

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No. 1667/Chny/2019
निर्धारण वर्ष/Assessment Year: 2013-14

The Assistant Commissioner of
Income Tax,
Corporate Range I,
Chennai.

M/s. Dorma India P. Ltd.,
Vs. No. 14, Pattullous Road, Royapettah,
Chennai 600 002.
[PAN: AAACD3980D]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. R. Anita, JCIT
प्रत्यर्थी की ओर से/Respondent by : Ms. Lakshmi, Advocate
सुनवाई की तारीख/ Date of hearing : 28.01.2020
घोषणा की तारीख /Date of Pronouncement : 30.01.2020

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Chennai dated 22.03.2019 relevant to the assessment year 2013-14. The only effective ground in this appeal raised by the Revenue is that the Ld. CIT(A) has erred in allowing the depreciation by relying on the decision of the Hon'ble Supreme Court in the case of M/s. Smifs Securities Ltd. and the ITAT's decision in the case of R.G. Keswani and failed to appreciate that following the principle of ejusdem generis, the goodwill accounted as balancing factor or non-compete fee is not a depreciable asset in nature of any other business or commercial rights'

specifically similar to know-how/patents/copyrights/trademarks/licences/franchises as per section 32(1)(ii) and explanation 3(b) of the section.

2. Brief facts of the case are that the assessee is engaged in manufacture & supply of door technology products and systems filed its return of income for the assessment year 2013-14 on 30.11.2013 admitting total income of ₹.9,73,06,860/-. The return filed by the assessee was selected for scrutiny and against statutory notice, the assessee's AR filed the details as called for. On perusal of the accounts of the assessee during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed depreciation of ₹.1,61,08,856/- on goodwill @ 25% for the current assessment year. The assessee was asked to furnish the details for the goodwill acquired by the assessee. After considering the submissions of the assessee as well as judicial precedents, the Assessing Officer was of the opinion that the depreciation on goodwill is not allowable on the same since it was not in the species of the intangible assets as per section 32 of the Income Tax Act, 1961 ["Act" in short] and brought to tax. On appeal, by following the decision in the case of Rentokil India Private Limited v. DCIT in ITA 2660/Mds/2016 dated 15.11.2017, the Id. CIT(A) allowed the ground raised by the assessee.

3. Aggrieved, the Revenue is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. DR has submitted that the decision of the

Tribunal in the case of Rentokil India Private Limited v. DCIT (supra) has not attained finality since the Department has preferred further appeal before the Hon'ble Jurisdictional High Court, it was pleaded for reversing the order of the Id. CIT(A) on this issue. On the other hand, the Id. Counsel for the assessee has submitted that the issue is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for earlier assessment years and prayed that the same should be followed.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including case law filed by the assessee. Similar issue was subject matter in appeal in assessee's own case for the assessment years 2010-11 to 2012-13 vide order in I.T.A. Nos. 1664 to 1666/Chny/2019 dated 20.11.2019, the Tribunal has observed and held as under:

In the instant case before us, it is not the case of Revenue, that assessee had acquired some land and building in which case, the valuation of such land and building at book value in the books of acquirer will distort the books of accounts as the fair market value of land and building is significantly higher, as no such land and buildings are acquired by assessee under these two slump sale agreements . What is acquired in these two slump sale agreements by assessee is in the form of tangible assets by assessee which are mainly business movable assets such as computers, laptops, fax machines , printers, office equipments, IT accessories, account receivables, inventories , loans and advances etc and it cannot be said that incorporating these assets in books of accounts of the assessee at book value existing on the date of acquisition has led to distortion in presentation of books of accounts of the acquirer . There is no such allegation by Revenue that these tangible assets never existed or any attempt is made to defraud revenue by introducing non existent tangible assets or undervaluing these assets

. The business assets related to these business activities of trading by these two entities GTS and Arc in Dorma Products and related installation services only were acquired by assessee and not all the assets existing in books of accounts of GTS/Arc and that is where the AO erred in computing the values of the assets acquired in the books of accounts of the assessee vis-à-vis assets existing in the books of accounts of GTS/Arc as the AO considered the entire assets of GTS/Arc existing in their books of accounts for incorporating in books of accounts of assessee which is not the correct thing to do as the assessee did not acquire these companies GTS/Arc nor acquire their entire assets /liabilities/businesses in toto but only acquired business related to trading in Dorma Products and related installation services business erstwhile carried on by these two entities. Thus, we do not agree with this contention of Revenue that merely because these tangible business movable assets were included by assessee in its books of accounts at the book value existing in the books of GTS/Arc on effective date will disentitle assessee from claiming depreciation on the excess consideration paid over and above book value of tangible assets acquired of GTS/Arc. The representations and warranties are made by GTS/Arc to the assessee vide these agreements that their books of accounts and records reflect true and correct state of affairs and for making false/wrong representation/warranties by the sellers, the consequences are provided in these agreements. Thus, we do not find any reasons to doubt the value of these tangible movable assets acquired by the assessee and the value incorporated in books of accounts by the assessee in our view reflect their fair market value, unless rebutted by Revenue. The Revenue has also not done any exercise to valuing these tangible movable assets acquired by the assessee to rebut contention of the assessee that book value of these acquired tangible assets represent fair market value of these assets. Rather AO has proceeded on wrong notion that the assessee acquired companies namely GTS/Arc or acquired their entire assets and liabilities which is not correct. The assessee has discharged its primary onus and now it was for Revenue to have brought on record incriminating material to rebut the contentions of the assessee and in the absence of any cogent incriminating material on record, we reject this contention of the Revenue and hold that book value of these tangible movable assets acquired by assessee was indeed their fair market value. The excess paid by assessee over and above book value of tangible movable assets(net of liabilities) acquired is definitely towards intangibles assets acquired by assessee in the form of business contracts, customer orders, customers, business information, right to continue business as going concerns, non compete by GTS/Arc/key

employees etc. Thus , consolidated payments made by assessee over and above net assets acquired by it under a composite contract in the present case before us, in our considered view is towards goodwill and non compete agreement by GTS/Arc and its key employees and in our considered view depreciation is allowable both on the aforesaid excess amount paid towards goodwill and non compete agreement, . Our aforesaid view is supported by decision of Hon'ble Madras High Court decision in the case of Pentasoft Technologies Limited(supra). We have observed that co-ordinate Bench of Chennai-tribunal in the case of M/s. Rentokil India Private Limited v. DCIT in ITA No.2660/Mds/2016 for ay: 2011-12 vide orders dated 15.11.2017 has allowed depreciation on the intangible assets viz. goodwill/customer list . The co-ordinate Bench of this tribunal in Rentokil (supra) referred to Explanation to Section 92B of the 1961 Act to hold that intangible shall include customer list and depreciation shall be allowable u/s 32 of the 1961 Act . We have observed that co-ordinate Bench of this Tribunal in the case of M/s.Rentokil India Pvt. Ltd. v. DCIT in ITA Nos.444 & 445/Chny/2018 for ay's: 2010-11 & 2014-15 vide common order dated 26.07.2018 has followed its earlier decision in the case of M/s.Rentokil India Pvt. Ltd. v. DCIT in ITA No.2660/Mds/2016 for ay: 2011-12 and has granted relief to the assessee by allowing depreciation on goodwill. Thus, keeping in view of the aforesaid decisions, we hold that Ld.CIT(A) has rightly allowed depreciation claimed by the assessee by following the decision of the tribunal in the case of M/s.Rentokil India Pvt. Ltd. v. DCIT in ITA no. 2660/Mds/2016, vide order dated 15.11.2017 in allowing relief to the assessee. The decision of Hon'ble Supreme Court in the case of Smifs Securities Limited (supra) also support the contentions of the assessee that goodwill is an asset under explanation 3(b) to Section 32(1) and depreciation shall be allowable on goodwill . Revenue has relied on decision of ITAT in the case of Chogule & Co. Private Limited We are of the view that the Ld.CIT(A) has rightly allowed claim of depreciation to the assessee by following Explanation-5 to Sec.32(1) of 1961 Act, which clearly stipulates that depreciation is to be allowed even if assessee has not claimed depreciation while computing income. Thus even if assessee has not filed claim of depreciation in return of income filed with Revenue as well in revised return of income filed with Revenue, but has made claim during the course of assessment proceedings, the assessee will be entitled for depreciation u/s.32 of the 1961 Act. Thus, we decide this effective ground in favour of the assessee. In the result appeal filed by Revenue in ITA No. 1664/Chny/2019 for ay: 2010-11 stand dismissed. We order accordingly.

4.1 By following the decision of the Tribunal in the case of Rentokil India Private Limited v. DCIT (supra), the Coordinate Benches of the Tribunal has decided the issue in favour of the assessee in assessee's own case for earlier assessment years. The Id. DR could not controvert the above decision of the Tribunal by filing higher Court decision having modified or reversed. In view of the above, the contention of the Revenue is devoid of merits and thus, the ground raised by the Revenue stands dismissed.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 30th January, 2020 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 30.01.2020

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.