

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-1561/Del/2011 (A.Y 2007-08)**

Remfry & Sagar Remfry House, Millenium Plaza, Sector-27 Gurgaon AAEFR6753P (APPELLANT)	vs	JCIT Range-37 New Delhi (RESPONDENT)
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I.T.A .No.-1084/Del/2014 (A.Y 2010-11)

Remfry & Sagar Remfry House, Millenium Plaza, Sector-27 Gurgaon AAEFR6753P (APPELLANT)	vs	DCIT Range-37(1) New Delhi (RESPONDENT)
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I.T.A .No.-3667/Del/2013 (A.Y 2003-04)

I.T.A .No.-3666/Del/2013 (A.Y 2004-05)

I.T.A .No.-3668/Del/2013 (A.Y 2005-06)

I.T.A .No.-3669/Del/2013 (A.Y 2006-07)

DCIT Range-37 New Delhi (APPELLANT)	vs	Remfry & Sagar 8, Nangal Raya Business Centre Nagal Raya New Delhi AAEFR6753P (RESPONDENT)
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I.T.A .No.-367/Del/2012 (A.Y 2008-09)

ACIT Circle-37(1) Room NI. 401, N-Block, Vikas Bhawan, I. P. Estate New Delhi (APPELLANT)	vs	Remfry & Sagar Remfry House, Millenium Plaza, Sector-27 Gurgaon AAEFR6753P (RESPONDENT)
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I.T.A .No.-4680/Del/2012 (A.Y 2009-10)

ACIT Circle-37(1) Room NI. 401, N-Block, Vikas Bhawan, I. P. Estate New Delhi (APPELLANT)	vs	Remfry & Sagar 8, Nangal Raya Business Centre Nagal Raya New Delhi AAEFR6753P (RESPONDENT)
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Assessee by	Sh. Ajay Vohra, Sr. Adv, Sh. Gaurav Jain & Sh. Aditya Vohra, Advs.
Revenue by	Sh. G. C. Srivastava, Spl. Counsel

Date of Hearing	10.06.2016
Date of Pronouncement	06.09.2016

ORDER

PER BENCH

ITA Nos. 1561/Del/2011 & 1084/Del/2014 are filed by the assessee. I.T.A Nos.-3667/Del/2013, 3666/Del/2013, 3668/Del/2013, 3669/Del/2013, 367/Del/2012 & 4680/Del/2012 are filed by the Revenue. The issue in all these appeals is common. Hence for the sake of convenience these appeals are heard together and disposed of by this common order.

Both parties submitted that, ITA 1561/ Del/2011 filed by the assessee for the Assessment Year 2007-08 against the CIT(A)'s XXVIII, New Delhi dated 14/2/2011 is the lead case and hence we shall first deal with it.

2. The grounds of appeal in the main/lead appeal ITA No. 1561/Del/2011 are as follows:-

“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in:-

1. *Sustaining the disallowance of License Fees of Rs.22,51,33,484/- payable by the Appellant Firm to Remfry & Sagar Consultants (P) Ltd. (RSCPL) for use of goodwill in ‘Remfry & Sagar’ for the purpose of the profession of the firm.*
2. *Holding that the License Fee paid by the Appellant Firm to RSCPL is not business expenditure allowable under section 37 of the Income Tax Act, 1961 and ignoring that the License Fee was paid pursuant to a valid agreement and had direct nexus to the income of the Appellant Firm.*
3. *Holding that the agreement to pay License Fee is a sham and the transaction is a colorable one for evading taxes even though it was proved to him that if the transaction is considered as a whole there was no loss of revenue.*
4. *Holding that payment of License Fee to RSCPL is a colourable transaction undertaken with a view to reduce taxes, whereas the fact is that the entire License Fee paid to RSCPL has been offered to tax by RSCPL and hence there is no loss of revenue whatsoever.*
5. *Perversely ignoring the fact that the Appellant firm and RSCPL together have paid Rs.20,86,47,812/- as taxes whereas they would have paid Rs.20,63,59,286/- as taxes if the License Fee had not been paid; the revenue has thereby gained Rs.22,28,526. Hence, the allegation by the Ld. CIT(A) that the purpose of paying the License Fee was to reduce the income of the firm is clearly unwarranted and misleading and not borne out from the facts on record.*
5. *Perversely ignoring the fact that the Appellant firm and RSCPL together have paid Rs.20, 86,47,812/- as taxes whereas they would have paid Rs.20,63,59,286/- as taxes if the License Fee*

had not been paid; the revenue has thereby gained Rs.22,28,526/-. Hence, the allegation by the Ld. CIT(A) that the purpose of paying the License Fee was to reduce the income of the firm is clearly unwarranted and misleading and not borne out from the facts on record.

- 6. Sustaining the disallowance of License Fee in the hands of Appellant Firm thereby taxing the same amount twice over; once by taxing it as income in the hands of RSCPL and, again by disallowing the expenditure for "alleged" tax avoidance in the hands of the Appellant Firm resulting in double jeopardy/ taxing the same amount twice over. This is strictly not permissible in law.*
- 7. Alleging that the transaction in question is a colourable device for evasion of tax without any basis.*
- 8. Holding that goodwill in 'Remfry and Sagar' is synonymous with the persona of Dr. V. Sagar, whereas in fact it embodies a practice established in 1827 with which hundreds of attorneys, scientists, patent agents and other experts in patents, trademarks and copy right have been associated to service more than 7000 clients spread all over the world.*
- 9. Holding that the gift of goodwill made by its owner Dr. V. Sagar to RSCPL in June, 2001 by way of gift deed, accepted as such by the Department both in the case of the Appellant Firm and RSCPL, was not a valid gift.*
- 10. Perversely and partially quoting selective and out of context observations of Bombay High Court in Vodafone International and of Special Bench of the Tribunal in Wallfort Share & Stock Brokers and then misapplying those judgments to the facts of the case.*
- 11. Perversely ignoring the judgments of the Apex Court in Azadi Bachao Andolan (263 ITR 706), CIT vs. Walfort Shares & Stock Broker (326 ITR 1) and CIT Vs. M/s Glaxo Smith Kline Asia (P) Ltd. [Appeal (Civil) No. 18121/2007] which were specially brought to his notice.*

12. *Acting perversely by refusing to admit evidence in the form of valuation reports of the goodwill in 'Remfry and Sagar' obtained periodically by the assessee from independent experts despite the fact that these valuation reports were referred to in the submissions before the Assessing Officer and specifically called for production by the Ld. CIT (A) u/s 250(4) of the Act.*
13. *That the A.O/ACIT erred in confirming the levy of interest u/s 234B & 234D of the Income-tax Act, 1961.*
14. *That the A.O/ACIT erred in initiating penalty proceeding u/s 271(1) (c) of the Act.*
15. *The appellant reserves its right to add or amend the grounds of appeal as and when necessitated.*

3. The facts of the case are as under:-

3.1 The assessee M/s "Remfry & Sagar" is a partnership firm providing legal service. It describes itself as a leading law firm specializing in intellectual property and corporate laws. It is a full-service intellectual property firm engaged inter alia in, advising clients worldwide on their trademarks, patents, designs, copyright, geographical indications, domain names and unfair competition issues.

3.2 A British immigrant, Mr. Henry Oliver Remfry established the sole proprietorship firm under the name and style of "Grant and Remfry" in the year 1827 in the field of intellectual property. He operated both as a sole proprietor as well as in partnership under various names. These sole proprietorship and partnerships continued to be run by 5 generations of Remfry's until the year

1957. Thereafter four Englishmen, joined as partners. On 31/3/1972 two partners retired and Mr. Holloway, Mrs. Silverstone and Mrs. Remfry entered into a fresh deed of partnership. On 4/4/1973, Mr. Holloway and Mrs. Silverstone transferred absolutely, by way of sale, to Dr. V. Sagar the business along with the goodwill in "Remfry and son". Mr. V. Sagar became the sole and absolute proprietor of this business of "Remfry & Son" along with the goodwill attached to it. He continued the business of "Remfry & Son" till 31st of December 1989.

3.3 Prior to the acquisition of "Remfry & Son", Dr. V. Sagar was a practicing attorney under the name and style of "Sagar & Co. On 1/1/1990 Dr. V. Sagar merged his own practice into "Remfry & Son", and changed the name of the proprietorship concern to "Remfry & Sagar". This sole proprietary concern continued to render services in the field of intellectual property laws till the year 2001.

3.4 The assessee states that, in the year 2001, Dr. V. Sagar started getting on in years he was 75 years old at that time and it became his prime concern to safeguard and maintain the goodwill, which had been so as studiously built up for over 184 years, by successive generations. It is stated that under expert legal advice, it was thought fit to safeguard and institutionalize the goodwill in "Remfry & Sagar" for perpetuity. Various legal options were examined and with an intention of segregating the goodwill in "Remfry & Sagar" from the attorney's (including Dr. V. Sagar), and

for institutionalizing the goodwill in perpetuity by way of corporatization, a deed of gift was executed on 1/6/2001 by Dr. Sagar in favour of “Remfry & Sagar (consultants Private Ltd” hereinafter referred to as (‘RSCPL’) whereby the goodwill in “Remfry & Sagar” was gifted to a newly incorporated juridical/legal entity “RSCPL”.

3.5 Thereafter Dr. V. Sagar on 5th June, 2001 entered into a partnership with Mr. P. Sampath Kumar, Mr. Ashwin Julka, Mr. Pamit Nagpal and Mr. Prem Sewak. This partnership firm entered into an agreement dated 5/6/2011 with RSCPL for grant of license for the use of goodwill of “Remfry & Sagar” subject to payment of license fee @ 25% of the amount of bills raised. The agreement was valid for the term of 5 years. This agreement was revised and renewed w.e.f 1/4/2008 and under the renewed arrangement, license fee was payable @ 28% of the amount of bills raised. The assessee firm in all these years under appeal filed paid the license fee as a percentage of gross receipts and claimed the same as an expense.

3.6 The primary issue before us is whether the Assessing Officer was right in disallowing the deduction of license fee paid by the assessee to RSCPL as per the agreement of license for the use of goodwill in the Remfry & Sagar. There are certain other small issues that arise in other years which we would be dealing with as and when necessary.

3.7 The Assessing Officer in his assessment order dated 30/12/2009 passed under section 143(3) of the act for the Assessment Year 2007-08, disallowed for the first time, license fee paid by the assessee to RSCPL for the use of goodwill on the ground that, the entire transaction was a colourable device adopted to transfer profits of the assessee firm to the family members of Dr. V. Sagar, who held majority shares in RSCPL and to evade tax. The observations of the A.O are as follows:

a) goodwill of the law practice did not belong to RSCPL as it has no capability;

b) no activity was carried out by RSCPL to enhance the goodwill of the law practice in the name of the “Remfry & Sagar”

c) the goodwill, if any, was of Dr. V. Sagar which could not have been separated from him, much less by way of gift to M/s RSCPL and

d) Dr. V. Sagar was enjoying the benefits of this goodwill by being a majority partner, having higher profit-sharing ratio, in the assessee partnership firm and enjoying other additional benefits, like controlling rights etc.

3.8 The Assessing Officer, for the very same reasons, disallowed the license fee paid for all the subsequent assessment years i.e. A.Y. 2008-09 and 2010-11. The assessments for the Assessment Year 2000-01 to 2006-07 were reopened and the licence fee paid was disallowed.

4. The assessee carried the matter in appeal. The first appellate authority for the Assessment Year 2007-08 and 2010-11 upheld the orders passed by the Assessing Officer, for the various reasons given in those orders. However, for the Assessment Years 2003-04 and 2006-07 and for the Assessment Year 2008-09 and 2009-10, the first appellate authority deleted the aforesaid disallowance made by the Assessing Officer. Aggrieved both the assessee as well as the revenue are in appeal before us for all there assessment years.

5. The Ld. Counsel for the assessee, Mr. Ajay Vohra, Sr. Advocate submitted that the common issue in dispute in all these appeals is with regard to the disallowance of license fees paid by the assessee firm to Remfry & Sagar Consultants Pvt. Ltd. (RSCPL) for license to practice in the name of “Remfry & Sagar” and for use of the said name/trade mark and goodwill.

5.1. The Ld. Counsel submitted that the assessee is a full service Intellectual Property Boutique Firm engaged inter alia in advising the clients worldwide on their trademarks, patents, designs, copyright, geographical indications, domain names and unfair competition issues. After discussing the dates and events, the Ld. Counsel pointed out that the origin of the firm was in the year 1827.

5.2. He submitted that there are four points to be looked into in respect of goodwill aspect. These are:

- (i) Goodwill is an intangible asset developed over a period of time, due to distinct reputation gained on account of several factors, like, quality of service, connection with clients/customer etc, together with the circumstances which make the connection durable;
- (ii). Goodwill can be alienated;
- (iii). Goodwill in case of a partnership firm ordinarily, attaches to the firm and constitutes property of the firm in which each partner has a share. He submitted that partners can agree that the goodwill may vest in one or more partners of the firm to the exclusion of the others.
- (iv) Goodwill survives the death of the original partners/founder and the death of Dr. V. Sagar has not affected the business of the firm which has been growing even after his demise.

5.3. That the professional firms in the present day, across the globe, enjoy goodwill, and are being continued to be run in the name of the original founders, despite the fact that the founding fathers are no longer part of the practice. For example, Mulla & Mulla, Little & Co. Ernst & Young, etc.

5.4. That Dr. V. Sagar is entitled to gift a goodwill to RSCPL. He further submitted that the goodwill of the firm "Remfry & Sons" was with Mr. Holloway and Mrs. Silverstone & not with Mrs. Remfry, who was an inactive partner, by virtue of a partnership deed

entered in the year 1970. These two persons were entitled and empowered to sell, all or any of the assets of the partnership firm, including the name and goodwill of the business. The business in the name of “Remfry & Sons”, was acquire by Dr. V. Sagar in the year 1973 for valuable consideration and this demonstrates that the goodwill of the firm was an intangible asset, capable of alienation. Thereafter Dr. V. Sagar carried on the said business under the name and style of “Remfry & Sons” between 1973 to 1990 as a sole proprietor. Thereafter on merger of his own practice as sole proprietor in the name of ‘Sagar & Co.’ in the year 1990 and carried on practice in the name of “Remfry & Sagar”.

5.5. Mr. Vohra, argued that the goodwill attached to the name “Remfry & Sagar” vested exclusively in Dr. V. Sagar who had legitimately transferred/gifted this goodwill, attaching to the name of “Remfry & Sagar” and all the rights associated therewith (including Intellectual Property Rights) to RSCPL in the year 2001.

5.6. There is no bar under the Advocates Act, 1961 or any other legislation for goodwill attaching to a professional practice to be owned by an independent entity other than the proprietor/partners carrying on the professional practice.

5.7. The goodwill and the rights associated therewith “Remfry and Sagar” have been legally vested in RSCPL. The company was, in law entitled to license the said goodwill, in order to practice in the name of “Remfry & Sagar” and to enjoy the goodwill associated

therewith, the assessee had necessarily to obtain the right to use thereof against payment of consideration.

5.8. He listed out the essential conditions of the newly constituted partnership and submitted that even if it is assumed for the sake of assumption that Dr. V. Sagar had not alienated goodwill to RSCPL in 2001, it was not obligatory on Dr. V. Sagar to let the firm practice in the name of “Remfry & Sagar” and exploit the goodwill attaching thereto, without payment of consideration or to provide that the goodwill would belong to the partnership and/or the surviving partners on his demise. That even if Dr. V. Sagar had introduced the goodwill in the firm, as his persons goodwill to be exploited by the firm on payment of license fee, even in that hypothetical situation, the firm would necessarily have to pay Dr. V. Sagar, (in his individual capacity), fee for license to use Firm’s name and goodwill.

5.9. That personal goodwill of Dr. V. Sagar would not become property of the firm and no other partners could have claimed any right in such goodwill. Upon the demise of Dr. V. Sagar (assuming the goodwill was not alienated), goodwill vesting exclusively in Dr. V. Sagar would have devolved on his legal heirs and the partnership and/or the surviving partners could not claim and right thereto.

5.10. That as the assessee firm could not have practiced in the name of “Remfry & Sagar” and enjoyed the goodwill associated therewith, the payment of license fee was incurred due to commercial expediency and thus, expenditure is incurred wholly

and exclusively for the purpose of profession and hence was an allowable deduction in terms of section 37(1) of the Act. That it is well settled that payment made for exclusive license to manufacture and sell products in India using technology and know-how licensed by the licensor are allowable as business expenditure. On the same analogy this expenditure is allowable.

5.11. On the finding of the Assessing Officer that goodwill is attached to the persona of Dr. V. Sagar, it was submitted that since inception of the practice in 1827, there have been lot of changes in the partners of the firm, which form time to time, varied from 20 partners to even 100 partners. He submitted that the goodwill belonged to the patent/IPR practice carried on over a period of 175 years which was represented in the name of “Remfry & Sagar”, which legally vested in RSCPL, subsequent to transfer in 2001. Thus, it is argued that the goodwill of the practice was not identifiable with any particular partner.

5.12. It was further submitted that after the demise of Dr. V. Sagar in February, 2011, the income and turnover of the firm increased, year after year and this demonstrates that the goodwill is not associated with the persona Dr. V. Sagar.

5.13. That the Assessing Officer was wrong in coming to a conclusion that the gift of goodwill by Dr. V. Sagar in favour of RSCPL and the assessee obtaining right to use such goodwill from RSCPL in consideration of payment of license fee are legally valid and binding transactions and that the question of the same being

colourable transactions entered into to evade taxes, does not arise. Hence, the allegations are without any basis. Mr. Ajay Vohra, also relied upon various case law. We will be referring to the same as and when necessary. He prayed that the disallowance be deleted and the appeal of the assessee be allowed.

6. The Ld. Special Counsel for the Revenue Shri G. C. Shrivastava on the other hand opposed the submissions of Mr. Vohra. He argued that:

6.1. Dr. V. Sagar started carrying on the practice and profession of Attorney-at-law with specialization in the areas of intellectual property law and corporate law under the name and style of “Remfry & Sagar”, at New Delhi i.e in the National Capital Region and at Mumbai since 1973 as a sole proprietor. Mr. Remfry, in the year, 1827 started his business of patent and Trade mark agents under the name and style of ‘Remfry & /Son’. Mr. Remfry was not in the practice of law but was in the business of trademark and patent agents. Dr. V. Sagar after purchasing this business in the year 1973, did not carry on the old business of Patent & Trade mark Agency, but carried on the same as part of his legal practice of Attorneys at law in the name of “Remfry & Sagar”.

6.2. The factual aspect is that the legal profession in the proprietary name of “Remfry & Sagar” carried on by Dr. V. Sagar was a practice in law with all its attendant functions and responsibilities. It was not a continuation of the agency business carried out earlier by “Remfry & Sons”.

6.3. That the deed of gift executed by Dr. V. Sagar on 1st June, 2011 in favour of RSCPL records that the gift was made to ensure continuity of the said practice. The partnership firm was constituted on 5th June 2001 by Dr. V. Sagar and his erstwhile associates in the practice of Attorney-at-law under the name and style of “Remfry & Sagar”.

6.4. Dr. V. Sagar also sold to RSCPL, the entire infrastructure of the said practice in the form of office equipment and facilities including the library.

6.5. RSCPL in turn made available this infrastructure to the assessee by way of a separate agreement for specified fee. The partnership was dependent upon the license for the use of goodwill given by RSCPL and the agreement for use of infrastructure and office etc.

6.6. That the agreement “clearly stipulated” that the License Agreement, the Deed of Partnership, the Agreement for use of infrastructure and the Agreement for Support Services were all an integral part.

6.7. The assessee has claimed deduction of his license fee paid to RSCPL, U/s 37 of the Act and hence, the allowability or otherwise of expenditure would depend on the fulfillment of the conditions laid down in Section 37 of the Act. The provisions contained in Section 37(1) stipulate that any expenditure, not being a capital

expenditure of the assessee, laid out wholly and exclusively for the purposes of business or profession shall be allowed as a deduction.

6.8. That the purpose test contemplated in Section 37 of the Act should be applied and for the same, the events that unfolded in the year 2001 have to be examined. Thus he argued that the correctness of the so called transfer/gift of goodwill and its license back to Dr. V. Sagar in the year 2001 has to be examined.

6.9. The son and daughter of Dr. V. Sagar do not have the requisite qualification to carry on the profession of law and the new firm is found only to continue the practice of law which was carried on earlier by Dr. V. Sagar as a proprietor. Hence RSCPL which has no rights whatsoever to carry on the profession of law, cannot license the same to the assessee firm.

6.10. RSPCL has done nothing to develop or maintain the goodwill of the legal practice. The payment of license fees has increased from year to year.

6.11. Goodwill of a business and the goodwill of a law practice or a professional are entirely different. In case of legal practice, the value depends solely on account of capabilities and skills of a person's carrying out the legal practice. Thus, attempt to separate the goodwill of a law firm, from the legal practice is a colourable device. Thus, nothing actually changed and Dr. V. Sagar continued to practice as before except the fact that his associates became his partners.

6.12. The payment of licenses fee was not for any purposes of profession but solely on account of relationship of Dr. V. Sagar with the owners of RSCPL.

6.13. Loss of Revenue cannot be a ground for allowability or otherwise of a claim of an expense.

6.14. It does not stand to reason, why the assessee should pay someone else for the goodwill which was created by them, belonged to them and never derived from the legal practice they carried on RSCPL had no other alternative but to lease back the goodwill to Dr. V. Sagar's firm as all these arrangements admittedly constituted an integral part.

6.15. Goodwill is a current right but it can have value when the business is transferred and it is an intangible asset to a business.

6.16. In the case of a professional or personal service partnerships, goodwill is likely to be personal to the partners individually and therefore incapable of transfer. He relied on certain judgments of foreign courts for the preposition that goodwill of a law firm may not be sold or transferred for a valuable consideration because of ethical reasons. He relied on the legal Ethics by 'Drinker' for the preposition that a "Lawyers clients are not merchandise, nor is a law practice the subject of Barter." Legally and analytically, the sale of a law practice is more than a sum of money and books for a library.

6.17. Goodwill of a law practice once divested of the legal profession is of no value and if artificially separated and transferred, the entire value would be lost, because of the loss of reputation and the client base.

6.18. The son and daughter of Dr. V. Sagar who formed the company were not entitled to carry on the legal profession u/s 29 of the "Advocates Act, 1961". Neither did the legal profession was owned or retained or developed or put to any use by the company i.e RSCPL. Only artificial rights have been created in this case. Ownership is recognized only when right to exercise the IP rights exists. RSCPL cannot exercise the rights associated with the name or goodwill of a legal practice.

6.19. The Ld. Special Counsel for the Revenue further submitted that the argument of the Ld. Counsel for the assessee that there is no legal bar on the transfer of goodwill attached to a professional practice to an independent entity really does not take into account the situation, like the present one, where the goodwill has been gifted to a person or entity not entitled to carry on legal profession. The goodwill representing the loyalty of the customer or the reputation of legal practice will really have no meaning to a person or entity not entitled to practice law.

6.20. License fee paid by the assessee is a mode of Revenue sharing and not an expense of the assessee. This is a profit sharing arrangements and such an arrangement is not permissible under Rule 2 of Chapter III of Part VI of the Bar Council Rules as it is

sharing profit by an Advocate. Such sharing of profit is violative of statutory provision and hence hit by Explanation 1 of Section 37(1) of the Act.

6.21. He distinguished the case of Devidas Vitthaldas & Co. and J. Srinivasan Vs. ITO by submitting that in those cases when a widow or other legal heir of a deceased partners got a share in the partnership, they get the share not in their individual rights but as the legal heirs of the deceased. The partnership continues to recognize the deceased person's right in the profits of the firm because of his contribution in the development of the goodwill and the legal heirs only receive the money as heirs of the deceased and not as partners on in their individual rights. He argued that after the death of Dr. V. Sagar, hi legal heirs may be entitled to receive the consideration for goodwill on behalf of their deceased father, but they cannot be regarded as being lawful owners of the goodwill or having the right to own the goodwill or license it.

6.22. The Ld. Special Counsel for Revenue submitted that the goodwill of a legal profession is distinct from that of a business and it cannot be alienated from the practice itself. Apart RSCPL could not do legal practice as it does not have license or rights to do the same.

6.23. Mr. G. C. Srivastava submitted that the entire arrangement does not serve business purpose and hence, the payment in question is not deductible u/s 37 of the Act and that it

was merely a device to transfer profits of the firm from the assessee to the company belonging to Dr. V. Sagar's children.

6.24. He reiterated his arguments that the legal heirs of Dr. V. Sagar had every right to share the goodwill after his death or after his retirement, but even at this stage, it could not be regarded as an expense of the firm within the meaning of Section 37 of the Act. He submitted that the Assessing Officer has rightly disallowed the claim of the assessee as expenses by way of license fees paid towards RSCPL and submitted that this action of the A.O should be upheld.

7. In his rejoinder, Mr. Vohra submitted that the submission of the revenue that "Remfry & Sons", prior to take over by Dr. V. Sagar in 1973 were not engaged in the practice of law but was in the business of trade mark and patents and that post acquisition by Dr. V. Sagar started legal practice in the name of "Remfry & Sagar" was not correct. It was submitted that Dr. V. Sagar was carrying on independent legal practice and it was only in the year 1990 that this legal practice in the name of 'Sagar & Co' got merged into "Remfry & Sons".

7.1. He submitted that the goodwill in the name of "Remfry & Sons" pertains to the business carried on by the concern and the said goodwill is related to the field of trade mark and patents and had considerable value, even for the legal practice carried on by Dr. V. Sagar in the same field. He emphasized that, if the aforesaid goodwill of business of "Remfry & Sons" had no value, there was no

occasion for Dr. V. Sagar to purchase the same for consideration and merge his sole proprietary legal practice in “Remfry & Sons”. Thus, the distinction sought to be drawn by Revenue that goodwill in the name “Remfry & Sons” was of business and not of legal practice is irrelevant and needs to be ignored.

7.2. On the submission that the son and daughter of Dr. V. Sagar were not entitled to carry on the legal practice, he argued that the company RSPCL was the lawful and legal owner of goodwill vesting in the name “Remfry & Sagar”, being distinct tangible asset, which was acquired by them post gift deed executed by Dr. V. Sagar. He reiterated that there is no bar under any law, including the Advocates Act, 1961, that has been specifically pointed out by the Revenue, which prohibits ownership in goodwill attaching to a legal practice vesting in an independent entity, other than the proprietors/partners carrying on the legal profession. He submitted that as RSCPL was the legal owner of the said goodwill and that any accretion in the value of that goodwill on carrying on of the legal profession by the users thereof, i.e. the assessee firm, was to former’s account, notwithstanding that RSCPL was not engaged in legal profession. On the submission of remuneration/profit sharing arrangement, he argued that the impugned payment was not sharing of remuneration or profits of the legal profession carried on by the assessee firm, but payment made in consideration for obtaining license/right to use the name “Remfry & Sagar”, and the goodwill associated therewith, being owned by RSCPL.

8. We have heard both the parties at length. We have considered the written submission, the papers on record as well as the case laws cited by both parties. On a careful consideration of the same we hold as follows:

8.1. Before we adjudicate the issue as to whether the disallowance of license fee paid by the assessee to RSCPL for license to practice as 'Remfry & Sagar' and for use of the said name, trade mark and goodwill by the A.O is to be upheld or not, for the purpose of the ready reference we recapitulate the facts of the case as below:

Facts

Year 1827: A sole proprietorship firm was established as "Grant and Remfry", by a British immigrant, Mr. Henry Oliver Remfry, which was subsequently converted into partnership firm and operated by five generations of Remfry family, until the year 1957.

Year 1957: Mr. Hollaway, Mrs. Silverstone, Mr. Bernier and Mr. Burrington joined 'Remfry & Son' (the name of the partnership firm at that time) as partners.

Year 1970: Mr. Bernier and Mr. Burrington retired. Mr. Holloway, Mr. Silverstone and Mrs. Remfry entered into a fresh deed of partnership. As per the partnership deed, Mr. Holloway and Mrs. Silverstone were entitled and empowered to sell all

or any of the assets of the partnership firm, including the name and goodwill of the business.

Year 1973: Mr. Holloway and Mrs. Silverstone transferred absolutely, the business with all assets including name and goodwill thereof, vesting in 'Remfry & Son' for valuable consideration, to Dr. V. Sagar, with effect from April 1, 1973.

Year 1990: Dr. V. Sagar merged his own sole-proprietorship practice in the name of 'Sagar & Co.' into 'Remfry & Son', and changed the name of the proprietorship to 'Remfry & Sagar'.

Year 2001: (i) By a Deed of Gift executed on June 1, 2001, Dr. V. Sagar gifted the good will vesting in 'Remfry & Sagar' to a private limited company, viz., Remfry & Sagar Consultants Private Limited ('RSCPL'), wherein substantial shareholding was held by Dr. Sagar's children, viz., Ms. Rosemary Sagar and Mr. Hemant Sagar, who were not lawyers. At the time of the said transfer, goodwill was valued at Rs.45 crores on which stamp duty of Rs. 90 lakhs was paid by Dr. V. Sagar.

(ii) On June 5, 2001, Dr. V. Sagar entered into partnership with Mr. R. Sampath, Mrs. Ashwin

Julka, Mr. Ramit Nagpal and Mr. Prem Sewak to continue the said practice of law.

(iii) By an agreement dated June 5, 2001 RSCPL granted a License for the use of Goodwill in 'Remfry & Sagar' to the appellant firm for a period of 5 years subject to payment of license fees @ 25% of the amount of bills raised. Latter this was raised to 28% of the bills raised on renewal of agreement after 5 years.

(iv) In addition to the above, RSCPL and the appellant firm entered into an agreement dated June 5, 2001, for use of infrastructure and provision of secretarial, accounting and other supporting services.

Feb 2011: Demise of Dr. V. Sagar

_In pursuance of the aforesaid license agreement dated June _5, 2001 entered into between the appellant and RSCPL, the _appellant paid license fee for use of goodwill to RSCPL w.e.f. _assessment year 2002-03, which continues till date, even _after the demise of Dr. V. Sagar.

8.2. M/s 'Remfry & Sons', was carrying on a business of patent agents. Vide terms of the deed of partnership dated 6th April 1970, 50% of the goodwill of the business belonged to the partner Mrs. Holloway and other 50% to Mrs. Silver Stone. Both of them held

50% of all the other capital assets and properties of the firm. Though Mrs. Remfry was having a share in the net profits of the partnership, she had no ownership rights in the goodwill of this firm. This demonstrates that the name and goodwill of the business 'Remfry & Sons' is distinct and separate from the other assets of the partnership firm and that it vested only in two partners of the firm and not the firm. This is clear from reading of Clause 2 & 3 of the said partnership deed.

8.3. On the fourth day of April 1973, Mr. Vidya Sagar purchased by way of sale, from Mr. Holloway and Mrs. Silver Stone, the business carried on under the name and style of 'Remfry & Sons' along with all its assets including capital asset as on 31st March 1973 and the name and goodwill thereof which was referred to as "the said business" in that agreement for a total consideration of Rs. 3 lacs. Thus when Dr.V.Sagar purchased the Goodwill along with other assets, this Goodwill was of business and not of any profession of law.

8.4. Thus, Dr. Sagar become an absolute owner of the business carried on in the name and style of "Remfry and Sons" which is in the business of trade mark and patent agent.

8.5. On 1st June, 1990, Dr. V. Sagar merged his legal practice in the name of "Sagar & Co." with the business of trade mark and patent agents carried on in the name and style of 'Remfry & Sons' and changed the name of the proprietorship into 'Remfry and Sagar'. Dr. V. Sagar was carrying practice and profession of

“Attorneys-at-Law” with specialization in the areas of intellectual Property Law and Corporate Law under the name and style of ‘Remfry & Sagar’, in New Delhi and Mumbai. The goodwill in the name of ‘Remfry & Sagar’ and all the rights associated thereof (including intellectual property rights) belong exclusively to Dr. V. Sagar. Dr. V. Sagar by way of a gift deed executed on the day of 1st June 2001, granted conveyed and transferred by way of gift to RSCPL the said goodwill in the name of ‘Remfry & Sagar’ and all the rights associated therewith (hereinafter referred collectively referred to as “goodwill”). Dr. V. Sagar also sold and transferred to RSCPL, the infrastructure associated with his practice.

8.6. From the above, it is clear that from 1st June 1990 to 31st May 2001, Dr. V. Sagar was only carrying on the practice and profession of Attorney-At-law, which included the business of “Remfry and Sons” acquired by him. In other words, prior to 1st June, 1990, the Goodwill of “Remfry and Sons” was goodwill of business and not of advocacy profession, but thereafter there is a merger of the profession of law and the business of trade mark and patent. Agents and this was carried on as a profession of law.

8.7. Vide Partnership dated 5th June 2001 between Dr. V. Sagar and four other partners it was agreed to carry on the practice and profession of Attorney-At-Law with the specialization in the area of Intellectual Property Law and Corporate Law with the object of carrying on, without break and in continuity, the practice, hither to carried on by Dr. V. Sagar. The four other partners were earlier

associated with the practice of Dr. V. Sagar, in their individual capacities for number of years and have acquired expertise in this field of the profession. We notice that the partnership deed dated 5th June 2001 is under the name and style of “Remfry & Sagar” and this partnership deed has come into force on 1st June 2001. Thus what is licensed by RSCPL to the assessee firm is Goodwill and its associated rights to practice as “Attorneys-at-law and not to do business of trademark and Patent Agents.

8.8. Vide agreement dated 5th June 2001, RSCPL permitted to use of “goodwill” to the partnership and permitted them to use the name of ‘Remfry & Sagar’ with retrospective effect i.e. 1st June 2001. While Clause No. 16.1 of this agreement, the license fee in question is to be paid in pursuance to this agreement.

8.9. It is clear that Dr. V. Sagar has arranged his affairs in such a way that the goodwill earned by him over the years is enjoyed by his children who are his legal heirs. All the documentation shows that this is a very well thought out strategy by Dr.V.Sagar to retain his hard earned as well as purchased goodwill and to use it for his future generations, irrespective of the fact whether they were in the practice of law. Such well considered and thought out arrangements cannot be said to be colourful devices. These are transparent and legally documented arrangements.

8.10. The issue for consideration is whether such an arrangement is permissible in law. The pith and substance of the argument of the revenue is that such segregation of goodwill from

the legal practice cannot be permitted. It is further argued that under the Advocates Act, 1961, the goodwill earned by an advocate cannot be alienated to any person or company which is not entitled to practice under the Advocates Act, 1961.

8.11. At the same time, the revenue concedes that the legal heirs of the advocates would be entitled to the benefit of the goodwill earned and created by the legal practitioner. It was submitted that the legal heirs may be entitled to consideration for the goodwill on behalf of the deceased father but they cannot be regarded as the lawful owners of the goodwill or having the rights of owning the goodwill or to license the same. In our view, we find a contradiction in these submissions. When it contended that the legal heirs of a practitioner are entitled to receive consideration for goodwill on behalf of the deceased parent, it would be difficult to hold that, the goodwill cannot be separated from the legal practice and the fruits of such goodwill cannot be enjoyed by the legal heirs of the legal practitioner or that it can be enjoyed by the legal heirs only in a particular manner.

8.12. Be it as it may, the submission of the assessee that goodwill is a separate intangible asset which can be alienated and that which cannot be attached to a firm and that it can be vested in one or more partner of the firm, in exclusion of others, is well settled. The assessee partnership firm formed for carrying a profession and practice of Dr. V. Sagar under the name and style of 'Remfry & Sagar' could not have carried out the profession as it is

doing run by using the goodwill and name of “Remfry & Sagar” unless specifically authorized to do so by the owner of the goodwill. As rightly pointed out by the Ld. Counsel for the assessee that in the present day professional practice and professional firms across the globe are in the names of the original founders, though they are no longer part of the practice. This name and goodwill helps in the practice. The partnership was formed to continue the law practice of Dr. V. Sagar and this could be done only if the assessee firm is permitted to do so by the owner of the goodwill.

8.13. The submission of the Ld. Special counsel for the revenue that goodwill of a profession cannot be segregated from the persona of the person is against the propositions of law laid down by the Hon'ble Supreme Court in the case of *Devi Das Mittal Daas Vithaldas & Co. VS. CIT Bombay City (supra)*. The constitutional bench of the Hon'ble Supreme Court consisting of four findings was considering a case of chartered accountant who was carrying on his profession in the name of *Devi Dass & Co.* Vide partnership dated 31 January 1948, wherein he retained/reserved the right of goodwill of the profession carried on by him earlier in sole proprietorship. On 2nd June 1951, he retired from the said partnership. The goodwill in the partnership was sold to the other partner and the consideration was to be paid to the Chartered Accountant at the certain rate and after his death to his wife and thereafter his son were to paid annual consideration. The question before the Hon'ble Court was whether such the amounts paid to the

wife and thereof to the son is allowable deduction or not under the Income tax Act.

8.14. The Larger Bench consisting of four Judges of Hon'ble Supreme Court in the case of Devidas Vithaldas & Co. Vs. CIT, Bombay, reported in 84 ITR 277 (S.C.), held as follows.

“Held, by Shelat, Khanna and Mitter JJ (SDhri CJ dissenting), reversing the decision of the High Court, that the transaction under the deed of dissolution was a licence and not a sale of the goodwill and the payments were in the nature of royalty and had to be treated as admissible deductions; because (i) though clause 2 of the deed of dissolution used expressions such as ‘agreed to sell’ and ‘the purchase price of the goodwill’, these expressions were not determinative of the exact nature of the transaction; (ii) neither clause 2 nor any other provision in the deed fixed any lump sum as price in respect of which annual payments were provided; (iii) the duration of payment was indefinite and the amount was indefinite and depended upon the rise and fall in the profits of the business, (iv) clause 6 indicated that the payments were to be made so long as the business was carried on in the name of D.V.&Co. And not otherwise; and (v) the document was silent as to what was to happen to the goodwill if A or his partners were to cease to carry on business in that name or at all.”

Justice S.M. Sikri C.J, has written a dissenting judgment, the pith and substance of which is that the entire arrangement was made for evasion of taxes. He held as follows:

“ In my view, it is a very ingenious attempt to avoid payment of tax by making it appear somehow that the payment of purchase money may be treated as payment of a royalty. In

the view I take of the deed, it is not necessary to discuss the numerous cases referred to by Shlat J. In my opinion, the High Court came to the correct conclusion and the appeals should be dismissed with costs.”

8.15. In the case of hand, this is exactly the case of the Revenue. The majority of the three Judges of Hon’ble Supreme Court did not agree with the minority view and have decided the issue in favour of the assessee.

8.16. Applying the propositions laid down in this case law to the facts of the case, we have to necessarily hold, that the argument of Revenue that the arrangement was for avoidance of tax and diversion of profits and hence the deduction was rightly denied by the Assessing Officer, has to be rejected. Even otherwise, it has been demonstrated by the assessee that the Revenue has accepted that both the entities i.e. the assessee as well as RSCPL, pay taxes, at the maximum rate and that there is no loss of Revenue on account of this arrangement. The taxes due to the Government have not been avoided or evaded by this arrangement. Thus the disallowance made on the ground of diversion of profits is devoid of merit.

8.17. Though the Ld. Special Counsel for the Revenue argued that good will of a profession cannot be sold to a company which does not have a right to carry on practice, no specific law or section was brought to the notice of the Bench in support of the argument. Only several submissions have been made. Certain judgements of

Foreign Courts were cited, which were based on “ethical considerations” and not legal prohibition. In any event, the ITAT has no power or authority to adjudicate the issue as to whether, the gift of goodwill by Dr.V.Sagar of his profession of law, to a company is violating the Advocates Act, 1961 or the Bar Council Rules. No authority has held that this arrangement violates any Act or law of the land, though the assessee firm has been carrying on its profession of Attorneys at law under this arrangement for the last many years.

8.18. Another important fact that has to be considered is that, Dr. V. Sagar had the sole and exclusive rights to the said goodwill. The goodwill was held by him. Without legal authorization from him, the assessee firm could not use the name and style of “Remfry & Sagar” along with its goodwill and other assets and rights. The assessee firm had to seek permissions and licences to continue and carry on this profession under this name as it is run doing. Hence obtaining a license is a must for assessee firm to continue and carry on its profession as the goodwill is not owned by it the payment made in pursuance of an agreement which enables the assessee firm to carry on its professions, in the manner in which it is now doing, is definitely an expenditure laid down wholly and exclusively for the purpose of business or profession. The argument of the Ld. Special Council that the purpose test contemplated u/s 37 of the Act is not satisfied is devoid of merit. Irrespective of whether the gift of Dr. V.Sagar to RSCPL being ethical or not and irrespective of the fact whether the gift is legally valid or not, from the view point of

the assessee firm, as it could not have continued and carried on the profession of Attorneys-at-Law in the name of “Remfry & Sagar” and use its goodwill and all its associated rights without the impugned agreement with RSCPL. Hence the payment has to be held as that which is incurred wholly and exclusively for the purpose of business or profession.

8.19. The contention of the Special Council for the Revenue that the arrangement is just a revenue shown arrangement is just an inference and is not supported by any material. Thus the argument of violation of Bar Council Rules is devoid of merit.

8.20. For all these reasons we are of the considered opinion that the deduction claimed by the assessee of license fee paid to M/s RSCPL has to be allowed as a deduction U/s 37 of the Act.

8.21. For the Assessment Year 2008-09, Ground No. 2 of the Revenue’s appeal is that, the Ld. CIT(A) erred in deleting the addition of Rs.6,17,832/- added by the A.O on account of personal nature, entertainment expenses.

8.22. The CIT(A) dealt with this issue which was raised as Ground No. 11 by the assessee. At page 58 the CIT(A) has recorded the facts and at page 60 allowed the ground of the assessee by observing that, the expenditure was incurred on the occasion of 180th years celebration and only 1/10th of the same was claimed in this year and no disallowance was made in any of the year on this

count. We find no infirmity in the same. Thus, we dismiss these grounds of the assessee.

8.23. For the Assessment Year 2010-11 the assessee has raised Ground No. 4 & 5 which is against sustenance of disallowance of Rs.10,20,346/- being 5% of travelling and entertainment expenses and a further addition of Rs.3,41,102/- representing the stale cheques issued by the assessee but not cleared. Both these grounds were dismissed and not pressed.

8.24. In ITA No. 3668/Del/2013 & ITA No. 3669/Del/13 for the Assessment Year 2005-06 & 2006-07 respectively , the Revenue raised Ground No. 4 which reads as follows:-

“4. Whether on facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the addition made by the AO on account of ssecretarial, accounting & other support services paid to M/s. IPSS (India) Pvt. Ltd. not appreciating the fact that M/s. IPSS (India) Pvt. Ltd. was a related company and the payment was made in excess of agreed ratio as per the agreement entered into by the assessee.”

8.25. After perusing the findings of the CIT(A) on this issue, we uphold the same as Ld. Departmental Representative could not controvert the factual finding. The CIT(A) at page 56 has recorded that the addition was made by the A.O on the ground that, this is not authorized by the partnership deed. Such ground of the disallowance cannot be sustained.

8.26 In result, these grounds are dismissed.

8.27. In the result all the appeals of the assessee for all these Assessment Years are allowed and all the appeals by the Revenue are dismissed.

The order is pronounced in the open court on 6th of September, 2016.

Sd/-

**(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: 06/09/2016

*R. Naheed **

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	/07/2016	PS
2.	Draft placed before author	/07/2016	PS
3.	Draft proposed & placed before the second member	08.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.08.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	12.09.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		