

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL ' B' BENCH : CHENNAI

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER &
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER

I.T.A.No.79/Chny/2018
Assessment year : 2013-14

M/s. Rentokil India Pvt.Ltd.
105, 4th floor, Sreela Terrace, 1st
Main Road, Gandhi Nagar, Adyar,
Chennai-600 020.

Vs. The Deputy Commissioner of
Income Tax, Corporate Circle-5,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

[PAN : AADCR7629E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.P.Chidambaram, Advocate
प्रत्यर्थी की ओर से /Respondent by : Mrs. R.Anita, JCIT

सुनवाई की तारीख/Date of Hearing : 03-06-2020
घोषणा की तारीख /Date of Pronouncement : 03-06-2020

आदेश / O R D E R

PER S.JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-3, Chennai, in ITA No.90/16-17/A-3 dated 29.09.2017 for the assessment year 2013-14.

2. M/s. Rentokil India P.Ltd., the assessee is engaged in the business of providing pest control services. It claimed depreciation on customer list and goodwill at the rate of 25% treating them as an intangible asset. While making the assessment for the assessment year 2013-14, the A.O.

required the assessee to explain the claim of depreciation. The assessee submitted that it wanted to expand its pest management and control service operations and in furtherance of the said intention, it had acquired business of M/s. Maykar Pest Control for a total consideration of Rs. 1.6 crores by entering into a Business Transfer Agreement (BTA). The consideration has been allocated to tangible assets based on the valuation carried out by individual valuer and the balance consideration has been allocated towards customer list and goodwill. According to Accounting Standards-26, the assessee had capitalized customer list and goodwill as intangible asset and claimed depreciation @ 25% as applicable under the Income-tax Rules for intangible assets. The assessee further contended before the A.O. that the customer list and goodwill would fall within the definition of intangible assets being payment for acquisition of business or commercial rights and relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Smifs Securities Ltd. 348 ITR 302 for claiming depreciation on goodwill. The A.O held, inter-alia, that the purchase price paid is nothing but non-compete fee paid to the transferor by the assessee and has just renamed it as customer right/goodwill. Therefore, he disallowed the depreciation claimed by the assessee. Aggrieved, the assessee filed an appeal before the CIT(A) and the learned CIT(A) dismissed the appeal on this issue. Aggrieved, the assessee filed this appeal.

3. The Ld. AR submitted that on similar facts, the co-ordinate Bench of this Tribunal in its case in ITA No.444 & 445/Chny/2018 for the assessment

years 2010-11 and 2014-15 dated 26.07.2018 has allowed the appeals on the issue of depreciation on goodwill. Similarly, in ITA No.2660/Mds/2016 dated 15.11.2017 has allowed this issue in its favour for the assessment year 2011-12. Therefore, he relied on those orders.

4. Per contra, Ld. DR supported the orders of the lower authorities.

5. We heard the rival submissions. The co-ordinate Bench of this Tribunal in ITA Nos. 444 & 445/Chny/2018 vide order dated 26.07.2018 for the assessment years 2010-11 & 2014-15 has allowed the issue of depreciation on goodwill, the relevant portion is extracted as under:-

"4. We heard the rival submissions. Since, there is no change in the factual and legal matrix, the relevant portion of the order of the co-ordinate Bench in ITA No. 2660/Mds/2016 for the assessment year 2011-12 is extracted as under:-

3. It was submitted by the Ld.AR that the assessee has raised 5 grounds in its appeal. It was a submission that the assessee was only pressing Ground Nos.2 to 2.5 which was against the action of the Ld.CIT(A) in confirming the disallowance made by the AO in relation to claim of depreciation on intangible asset representing the goodwill/customer list. It was a submission that the assessee is in the business of providing Pest Control Services. It was a submission that during the AY 2009-10, the assessee had with the objective of expanding its business, had acquired the businesses of 7 other companies under Business Transfer Agreements (BTA). The assessee company had capitalized the payments in respect of the payment for the goodwill/customer list and the assessee had claimed depreciation on the same. It was a submission that for the AY 2009-10, the assessee had claimed the depreciation and the return filed by the assessee had been

accepted and there was no scrutiny assessment on the same. It was a submission that for the AY 2011-12 being the AY under dispute, the AO had denied the assessee's claim of depreciation. For the AY 2010-11 the assessment have been re-opened and was pending. It was a submission that the AO had disallowed the assessee's claim for depreciation holding that the Business Transfer Agreement contained non-compete clauses and hence depreciation was not allowable on the non-compete fee. The AO held that the assessee was attempting to claim the depreciation on the payment in respect of non-compete fee by changing nomenclature. It was a submission that the assessee had acquired the businesses by the Business Transfer Agreement on a Slump Sale basis. In the books of account of the assessee, the assessee had valued the assets and the goodwill/customer list had been treated as an intangible asset and depreciation claimed thereon. It was a submission that though there is non-compete clause in the Business Transfer Agreement, no amount was quantified for the same. It was a further submission that even assuming the amount was non-compete fee still in view of the decision of the Hon'ble Madras High Court in the case of M/s.Pentasoftware Technologies Ltd., reported in 264 CTR 187, non-compete fee has been held to be a right as an intangible asset entitled to depreciation u/s.32. It was a further submission that neither the term customer list nor non-compete fee was defined in Sec.32. It was a submission that Sec.92B(2)(ii)(f) however defined intangible asset to include the customer list and sub-clause (g) to include non-compete fee. It was a submission that as the customer list as claimed by the assessee and non-compete fee as held by the AO were both intangible assets, in view of the provisions of Sec.32, the assessee was entitled to the claim of depreciation.

4. In reply, the Ld.DR vehemently supported the order of the Ld.CIT(A) & the AO. It was a submission that Sec.92B was in relation to international transactions and Sec.32 did not include customer list or non-compete fee.

5. We have considered the rival submissions. A perusal of the provisions of Sec.32(1) Explanation-3 shows that the expression asset meant to include intangible assets being knowhow, patents, copyrights, trademarks any other business or commercial rights of similar nature. A perusal of the decision of the Hon'ble Madras High Court in the case of M/s.Pentasoftware Technologies Ltd., shows that it has recognized that the agreement therein was a

composite agreement and under the agreement, the transferor had transferred all its rights, copy rights to the transferee and in order to strengthen those rights transferred, the non-compete clause was supporting the clause to strengthen the commercial right which is transferred in favour of the transferee. In the present case also, the Business Transfer Agreement is a composite agreement and the non-compete clause therein was supporting clause to strengthen the commercial rights which had been transferred to the assessee herein. Further, a perusal of the decision of the Co-ordinate Bench of this Tribunal, Pune 'A' Bench, in the case of M/s.Cosmos Co-op Bank Ltd., shows that even the customer list has been treated as falling within the expression "business or commercial rights of similar nature" contained in Sec.32(1)(ii) of the Act. For this purpose, the Co-ordinate Bench of this Tribunal has relied upon the decision of the Hon'ble Delhi High Court in the case of M/s.Areva T & D India Ltd., reported in [2012] 20 taxmann.com 29 (Delhi). In these circumstances, we are of the view that the assessee is entitled to the depreciation on the intangible asset viz., goodwill/customer list as claimed by him. Our view is also on account of the fact that Sec.92B in respect of international transactions under the Explanation thereto has provided that the expression intangible property would include under clause-(f) "customer related intangible assets such as customer list, customer contacts,", thus, the legislature in its wisdom in respect of the international transactions provided for the expression intangible property to include intangible assets such as customer list in Sec.92B then an interpretation difference from the same cannot be taken that under the same applicable act and that too to the detriment of local business and citizens. In these circumstances, we are of the view that the assessee is entitled to the claim of depreciation on the intangible assets, being the goodwill/customer list, as claimed by the assessee. In the result, Ground Nos.2 to 2.5 of the assessee's appeal stand allowed. The other grounds have not been pressed by the assessee and consequently stand dismissed as not pressed."

6. Thus, this Tribunal has allowed this issue in favour of the assessee in the earlier and subsequent assessment years. Therefore, following the above orders of the co-ordinate Bench of this Tribunal, the ground of depreciation on goodwill is allowed for this assessment year 2013-14 also.

7. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 3rd June, 2020 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/Judicial Member

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai

दिनांक/Dated: 03.06.2020

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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