

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6774/Del./2014
(ASSESSMENT YEAR : 2010-11)**

ACIT, Circle 52 (1), vs. M/s. Premier Book Co.,
New Delhi. 4792/23, Ansari Road,
Darya Ganj,
New Delhi – 110 002.

(PAN : AA EFP8468R)

**CO No.210/Del/2015
(in ITA No.6774/Del./2014)
(ASSESSMENT YEAR : 2010-11)**

M/s. Premier Book Co., vs. ACIT, Circle 52 (1),
4792/23, Ansari Road, New Delhi.
Darya Ganj,
New Delhi – 110 002.

(PAN : AA EFP8468R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri B.K. Anand, CA
REVENUE BY : Smt. Paramita Tripathy, CIT DR

Date of Hearing : 19.09.2017
Date of Order : 21.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The aforesaid appeal filed by the Revenue and cross objections filed by the assessee are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Assistant Commissioner of Income-tax, Circle 52 (1), New Delhi (hereinafter referred to as 'the assessee company'), by filing the present appeal, sought to set aside the impugned order dated 02.09.2014 passed by the Commissioner of Income-tax (Appeals)-XXV, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

“1. The CIT (A) has erred in deleting the addition of Rs.34,14,614/- without appreciating that depreciation on goodwill is not allowable as per the provision of section 32(1)(ii) of the Income Tax Act.

2. The CIT (A) has erred in deleting the addition without appreciating that the assessee has not established that the payments made were not for goodwill but only for acquiring copyrights of the book titles.”

3. The Objector, M/s. Premier Book Co., by filing the present cross objections challenged the assessment order dated 05.03.2013 passed by the Assessing Officer qua the assessment year 2010-11 on the grounds inter alia that :-

“That the learned CIT (Appeals) erred in not holding that on the facts of the case the withdrawal of claim of depreciation by the A.O. was not a prima facie mistake apparent on the face of the record that could be rectified u/s 154 of the Act.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : initially assessment was completed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') by making an addition of Rs.5,41,406/- to the total income of the assessee at Rs.3,66,46,031/-. Subsequently, AO issued a notice u/s 154 of the Act to show cause the assessee as to why the depreciation claimed in respect of goodwill amounting to Rs.34,14,614/- be not withdrawn, to which the assessee filed a comprehensive reply. AO, being dis-satisfied with the explanation filed by the assessee, invoked provisions contained u/s 32(1)(ii) of the Act and disallowed the depreciation amounting to Rs.34,14,614/- on the ground that goodwill in copyrights or goodwill was not eligible for depreciation and made addition thereof to the total income of the assessee.

5. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the addition of Rs.34,14,614/-. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A) and the assessee impugned the assessment order.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. To the show-cause notice issued by the AO u/s 154 of the Act, the assessee submitted reply as under :-

"In the present case in the previous year relevant to the assessment year 2008-09 when there was a settlement with the legal heirs of a former partner, beside what "what was paid to them as credit amount to the account of the former partner, the assessee was also required to pay tenancy rights in respect of premises occupied by the firm for the purpose of its business. Further as publishers of books author some renowned teachers and professors there copyrights in respect of such as which the assessee the acquired as exclusive user thereof. The assessee firm had to pay to the said legal heirs Rs.2,08,12,886 towards such copyrights it acquired in respect of these books (which titles the assessee is since publishing). No doubt the description of such copyrights in the books of the assessee is "Payments for Goodwill Copyrights", it is nothing other than cost of titles. It is not a trade name goodwill arising as differential in case of mergers representing difference between assets and liabilities of an acquired business. Cost of copyrights or any such similar assets (publishing rights) is well within the preview of 'intangible assets' as covered by section 32 of the Act."

8. Ld. CIT (A), after considering the pleas raised by the assessee, deleted the addition made by the AO on the ground that the assessee has wrongly used the word goodwill which was actually a transaction executed by the assessee in respect of payment towards copyright acquisition on which depreciation was

claimed u/s 32(1)(ii) of the Act. When we examine the reply filed by the assessee before the AO the assessee has specifically used the word **“payment for goodwill in books copyright”** which is nothing other than cost of titles of the books and it is not a trade name goodwill or amount arising out of differential in case of mergers representing difference between assets and liabilities of acquired business and as such are not intangible assets covered u/s 32 of the Act.

9. So, when it is not in dispute that assessee has acquired exclusive user as publishers of books authored by some renowned teachers and professors by making payment to their legal heirs to the tune of Rs.2,08,12,886/- towards such copyrights, there is no question of disallowing the depreciation claimed by the assessee. So, the AO has merely denied the depreciation because word goodwill was prefixed before word copyright which is not sustainable in the eyes of law.

10. Hon'ble Apex Court in judgment cited as *CIT, Kolkata vs. Smifs Securities Ltd. – (2012) 24 taxmann.com 222 (SC)* even allowed the depreciation on goodwill u/s 32 by making following observations :-

“I. Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of - Assessment year 2003-04 - Whether 'goodwill' is an asset under

Explanation 3(b) to section 32(1) - Held, yes - During relevant assessment year, one 'Y' Ltd. amalgamated with assessee-company - According to assessee, excess consideration paid by it over value of net assets acquired of 'Y' Ltd. amounted to goodwill on which depreciation was to be allowed - Authorities below recorded a finding that assets and liabilities of 'Y' Ltd. were transferred to assessee for a consideration; that difference between cost of an asset and amount paid constituted goodwill and that assessee-company in process of amalgamation had acquired a capital right in form of goodwill because of which market worth of assessee-company stood increased - Accordingly, assessee's claim was allowed - Whether since revenue could not rebut factual findings recorded by authorities below, impugned order passed by them was to be upheld - Held, yes [Para 8] [In favour of assessee]

11. In view of what has been discussed above, we find no illegality or perversity in the impugned order passed by Id. CIT (A), hence the present appeal filed by the Revenue is hereby dismissed. However, cross objections bearing CO No.210/Del/2015 filed by the assessee stands dismissed having been withdrawn.

Order pronounced in open court on this 21st day of September, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 21st day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-40, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.