

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.4955/Del./2018
(Assessment Year : 2014-15)**

ACIT, Circle 61 (1),
New Delhi.

vs.

M/s. Remfry & Sagar,
Remfry House at Millenium Plaza,
Sector – 27,
Gurgaon – 122 002.

(PAN : AAEFR6753P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri KVSR Krishna, Advocate
REVENUE BY : Shri Dilip Kothari, CIT DR

Date of Hearing : 08.09.2021

Date of Order : 22.09.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Circle 61 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 01.02.2018 passed by the Commissioner of Income - tax (Appeals)-38, New Delhi qua the assessment year 2013-14 on the grounds inter alia that:-

"1. On the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of disallowance of license fee of Rs.30,49,29,397/- paid to

Remfry & Sagar Consultants Pvt. Ltd. (RSCPL) by ignoring the fact that the assessee being law firm was using goodwill of RSCPL being a company prohibited from practicing law in India as per Advocates Act, 1961 and Bar Council Rule.

2. On the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of disallowance of license fee of Rs.30,49,29,397/- paid to Remfry & Sagar Consultants Pvt. Ltd. (RSCPL) by ignoring the fact that the value of license fee paid by the assessee has been increasing year after year and no expenditure being incurred by RSCPL towards improvement, development or protection of the said goodwill.

3. On the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of disallowance of Rs.10,24,570/- out of travelling expense by ignoring the fact that personal element in respect of these expenses cannot be ruled out considering the nature of expenses.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is a law firm deriving income from business and profession. Assessee claimed expenditure of Rs.30,49,29,397/- being the licence fee paid to M/s. Remfry & Sagar Consultants Pvt. Ltd. (RSCPL) for the use of goodwill of RSCPL and to practice in its name. Declining the contentions raised by the assessee, Assessing Officer (AO) disallowed the expenses to the tune of Rs.30,49,29,397/- claimed by the assessee and made addition thereof to the total income on the ground that assessee has failed to justify the payment of licence fee to RSCPL that it is wholly and exclusively for business and on the ground that since payment of licence fee for use of goodwill is increasing year

after year RSCPL, owner of goodwill, is doing nothing for promotion and enhancing the goodwill.

3. Assessee also claimed foreign travel expenses to the tune of Rs.1,56,11,923/-. AO made ad hoc addition of 10% of the total amount of Rs.1,02,45,696/- i.e. Rs.10,24,570/- on the ground of personal element in these expenses and made addition thereof to the total income of the assessee.

4. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has deleted the additions by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, 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.

GROUND NO.1 & 2

6. By relying upon paras 3.21 to 3.24 of the assessment order, Id. DR for the Revenue while challenging the impugned order contented that AO has factually determined that expenses paid by the assessee to RSCPL under the garb of licence fee are not in the nature of licence fee.

7. However, ld. AR for the assessee to repel the arguments addressed by the ld. DR for the Revenue contented that this issue has already been decided by the Tribunal in favour of the assessee in its own case in ITA Nos.3667, 3666, 3668, 3669/Del/2013, 367/Del/2012 & 4680/Del/2012, ITA No.6669/Del/2017 & ITA No.2979/Del/2016 for AYs 2003-04 to 2009-10, 2013-14 & 2015-16 vide orders dated 06.09.2016, 22.01.2021 & 26.07.2019 respectively.

8. Bare perusal of the impugned order passed by the ld. CIT(A) goes to prove that the same has been passed by following earlier years order passed by the Tribunal deleting the identical addition by thrashing complete facts in detail in the light of the agreement dated June 5, 2001 vide which RSCPL has granted the licence for the use of goodwill to the assessee on payment of licence fee @25% of the amount of bills raised. When the agreement is still in operation, we do not find any reason to interfere into the findings returned by the ld. CIT (A).

9. Coordinate Bench of the Tribunal in the case of assessee vide order dated 26.07.2019 in ITA No.2979/Del/2016 for AY 2015-16 dealt with the identical issue and decided in favour of the assessee by returning following findings :-

“6. We find that this issue is permeating from the earlier years and the Tribunal after noting the entire facts and rival contentions made by the parties as well as relevant provision of law has held that the license fee paid to M/s. RSCPL is allowable as Revenue expenditure. The relevant observation and the finding of the Tribunal read as under:

“8. We have heard both the parties at length. We have considered the written submission, the papers on record as well as the case laws cited by both parties. On a careful consideration of the same we hold as follows: 8.1. Before we adjudicate the issue as to whether the disallowance of license fee paid by the assessee to RSCPL for license to practice as 'Remfry & Sagar' and for use of the said name, trade mark and goodwill by the A.O is to be upheld or not, for the purpose of the ready reference we recapitulate the facts of the case as below: Facts Year 1827: A sole proprietorship firm was established as "Grant and Remfry", by a British immigrant, Mr. Henry Oliver Remfry, which was subsequently converted into partnership firm and operated by five generations of Remfry family, until the year 1957.

Year 1957: Mr. Holloway, Mrs. Silverstone, Mr. Bernier and Mr. Burrington joined 'Remfry & Son' (the name of the partnership firm at that time) as partners. Year 1970: Mr. Bernier and Mr. Burrington retired. Mr. Holloway, Mr. Silverstone and Mrs. Remfry entered into a fresh deed of partnership. As per the partnership deed, Mr. Holloway and Mrs. Silverstone were entitled and empowered to sell all or any of the assets of the partnership firm, including the name and goodwill of the business.

Year 1973: Mr. Holloway and Mrs. Silverstone transferred absolutely, the business with all assets including name and goodwill thereof, vesting in 'Remfry & Son' for valuable consideration, to Dr. V. Sagar, with effect from April 1, 1973. Year 1990: Dr. V. Sagar merged his own sole-proprietorship practice in the name of 'Sagar & Co.' into 'Remfry & Son', and changed the name of the proprietorship to 'Remfry & Sagar'.

Year 2001: (i) By a Deed of Gift executed on June 1, 2001, Dr. V. Sagar gifted the good will vesting in 'Remfry & Sagar' to a private limited company, viz., Remfry & Sagar Consultants Private Limited ('RSCPL'), wherein substantial shareholding was held by Dr. Sagar's children, viz., Ms. Rosemary Sagar and Mr. Hemant Sagar, who were not lawyers. At the time of the said

transfer, goodwill was valued at Rs.45 crores on which stamp duty of Rs. 90 lakhs was paid by Dr. V. Sagar.

(ii) On June 5, 2001, Dr. V. Sagar entered into partnership with Mr. R. Sampath, Mrs. Ashwin Julka, Mr. Ramit Nagpal and Mr. Prem Sewak to continue the said practice of law.

(iii) By an agreement dated June 5, 2001 RSCPL granted a License for the use of Goodwill in 'Remfry & Sagar' to the appellant firm for a period of 5 years subject to payment of license fees @ 25% of the amount of bills raised. Latter this was raised to 28% of the bills raised on renewal of agreement after 5 years.

(iv) In addition to the above, RSCPL and the appellant firm entered into an agreement dated June 5, 2001, for use of infrastructure and provision of secretarial, accounting and other supporting services.

Feb 2011: Demise of Dr. V. Sagar In pursuance of the aforesaid license agreement dated June 5, 2001 entered into between the appellant and RSCPL, the appellant paid license fee for use of goodwill to RSCPL w.e.f. assessment year 2002-03, which continues till date, even

-after the demise of Dr. V. Sagar.

8.2. M/s 'Remfry & Sons', was carrying on a business of patent agents. Vide terms of the deed of partnership dated 6th April 1970, 50% of the goodwill of the business belonged to the partner Mrs. Holloway and other 50% to Mrs. Silver Stone. Both of them held 50% of all the other capital assets and properties of the firm. Though Mrs. Remfry was having a share in the net profits of the partnership, she had no ownership rights in the goodwill of this firm. This demonstrates that the name and goodwill of the business 'Remfry & Sons' is distinct and separate from the other assets of the partnership firm and that it vested only in two partners of the firm and not the firm. This is clear from reading of Clause 2 & 3 of the said partnership deed.

8.3. On the fourth day of April 1973, Mr. Vidya Sagar purchased by way of sale, from Mr. Holloway and Mrs. Silver Stone, the business carried on under the name and style of 'Remfry & Sons' along with all its assets including capital asset as on 31st March 1973 and the name and goodwill thereof which was referred to as "the said business" in that agreement for a total consideration

of Rs. 3 lacs. Thus when Dr.V.Sagar purchased the Goodwill along with other assets, this Goodwill was of business and not of any profession of law.

8.4. Thus, Dr. Sagar become an absolute owner of the business carried on in the name and style of "Remfry and Sons" which is in the business of trade mark and patent agent.

8.5. On 1st June, 1990, Dr. V. Sagar merged his legal practice in the name of "Sagar & Co." with the business of trade mark and patent agents carried on in the name and style of 'Remfry & Sons' and changed the name of the proprietorship into 'Remfry and Sagar'. Dr. V. Sagar was carrying practice and profession of "Attorneys-at-Law" with specialization in the areas of intellectual Property Law and Corporate Law under the name and style of 'Remfry & Sagar', in New Delhi and Mumbai. The goodwill in the name of 'Remfry & Sagar' and all the rights associated thereof (including intellectual property rights) belong exclusively to Dr. V. Sagar. Dr. V. Sagar by way of a gift deed executed on the day of 1st June 2001, granted conveyed and transferred by way of gift to RSCPL the said goodwill in the name of 'Remfry & Sagar' and all the rights associated therewith(hereinafter referred collectively referred to as "goodwill"). Dr. V. Sagar also sold and transferred to RSCPL, the infrastructure associated with his practice. 8.6. From the above, it is clear that from 1st June 1990 to 31st May 2001, Dr. V. Sagar was only carrying on the practice and profession of Attorney-At-law, which included the business of "Remfry and Sons" acquired by him. In other words, prior to 1st June, 1990, the Goodwill of "Remfry and Sons" was goodwill of business and not of advocacy profession, but thereafter there is a merger of the profession of law and the business of trade mark and patent. Agents and this was carried on as a profession of law.

8.7. Vide Partnership dated 5th June 2001 between Dr. V. Sagar and four other partners it was agreed to carry on the practice and profession of Attorney-At-Law with the specialization in the area of Intellectual Property Law and Corporate Law with the object of carrying on, without break and in continuity, the practice, hither to carried on by Dr. V. Sagar. The four other partners were earlier associated with the practice of Dr. V. Sagar, in their individual capacities for number of years and have acquired expertise in this field of the profession. We notice that the partnership deed dated 5th June 2001 is

under the name and style of "Remfry & Sagar" and this partnership deed has come into force on 1st June 2001. Thus what is licensed by RSCPL to the assessee firm is Goodwill and its associated rights to practice as "Attorneys-at-law and not to do business of trademark and Patent Agents.

8.8. Vide agreement dated 5th June 2001, RSCPL permitted to use of "goodwill" to the partnership and permitted them to use the name of 'Remfry & Sagar' with retrospective effect i.e. 1st June 2001. While Clause No. 16.1 of this agreement, the license fee in question is to be paid in pursuance to this agreement. 8.9. It is clear that Dr. V. Sagar has arranged his affairs in such a way that the goodwill earned by him over the years is enjoyed by his children who are his legal heirs. All the documentation shows that this is a very well thought out strategy by Dr.V.Sagar to retain his hard earned as well as purchased goodwill and to use it for his future generations, irrespective of the fact whether they were in the practice of law. Such well considered and thought out arrangements cannot be said to be colourful devices. These are transparent and legally documented arrangements. 8.10. The issue for consideration is whether such an arrangement is permissible in law. The pith and substance of the argument of the revenue is that such segregation of goodwill from the legal practice cannot be permitted. It is further argued that under the [Advocates Act, 1961](#), the goodwill earned by an advocate cannot be alienated to any person or company which is not entitled to practice under the [Advocates Act, 1961](#).

8.11. At the same time, the revenue concedes that the legal heirs of the advocates would be entitled to the benefit of the goodwill earned and created by the legal practitioner. It was submitted that the legal heirs may be entitled to consideration for the goodwill on behalf of the deceased father but they cannot be regarded as the lawful owners of the goodwill or having the rights of owning the goodwill or to license the same. In our view, we find a contradiction in these submissions. When it contended that the legal heirs of a practitioner are entitled to receive consideration for goodwill on behalf of the deceased parent, it would be difficult to hold that, the goodwill cannot be separated from the legal practice and the fruits of such goodwill cannot be enjoyed by the legal heirs of the legal practitioner or that it can be enjoyed by the legal heirs only in a particular manner.

8.12. *Be it as it may, the submission of the assessee that goodwill is a separate intangible asset which can be alienated and that which cannot be attached to a firm and that it can be vested in one or more partner of the firm, in exclusion of others, is well settled. The assessee partnership firm formed for carrying a profession and practice of Dr. V. Sagar under the name and style of 'Remfry & Sagar' could not have carried out the profession as it is doing run by using the goodwill and name of "Remfry & Sagar" unless specifically authorized to do so by the owner of the goodwill. As rightly pointed out by the Ld. Counsel for the assessee that in the present day professional practice and professional firms across the globe are in the names of the original founders, though they are no longer part of the practice. This name and goodwill helps in the practice. The partnership was formed to continue the law practice of Dr. V. Sagar and this could be done only if the assessee firm is permitted to do so by the owner of the goodwill.*

8.13. *The submission of the Ld. Special counsel for the revenue that goodwill of a profession cannot be segregated from the persona of the person is against the propositions of law laid down by the Hon'ble Supreme Court in the case of Devi Das Mittal Daas Vithaldas & Co. VS. CIT Bombay City (supra). The constitutional bench of the Hon'ble Supreme Court consisting of four findings was considering a case of chartered accountant who was carrying on his profession in the name of Devi Dass & Co. Vide partnership dated 31 January 1948, wherein he retained/reserved the right of goodwill of the profession carried on by him earlier in sole proprietorship. On 2nd June 1951, he retired from the said partnership. The goodwill in the partnership was sold to the other partner and the consideration was to be paid to the Chartered Accountant at the certain rate and after his death to his wife and thereafter his son were to paid annual consideration. The question before the Hon'ble Court was whether such the amounts paid to the wife and thereof to the son is allowable deduction or not under the Income tax Act. 8.14. The Larger Bench consisting of four Judges of Hon'ble Supreme Court in the case of Devidas Vithaldas & Co. Vs. CIT, Bombay, reported in 84 ITR 277 (S.C.), held as follows.*

"Held, by Shelat, Khanna and Mitter JJ (SDhri CJ dissenting), reversing the decision of the High Court, that the transaction under the deed of dissolution was a licence and not a sale of the goodwill and the payments were in the nature of

royalty and had to be treated as admissible deductions; because (i) though clause 2 of the deed of dissolution used expressions such as 'agreed to sell' and 'the purchase price of the goodwill', these expressions were not determinative of the exact nature of the transaction; (ii) neither clause 2 nor any other provision in the deed fixed any lump sum as price in respect of which annual payments were provided; (iii) the duration of payment was indefinite and the amount was indefinite and depended upon the rise and fall in the profits of the business, (iv) clause 6 indicated that the payments were to be made so long as the business was carried on in the name of D.V.&Co. And not otherwise; and (v) the document was silent as to what was to happen to the goodwill if A or his partners were to cease to carry on business in that name or at all."

Justice S.M. Sikri C.J, has written a dissenting judgment, the pith and substance of which is that the entire arrangement was made for evasion of taxes. He held as follows:

" In my view, it is a very ingenious attempt to avoid payment of tax by making it appear somehow that the payment of purchase money may be treated as payment of a royalty. In the view I take of the deed, it is not necessary to discuss the numerous cases referred to by Shlat J. In my opinion, the High Court came to the correct conclusion and the appeals should be dismissed with costs." 8.15. In the case of hand, this is exactly the case of the Revenue. The majority of the three Judges of Hon'ble Supreme Court did not agree with the minority view and have decided the issue in favour of the assessee.

8.16. Applying the propositions laid down in this case law to the facts of the case, we have to necessarily hold, that the argument of Revenue that the arrangement was for avoidance of tax and diversion of profits and hence the deduction was rightly denied by the Assessing Officer, has to be rejected. Even otherwise, it has been demonstrated by the assessee that the Revenue has accepted that both the entities i.e. the assessee as well as RSCPL, pay taxes, at the maximum rate and that there is no loss of Revenue on account of this arrangement. The taxes due to the Government have not been avoided or evaded by this arrangement. Thus the disallowance made on the ground of diversion of profits is devoid of merit. 8.17. Though the

Ld. Special Counsel for the Revenue argued that good will of a profession cannot be sold to a company which does not have a right to carry on practice, no specific law or section was brought to the notice of the Bench in support of the argument. Only several submissions have been made. Certain judgements of Foreign Courts were cited, which were based on "ethical considerations" and not legal prohibition. In any event, the ITAT has no power or authority to adjudicate the issue as to whether, the gift of goodwill by Dr.V.Sagar of his profession of law, to a company is violating the [Advocates Act, 1961](#) or the Bar Council Rules. No authority has held that this arrangement violates any Act or law of the land, though the assessee firm has been carrying on its profession of Attorneys at law under this arrangement for the last many years. 8.18. Another important fact that has to be considered is that, Dr. V. Sagar had the sole and exclusive rights to the said goodwill. The goodwill was held by him. Without legal authorization from him, the assessee firm could not use the name and style of "Remfry & Sagar" along with its goodwill and other assets and rights. The assessee firm had to seek permissions and licences to continue and carry on this profession under this name as it is run doing. Hence obtaining a license is a must for assessee firm to continue and carry on its profession as the goodwill is not owned by it the payment made in pursuance of an agreement which enables the assessee firm to carry on its profusions, in the manner in which it is now doing, is definitely an expenditure laid down wholly and exclusively for the purpose of business or profession. The argument of the Ld. Special Council that the purpose test contemplated u/s 37 of the Act is not satisfied is devoid of merit. Irrespective of whether the gift of Dr. V. Sagar to RSCPL being ethical or not and irrespective of the fact whether the gift is legally valid or not, from the view point of the assessee firm, as it could not have continued and carried on the profession of Attorneys-at- Law in the name of "Remfry & Sagar" and use its goodwill and all its associated rights without the impugned agreement with RSCPL. Hence the payment has to be held as that which is incurred wholly and exclusively for the purpose of business or profession.

8.19. The contention of the Special Council for the Revenue that the arrangement is just a revenue shown arrangement is just an inference and is not supported by any material. Thus the argument of violation of Bar Council Rules is devoid of merit. 8.20. For all these reasons we are of the considered opinion that the deduction claimed by the assessee of license fee paid to

M/s RSCPL has to be allowed as a deduction u/s 37 of the Act."

7. Thus, respectfully following the aforesaid precedence, we hold that the said deduction claimed by the assessee on account of license fee paid to M/s. RSCPL is allowable as Revenue expenditure u/s.37. Consequently, ground no.1 of the Revenue is dismissed and ground no.2 of the assessee is allowed."

10. Since Id. DR for the Revenue has failed to bring on record any distinguishing facts qua the year under assessment vis-à-vis preceding and succeeding years to controvert the findings returned by the coordinate Bench of the Tribunal, we are of the considered view that amount of deduction claimed by the assessee on account of licencee fee paid to RSCPL is allowable expenditure u/s 37 of the Act. Consequently, grounds no.1 & 2 are determined against the Revenue.

GROUND NO.3

11. AO made an ad hoc disallowance @ 10% of the foreign travel expenses claimed by the assessee on ground of personal element in these expenses which Id. CIT (A) has deleted. Ld. DR for the Revenue challenging the impugned deletion relied upon the order passed by the AO.

12. We are of the considered view that none of the expenditure claimed by the assessee as business expenditure can be disallowed merely on the basis of surmises. Ld. CIT (A) deleted the impugned

addition by following the earlier years order allowing identical expenditure.

13. When AO has not disputed the books of account qua the expenditure claimed by the assessee in any manner, ad hoc disallowance to the extent of 10% of the foreign travel expenses is not sustainable in the eyes of law. So, we find no ground to interfere in the findings returned by the Id. CIT (A), hence ground no.3 is determined against the Revenue.

14. Resultantly, finding no illegality or infirmity in the order passed by the Id. CIT(A), present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 22nd day of September, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

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

**Dated the 22nd day of September, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-38, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**