

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.1941/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2003-04

Navin Global P.Ltd. Nirma House Ashram Road Ahmedabad. PAN : AAACN 5215 B	Vs.	DCIT, Cir.(3)(1)(1) Ahmedabad.
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Assessee by :	Shri Himanshu Shah, AR
Revenue by :	Shri B.P. Srivastava, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/01/2019

घोषणा की तारीख/Date of Pronouncement: 16/01/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-9, Ahmedabad dated 14.7.2017 passed for the Asstt.Year 2003-04.

2. Though the assessee has taken four grounds of appeal, but its grievance revolves around a single issue whereby it has pleaded that he Id.CIT(A) has erred in confirming the disallowance of depreciation of Rs.8,20,313/-.

3. Brief facts of the case are that the assessee has filed its return of income declaring a loss of Rs.23,64,220/-. An assessment was made

under section 143(3) on 22.3.2006 whereby total income of the assessee was determined at Rs.7,55,415/- as against returned loss. The assessee has claimed depreciation on licence fee amounting to Rs.8,20,313/-. This depreciation was disallowed to the assessee by the AO. Dispute travelled upto the Tribunal, and the issue was remitted back to the AO. Again this disallowance has been made, and total income of the assessee has been determined at a negative figure of Rs.15,43,907/-. The Id.CIT(A) discussed the issue elaborately in the impugned order. We would like to take note of relevant finding recorded by the Id.CIT(A) on this issue, which reads as under:

"It can be seen from, the above referred finding of Hon'ble Supreme Court the main argument for claiming depreciation on the goodwill arising on amalgamation was that the extra consideration was paid towards- the reputation that the amalgamating company was enjoying in order to retain its existing clientele. Relying on this main argument, the Hon'ble Apex Court has considered goodwill as an asset under explanation-3(b) to sec.32(1) of the Act. Hon'ble Apex court has further gone in to another aspect that no amount was actually paid on account of goodwill which was a finding of fact. In the case before Hon'ble Supreme Court, the CIT(A) .had come to the conclusion that the assets and liabilities of YSN Shares and Securities (P) Ltd. were transferred to the assessee for a consideration and the difference between the cost of an asset and the amount paid constituted goodwill and the assessee company in the process of amalgamation has acquired a capital right in the form of goodwill because of which the "market worth" of the assessee company stood increased. Hon'ble Supreme Court has also mentioned that the ITAT has upheld this fact and hence there is no reason to interfere with the factual finding. Further the Supreme Court has also mentioned that the only question raised before it was whether goodwill is an asset u/s.32 of the Act or not ? and the revenue had not filed an appeal before the High Court on the finding of fact mentioned earlier. The A.O has also mentioned in the order of assessment that the findings given by the Hon'ble Supreme Court that the only question of law that was raised before it was whether goodwill is a depreciable asset or not? There is no doubt that the judgment of the Apex Court is the law of land. There is also no doubt that 'Goodwill' is an intangible asset eligible for claim of depreciation u/s.32 of the Act. It is seen that the appellant had acquired the concern Alpa Marketing Enterprises for the reason of marketing set up of Alpa Marketing Enterprise in different states and centre, with its own liecense and arrangement alongwith vast number of distributors. The data base of consumer habits and market potential of Alpa Marketing was also acquired and hence an amount of Rs. 50 lac was paid. It is a matter of fact that the appellant had paid Rs. 50 lacs as a lumpsum payment for acquiring running business of Alpa Marketing. The auditors have also mentioned that

it was a consideration for slump sale and it does not amount to purchase of license or intangible assets. In the agreement the seller had agreed that all the contracts, deed, agreements, other instruments and documents of whatever nature of which the same was the party shall remain in full force in favour of the purchaser. It had also agreed that all the benefits under agreements which was earned by the seller would be transferred to the purchaser as a part of running business and assets. I am of the considered opinion that Hon'ble -Supreme Court has mentioned in its judgment in Smifs Securities that it is a matter of fact that in the process of amalgamation the difference between the cost of an asset and the amount paid constituted the goodwill for reason that Smifs Securities had acquired a capital right in the form of goodwill because of which market worth of Smifs Securities increased by means of scheme of amalgamation of YSN Shares and Securities Pvt. Ltd. with Smifs Securities. Thus the main question remains that by acquiring Alpa Marketing Enterprise whether the market worth of the appellant company stood increased or not? It is seen from the agreement between the appellant and the Alpa Marketing Enterprise that the appellant has paid Rs. 50 lacs over and above the total assets and liabilities received by the appellant. The payment is in lieu of total assets along with liabilities and in lieu of running business of Alpa Marketing. Neither in the agreement nor in the audit report in form No.SCEA the valuation of intangible assets such as government approvals, licenses and registration etc have been reflected upon nor has there been any discussion on value of such intangibles. Thus, the payment appears to have been made only for acquiring the running business and not in lieu of any intangible assets that would increase the market worth of the appellant. Further, the audit report and the agreement is also not clear whether the said agreement has lead to increase in market worth of the appellant company or not. At the same time it is a matter of fact that the payments of Rs. 50 lacs was over and above the total assets and liabilities received by the appellant. Considering all the facts above, I am of the considered opinion that it has not been proved by the appellant during the assessment as well as appellate proceedings that the payments of Rs. 50 lacs has lead to increase in its market worth by acquiring a capital right in the form of goodwill. Therefore, the disallowance of Rs.8,20,313/- made by the A.O on account of claim of depreciation on the goodwill arising out of acquiring Alpa Marketing is hereby confirmed and the ground of appeal is dismissed.”

4. A perusal of the above finding would indicate that basically, the Id.CIT(A) has doubted very existence of the assets by virtue of this transaction. In the opinion of the Id.CIT(A) no intangible asset in the shape of licence etc. appears to have come to the assessee, and the payments were made only for acquiring running business. However, during the course of discussion, it came to our notice that depreciation was granted for the first time in the Asstt.Year 2001-02. A re-assessment order was passed, but it was quashed by the Tribunal. In

the Asstt.Year 2002-03, depreciation was allowed by the AO himself under section 143(3). The Id.counsel for the assessee further pointed out that except Asstt.Year 2003-04 i.e. present year, in subsequent year also depreciation has been granted. Considering above position, we do not see any reason to doubt about existence of an asset in a particular year, more so, without any specific evidence on record. The Id.CIT(A) has just re-appreciated the agreement, which has been construed otherwise by the Revenue authorities in all other assessment years. Considering principle of consistency, we are of the view that the assessee is entitled for depreciation this year also. Therefore, we allow this ground of appeal and delete disallowance made by the AO, and confirmed by the Id.CIT(A).

5. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 16th January, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER