IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No.5387/DEL/2024
(Assessment Year: 2021-22)

Janes Defense India LLP, 2nd Floor, Mobius Tower 1, SJR Park, KIADB EPIP, Whitefield Road, Hoodi Village, Begaluru – 560 066.	vs.	DCIT, Circle 28 (1), Delhi.
(PAN :AAPFJ6940H)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY :	Ms. Shashi M. Kapila, Advocate Shri Pravesh Sharma, Advocate Shri Sushil Kumar, Advocate
REVENUE BY :	Shri Dharm Veer Singh, CIT DR

Date of Hearing	:	18.05.2026
Date of Pronouncement	:	31.07.2026

ORDER

PER S.RIFAURRAHMAN, AM:

1. This appeal filed by the assessee is directed against the assessment order dated 27.09.2024 passed by the DCIT, Circle 38 (2), Delhi under section 143(3) read with section 144(C)(13) and 144B of the Income-tax Act, 1961 (for short 'the Act") for Assessment Year 2021-22 pursuant to the directions of the Dispute Resolution Panel u/s 144C (5) of the Act.

2. The only issue raised by the assessee is with regard to goodwill and the grounds raised to this issue are as under :-

> **"Issue for adjudication: Whether the Amortization of Goodwill can be treated as an operating expense for purposes of computation of PLI/ net profile margin when TNMM method is applied.**
>
> **This issue is raised in Grounds of appeal 2, 3 & 4.**
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> Ground 2: The Ld. TPO erred in treating the amortization of goodwill as operating expense for purposes of determination of transfer pricing margin computation.
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> Ground 3: The Ld. TPO erred in ignoring the various to be judicial decisions which have ruled that goodwill being an extraordinary item, hence it must be excluded from operating costs for determining net profit margin.
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> Ground 4: The Ld. TPO erred in making addition of Rs. 6,84,55,772/- on account of amortization of goodwill without considering the fact that the Assessee had already disallowed the said expense in its, computation of taxable income/ Return of income."

3. Brief facts of the case are, Jane's Defense India (LLP) was established in November 2019 as a limited liability partnership engaged in providing IT-enabled services such as data collection, input services, consulting and advisory services, outsourcing services including back-office processing, business process outsourcing. The Assessee had acquired the support service business ("Jackal India") from IHS Global Private Limited through slump sale under Business Transfer Agreement dated March 2, 2020, for which total consideration paid was INR 32,96,95,600 which included premium of INR 6,84,55,772 paid towards goodwill. The case

was selected for scrutiny under CASS in view of the large value of international transactions. The case was referred to the TPO for computing the arm's length price.

4. At the commencement of Transfer Pricing proceeding, the Ld. TPO issued a Show Cause Notice ('SCN') dated 06.10.2023 wherein the TPO has treated the amortization of goodwill as a non-operating expense. During the course of the transfer pricing proceedings, the TPO examined in detail the comparables to determine the net profit margin under TNMM. After detailed examination the TPO determined the net profit margin as per his comparables at 14.89 as against the assessee determined by him at 15%. Thereafter, without giving opportunity to the assessee, the TPO at Paragraph 14.1, the TPO *suo moto* alters his stand and holds that amortization of goodwill is to be treated as an operating expense and makes an addition of Rs.7,23,25,005 alongwith other additions.

5. Aggrieved, the Assessee filed Objections before the Dispute Resolution Panel (DRP). It was pleaded that:

(i) The TPO has erred by treating the amortization goodwill as an operating expense without giving any opportunity to the Assessee / Assessee of presenting his case. This was in complete violation of the *"audi alteram partem"* rule of Natural Justice since this was an erroneous procedure in law, this addition should be deleted. The DPR held that since DRP proceedings were an extension of assessment proceedings, they refused to hold that violation of natural justice was fatal to the TPO s order.

(ii) However, Ld DRP upheld the TPO's position that amortization of goodwill constituted on "operating expenses" for determination of net profit margin under TNMM.

(iii) However, the DRP granted relief on other issues & reduced the addition to Rs. 6,35,45,043/-.

5. Aggrieved, the assessee has filed this appeal before us.

6. At the time of hearing, ld. AR of the assessee submitted as under:-

ii) At the outset it is submitted that the TPO had treated the amortization of goodwill as non-operating expense in the Show Cause Notice dt. 6.10.2023 (See Pgs. 2 & 3 of PB-I)

iii) Thereafter suddenly the TPO suo-moto at the last minute reversed his stand when passing the final order (see para 14.1 of the TPO's order) without advising or giving any opportunity to the Assessee to respond or rebut this stand of the TPO. The TPO simply states that an inadvertent error was made in the SCN dt. 6.10.2023 reads is as follows: as the item of 'amortization of goodwill' was considered as non-operating expense, which is now being treated as an operating expenses. No further reason was given.

Para 14.1 of TPO Order dt. 28.10.2023 (Pg. 144 of AM)

"14.1 While computing margin of the assessee, an inadvertent error was made in the showcause notice as the item "amortization of goodwill" was considered a non-operating expense. It may be mentioned that operating expenses are expenses incurred in the normal course of business. Goodwill is an intangible asset used in the normal

course of business, which is amortised by the assessee and thus, it is part of normal course of business. Thus, it is part of operating expenses."

iv) The above action of the TPO results in a breach of principles of natural justice. (*Please refer to Para 14.1 of TPO Order at Pg. 144 of AM)*, in addition to making double addition on account of treating amortization of goodwill as an operating expense for determining net profit margin when the amortization of goodwill was never claimed as a deductible expense when computing the taxable income.

v) **Double Jeopardy**: it is submitted that the amortization of goodwill as per Companies Act was added back in Computation of Taxable Income. Attention is drawn to **pages 28, 30 & 31** of Paper Book-1, which is the Computation of Taxable Income. The assessee has treated amortization of goodwill as non-operating expense in its return of income. No deduction has been claimed of this amount when computing taxable income. (*Please see (i) computation of income at **Pgs. 27-29 of PB-I** (ii) return of income at **Pgs. 30-31 of PB-I.*** Thus the that amortization of goodwill has been added back to the taxable income and not claimed as a deductible expense for computing taxable income as per provisions of the Income-tax Act, 1961

vi) Thereafter the TPO's act of treating the amortization of goodwill as an *"operating expense"* and making an addition by way of transfer pricing adjustment results in dis-allowance of an item which was never claimed as a deductible expense and results in double jeopardy. This results in double dis-allowance.

vii) It is submitted that the courts of law have uniformly held that amortization of goodwill is a non-routine, non-recurring accounting adjustment, representing part of the purchase consideration. It is not an expense incurred in the regular course of business and is not linked to the operational functioning of the assessee, nor does it constitute an operational expense.

viii) The tax treatment of goodwill has changed overtime. Before 2021: Depreciation of Goodwill was allowed based on Supreme Court rulings. After 2021: the Finance Act of 2021 explicitly removed goodwill from the definition of intangible assets eligible for depreciation.

ix) Rule 10B(1)(e)(i) of the Income Tax Rules 1962 does not mandate inclusion of such non-operating expenses.

"Determination of arm's length price under section 92C.
10B. (1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction or a specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely:—
(e) transactional net margin method, by which,—

(i) the net profit margin realised by the enterprise from an international transaction or a specified domestic transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;"

4. The issue as to whether amortization of goodwill constituted is an operating expenses for determination of PLI under TNMM for determination of net profit margin has been the subject matter of judicial examination by courts of law.

The following judgments have consistently ruled that the amortization of goodwill is a non-operating expense for Transfer Pricing Purpose.

1. DHR Holding India Pvt Ltd [2021] 133 Taxmann.com 519 (Del. Trib) (See Pgs. 36, 37, 38 para 15 to 24)

2. ST-Ericsson India Pvt. Ltd. vs. DCIT (ITA No. 609/Del./2015) (See Pgs. 52 & 53)

3. Continental Automotive Components (India) Pvt. Ltd. vs. ACIT [2022] 139 Taxmannn.com 187 (Bang Trib) (See Pgs. 103 & 117, 118 Para 41 to 45)

4. TE Connectivity Services India Private Ltd (IT(TP)A No. 300/Bang/2021) (See Pgs. 152 & 153 Para 23 & 24)

5. Hitachi Solutions India Pvt. Ltd. IT TPA No. 17/Chny/2025 Dt. 6.6.2025 (See Pgs. 215 to 219 Para 13 to 22)

In all the above judgments, the courts have ruled that amortization of goodwill (arising out of merger) is a non operating expenditure for purposes of computing the net profit margins of the assessee under TNMM. The latest judgment on the subject is Hitachi Solutions dt. 6.6.2025. The following extract sums the issue in detail: **(See. Pg. 215 to 219/PB-1)**:-

"Amortization of goodwill (arising out of merger) to be considered as a non-operating expense while computing operating margins of the assessee(Ground no 3.6 and 3.10):

"5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The goodwill is an intangible asset which arises to an assessee either by way of acquisition of any company or self-generated by the assessee by considering its intangible like technical know-how, trade mark, patent etc. Further, all assessees do not have goodwill in their books of account. because it arises only in very few instances as stated by us in earlier part of this order and thus, definitely it is in the nature of extraordinary item which cannot be considered as part of operating cost of the assessee. Further, it cannot be said that amortization of goodwill does having bearing on operations of the assessee. Therefore, we are of the considered view that the Assessing Officer has erred in considering amortization of goodwill as operating in nature for the purpose of computing margin of the assessee to determine arms' length price of international transactions."

- *Hospira Healthcare India Pvt. Ltd [ITA No.469/Chny/2017] (page 31 & 32 of the legal PB)*

"10.3 We have considered the rival arguments and perused the TP documents. We agree with assessee submission that amortization of goodwill is an abnormal item arising out of business acquisition

and therefore not part of operating expenditure. The Ld AO/TPO in A.Y 2011-12 has allowed the assessee's claim of adjustment on account of amortization. The Ld AO/TPO are accordingly, directed to grant adjustment of amortization of goodwill by excluding from operating expenditure."

- *DIAB Core Materials Pvt. Ltd [ITA No.2176/Chny/2017] (page 60 & 62 of legal*

- *Ametek Instruments India Pvt. Ltd [IT(TP)A No.398/Bang/2016] (page 76 of legal PB)*

21. Per contra the Ld. DR relied on the orders of the AO and that of ld.CIT(A).

22. We have heard the rival contentions perused the material available on recordand gone through the orders of the authorities along with submissions and case laws relied upon by both the parties. The present dispute is covered by the various courts and tribunals by holding it as amortization of goodwill is an abnormal item arising out of business acquisition and therefore not part of operating expenditure. Considering the present facts and judicial precedents as discussed supra, we direct the AO/TPO to grant adjustment of amortization of goodwill by excluding from operating expenditure by allowing the related grounds of appeal of the assessee."

5. Thus from all the judgments cited above it is obvious that the courts have uniformly held that amortization of goodwill does not constitute operational expenditure for determination of PLI.

Once this plea of the Assessee is accepted the net profit operating margin falls within the range of the arms length price and no further transfer pricing adjustment is warranted in law.

6. On the other hand, ld. DR of the Revenue submitted as under :-

" During the course of hearing in respect of above-mentioned appeal, detailed arguments were made by the undersigned contending that in light of facts of the instant case, depreciation/amortization amount in respect of Goodwill will constitute an operating expenditure and the same needs to be taken into consideration for the purpose of computing Profit Level Indicator (PLI) i.e. OP/OC for the assessee. During the course of hearing, the undersigned had submitted copy of Transfer Pricing Study Report (TPSR) and Financial Statements. The Hon'ble Bench had allowed for filing of written submissions subsequent to the hearing. Accordingly, following submission is being made, which may kindly be taken into consideration for the purpose of deciding the instant appeal, in addition to and without prejudice to the detailed arguments made during the course of hearing.

1. From perusal of Financial Statement of the assessee (page 14,15 & 22 of Paper Book-l filed by the assessee) for A.Y. 2021-22, it is evident that 'Goodwill' forms part of balance sheet as an 'Intangible Asset'. Further, depreciation on such 'Goodwill' has been debited to the Profit &Loss A/c by the assessee itself. Thus, the- assessee itself has accounted for Goodwill and depreciation on the same as asset and expense respectively in its financial statements.

2. Contention of the assessee that the depreciation on Goodwill has been added back while computing total income under normal provisions of the I.T. Act cannot be considered as a relevant factor for determination of Arms Length Price (ALP) under Chapter- X of the Act, which deals with special provisions relating to avoidance of tax on account of International Transactions. Transfer Pricing provisions under Chapter-X of the Act are special provisions and constitute self- contained code for specific purpose of determination of ALP as held in catena of judgements and these provisions have overriding effect over general provisions of the Act. Accordingly, determination of ALP for the international transaction in question has to be made in accordance with provisions of Chapter-X of the Act read with relevant I.T. Rules.

3. Contrary to claim of the assessee, depreciation on amortization of Goodwill is recurring in nature and hence, as per the OECD transfer pricing guideline too, the same should be considered as being operating in nature. Exclusion of amortization of Goodwill is not explicitly prescribed in such guidelines.

4. As depreciation is part of EBIT, the same should be considered as operating for the purpose of PLI computation.

5. Goodwill has been recognised as an Asset by the assessee in its Balance Sheet. Transfer Pricing Provisions under Indian Laws provide for taking into consideration FAR i.e. Functions, Assets deployed & Risk assumed in respect of the tested party and comparables for the purpose of benchmarking/determination of ALP. From perusal of summary of FAR analysis given on page 23 (Para 5.3, Table-9) of Transfer Pricing Study Report (TPSR) with regard to ITES (IT Enabled Services) and such FAR analysis with regard to BSS (Business Support Services) given on page 29 (Para-5.5, Table-H) of TPSR, it is evident that the assessee itself has considered the 'Intangibles' as part of Assets employed for carrying out functions relating to ITES and BSS segments. As per Balance sheet (refer to Note -9 to the B/S), the only intangible asset available with the assessee is 'Goodwill'. Thus, Goodwill is being employed and playing an active role in business of the assessee as a Intangible Asset. Since assessee itself has treated the intangibles i.e. Goodwill as having been employed in respect of international transactions of the nature of ITES and BSS, there does not remain any basis for selectively excluding depreciation/amount of amortization in respect of Goodwill for purpose of computing Operating Cost (OC) for computing PLI (i.e. OP/OC) for determination of ALP for international transactions.

6. It is noteworthy that Annexure-III (a), Annexure-IV & Annexure- V of TPSR clearly shows that no adjustment has been made by the assessee to PLI of the comparables by way of exclusion of depreciation on intangible assets held by comparables. Further, no study has been carried out and no filter has been used by the assessee to choose only those comparables, which did not have any intangible asset of the nature of Goodwill. Page 34 & 35 of TPSR (Para-6.3) also substantiate that there is no adjustment to profit margins i.e. PLI of comparables made by the assessee on account of depreciation/amortization of Goodwill as in the TPSR, the assessee has mentioned only about working Capital Adjustment and Risk Adjustment only in the said paragraphs. In the case of Citrix Systems India Private Limited vide IT(TP)A No.2513lBang/2019, the Hon'ble ITAT Bangalore had opined that "There should not be any doubt that, while computing "Operating Cost", a uniform practice should be followed for all the comparable companies".

In light of the same, there was no basis or justification available with the assessee to exclude depreciation/amortisation in respect of

Goodwill for determination of PLI in the case of assessee i.e. the tested party. It also shows that assessee is adopting contradictory approach in respect of itself and comparables.

7. It is pertinent to note that intangible assets like trademark, license, Goodwill etc. play similar or even higher level of role in revenue generation and profit earning in a business as tangible assets like plant and machinery, computers etc. play. Thus, intangible assets just like other fixed assets have twin impact on business operations and financials of an entity. On the Revenue side, intangible assets help in generation of higher revenue and profit, which has the effect of increase in PLI. On the expenditure side, intangible assets are cost to be business and accordingly, accounted for by way of depreciation or amortisation, which has the effect of reducing PLI. In such a scenario, excluding depreciation or amortisation in respect of an intangible like Goodwill just from expenditure side cannot be allowed as the impact of such intangible on revenue side is not getting excluded. As per assessee's submission, Goodwill had arisen as a result acquisition of a business on slump sale basis under Business Transfer Agreement. Such acquisitions, which lead to recognition of goodwill in the books of account, creates synergy and are undertaken when they are considered contributing positively to the existing business and benefits outweigh the cost. Thus, similar to any other tangible or intangible asset, intangible asset of Goodwill and its use for the business purposes will be having positive impact on revenue earned of an assessee leading to improved PLI. In other words, increase in expenditure on account of depreciation on Goodwill for a business entity will get set off by increase in Revenue due to presence of such Goodwill in a market economy. In such a situation, excluding depreciation on Goodwill from the expenditure side alone without making any corresponding downward adjustment to the Revenue will provide distorted result and distorted PLI i.e. OP/OC. Whole effort of the assessee is to artificially increase its PLI (OP/OC) by reducing the Operating Cost by way of excluding depreciation on Goodwill as it would prove to be beneficial to the assessee (tested party) during exercise of ALP determination without appreciating that assessee already has benefit of higher PLI on account of positive impact of Goodwill on profit and revenue side. The assessee cannot be allowed pick and choose approach, which is in contradiction to accounting principles and business principles.

8. In case, contention of the assessee is accepted, it will lead to exclusion of depreciation/amortisation amount in respect of Goodwill from operating cost not only for current year, but also for many subsequent years. At the same time, Goodwill generated as a result of purchase of another business will keep benefitting the assessee resulting in higher PLI and this benefit will keep increasing more and more with passage of time. It would lead to unlawful benefit to the assessee in ALP determination exercise over a period of time.

9. Reliance is placed upon decision dated 06.09.2029 of Hon'ble ITAT, Pune in the case of Nalco Water India Limited Vs. ACIT (ITA No. 742IPUN/20217), which supports of the case of Revenue on this point. Relevant part of said decision is reproduced here in under:

> 15. We have heard the rival contentions and perused the record. The issue arising by way of ground of appeal No.2 is against treatment of subvention / subsidy received by assessee from its parent company Nalco, USA. The second issue which is raised on without prejudice basis vide ground of appeal No. 11 is whether the said subvention amount is operating in nature and the same has to be includable as receipt in the hands of assessee while computing PLI for the year under consideration. The assessee was a subsidiary of Nalco, USA and since it was incurring losses, the parent company allowed promotional allowance to prevent the assessee from becoming sick company. This is evident from the Memo placed at page 139 of Paper Book and also from consequential Memo for approval of subvention and relevant e-mails and relevant documents thereto. The assessee received sum of (Rs.65,19,47,000/- towards subvention. The assessee had offered the said amount as taxable in its hands initially but before the DRP, it was pleaded that the same was not taxable in its hands. The issue vis-a-vis its taxability i. e. receipt of subvention from parent company now stands settled by recent decision of Hon'ble Supreme Court in Siemens Public Communication Network (P.) Ltd. Vs. CIT (supra). The Hon'ble Supreme Court had held that voluntary payments made by parent company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of assessee company. It was further held that if that is so, then the payment in

question could not be held to be revenue receipts, hence they were capital receipts in the hands of assessee. Similar proposition has been laid down by the Hon"ble High Court of Kolkata and Hon"ble Delhi High Court in different decisions.

16. Applying the said proposition to the facts of present case, where the assessee had received the alleged subvention amount or the subsidy as referred to by the Assessing Officer / TPO / DRP, the amount received by assessee from its parent company Nalco, USA was a capital receipt in the hands of assessee and hence, was not taxable in its hands.

17. Coming to the next aspect of treatment of said amount while determining the PLI of assessee, the assessee claims that the amount is to be taken as operating income since the said receipt was to make good losses incurred by assessee in earlier years and also current year. The assessee has time and again stressed that taxability of receipt under the Income Tax Act cannot affect the calculation '0/ operating margins 0/ assessee, as the amount which had been received was during the course of its business i.e. preventing the assessee from going into losses, hence the re-computation of PLI in the hands of assessee.

18. The first question which arises is whether the capital receipt in the hands of assessee can be held to be operating in nature. While deciding the said aspect as to whether Nalco, USA had granted the assessee a onetime promotional allowance in order to save it from becoming sick, this aspect is to be seen from the fact that during the year under consideration the assessee had booked losses of Rs.63.16 crores in its Profit and Loss Account. Once the subsidy of Rs.65.19 crores was credited, there was profit of Rs.2.03 crores. In other words, profit during the year was attributable to subvention amount of Rs.65.19 crores and hence, it cannot be held that the amount was not operational in nature. The item of receipt was undoubtedly, an exceptional item of income but was not an extraordinary item of income. The assessee was also compensated for additional revenue expenses incurred by it for transferring its establishment from Kolkata to Pune and then running the same at Pune. Such onetime payment received by assessee is thus,

> operating in nature. The learned Authorized Representative for the assessee had pointed out that the subvention amount related to two years. We hold that amount relatable to the year, need to be considered for computing PLI of the assessee. We direct the Assessing Officer to carry out the said exercise. As far as reliance on the decision of Mumbai Bench of Tribunal in the case of UPS Jetair Express Pvt. Ltd. (supra) is concerned, wherein the proposition laid down was since the subvention income had been offered to tax, then the same would be available to the assessee for set off against TP adjustment proposed by TPO. The said proposition will not be applicable to the issue raised before us since the Hon'ble Apex Court has decided the taxability of subvention income to be capital in nature and hence, the said income is not taxable in the hands of assessee and same would not be available as set off as against TP adjustment made by Assessing Officer/TPO. Accordingly, there is no merit in the directions of DRP in this regard. We in the final analysis hold that subvention income is capital receipt in the hands of assessee, hence not taxable. Further, we hold that the said subvention amount is operating in nature and has to be included as operating income while computing PLI in the hands of assessee restricted to the amount relatable to the instant assessment year. Thus, ground of appeal No.2 raised by assessee against taxability of subvention income is allowed and ground of appeal No.2 also stands allowed in favour of assessee. " (Emphasis supplied)

In above case of Nalco, Hon'ble Tribunal had held that subsidy amount/subvention amount received by the assessee from its AE was to be considered as operating in nature and thus, needed to be taken into consideration for PLI, even though such amount was a capital receipt and not taxable under normal provisions. Thus, as per ration of this decision, there is no correlation between taxability of a receipt or expenditure under non- TP provisions i.e. normal provisions and consideration or non -consideration of such receipt or expenditure for computing PLI under TP Provisions. In case of Nalco, a receipt which was held to be non-taxable under normal provisions was held to be fit for being considered for computing PLI under TP provisions. Similarly, an item of expenditure (depreciation on Goodwill in the instant case) which is not allowable as deduction under normal provisions of the Act can be eligible for being considered for the purpose of computation of PLI under TP provisions. The ration emerging from above decision is that computation of income under normal provisions and under TP provisions operate under different realms for the reasons discussed in earlier paragraphs. Therefore, contention of the Assessee that depreciation/amortisation amount in respect of Goodwill cannot be taken into consideration for computing PLI under TP provisions in its case just because the said deprecation/amortisation amount was not claimed as deduction under normal (non- TP) provisions of the Act deserves to be rejected. Here, it would be useful to mention that as per amended provisions of the I.T. Act vide Finance Act, 2021, depreciation on Goodwill is not an allowable deduction under normal provisions of the LT. Act w.e.f. 01.04.2021 i.e. A.Y. 2020-21. The amount of deprecation on Goodwill had to be offered for tax by the assessee due to such amended provisions.

Secondly, in the case of Nalco, facts indicate that issue of receipt of the subsidy /subvention amount was not recurring in nature and was kind of one time event. Still, Hon'ble Tribunal treated the said receipt as operating in nature. Whereas, in the instant case, deprecation or amortization of Goodwill would appear in profit and loss account of the assessee year after year and is recurring in nature. Thus, facts of the instant case of the assessee stand on much better footing than those in the case of Nalco for the purpose of holding that deprecation or amortization of Goodwill will be operating in nature.

Moreover, Depreciation by its very nature is considered operating in nature. There is no justification for drawing any artificial difference between depreciation on Goodwill and depreciation on other assets, particularly when both kind of assets play their respective roles in business operations of an assessee.

10. The case laws relied upon by the assessee are not of any kind of help to the assessee as they are distinguishable on facts from the case of the assessee and findings of Hon'ble Tribunal in those cases are based on specific facts of those cases. These case laws do not lay down any preposition of law that the depreciation on/amortisation of Goodwill is a non-operating expense as findings are specific to facts of respective cases. Further, none of the decisions relied by the assessee is having fact similar to the case of the assessee on the point that in its TPSR, the assessee itself has categorically admitted that Goodwill in form of Intangible Asset is employed for business operations both in ITES and BSS segments.

In particular, decisions of Hon'ble ITAT, Delhi relied upon by the assessee are discussed here in under in detail:

10.1 In the case of DHR Holding India Pvt. Ltd, [2021] 133 Taxmann.com 519 (Delhi-Trib.), The Hon'ble Tribunal has mainly relied upon the fact that in subsequent A.Ys, the TPO had considered amortization of Goodwill and non-compete fees as non-operating expenses. It was, in light of such peculiar facts that Hon'ble Tribunal in para 23 of its order had held that "we don't find any merit in considering them as part of operating expenses for the year under consideration when the facts are same". (Para 23 of the ITAT order).

10.2 In the case of ST-Ericsson India (P.)Ltd. (ITA 609/De1/2015), the hon'ble Tribunal had noted that Ld. DRP itself had treated amortization of Goodwill as non-operating expense in subsequent Assessment years. The assessee in that case was allowed relief on this basis. (Para 16 of ITAT order). On this point, facts of the instant case are distinguishable and hence, decision in case of ST -Ericsson cannot be of any help to the assessee.

10.3 The case of Imsofer Manufacturing India Pvt. Ltd (2020), 121 Taxmann.com 209 (Delhi- Trib) relied upon by the Assessee did not deal with the issue of amortization of Goodwill at all. The issue involved in that case was of impairment of the assets, and as noted by the Hon'ble Tribunal, the same was not recurring in nature. In fact, in that case, Hon'ble Tribunal observed that "in our considered opinion a provision for impairment of assets is not a depreciation charge nor amortisation of fixed assets but it is a provision made to the earring amount of the fixed assets which is reversible in nature". This observation of hon'ble Tribunal shows that impairment of asset was put on a different footing vis-a-vis depreciation or amortisation of fixed assets. In fact, this particular observation of the Hon'ble ITAT, Delhi in a way supports the case of the Revenue that deprecation or amortisation of fixed assets need to be treated as operating in nature.

10.4 In the case of Hitachi Solutions India Pvt. Ltd, IT(TP) A No. 17/CHNY/2024 relied upon by the assessee, the Hon'ble Tribunal, while deciding the issues, had in turn relied upon the decisions in the case of CH Robinson Worldwide Freight India Pvt. Ltd (ITA No.3444/Chny/2016 and No. 28/Chny/2017), and Hospira Healthcare India Pvt. Ltd (ITA No.469/Chny12017) without giving any independent finding of facts for the concerned case. Relevant part of both these decisions have been reproduced by hon'ble Tribunal in its order. It is noted that in the case of CH Robinson, while deciding the issue, the hon'ble Tribunal had noted that "it cannot be said that amortisation of Goodwill does having bearing on operations of the assessee". On this point, facts of the instant case of the assessee are distinguishable from that in case of CH Robinson as FAR analysis of ITES and BSS segments given in TPSR clearly mentioned that Goodwill had been employed as asset for operation in both segments. The assessee has also not made out any case of non-employment/non-use of Goodwill for its business purposes. Further, in case of Hospira Healthcare, the Hon'ble Tribunal has noted that "The Ld AO/TPO in A.Y.2011-12 has allowed the assessee's claim of adjustment on account of amortisation." Thus, the relief in case of Hospira Healthcare was allowed on the ground of AO/TPO accepting claim of the assessee in subsequent year. Thus, facts of the instant case of the assessee are distinguishable from those in case of CH Robinson and Hospira Healthcare as discussed above. There is no other independent finding of fact given by Hon'ble Tribunal in case Hitachi Solution. In view of the same, decision of Hon'ble Tribunal in case of Hitachi solution cannot act as precedent.

10.5 Similarly, in case of Continental Automotive Components India (P.) Ltd. (2022), 139 Taxmann.com 187, Hon'ble ITAT, Bangalore had simply relied upon decisions of Hon'ble ITAT, Delhi in case of ST-Ericsson India P. Ltd, which has been discussed above. As stated earlier, in case of ST-Ericsson, the DRP itself had treated amortization of Goodwill as non-operating expense in subsequent Assessment years and that was the basis for allowing relief to the assessee in that case. There is no other legal or factual finding given by Hon'ble ITAT in case of Continental Automotive while allowing relief to the assessee. Hence, the decision in case of Continental Automotive cannot act as a precedent on the same line as decision in the case of ST-Ericsson due to distinguishable facts of the instant case.

10.6 Before concluding on this issue, it is pertinent to mention that it is well accepted principal of law that there cannot any estoppel against the law. Therefore, any action of the AO/TPO in some other case accepting the depreciation /amortisation on Goodwill as non-operating in light of peculiar facts of those cases cannot place any restriction on the Revenue to treat depreciation

/amortisation on Goodwill as operating in some other case in light of facts of that case and provisions of law.

11. In view of the above discussion, it is submitted that depreciation /amortisation in respect of Goodwill is operating in nature and need to be taken into consideration as part of Operating Cost for the purpose of Computing PLI (OP/OC) of the Assessee. It is requested to kindly uphold the order of the Assessing officer and dismiss appeal of the assessee."

7. Considered the rival submissions and material as well as relevant case law placed on record. We observed that the assessee declared goodwill in its balance sheet and the same was amortised as per the method followed by it. In the Transfer Pricing adjustment, the TPO had treated the above amortisation of goodwill as operating expenses without giving an opportunity to the assessee. Further, he proceeded to make the adjustment treating the goodwill as another intangible asset. We observed that the goodwill is no functional asset and treating them similar to other intangible assets are not proper. The other intangible assets are being applied to generate the profit of the undertaking whereas the goodwill is created due to acquisition of other undertaking under merger schemes. In this case, the assessee had generated the goodwill under the merger scheme. The assessee is allowed to amortise the above goodwill over the years. There was a dispute before amendment in the section 32 of the Act, whether the goodwill should be allowed as expenditure. However, the above aspect of the dispute was settled.

8. Coming to the issue of treating the amortisation of goodwill as operating expenditure in TP adjustment. This issue is squarely covered by the decision in the case of Hitachi Solutions India Private Limited (supra), the relevant findings of the ITAT Chennai are reproduced below:

> "14. The assessee has claimed amortization of goodwill as a deduction for the purpose of computation of total income for tax purposes which reduces the tax incidence on the assessee to that extent. Since it is amortized over 5 years, it has a bearing on the cash flow and is operating in nature. Basis the same, the Ld. CIT(A) has upheld the TPO's views and treated amortization of goodwill as an operating expense. (page 67 of the factual PB - CIT(A) order)
>
> 15. The ld.AR submitted that the amount recorded as goodwill in the books of accounts of the assessee is the excess consideration paid in relation to the assets purchased by way of the amalgamation. The difference in purchase value treated as goodwill cannot be identified to any specific characteristic or value generating intangible that can support the operations of the assessee in the future and is a result of the accounting treatment. Further, undertaking reorganization of business is not a regular activity of the assessee. Hence, the resultant goodwill is non-recurring and an extra-ordinary item of expenditure which is not incurred for the purpose of rendering the services to AEs, i.e., its operations.
>
> 16. Accordingly, the expenses under consideration are not common business expenditures (goodwill arising out of a merger) that any third-party comparable companies would have incurred in the course of its business.
>
> 17. Further, the ld.AR stated that the services rendered by the assessee before and after the amalgamation have not undergone any change. In an independent scenario, no third-party service provider would increase the price of its services for acquiring another company without any change in its service offerings.
>
> 18. Amortization of goodwill is exceptional cost and none of the comparable companies have such expenses. Accordingly, it is to be

eliminated from the operating margin earned by the assessee so as to bring it at parity with the operating margin earned by the comparable companies.

19. Depreciation as a % of operating revenue has an abnormal effect from FY 2016-17 (year in which amortization commenced), increasing to 12.77% from 2.80% in FY 2015-16.

20. Further, without prejudice, adjusting the operating margin of the assessee to account for the difference in depreciation rates of comparable companies is warranted, given the differences between depreciation to sales ratio of assessee and comparable companies. Judicial precedence:

- Jurisdiction case law of ACIT vs. CH Robinson Worldwide Freight India Pvt. Ltd [ITA No.3444/Chny/2016 & No.28/Chny/2017], wherein the facts are squarely similar to that of the Assessee, and wherein the Chennai ITAT has held amortization of goodwill to be a non-operating expense, despite being claimed as a deduction for tax purposes. Further, treatment of expenses as operating/nonoperating in nature differ for calculation of operating margins from a TP perspective, vis-à-vis return position. Relevant extracts are provided below (Page 39 and 42 of legal paper book): :-

  "4.1…The facts with regard to impugned dispute are that the assessee has derived goodwill on account of acquisition of certain undertakings and same has been treated as intangible assets, as defined u/s.32(1) of the Act, and claimed depreciation. However, for the purpose of computing operating margin of the assessee, to test its international transactions, the assessee has excluded amortization of goodwill as non- operating expenditure on the ground that goodwill does not have any bearing on the operations of the assessee"

  "5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The goodwill is an intangible asset which arises to an assessee either by way of acquisition of any company or self-generated by the assessee by considering its intangible like technical know-how, trade mark, patent etc. Further, all assessees do not have goodwill in their books of account, because it arises only in very few instances as stated by us in earlier part of this order and thus, definitely it is in the nature of extraordinary item which cannot be considered as part of operating cost of the assessee. Further, it cannot be said that amortization of goodwill does having bearing on operations of the assessee. Therefore, we are of the considered view that the Assessing Officer has erred in considering amortization of goodwill as operating in nature for the purpose of computing margin of the assessee to determine arms' length price of international transactions."

- Hospira Healthcare India Pvt. Ltd [ITA No.469/Chny/2017] (page 31 & 32 of the legal PB)

  "10.3 We have considered the rival arguments and perused the TP documents. We agree with assessee submission that amortization of goodwill is an abnormal item arising out of business acquisition and therefore not part of operating expenditure. The Ld AO/TPO in A.Y 2011-12 has allowed the assessee's claim of adjustment on account of amortization. The Ld AO/TPO are accordingly, directed to grant adjustment of amortization of goodwill by excluding from operating expenditure."

- DIAB Core Materials Pvt. Ltd [ITA No.2176/Chny/2017] (page 60 & 62 of legal PB) :-

- Ametek Instruments India Pvt. Ltd [IT(TP)A No.398/Bang/2016] (page 76 of legal PB)

21. Per contra the ld. DR relied on the orders of the AO and that of ld.CIT(A).

22. We have heard the rival contentions perused the material available on record and gone through the orders of the authorities along with submissions and case laws relied upon by both the parties. The present dispute is covered by the various courts and tribunals by holding it as amortization of goodwill is an abnormal item arising out of business acquisition and therefore not part of operating expenditure. Considering the present facts and judicial precedents as discussed supra, we direct the AO/TPO to grant adjustment of amortization of goodwill by excluding from

> operating expenditure by allowing the related grounds of appeal of the assessee."

9. The other decisions relied by both the parties are distinguishable to the facts in the present case. Therefore, in our view, the amortization of goodwill is an abnormal item arising out of acquisition of business and not a regular operating expenditure, in our view the TPO cannot treat the amortisation of goodwill as operating expenditure for the purpose of TP adjustments. In the result grounds raised by the assessee are allowed.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 31st day of July, 2026.

Sd/-	**sd/-**
(VIMAL KUMAR) **JUDICIAL MEMBER**	**(S. RIFAUR RAHMAN)** **ACCOUNTANT MEMBER**

Dated : 31.07.2026
TS

Copy forwarded to:

1. assessee
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT, NEW DELHI