

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'I-1 NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 483/DEL/2017 (A.Y 2012-13)**

**(THROUGH VIDEO CONFERENCING)**

Geodis Overseas Pvt. Ltd. Building No. 5, Tower B, 10 <sup>th</sup> Floor, DLF Cyber City Gurgaon AAACC6168L <b>(APPELLANT)</b>	Vs	DCIT Circle-10(1) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Vishal Kalra, Adv</b>
<b>Respondent by</b>	<b>Sh. Surender Pal, CIT DR</b>

<b>Date of Hearing</b>	<b>25.02.2021</b>
<b>Date of Pronouncement</b>	<b>17.03.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 24/11/2016 order passed by 144C(1)(3) read with Section 143 (3) of the Income Tax Act, 1961 for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

1. *“That the impugned order of assessment framed by the assessing officer (“AO”) in pursuance of the directions of the Dispute Resolution Panel (hereinafter referred to as ‘DRP’) under Section 143(3) read with Section 144C of the Income-tax Act, 1961 (‘Act’), is bad in law, violative of principles of natural justice and void ab-jnatio.*

2. *That the assessing officer erred on facts and in law in completing the*

assessment under section 143(3) read with section 144C of the Income-tax Act ("the Act") at an income of Rs. 184,341,870 as against INR 72,692,430 returned income.

**3. Transfer Pricing Issues:**

3.1 *That on the facts and circumstances of the case and in law, the AO / DRP / transfer pricing officer ("TPO") have erred in disallowing payment of INR 90,936,248 by the Appellant to its associated enterprises on account of allocation of management and support charges incurred by the Appellant.*

3.2 *That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in holding the international transaction of allocation of management and IT support charges to be not at arm's length in terms of the provisions of sections 92C(1) and 92C(2) of the Act, read with Rule 10D of the Income-tax Rules, 1962 ("Rules").*

3.3 *That on the facts and circumstances of the case and in law, the AO / TPO have not appreciated the business model, functional, asset and risk profile of the Appellant and have further erred in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules for the determination of the arm's length price ("ALP").*

3.4 *That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not appreciating the documentary evidence submitted by the Appellant, unambiguously justifying the receipt of such services and allocation of cost. The AO / DRP / TPO have further erred in questioning the sanctity of the inter-company agreements.*

3.5 *That on the facts and circumstances of the case and in law, the AO/TPO have erred in stating erroneous facts while rejecting the benchmarking analysis of the Appellant and not appreciating the approach undertaken by the Appellant in its transfer pricing documentation. The AO / TPO have further erred in undertaking a fresh analysis without documenting cogent reasons under section 92C(3) of the Act for rejecting the documentation of the Appellant with respect to the international transaction of allocation of management support and IT charges.*

3.6 *That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in benchmarking management support and IT*

*charges using Comparable Uncontrolled Price (“CUP”) method and determining the arm’s length price towards such payment of charges for management and support services as ‘Nil’, which is not in accordance with the provisions of Chapter-X read with Rules 10 of Income Tax Rules, 1962 (“Rules”).*

*3.7 That on facts and circumstances of the case and in law, the DRP directions are bad in law as the DRP benchmarked the management support and IT charges of the Appellant using the operating expenses upon sales of some companies, without even providing the search process as well as the companies used for the purpose of benchmarking to the Appellant.*

*3.8 That on facts and circumstances of the case and in law, the DRP directions are bad in law as the operating expenses upon sales ratio (“bright line”) of the unknown comparable companies used by DRP with the ratio of operating expenses upon sales of the Appellant, without appreciating that such an approach is not stipulated under any methods prescribed under Chapter X read with the Rule 10 of the Rules there under to determine the ALP of the international transaction of management support and IT charges.*

*3.9 That on facts and circumstances of the case and in law, the directions passed by DRP and the subsequent orders passed by lower authorities are bad in law and void ab-initio as the DRP has enhanced the disallowance for management support and IT charges to INR 90,936,248 as against disallowance of INR 77,393,666 made by the TPO, without providing an opportunity of being heard, which is sine qua non as per section 144C(1 1) of the Act.*

*3.10 That on facts and circumstances of the case and in law, the directions are bad in law and void ab-initio as the DRP has erred in observing / directing that the management support and IT charges amounting to INR 90,936,248 are alternatively disallowable under section 37(1) of the Act, without passing a speaking order on the issue and providing an opportunity of being heard, which is sine qua non as per section 144C( 11) of the Act.*

*3.11 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in undertaking separate benchmarking analysis for allocation of management and support charges, ignoring the fact that the reimbursements were benchmarked with the primary transaction using entity level Transactional Net Margin Method (“TNMM”).*

#### **4. CORPORATE TAX GROUNDS**

4.1. *That on the facts and circumstances of the case and in law, AO erred in making disallowance and DRP erred in upholding disallowance of INR 20,713,187 being depreciation claimed under section 32(1 )(ii) of the Act, on the amount of goodwill.*

4.2 *That on the facts and circumstances of the case and in law, the AO/ DRP erred in holding that goodwill does not qualify as 'business or commercial right' as envisaged under section 32(1 )(ii) of the Act.*

4.3 *That on the facts and circumstances of the case and in law, the AO erred in levying interest under section 234B and section 234D of the Act.*

*Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the appellant.”*

3. The assessee is engaged in the business of transportation of time sensitive packages, documents and Cargo to domestic and international destinations. The assessee filed return of income declaring 'NIL' income on 30/11/2012. During the year under consideration, the assessee had undertaken international transaction with its associated enterprises. In accordance with the provisions of Section 92CA of the Income Tax Act, the international transactions entered into by the assessee with the associated enterprises were referred to the Transfer Pricing Office for determining the Arms Length Price. The TPO passed order u/s 92CA(3) of the Act, on 21/1/2016 thereby making adjustment of Rs. 7,73,93,666/-. The draft assessment was passed on 15/3/2016 thereby making addition of Rs. 2,07,13,187/- on account of depreciation on goodwill and also as per the Transfer Pricing Adjustment at Rs.7,73,93,666/-. The assessee filed objections before the DRP and the DRP has given directions u/s 144C (5) of the Act vide order dated 18/10/2016. After following the directions issued by the DRP, the Transfer Pricing Officer has given an order giving effect vide order dated 8/11/2016 thereby making revised total adjustment to that of

Rs.9,09,36,248/- . The assessment order was passed on 24/11/2016 thereby making an additions as per the directions given by the DRP and assessing the income at Rs. 18,43,41,870/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before us.

5. The Ld. AR submitted that Ground No. 1 & 2 are general. The Ld. AR further submitted that in light of APA Ground No. 3, 3.1 to 3.1.1 are withdrawn as the same are academic. As regards Ground No. 4 & 4.1, the Ld. AR submitted that the issue is covered by the order of the Tribunal in ITA No. 2305/Del/2015 Assessment Year 2010-11 order dated 18/05/2020 which is followed in ITA No. 2242/del/2016 for Assessment Year 2011-12 order dated 28/10/2020. As related to Ground No. 4.2, the same is also covered by the said decision of the Tribunal.

6. The Ld. DR relied upon the order of the TPO and DRP and further submitted that goodwill is not inclusive and hence the adjustment and the additions made by the TPO/A.O are just and proper.

7. We have heard both the parties and perused the material available on record. Since, Ground No. 1 & 2 are general. The same are not adjudicated upon. As regards Ground No. 3, 3.1 to 3.11, the same are dismissed as withdrawn. As regards Ground No. 4 & 4.1, the Tribunal in assessee's own case for A.Y. 2010-11 held as under:-

*“40. We have considered the rival arguments made by both the sides, perused the orders of the AO/TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, disallowed depreciation on goodwill on the ground that the assessee has not become the sole logistic service provider to IBM India, the value of workforce does not facilitate the smooth carrying on of the business of the assessee and the supplier contracts forming part of the*

acquisition agreement have expired in the previous year relevant to the assessment year under consideration. According to the AO, the assessee has not acquired any business during the year and, hence, there is no question of making payment over and above for any commercial or business rights as defined under Explanation 3 to section 32(1). Further, the purchase price is not verifiable from any calculation or valuation report. According to the AO, there is decline in the business receipts even after paying so much on account of goodwill and, therefore, there is no justification for the payment of such amount. Further, it is also the case of the AO that as per the provisions of law, no depreciation is allowable on goodwill and the legislature provides that depreciation should be allowed on all other intangible assets other than goodwill.

41. We find, the Hon'ble Delhi High Court in the case of *Areva T & D India Ltd. vs. DCIT, 345 ITR 421* has decided an identical issue in favour of the assessee. In that case, the following substantial question of law was admitted:-

*"Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that know-how, business contacts, business information, etc. acquired as part of the slump sale described as „goodwill“ were not entitled for depreciation under Section 32(1)(ii) of the Income Tax Act?"*

42. We find, the Hon'ble Delhi High Court in the said decision has held that specified intangible assets, viz., business claims, business information, business records, contracts, employees and know-how acquired by assessee under slump sale agreement are in nature of 'business or commercial rights of similar nature' specified in section 32(1)(ii) and are accordingly eligible for depreciation under that section.

43. The relevant observation of the Hon'ble High Court from para 12 to 15 are as under:-

*" 12. In the present case, it is seen that the assessee vide slump sale agreement dated 30th June, 2004, acquired, as a going concern, the transmission and distribution business of the transferor Company w.e.f. 1st April, 2004. As a result thereof, the running business of transmission and distribution was acquired by the transferee lock, stock and barrel*

minus the trademark of the transferor which was retained by the transferor, for lump sum consideration of Rs.44.7 Crores. It is further seen that the book value of the net tangible assets (assets minus liabilities) acquired was recorded in the balance sheet of the transferor as on the date of transfer as Rs.28.11 Crores. The said assets and liabilities were recorded in the books of transferee at the same value as appeared in the books of the transferor. The balance payment of Rs.16,58,76,000/- over and above the book value of net tangible assets, was allocated by the transferee towards acquisition of bundle of business and commercial rights, clearly defined in the slump sale agreement, compendiously termed as "goodwill" in the books of accounts, which comprised, inter alia, the following:- (i) Business claims, (ii) Business information, (iii) Business records, (iv) Contracts, (v) Skilled employees, (vi) knowhow. It is also observed that the AO accepted the allocation of the slump consideration of Rs.44.7 Crores paid by the transferee, between tangible assets and intangible assets (described as goodwill) acquired as part of the running business. The AO, however, held that depreciation in terms of Section 32(1)(ii) of the Act was not, in law, available on goodwill. The CIT(A) and the ITAT approved the reasoning of the AO thereby holding disallowance of depreciation on the amount described as goodwill. It was thus argued on behalf of the assessee Company that Section 32(1)(ii) would mean rights similar in nature as the specified assets, viz., intangible, valuable and capable of being transferred and that such assets were eligible for depreciation. On behalf of the respondent it was argued that applying the doctrine of *noscitur sociis* the expression "any other business or commercial rights of similar nature" used in Explanation 3(b) to Section 32(1) has to take colour from the preceding words "knowhow, patents, copyrights, trademarks, licenses, franchises". It was urged that the Supreme Court had clearly held in *Techno Shares and Stocks Ltd.*(supra) that "Our judgment should not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of section 32(1)(ii) of 1961 Act".

13. In the present case, applying the principle of *ejusdem generis*, which provides that where there are general words following particular and specific words, the meaning of the latter words shall be confined to things of the same kind, as specified for interpreting the expression "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act, it is seen that such rights need not answer the description of "knowhow, patents, trademarks, licenses or franchises" but must be of

*similar nature as the specified assets. On a perusal of the meaning of the categories of specific intangible assets referred in Section 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature", it is seen that the aforesaid intangible assets are not of the same kind and are clearly distinct from one another. The fact that after the specified intangible assets the words "business or commercial rights of similar nature" have been additionally used, clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate. In the circumstances, the nature of "business or commercial rights" cannot be restricted to only the aforesaid six categories of assets, viz., knowhow, patents, trademarks, copyrights, licenses or franchises. The nature of "business or commercial rights" can be of the same genus in which all the aforesaid six assets fall. All the above fall in the genus of intangible assets that form part of the tool of trade of an assessee facilitating smooth carrying on of the business. In the circumstances, it is observed that in case of the assessee, intangible assets, viz., business claims; business information; business records; contracts; employees; and knowhow, are all assets, which are invaluable and result in carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a license to carry out the existing transmission and distribution business of the transferor. In the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee got an up and running business. This view is fortified by the ratio of the decision of the Supreme Court in *Techno Shares and Stocks Ltd.*(supra) wherein it was held that intangible assets owned by the assessee and used for the business purpose which enables the assessee to access the market and has an economic and money value is a "license" or "akin to a license" which is one of the items falling in Section 32(1)(ii) of the Act.*

*14. In view of the above discussion, we are of the view that the specified intangible assets acquired under slump sale agreement were in the nature of "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act and were accordingly eligible for depreciation under that Section.*



15. *In view of the above, it is not necessary to decide the alternative submission made on behalf of the assessee that goodwill per se is eligible for depreciation under Section 32(1)(ii) of the Act. In the circumstances, the substantial question of law is decided in the affirmative and this appeal is allowed in favour of the assessee and against the Revenue and the impugned order is set aside.”*

44. *We further find the SLP filed by the Revenue against the aforesaid decision was dismissed by the Hon’ble Supreme Court, vide order dated 23<sup>rd</sup> September, 2013 vide SLP 21227/2012.*

45. *We further find, the Delhi Special Bench in the case of CLC & Sons Private Ltd. (supra), while allowing depreciation on goodwill has held as under:-*

*“7. It is overt from the command of clause (ii) of section 32(1) of the Act that depreciation is permissible in respect of intangible assets listed herein, acquired on or after 01.04.1998. This clause contains certain specified and unspecified species of intangible assets. Whereas the specified intangible assets enshrined in the provision include know-how, patent and copyrights ITA No.1976/Del/2006 etc., the unspecified intangible assets have been described with the expression 'or any other business or commercial rights of similar nature.' It is nobody's case that goodwill is a specified intangible asset. The assessee has sought to cover 'goodwill' within the expression deployed to define unspecified intangible assets. Au contraire, the A.O. has canvassed a view that the expression used in the provision for defining unspecified intangible assets cannot embrace something which is inextricably linked with the business of the assessee. He bolstered his point of view by noting that the specified assets in the provision are such which are detachable from the business of the assessee and transferrable individually and separately. In this light, he held that the expression 'or any other business or commercial rights of similar nature' would include only such assets which are transferrable distinctly. Goodwill of a business, being, an intangible asset which cannot be transferred separately de hors the transfer of business, was, ergo, held to be not includible in the expression used in the provision to explain the unspecified intangible assets. In our considered opinion, this issue is no more res integra in view of the judgment of the Hon'ble Summit court in CIT vs. Smifs Securities Ltd. (2012) 348 ITR 302 (SC) in which it ITA No.1976/Del/2006 has been held: "that goodwill will fall under the expression 'or any other business or commercial rights of similar nature'"*

*and, hence, qualifies for depreciation u/s 32(1) of the Act. We, therefore, answer the legal issue raised in the question before the Special bench in affirmative by holding, in principle, that depreciation is available on genuine goodwill.”*

46. *The various other decisions relied on by the Id. Counsel for the assessee also support his case to the proposition that depreciation is allowable on goodwill.*

47. *We further find the allegation of the AO that the year-wise revenue from logistic services to IBM India is showing a declining trend is also incorrect. A perusal of the chart at para 32 of this order shows that there is, in fact, increase of revenue from IBM.*

48. *In view of the above discussion and relying on the decisions cited (supra), we hold that the assessee is entitled to depreciation on goodwill. The ground raised by the assessee is accordingly allowed.”*

8. As regards Ground No. 42 in Assessment Year 2011-12, the Tribunal held in Para 17 to 25 are as under:-

“17. *The second grievance relates to disallowance of depreciation on goodwill.*

18. *Facts on record show that the appellant entered into a world-wide multi-year outsourcing agreement with IBM India Private Limited, Network Solutions Private Limited and IBM Daksh Business Process Services Private Limited to acquire the freight forwarding business/ internal global logistics operations of IBM in India for a consideration of Rs. 14,78 crores.*

19. *The appellant acquired tangible assets, employees, supplier contracts of IBM. Consideration of Rs. 14.72 crores paid by the appellant represents the value of transferred workforce and supplier contracts including the right to provide logistics services to IBM India for a maximum period of 15 years. The appellant has characterised these as goodwill and claimed depreciation on the same at the rate of 25% under section 32(i)(ii) of the Act.*

20. *However, the claim of the assessee was dismissed by the Assessing Officer who was of the firm belief that the depreciation on goodwill was not*

*allowable as a deduction in light of the provisions of Explanation 3 to section 32(1) of the Act.*

21. *Before us, the ld. counsel for the assessee brought to our notice the decision of the co-ordinate bench in assessee's own case in ITA No. 2305/DEL/2015 for A.Y 2010-11 and pointed out that Tribunal has decided this issue in favour of the appellant.*

22. *Per contra, the ld. DR supported the findings of the DRP.*

23. *We find force in the contention of the ld. counsel for the assessee. We are of the considered opinion that this is not the initial year of claim of depreciation and in this year, the assessee has claimed depreciation on the written down value. We find that in the immediately preceding A.Y i.e. 2010-11, this dispute has been settled by the co-ordinate bench in assessee's own case [supra].*

24. *The relevant findings read as under:*

*"40. We have considered the rival arguments made by both the sides, perused the orders of the AO/TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, disallowed depreciation on goodwill on the ground that the assessee has not become the sole logistic service provider to IBM India, the value of workforce does not facilitate the smooth carrying on of the business of the assessee and the supplier contracts forming part of the acquisition agreement have expired in the previous year relevant to the assessment year under consideration. According to the AO, the assessee has not acquired any business during the year and, hence, there is no question of making payment over and above for any commercial or business rights as defined under Explanation 3 to section 32(1). Further, the purchase price is not verifiable from any calculation or valuation report. According to the AO, there is decline in the business receipts even after paying so much on account of goodwill and, therefore, there is no justification for the payment of such amount. Further, it is also the case of the AO that as per the provisions of law, no depreciation is allowable on goodwill and the legislature provides that depreciation should be allowed on all other intangible assets other than goodwill.*

41. We find, the Hon'ble Delhi High Court in the case of *Areva T & D India Ltd. vs. DCIT, 345 ITR 421* has decided an identical issue in favour of the assessee. In that case, the following substantial question of law was admitted:-

*"Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that know-how, business contacts, business information, etc. acquired as part of the slump sale described as „goodwill“ were not entitled for depreciation under Section 32(1)(ii) of the Income Tax Act?"*

42. We find, the Hon'ble Delhi High Court in the said decision has held that specified intangible assets, viz., business claims, business information, business records, contracts, employees and know-how acquired by assessee under slump sale agreement are in nature of 'business or commercial rights of similar nature' specified in section 32(1)(ii) and are accordingly eligible for depreciation under that section.

43. The relevant observation of the Hon'ble High Court from para 12 to 15 are as under:-

*"12. In the present case, it is seen that the assessee vide slump sale agreement dated 30th June, 2004, acquired, as a going concern, the transmission and distribution business of the transferor Company w.e.f. 1st April, 2004. As a result thereof, the running business of transmission and distribution was acquired by the transferee lock, stock and barrel minus the trademark of the transferor which was retained by the transferor, for lump sum consideration of Rs.44.7 Crores. It is further seen that the book value of the net tangible assets (assets minus liabilities) acquired was recorded in the balance sheet of the transferor as on the date of transfer as Rs.28.11 Crores. The said assets and liabilities were recorded in the books of transferee at the same value as appeared in the books of the transferor. The balance payment of Rs.16,58,76,000/- over and above the book value of net tangible assets, was allocated by the transferee towards acquisition of bundle of business and commercial rights, clearly defined in the slump sale agreement, compendiously termed as "goodwill" in the books of accounts, which comprised, inter alia, the following:- (i) Business claims, (ii) Business information, (iii) Business records, (iv) Contracts, (v) Skilled employees, (vi) knowhow. It is also observed that the AO accepted the allocation of the slump consideration of Rs.44.7 Crores paid by the transferee, between tangible assets and*

*intangible assets (described as goodwill) acquired as part of the running business. The AO, however, held that depreciation in terms of Section 32(1)(ii) of the Act was not, in law, available on goodwill. The CIT(A) and the ITAT approved the reasoning of the AO thereby holding disallowance of depreciation on the amount described as goodwill. It was thus argued on behalf of the assessee Company that Section 32(1)(ii) would mean rights similar in nature as the specified assets, viz., intangible, valuable and capable of being transferred and that such assets were eligible for depreciation. On behalf of the respondent it was argued that applying the doctrine of noscitur sociis the expression "any other business or commercial rights of similar nature" used in Explanation 3(b) to Section 32(1) has to take colour from the preceding words "knowhow, patents, copyrights, trademarks, licenses, franchises". It was urged that the Supreme Court had clearly held in *Techno Shares and Stocks Ltd.*(supra) that "Our judgment should not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of section 32(1)(ii) of 1961 Act".*

13. *In the present case, applying the principle of ejusdem generis, which provides that where there are general words following particular and specific words, the meaning of the latter words shall be confined to things of the same kind, as specified for interpreting the expression "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act, it is seen that such rights need not answer the description of "knowhow, patents, trademarks, licenses or franchises" but must be of similar nature as the specified assets. On a perusal of the meaning of the categories of specific intangible assets referred in Section 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature", it is seen that the aforesaid intangible assets are not of the same kind and are clearly distinct from one another. The fact that after the specified intangible assets the words "business or commercial rights of similar nature" have been additionally used, clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate. In the circumstances, the nature of "business or commercial rights" cannot be restricted to only the aforesaid six categories of assets, viz., knowhow, patents, trademarks, copyrights, licenses or franchises. The nature of "business or commercial rights" can be of the same genus in which all the aforesaid six assets fall. All the above fall in the genus of intangible assets that form part of the tool of trade of an assessee facilitating smooth*

*carrying on of the business. In the circumstances, it is observed that in case of the assessee, intangible assets, viz., business claims; business information; business records; contracts; employees; and knowhow, are all assets, which are invaluable and result in carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a license to carry out the existing transmission and distribution business of the transferor. In the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee got an up and running business. This view is fortified by the ratio of the decision of the Supreme Court in Techno Shares and Stocks Ltd.(supra) wherein it was held that intangible assets owned by the assessee and used for the business purpose which enables the assessee to access the market and has an economic and money value is a "license" or "akin to a license" which is one of the items falling in Section 32(1)(ii) of the Act.*

*14. In view of the above discussion, we are of the view that the specified intangible assets acquired under slump sale agreement were in the nature of "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act and were accordingly eligible for depreciation under that Section.*

*15. In view of the above, it is not necessary to decide the alternative submission made on behalf of the assessee that goodwill per se is eligible for depreciation under Section 32(1)(ii) of the Act. In the circumstances, the substantial question of law is decided in the affirmative and this appeal is allowed in favour of the assessee and against the Revenue and the impugned order is set aside.”*

*44. We further find the SLP filed by the Revenue against the aforesaid decision was dismissed by the Hon’ble Supreme Court, vide order dated 23<sup>rd</sup> September, 2013 vide SLP 21227/2012.*

*45. We further find, the Delhi Special Bench in the case of CLC & Sons Private Ltd. (supra), while allowing depreciation on goodwill has held as under:-*

*“7. It is overt from the command of clause (ii) of section 32(1) of the Act that depreciation is permissible in respect of intangible assets listed herein, acquired on or after 01.04.1998. This clause contains certain*

*specified and unspecified species of intangible assets. Whereas the specified intangible assets enshrined in the provision include know-how, patent and copyrights ITA No.1976/Del/2006 etc., the unspecified intangible assets have been described with the expression 'or any other business or commercial rights of similar nature.' It is nobody's case that goodwill is a specified intangible asset. The assessee has sought to cover 'goodwill' within the expression deployed to define unspecified intangible assets. Au contraire, the A.O. has canvassed a view that the expression used in the provision for defining unspecified intangible assets cannot embrace something which is inextricably linked with the business of the assessee. He bolstered his point of view by noting that the specified assets in the provision are such which are detachable from the business of the assessee and transferrable individually and separately. In this light, he held that the expression 'or any other business or commercial rights of similar nature' would include only such assets which are transferrable distinctly. Goodwill of a business, being, an intangible asset which cannot be transferred separately de hors the transfer of business, was, ergo, held to be not includible in the expression used in the provision to explain the unspecified intangible assets. In our considered opinion, this issue is no more res integra in view of the judgment of the Hon'ble Summit court in CIT vs. Smifs Securities Ltd. (2012) 348 ITR 302 (SC) in which it ITA No.1976/Del/2006 has been held: "that goodwill will fall under the expression 'or any other business or commercial rights of similar nature'" and, hence, qualifies for depreciation u/s 32(1) of the Act. We, therefore, answer the legal issue raised in the question before the Special bench in affirmative by holding, in principle, that depreciation is available on genuine goodwill."*

46. *The various other decisions relied on by the Id. Counsel for the assessee also support his case to the proposition that depreciation is allowable on goodwill.*

47. *We further find the allegation of the AO that the year-wise revenue from logistic services to IBM India is showing a declining trend is also incorrect. A perusal of the chart at para 32 of this order shows that there is, in fact, increase of revenue from IBM.*

48. *In view of the above discussion and relying on the decisions cited (supra), we hold that the assessee is entitled to depreciation on goodwill. The ground raised by the assessee is accordingly allowed."*

25. *Respectfully following the findings of the co-ordinate bench, we direct the Assessing Officer to allow claim of depreciation of good will. This ground is, accordingly, allowed.”*

In the present appeal, the issue is identical to that of earlier years and no distinguishing facts pointed out by the Revenue. The DRP has not at all considered the aspect of depreciation on goodwill in correct context as there is a finding identical to that of earlier years, assessee entered into a world-wide multi-year outsourcing agreement with IBM India Pvt. Ltd., Network Solutions Pvt. Ltd. and IBM Daksh Business Process Services Pvt. Ltd. as well as Acquisition Agreement and this is not an initial year of claim of depreciation on goodwill. Hence, in light of the decision of the earlier years by the Tribunal the appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

**Order pronounced in the Open Court in presence of both the parties on this 17th Day of March, 2021**

**Sd/-  
(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 17/03/2021  
R. Naheed \*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT



ASSISTANT REGISTRAR  
ITAT NEW DELHI