesh Kumar Sharma, learned Counsel appearing for the Appellant-Revenue. Also heard Mr. Nishant Thakkar, learned Counsel for the Respondent.

2. This Appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for short 'Act of 1961') is directed against the Judgment and Order dated 13th December, 2017, passed by the learned Income Tax Appellate Tribunal ('ITAT') Mumbai, in Income Tax Appeal No.90/Mum/2016 (A.Y.2010-11), dismissing the Appeal filed by the Revenue.

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3. The core controversy involved in this proceeding was pertaining to the question, as to whether, goodwill is an intangible asset eligible for depreciation? The said question has been answered by the learned Tribunal in the following manner.-

> "8. We have heard rival contentions and perused the material available on record. As far as the issue whether goodwill is an intangible asset eligible for depreciation is concerned, it is no more res integra in view of the decisions of Hon'ble Supreme Court in Smifs Securities Ltd. (supra) and catena of decisions of different High Courts including the Hon'ble Jurisdictional High Court as well as different Benches of the Tribunal. In fact, in assessee's own case for assessment year 2005-06, the Tribunal has upheld the entitlement of the assessee to claim depreciation on goodwill. In view of the aforesaid, we uphold the order of the learned Commissioner (Appeals) in allowing assessee's claim of depreciation. However, as could be seen, in assessment year 2005-06 the Tribunal has restored the issue of quantification of depreciation on goodwill to the file of the Assessing Officer for computation. Therefore, we direct the Assessing Officer to allow depreciation on goodwill in the impugned assessment year after the quantification of depreciation on goodwill is made in assessment year 2005-06 as per the direction of the Tribunal. Grounds raised are dismissed."

4. Notwithstanding the same, the Department has preferred this Appeal by projecting the following substantial question of law:-

> "Whether depreciation on goodwill, arising out of amalgamation, without placing a restriction on such deduction as provided in the fifth proviso of Section 32(1) of the Income-tax Act, 1961 is allowable?"

5. Questioning the maintainability of this Appeal, Mr. Thakkar, learned Counsel appearing for the Respondent has argued that the core legal issue involved in this proceeding is settled in view of the previous decision of the Hon'ble Supreme Court rendered in the case of **Commissioner of Income-ax, Kolkata vs. Smifs Securities Ltd.** [1], whereby, the question has been unambiguously answered in the 'Affirmative' and in favour of the assessee. Not only that, Mr. Thakkar, by pointing out the observations made by the learned Tribunal submits that similar view expressed for the assessment year 2005-2006, in the case of the same assessee, has been accepted by the Department. Under such circumstances, submits Mr. Thakkar, the projected substantial question of law does not arise for consideration before this Court.

6. We have examined the material on record and have also carefully considered the arguments addressed by both the sides. In the first place, as has been noted above, the issue which was

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relevant before the learned Tribunal was, as to whether, goodwill is an intangible asset which is eligible for depreciation? The said issue was considered by the Hon'ble Supreme Court in the case of **Smifs Securities Ltd (supra)**, as Question No.[b], which reads as follows:-

> "Question No.[b]: "Whether goodwill is an asset within the meaning of Section 32 of the Income Tax Act, 1961, and whether depreciation on 'goodwill' is allowable under the said Section?"

The question was answered in the following manner:-

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

7. In view of the above, the substantial question of law projected by the Appellant does not survive for consideration by this Court.

8. The substantial questions of law formulated by the learned Departmental Counsel, has apparently been couched in a slightly different form so as to give it the shape of an independent and different substantial question of law which was not involved in the case of **Smifs Securities Ltd (supra).** However, on a careful examination of the same, we find that the question as to whether, depreciation of goodwill arising out of amalgamation without

placing a restriction on such deduction, as provided in the fifth proviso of Section 32(1) of the Act of 1961, was neither categorically raised by the Department nor was the said issue considered by the learned Tribunal. The core issue appears to be the same as has been considered by the Hon'ble Supreme Court in **Smifs Securities Ltd (supra).**

9. Under such circumstances, the Department cannot be permitted to raise an issue for the first time, before this Court, which was never raised before the Tribunal or the CIT(A).

10. For the reasons stated herein-above, we are of the view that there is no substantial question of law arising in this case for consideration by this Court in exercise of Powers conferred under Section 260-A of the Act of 1961.

11. The Appeal is accordingly dismissed.

(GAUTAM A. ANKHAD, J.) **(SUMAN SHYAM, J.)**