

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2064 & 2924/Mds/2016

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

M/s Compass Group (India) Support  
Services Pvt. Ltd.,  
(Formerly known as 'Epicurean  
Enterprises Pvt. Ltd.)  
(1) H M Center, 1<sup>st</sup> floor,  
No.29, Nungambakkam High Road,  
Chennai - 600 034.  
(2) 402, 4<sup>th</sup> floor, Tower A,  
Spaze I-Tech Park, Sohna Road,  
Sector-49, Gurgaon,  
Haryana-122018.

v. The Assistant Commissioner of  
Income Tax,  
Circle – 1(3),  
Chennai - 600 034.

PAN : AADCC 9070 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Sriram Seshadri, CA

प्रत्यर्थी की ओर से/Respondent by : Shri S. Nataraja, JCIT

सुनवाई की तारीख/Date of Hearing : 05.07.2017

घोषणा की तारीख/Date of Pronouncement : 04.10.2017

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -1, Chennai, and pertain to assessment years 2010-11 and 2011-12.

Since common issue arises for consideration in both the appeals, we heard the appeals together and disposing of the same by this common order.

2. The only issue arises for consideration is disallowance of depreciation on non-compete fee.

3. Shri Sriram Seshadri, the Ld. representative for the assessee, submitted that the assessee debited non-compete fee of ₹1,33,50,599/- for the assessment year 2010-11 and ₹1,35,86,570/- for the assessment year 2011-12 in the Profit & Loss account and the same were disallowed in the computation statement. However, the assessee claimed depreciation on the non-compete fee for the purpose of Income-tax Act. According to the Ld. representative, during the assessment year 2010-11, M/s Epicurean Enterprises Pvt. Ltd. had been acquired by Compass Group of companies by means of share purchase agreement dated 31.03.2009. The company also entered into a non-compete fee agreement with Shri Darayes P. Dalal, Shri N.S. Udayakumar and Stamfles Food Management Pte Ltd. Singapore. Pursuant to non-compete fee agreement, according to the Ld. representative, non-compete fee

was paid in three instalments based on annual revenue of the company. Since the payment was made at the time of acquisition of company, according to the Ld. representative, it is in the nature of expenditure incurred for the purpose of acquisition of the business of the assessee, therefore, non-compete fee cannot be considered as intangible asset. The Ld. representative further submitted that the expenditure is in the nature of capital. However, the Assessing Officer rejected the claim of the assessee. On appeal before the CIT(Appeals), the CIT(Appeals) found that the agreement was purely personal, hence, the assessee is not eligible for depreciation.

4. Placing reliance on the judgment of Madras High Court in Pentasoft Technologies Ltd. v. DCIT (2014) 41 taxmann.com 120, the Ld. representative for the assessee submitted that when there was an agreement transferring the rights over the business as well as for non-compete fee, in the absence of any segregation and distinction between the rights over the business and payment towards non-compete fee, the assessee is entitled for depreciation. Referring to the judgment of Madras High Court in Pentasoft Technologies Ltd. (supra), more particularly paragraph 21, the Ld. representative submitted that a similar contention raised by the

Revenue was rejected by the Madras High Court. The Madras High Court found that the non-compete fee clause under the agreement is to strengthen the commercial right which was transferred in favour of the assessee. Therefore, according to the Ld. representative, the assessee is entitled for depreciation.

5. On the contrary, Shri S. Nataraja, the Ld. Departmental Representative, submitted that the assessee claimed that the non-compete fee was for a period of three years from the date of termination of the employment of two covenanters. According to the Ld. D.R., one covenanter Shri Darayes Dalal was terminated from the employment of the company. However, the other covenanter Shri Udayakumar is still continuing in the company. Therefore, according to the Ld. D.R., the non-compete fee agreement is not for a fixed term. The Assessing Officer after referring to the judgment of Delhi High Court in Sharp Business System in I.T.A. No.492/2012, found that the non-compete fee is not an allowable expenditure. According to the Ld. D.R., the Assessing Officer has found that the so-called non-compete fee agreement is purely a personal one. The alternative claim of the assessee that it will be allowed as revenue expenditure was also rejected by the Assessing

Officer. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee-company earlier known as Epicurean Enterprises Pvt. Ltd. was acquired by Compass Group of companies by means of share purchase agreement. The only issue arises for consideration is disallowance of depreciation on non-compete fee. The Assessing Officer found that non-compete fee paid by the assessee is not a right available to the company which can be sold. The Assessing Officer further found that business as well as commercial right are similar nature. According to Section 32(1)(ii) of the Act, it cannot be said to arise overnight on account of payment of non-compete fee. The Assessing Officer also found that the payment of non-compete fee did not result in any intangible asset. Accordingly, the Assessing Officer by placing reliance on the judgment of Delhi High Court in Hindustan Coco Cola Beverages Pvt. Ltd. (331 ITR 192), found that the assessee is not eligible for depreciation on the non-compete fee. Before this Tribunal, the assessee is placing its

reliance on the judgment of Madras High Court in Pentasoft Technologies Ltd. (supra).

7. We have carefully gone through the judgment of Madras High Court in Pentasoft Technologies Ltd. (supra). In the case before Madras High Court, the assessee paid non-compete fee by virtue of an agreement. The assessee claimed the same as capital expenditure and depreciation was also claimed. The Assessing Officer rejected the claim of the assessee. The Tribunal also confirmed the order of the Assessing Officer on the ground that the non-compete fee is not an asset, therefore, depreciation cannot be allowed. On further appeal before High Court, it was found that under the agreement, the transferor had all the rights like copyright, trademark, etc. The High Court further found that the non-compete fee is a commercial right and therefore, eligible for depreciation under Section 32(1)(ii) of the Act.

8. In view of the judgment of Madras High Court in Pentasoft Technologies Ltd. (supra), this Tribunal is unable to uphold the order of the lower authority. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to grant depreciation on the non-compete fee paid by the assessee.

9. In the result, both the appeals of the assessee stand allowed.

Order pronounced on 4<sup>th</sup> October, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 4<sup>th</sup> October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai
4. Principal CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.