

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI

Before Shri Shamim Yahya, Accountant Member  
& Shri Pavan Kumar Gadale, Judicial Member

ITA No.3322/MUM/2019  
Assessment Year: 2015-16

The DCIT 14(2)(1), Mumbai	Vs.	M/s. IMCD Group B V India Branch (Now IMCD India P. Ltd.), B Wingh, 1101-1103, One KBC, C-66, G Block, BKC, Bandra (E), Mumbai 400 051.
(Appellant)		PAN AABC18417R (Respondent)

Appellant By : Shri Mallikarjain Utture  
Respondent By : Shri Sandip Bagmar

Date of Hearing :30.09.2020	Date of Pronouncement : 12.10.2020
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**ORDER**

This is an appeal by the Revenue directed against order of learned CIT(A)-56, Mumbai, dated 14.03.2019, pertaining to assessment year 2015-16.

2. The only grounds of appeal raised by the Revenue read as under:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in directing the AO to allow the depreciation of Rs 8,34,91,830/- on non-compete fees without appreciating the fact that non-compete fees is not an asset and is a right available against the contracting parties only and hence not an asset."

3. At the outset, in this case learned counsel of the assessee submitted that the issue is squarely covered by the order of the Tribunal in its own case for A.Y. 2012-13.

4. Per contra, the learned DR did not dispute this proposition.
5. We find that the Assessing Officer in this case has made the disallowance of depreciation on non-compete fees by concluding as under:

*"4.3 The Hon'ble Dispute Resolution Panel (DRP) in assessee's own case for AY 2012-13 has accepted-the contention of the assessee without appreciating the facts of the case. The department has filed an appeal before the JTAT, Mumbai against the directions of DRP before Hon'ble ITAT Mumbai and the matter is sub judice.*

*4.4 In view of the above and as per the stand taken by the Assessing officer in earlier years and stand taken by the department the claim of depreciation made by the assessee on goodwill amounting to Rs, 83,491,831/-- is hereby disallowed. As a result the same is added back to the business income returned by the assessee. Penalty proceedings are initiated simultaneously under section 271(1)(c) of the Income Tax Act for furnishing inaccurate particulars of income."*

6. Upon assessee's appeal, the learned CIT(A) deleted the disallowance placing reliance on the decision of the Tribunal in assessee's own case and his own order for earlier year by observing as under:

*"The latest position on assessment of same income is as under :*

*A. In AY 2012-13 appeal by revenue against decision of DRP where following- question was raised before Hon. ITAT [in ITA/1544/MUM/2016 dated 11.07.2018.] was dismissed.*

*Whether on the facts and in the circumstances of the case, the Hon'ble Dispute Resolution Panel (DRP) was justified in directing the AO to allow depreciation of Rs. 1,36,31,137/- on Goodwill and Non-compete Fees, without appreciating the facts of the case that the consideration of Rs. 10,90,49,099/-paid by the assessee included consideration of Rs. restraining the seller to carry on a similar business for a period of 8 years.*

*B. In AY 2013-14, the sum claimed as depreciation on goodwill was not accepted by me but was allowed as depreciation on non-compete fee vide order dated 17.01.2018.*

C. In AY 2014-15 there is no addition to goodwill/non-compete fee is there and decision for AY 2013-14 was to continue.

5. In A.Y. 2015-16 there is no addition to good will/non-compete fee. The depreciation is on addition to intangible assets acquired in A.Y. 2012-13 and 2013-14. The opening WDV for A.Y. 2012-13 stands cemented by Hon'ble ITAT and is further recast based on appellate order by undersigned for A.Y. 2013-14 and 2014-15. Depreciation is to be granted on account of decision of Hon'ble ITAT in this assessment year also as facts and circumstances are identical as for A.Y. 2011-12.

6. The A.O. is accordingly directed to grant depreciation on intangible assets as claimed by assessee on goodwill/non-compete fee after correcting computing opening WDV based on appellate decision for A.Y. 2012-13, 2013-14 and 2014-15. The alternate grounds turns inconsequential and needs no adjudication.

7. We find that this Tribunal in assessee's own case for A.Y. 2012-13 vide order dated 11.07.2018 has upheld the order of the CIT(A) in deleting the disallowance of depreciation by concluding as under:

"11. We have deliberated at length on the facts of the case in the backdrop of the settled position of law, and being of the view that as the issue involved in the present appeal is squarely covered by the aforesaid judgments of the Hon'ble High Court of Madras in the case of Pentasoft Technologies Ltd. vs. DCIT (2014) 264 CTR 187 )(Mad) and that of the High Court of Karnataka in the case of CIT vs. Ingersoll Rand International Ind Ltd. (2014) (48 taxman.com 349), therefore, respectfully follow the same. We, thus, in terms of our aforesaid observations uphold the order passed by the A.O. under Sec. 14(3) r.w.s. 144C(13) in compliance to the directions of the DRP under Sec. 144C(5) of the Act. The ground of appeal No.1 raised by the revenue is dismissed. The Grounds of appeal no.2 and 3 being general in nature are dismissed as not pressed."

Accordingly, following the above precedent, we uphold the order of Ld. CIT(A)

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules on 12<sup>th</sup> Oct, 2020.

**Sd/-**  
**(Pavan Kumar Gadale)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Shamim Yahya)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated : 12<sup>th</sup> October, 2020.

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A),
4. The CIT
5. The DR, 'C' Bench

BY ORDER

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai