

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.3475/Del./2018  
(ASSESSMENT YEAR : 2012-13)**

**ITA No.3850/Del./2018  
(ASSESSMENT YEAR : 2013-14)**

**ITA No.4330/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

**ITA No.1637/Del./2019  
(ASSESSMENT YEAR : 2015-16)**

DCIT, Circle 12 (1), vs. M/s. Infracsoft Technologies Ltd.,  
New Delhi. Unit No.86 & 87, SDF III,  
SEEPZ, SEZ, MIDC, Andheri East,  
Mumbai – 400 096 (Maharashtra).  
**(PAN : AAACB2817R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Manish Shah, CA  
REVENUE BY : Ms. Parul Singh, Senior DR

**Date of Hearing : 12.10.2020**

**Date of Order : 20.10.2020**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Aforesaid interconnected appeals filed by the Revenue challenging the impugned orders passed by the Id. CIT (A) bearing

common question of law and facts are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, DCIT, Circle 12 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeals sought to set aside the impugned orders dated 27.02.2018, 15.03.2018, 16.03.2018 & 26.12.2018 for Assessment Years 2012-13, 2013-14, 2014-15 & 2015-16 respectively passed by the Commissioner of Income - tax (Appeals)-4, New Delhi on the identical grounds except the difference in amount of depreciation claimed by the assessee inter alia that :-

***“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the Assessing Officer is wrong in disallowing depreciation u/s 32 claimed on self valued, unsubstantial intangibles declared as ‘customers contract’ & ‘goodwill’, whereas no such breakup was part of agreement with KPIT.***

***2. Whether the CIT (A) has erred in allowing depreciation on claimed intangible ‘customer contract’ which is not covered in the definition of ‘Intangible Assets’ as defined in Explanation 3 to Section 32 (1) of the IT Act.”***

3. For the sake of brevity, we are taking up the facts of ITA No.3475/Del/2018 for AY 2012-13 to dispose off all the four appeals bearing common question of law and facts which are :

4. Assessee company is into the business of sale of software licence, software development and other software related services which has entered into international transactions but ld. TPO has not drawn any adverse inference in respect of the international transactions undertaken by the assessee. Assessing Officer (AO) noticed that during the years under assessment, assessee has shown addition in the intangible assets in goodwill amounting to Rs.6,52,80,577/- and Rs.10,89,00,000/- in goodwill and in customer contract and claimed substantial depreciation thereon. Assessee was called upon to file details of the said intangible assets and prove allowability of depreciation claimed. Assessee filed reply which has been extracted by the AO in Para 4 of the assessment order. Declining the explanation offered by the assessee, AO proceeded to conclude that the claim of the assessee in transferring part investment as intangible assets i.e. customer contract and goodwill was not justified and thereby disallowed depreciation claimed by the assessee on such intangible assets and framed the assessment accordingly.

5. Assessee carried the matter before the Id. CIT (A) by way of appeals who has deleted the disallowance of depreciation on goodwill and customer contract made by the AO by allowing the appeals. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the aforesaid appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeals, gone through the documents relied upon and orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, during the year under assessment, the assessee has acquired certain business interest from M/s. KPIT Cummins Infosystems Ltd. for a consideration of Rs.19,02,00,000/- out of which an amount of Rs.6,52,80,577/- and Rs.10,89,60,000/- has been shown as goodwill and customer contract respectively. It is also not in dispute that assessee has furnished detail of amount of Rs.17.52 crores paid during the year under assessment based on the valuation report dated 21.08.2012 which is as under :-

Sr.No.	Asset	Amount (Rs.)
1	Customer Contracts	10,89,00,000
2	Goodwill	6,52,80,577
3	Computer Equipment	9,00,000
	<b>Total</b>	<b>17,50,80,577</b>

8. It is also not in dispute that the assessee has claimed aforesaid investment in two intangible assets and claimed depreciation thereon. It is also not in dispute that the aforesaid intangible assets have been acquired by the assessee by virtue of the Business Transfer Agreement dated 24.06.2011 entered into between the assessee and M/s. KPIT Cummins Infosystems Ltd. for acquiring BFSI Software Services business comprising target customer contracts, target employees and target assets.

9. Perusal of the impugned order passed by the Id. CIT (A) shows that the issue in controversy has been thrashed in entirety in the light of the law laid down by the Hon'ble Apex Court and Hon'ble Delhi High Court. AO has disallowed goodwill and customer contract merely on the basis of surmises; that consideration paid on account of customer contract and goodwill has been classified as intangible assets just to reduce its tax liability by wrongfully claiming goodwill and customer contract.

10. Assessee has purchased the running business of M/s. KPIT Cummins Infosystems Ltd. for acquiring its banking and financial services business (BFSI) for a consideration of Rs.19,02,00,000/- as per valuation report, available at pages 87 to 89 of the paper book. Valuation Report contains value of tangible and intangible assets separately as in the business of banking and financial software business, contracts and the people along with a marginal amount of assets is considered as the major component of the transfer. Furthermore, in the business transfer agreement, complete detail of specified BSFI business, target assets, target customers and name of the target customers are available at pages 46 & 47 of the paper book.

11. Hon'ble Supreme Court in *CIT vs. Smiffs Securities Ltd. (2012) 348 ITR 302* held that, ““goodwill” is an asset under Explanation 3B to section 32 of the Act and is eligible for depreciation”.

12. So far as depreciation of customer contracts is concerned, ld. AR for the assessee contended that the assessee is entitled for depreciation on customer contracts also in view of the decision

rendered by the Hon'ble Delhi High Court in case of *Areva T&D India Ltd. vs. DCIT (2012) 345 ITR 421 (Delhi)*.

13. Hon'ble Delhi High Court in *Areva T&D India Ltd.* (supra) has held that when goodwill in books of account comprises inter alia business claims, business information, business records, contracts, skilled employees & knowhow has been purchased for a consideration to acquire the running business, it is comparable to a licence to carry out the existing transmission and distribution business of the transferor and in the absence of aforesaid intangible assets business, assessee would have to commence business from scratch. Effect of acquiring running business with tangible and intangible assets including goodwill and customer contracts are quite visible as turnover of the assessee has been increased from Rs.18.32 crores to Rs.13.92 crores during the year under assessment.

14. Despite the fact that the assessee has given the complete details of agreement vide which tangible and intangible assets of running business of M/s. KPIT Cummins Infosystems Ltd. were purchased as per valuation report, AO has disallowed the

depreciation on goodwill and customer contracts by ignoring the settled principle of law that goodwill / customer contracts duly recorded in the audited financials are eligible for depreciation being intangible assets under section 32 (1)(ii) of the Act.

15. We are of the considered view that Id. CIT (A) has rightly deleted the disallowance made by the AO by following settled proposition of law discussed in the preceding paras. Finding no illegality or perversity in impugned order passed by the Id. CIT (A), appeal bearing ITA No.3475/Del/2018 filed by the Revenue is hereby dismissed.

16. Since question of fact and law raised in appeals bearing ITA Nos.3850/Del/2018, 4330/Del/2018 & 1637/Del/2019 is identical vis-à-vis appeal bearing ITA No.3475/Del/2018, the same are also dismissed.

**Order pronounced in open court on this 20<sup>th</sup> day of October, 2020.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 20<sup>th</sup> day of October, 2020/TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-4, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.