

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 42/Bang/2017
Assessment Year : 2011-12

The Assistant Commissioner of Income- tax, Circle – 7 (1) (2), Bangalore.	Vs.	M/s. VF Brands India Pvt. Ltd., (Formerly known as 'VF Arvind Brands Pvt. Ltd.), Bagmane Laurel, Block B, Level 09, Floor 8, Bagmane Tech Park, C.V. Raman Nagar, Bangalore – 560 093. PAN: AACCV2727L
APPELLANT		RESPONDENT
Assessee by	:	Smt. Shreya Loyalka, CA
Revenue by	:	Shri K.N. Dhandapani, JCIT (DR)
Date of hearing	:	14.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue and the same is directed against the order of Id. CIT(A)-7, Bangalore dated 07.10.2016 for Assessment Year 2011-12.

2. The grounds raised by the revenue are as under.

“1. The order of the learned CIT(A) is opposed to law and facts of the case.

2. "Whether on the facts and circumstances of the case the CIT(A) is justified in law in not considering that the business transferred to M/s. VF has been basically with all its divisions and operations other than the operation of Factory and the Exclusive Brand Outlets [EBOs]

3. "Whether on the facts and circumstances of the case the CIT(A) is justified in law in considering that the intangible assets on which depreciation is claimed by the assessee come under the purview of Explanation 4 to Section 32 of the I. T. Act"?

4. The CIT(Appeals) has erred in allowing the depreciation on Customer Relationship (CR) & Vendor Relationship (VR) considering them to fall under "Any other business or commercial rights of similar

nature" of Explanation 4 to Section 32 of the I. T. Act"?

5. The CIT(Appeals) has erred in allowing the oral claim of Depreciation on Goodwill to the assessee company, without taking into consideration the landmark judgement of the Hon'ble Supreme Court in the case of M/s. Goetze India (2003), which has been relied upon by the AO".

6. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

7. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above."

3. Both sides were heard. We find that reliance was placed by Id. AR of assessee on the Tribunal order rendered in the case of DCIT Vs. V.F. Arvind Brands Pvt. Ltd. in ITA No. 1904/Ahd/2013 and C.O. No. 204/Ahd/2013 dated 01.01.2019. She submitted a copy of this Tribunal order and drawn our attention to para no. 12.4 of this Tribunal order and pointed out that in this para, it is held by the Tribunal that there is no ambiguity about assessee's eligibility for depreciation in respect of intangible assets as discussed in another para of same Tribunal order. Thereafter, she submitted that in para 17 of this Tribunal order, the issue is discussed by the Tribunal regarding allowability of depreciation on goodwill. She pointed out that in this para, the Tribunal has followed the judgment of Hon'ble Apex Court rendered in the case of CIT Vs. Smifs Securities Ltd. as reported in 348 ITR 302 and the Tribunal has reproduced the relevant para of this judgment of Hon'ble Apex Court and respectfully following the same, the Tribunal has decided the issue in favour of the assessee regarding allowability of depreciation on goodwill.
4. We have considered the rival submissions. We find that as per ground no. 3 of appeal raised by the revenue as reproduced above, this is the grievance of the revenue that CIT(A) has erred in allowing the claim of Depreciation on Intangible assets and as per Ground No. 5, this is the grievance of the revenue that CIT(A) has erred in allowing the claim of Depreciation on Goodwill to the assessee company without taking into consideration the landmark judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd. vs. CIT as reported in 284 ITR 323. But in this regard, we find no merit

in this objection of revenue because as per the same judgment of Hon'ble Apex Court, it is noted in that case also that fresh claim was raised by assessee before the AO without filing any revised return of income and the same was rejected by the AO but when the assessee carried the matter in appeal before CIT(A), the claim of the assessee was allowed by CIT(A). Against this order of CIT(A), the revenue filed appeal before the Tribunal and the Tribunal approved the AO's order and when this matter reached to Hon'ble Apex Court, it was held by Hon'ble Apex Court in this case that the AO cannot allow a fresh claim which is not raised by assessee by filing revised return of income but allowing of such claim in appeal by Id. CIT(A) or Tribunal has no infirmity. In fact, it is specifically stated by Hon'ble Apex Court in this judgment that the issue in this case is limited to the power of the assessing authority and it does not impinge on the power of the Income Tax Appellate Tribunal u/s. 254 of the IT Act. Accordingly, ground no. 5 of appeal raised by revenue is rejected.

5. Now the issue on merit is regarding allowability of depreciation on intangible assets. On this aspect, the issue is covered by the Tribunal order rendered in the case of DCIT Vs. V.F. Arvind Brands Pvt. Ltd. (supra). Para nos. 12 to 12.5 of this Tribunal order are relevant in this regard and hence, the same are reproduced hereinbelow.

“12. The next question arises about the allowability of the cost incurred by the assessee in connection with the business. In our view, such deductions cannot be disallowed on a technical basis. Supposing the assessee does not allocate the expenses under the head design and technical know-how and it prefers to allocate the same under the head goodwill. There is no dispute for the depreciation on the goodwill as held by the Honourable Supreme Court in the case of semif securities Ltd. reported in 348 ITR 302 wherein it was held as under:

4. Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

5. In the circumstances, we are of the view that 'Goodwill' is an asset

under Explanation 3(b) to Section 32(1) of the Act.

6. One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax (Appeals) ['CIT(A)', for short] has come to the conclusion that the authorised representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT', for short]. We see no reason to interfere with the factual finding.

7. One more aspect which needs to be mentioned is that, against the decision of ITAT, the Revenue had preferred an appeal to the High Court in which it had raised only the question as to whether goodwill is an asset under Section 32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove.

8. For the afore-stated reasons, we answer Question No.[b] also in favour of the assessee.

12.1 Thus in our considered view there could not have been any dispute regarding the claim of depreciation on the goodwill as discussed above. Therefore, in our considered view, the expenses incurred by the assessee in connection with the business cannot be disallowed merely on the ground that these have been claimed under different nomenclatural. Thus, we hold that the expenses have been incurred for the business then the deduction has to be allowed to the assessee under the provisions of the Act.

12.2 We also note that the assessee has claimed depreciation on the same intangible assets in the immediately preceding year in its income tax return which was processed under section 143(1) of the Act. Thus, it is clear that there was written down value of these intangible assets which were brought forward in the year under consideration. Thus, in our considered view the opening written down value in the year cannot be disputed. In this regard we find support and guidance from the judgment of Hon'ble High Court of Bombay in case of HSBC asset management India Pvt. Ltd. reported in 47 taxmann.com 286 wherein it was held as under:

“Having perused this Appeal Memo including the impugned orders,

we are of the opinion that the Delhi High Court judgment has been delivered on 5th November 2012 and the impugned order was passed on 15th June 2011. The Tribunal has essentially based its conclusion on the consistent stand of the Assessee and that of the Assessing Officer. In dealing with the shift in stand for the subject assessment year, the Tribunal found that this claim of depreciation was raised in the assessment year 2003-2004. The Assessee claimed that it is allowable as per the provisions of Income Tax Act on block of assets under the head "intangible assets". The Assessing Officer allowed the claim for that assessment year by an order under Section 143(3) dated 28.03.2006. The Tribunal then, proceeds to hold that when the Assessing Officer had to allow depreciation on the written down value of the block of assets, then, it cannot in the present assessment year dispute the opening written down value of the block of assets nor can he examine the correctness or otherwise of the opening written down value brought forward from the earlier year. The order under Section 143(3) for the assessment year 2003-2004 continues to operate and no proceedings under the Act were initiated to disturb the same."

12.3 We also note that the Ld. DR have not brought anything on records suggesting that any action against the assessee was taken under section 147 of the Act on account of escapement of income.

12.4 In view of above there remains no ambiguity that the assessee is eligible for the depreciation in respect of the intangible assets as discussed above. Accordingly, we do not find any reason to interfere in the order of Ld. CIT(A).

12.5. Thus, the ground of appeal of the Revenue is dismissed."

6. Regarding the assessee's claim for depreciation on goodwill, para nos. 17 & 17.1 of this Tribunal order are relevant in this regard and hence, these paras are also reproduced hereinbelow for ready reference.

"17. The 2nd controversy arises whether the depreciation is eligible for deduction on the goodwill acquired by the assessee. In this regard we note that the Hon'ble Supreme Court has settled the issue of depreciation on goodwill in the case discussed above. The relevant judgment of the Supreme Court is extracted below:

"4. Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

5. *In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act.*

6. *One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax (Appeals) ['CIT(A)', for short] has come to the conclusion that the authorised representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT', for short]. We see no reason to interfere with the factual finding.*

7. *One more aspect which needs to be mentioned is that, against the decision of ITAT, the Revenue had preferred an appeal to the High Court in which it had raised only the question as to whether goodwill is an asset under Section 32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove.*

8. *For the afore-stated reasons, we answer Question No.[b] also in favour of the assessee."*

17.1 In view of above we hold that the assessee is entitled for the claim of depreciation on the goodwill. Therefore, we allow the claim of the assessee raised in its CO. Accordingly we dismissed the ground of appeal raised by the Revenue."

7. Respectfully following this Tribunal order, we decline to interfere in the order of CIT(A) on any of the issues.
8. In the result, the appeal by the revenue is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 28th June, 2019.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.