

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.82/Bang/2018
Assessment year : 2006-07

The Asst. Commissioner of Income-tax, Circle-11(4), Bengaluru.	Vs.	M/s Indus League Clothing Ltd., No.22, VK Kalyani Commercial Complex, Opp.BDA Office, Kumara Park Road, Bengaluru-560 020.  <b>PAN – AAACI 5392 Q</b>
REVENUE		ASSESSEE

Assessee by	:	Shri L Bharath, C.A
Revenue by	:	Shri Priyadarshi Mishra, Addl.CIT(DR)

Date of hearing	:	27.10.2021
Date of Pronouncement	:	.11.2021

**ORDER**

*Per Chandra Poojari, Accountant Member*

This appeal by the assessee is directed against the order of CIT(A)-12 dated 28.01.2009. The relevant assessment year is 2006-2007.

2. The assessee raised following grounds of appeal:-

*“1. The LAO and Hon'ble CIT(A) erred in not appreciating the fact that the total consideration of Rs. 125 lakhs was paid only for "Jealous" brand and not for other residuary brands namely 'Analyse', 'Detour' & 'JLS'.*

*a) Hon'ble CIT(A) erred in not considering the certificate provided by the assignor of the trademarks stating that the total consideration was related only to "Jealous" trademark and the other trademarks were residuary.*

*b) Hon'ble CIT(A) also failed to disregard the letter filed by the Appellant stating that the other residuary trademarks are not at all launched in the market and accordingly, it possess no value.*

*c) In the facts and circumstances of the case, the Hon'ble CIT(A) erred in upholding the order of the LAO on assumption and without any evidence to rebut the fact that the total consideration was only for "Jealous" trademark and other residuary trademarks were not at all launched in the market.*

*2. Without prejudice to Ground no.3, even if the three trademarks were not actually put to use during the year, they were 'ready for use' and hence depreciation is allowable on the same.”*

3. The assessee also raised following additional grounds:-

*“The Appellant prays to submit the under-mentioned additional ground of appeal which were not urged specifically in the original grounds of appeal filed at the time of institution of appeal. These grounds do not involve any investigation of any facts otherwise on the record of the department and are also pure questions of law, which goes into the very root of the matter of jurisdiction and validity of the impugned addition and therefore, it is prayed that the additional ground may kindly be admitted and disposed off on merits for the advancement of substantial cause of justice. Reliance is placed on the decision of the Supreme Court in National Thermal Power Co. Ltd. v. CIT (229 ITR 383) and decision of the Karnataka High Court in Gundathur Thimmappa & Sons v. CIT (70 ITR 70).*

*1. The Learned Assessing Officer ('LAO') erred in fact and in law in not allowing depreciation as claimed by the Appellant with respect to the trademark and undertaking the disallowance by not considering the actual cost of the trademark as was incurred and paid by the Appellant.*

*2. The LAO erred in fact and in law in re-working the actual cost of the trademark acquired by the Appellant without satisfying any of the conditions of Explanation 3 to section 43(1) of the Income-tax Act, 1961 ('the Act').*

*3. For the above and other grounds that may be urged at the time of the hearing of the appeal the appeal may be allowed and justice rendered."*

4. The assessee filed petition for admitting additional grounds and placed reliance on the judgment of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd., Vs. CIT, 229 ITR 383 (SC) and prayed that the additional grounds may be admitted, as these grounds do not involve any investigation of facts, otherwise on the records of the department and are also pure questions of law, which goes into the very root of the matter of jurisdiction and validity of impugned addition and, therefore, the assessee prayed that additional grounds may be admitted and adjudicated on merits.

5. We have heard the rival submissions and perused the materials on record on the admissions of additional grounds. In our opinion, the issue raised by the assessee

which being legal issue and it does not require any investigation of facts and all the facts are already on record. Accordingly, this additional ground is admitted for adjudication.

6. The facts of the case are that the AO noted that during the year, the assessee had acquired four trade Marks-'Jealous', 'Analyse', 'Detour' and 'JLS', at a total cost of Rs 125 lakhs. On verification of records,he found that only one trademark 'Jealous' was put to use. Since the appellant was unable to submit the cost of each trademark, the AO apportioned the total payment of Rs 125 lakhs equally among the four trade Marks and disallowed depreciation claimed on the other three i.e. total disallowance Rs.31,38,442/-.

7. The CIT(A) observed that the assessee acquired 4 trademarks and consideration paid for them was Rs.1.25 crores and there was segregation of price paid for each trademarks as such the amount paid of Rs.1.25 croes to be attributable to all the 4 trademarks. Only 1 trade mark viz., 'Jealous' was used for depreciation and other trademarks were not used so as to grant depreciation. Before the CIT(A), the assessee filed one letter received

from Mr. Prem Gupta, Director of Miracle Lifestyle Ltd., wherein it was confirmed that payment of Rs.1.25 crores received from assessee is only related to 'Jealous' and 3 trademarks are additional trademarks given to the assessee. The ld.CIT(A) observed that no credence to be given to this letter. Against this, the assessee is in appeal before us.

8. The ld.AR submitted that

1. *The actual cost of Rs. 1.25 crore adopted by the Appellant was on the basis that the said sum was paid by it for the purchase of the 'Jealous' trademark alone. The other trademarks were ancillary having no value.*
2. *The Appellant has based its depreciation claim on the following:*
  - a. *Since no amount was paid towards the other trademarks, it is not relevant if those assets were put to use or not. Hence, there was no question of claiming depreciation on those trademarks.*
  - b. *Understanding between the parties that the Jealous trademark is the only trademark of value. It was also the understanding that the other trademarks are ancillary trademarks which the seller would have no use of given that the seller had transferred the important Jealous trademark. To substantiate this, the Appellant had obtained a letter from the transferor.*
  - c. *Mention in its audited financials that trademarks of 1.25 crore were only towards Jealous.*
  - d. *The fact that the Jealous trademark is used by the Appellant even today, approximately 15 years of since its acquisition also demonstrates that the primary consideration for acquiring the trademarks was towards Jealous.*

3. *All of the above have been brushed by the LAO in the Ld. CIT(A) without any basis. It is held without basis that these are afterthoughts. The least that the LAO and CIT(A) could have done was to cross check with the buyer on the contentions of the Appellant.*
4. *Without prejudice to the above, the LAO has apportioned an equal amount to all the 4 trademarks i.e., Rs. 31.25 lakhs. There is no basis for this equal bifurcation when the contract was driven by the Jealous trademark. Neither the LAO nor the CIT(A) have given any basis. The LAO and CIT(A) cannot substitute their judgment for the business facts of the Appellant as demonstrated by the assessee by way of evidence. The least that the LAO and the CIT(A) could have done was to call for a valuation report from a specialist in the interest of natural justice although no such provision is contemplated under the Income-tax Act 1961 ('the Act').*
5. *Without prejudice to the above, the Act contains a review mechanism for adopting a different actual cost than that adopted. This is provided in Explanation 3 to section 43(1) of the Act which requires the LAO to obtain the prior permission of Joint Commissioner where he proposes to change the actual cost adopted by the Assessee. The LAO should also satisfy himself that the change in the actual cost is warranted by an intention to avoid tax. No such approval is obtained nor has the AO arrived at such satisfaction. As such the LAO has incorrectly changed the actual cost. In this regard, reliance is placed on the following rulings:*
  - a. *DCIT v. Lafarge India Limited (9 taxmann.com 40) (p. 8, para 13 of the case law compilation volume 2);*
  - b. *DCIT v. Jaya Hind Sciaky Ltd. (65 taxmann.com 60) (p. 14-15, para 12-14 of the case law compilation volume 2);*
  - c. *CIT v. SRF Ltd. (56 taxmann.com 173) (p. 21-22, para 8-9 of the case law compilation volume 2);*
  - d. *Nirma Industries Limited v. DCIT (29 taxmann.com 89) (p. 39 para 3.5 of the case law compilation volume 2);*
  - e. *DCIT v. S.V.P.B. Spinners (P.) Ltd. (82 taxmann.com 278) (p. 48-54, para 11-16 of the case law compilation volume 2);*

- f. *Unimed Technologies Ltd. v. DCIT (73 ITD 150) (p. 70, para 19 of the case law compilation volume 2);*
  - g. *Chitra Publicity Company (P) Ltd.v. ACIT (127 TTJ 1 (Ahmedabad)) (p. 137, para 17.2-25 of the case law compilation volume 2);*
  - h. *Ashwin Vanaspati Industries v. CIT (125 Taxman 59) (p. 149-150, para 20 of the case law compilation volume 2);*
  - i. *ACIT v. Karma Energy Ltd. (33 taxmann.com 580) (p. 168-170, para 41-45 of the case law compilation volume 2).*
6. *Without prejudice to the above, the Appellant submits that an asset has entered in to the block, it is neither possible nor is it necessary to consider whether each asset is used in the year. It is submitted that LAO has acknowledged the use of the Jealous brand during the year, but not the other brands. All these 4 brands constitute as one block of intangible assets. The test of user has to be applied upon the block as a whole instead of upon an individual asset. Since the assessee has acknowledged the use of one asset in the block, he cannot deny that the other assets in the block have not been put use. Once it is proved that block of asset is used for the purposes of appellant business and there is no finding as to whether the block of assets or for that matter any asset falling in the block of asset is used for other business purposes proportionate disallowances of depreciation is not warranted. This is contrary to the positions of section 32 as has been held in the Delhi High Court in CIT v. Oswal Agro Mills Ltd (341 ITR 467). Reliance is also placed on the following rulings:*
- a. *CIT v. Bharat Aluminium Co. Ltd. (187 taxman 111) (p. , para 31-32 of the case law compilation volume 2);*
  - b. *CIT v. Sonal Gum Industries (322 ITR 542) (p.197, para 5 of the case law compilation volume 2);*
  - c. *E-City Entertainment (India) (P.) Ltd. v. ACIT (39 taxmann.com 120); (p.208-211 , para 25-28 of the case law compilation volume 2).*
7. *Without prejudice to the above, proportionate disallowance of depreciation can be undertaken only when there is a finding that the business assets have been used for other than*

*business purposes. This is contemplated under section 38 of the Act. No such restriction is contemplated with respect to intangible assets. When this is not the claim of the AO, the AO cannot undertake a proportional disallowance. In this regard, reliance is placed on the ruling*

8. *Without prejudice to the above the Appellant submits that with due respect to the Karnataka High Court judgement of Yellamma Dasappa's case, when assets are ready for use but not put to use, the same is eligible for depreciation. In this regard reliance is placed on:*
  - a. *CIT vs Geo Tech Construction Corporation, (244 ITR 452)- Kerala High Court*
  - b. *CIT vs Swarup Vegetable Products India Ltd , (277 ITR 60)- Allahabad High Court*
  - c. *CIT v. Radio Today Broadcasting Ltd (64 taxmann.com 332) – Delhi High Court*
  - d. *CIT v. Chennai Petroleum Corporation Ltd (37 taxmann.com 332) – Madras High Court*
  - e. *CIT v. Yamaha Motor India (P) Ltd (328 ITR 297) – Delhi High Court*

9. The ld.DR relied on the order of the ld.CIT(A).

10. We have heard both the parties and perused the materials on record. In the present case, main argument of the ld.AR is that consideration paid for a sum of Rs.1.25 crores is only related to the trademark for 'Jealous' and it has not related to other trademarks viz., 'Analyse', Detour' & 'JLS'.

11. We have carefully gone through agreement entered by the assessee with Jealous Fashions Pvt. Ltd., on 1<sup>st</sup>

June, 2005, wherein the assessee made payment of Rs.1.25 crores for purchase of following trademarks.

	Name of the Trade Mark	Registration / Application No.	Class
1.	JEALOUS*	605936	25
2.	ANALYSE*	1153164	25
3.	DETOUR	1153163	25
4.	JLS	1156154	25

12. Contrary to this, the submission of AR is that the assessee has paid a sum of Rs.1.25 crores only for one trademark i.e 'Jealous'. However, we find that the agreement entered for acquisition of four trademarks and not for one trademark. Being so, we are not in agreement with the arguments of the assessee's counsel.

13. Next argument of the assessee counsel is that all the 4 trademarks have been included in the block of assets, though they were not actually put to use during the asst. year under consideration. The depreciation cannot be disallowed on the reason that these are not put to use. According to Id.AR, the depreciation allowable on all these trademarks as these are included in same block of assets

though they were not put to use but ready to use. It has been further argued that in the light of amended provisions w.e.f asst. year 1988-89 individual items included in the blocks are not to be considered separately for the purposes of granting depreciation. For this purpose, he relied on various case laws. We find force in the arguments of ld.Counsel for the assessee. In our opinion, it is not the case of the AO that the assets were not put to use at all. The contention of the ld.DR is that only the brand 'Jealous' was put to use in the asst. year under consideration, as such, only this brand is entitled for depreciation and not other 3 brands. All these 4 brands falling under one block of assets and even one of the brads is put to use, it is not possible to restrict the depreciation on the said brand only by stating that a portion of block assets only has been put to use. In our opinion, in relation to block of assets, it is not possible to segregate the each trademark from the block for the purposes of granting depreciation and thereby restricting the claim thereof. Once it is found that the assets are used for business purpose out of particular block, it is not necessary that all the item falling within that block have to be simultaneously used for being entitled to depreciation . In view of this, we are of the opinion that

lower authorities are not justified in rejecting the claim of depreciation on the block of these assets and the assessee to be granted depreciation at the prescribed rate for this block of assets. Accordingly, we allow this ground of appeal of the assessee.

14. Other grounds of appeal raised by the assessee have become infructuous in view of our findings in earlier para and it does not require any adjudication.

15. In the result, assessee's appeal is partly allowed.

Order pronounced in court on 17<sup>th</sup> Nov, 2021.

Sd/-

Sd/-

**(N.V VASUDEVAN)**

**( CHANDRA POOJARI)**

Vice President

Accountant Member

Bangalore,

Dated, 17<sup>th</sup> Nov, 2021

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation  
.....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
.....
8. Date on which the file goes to the Bench Clerk  
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9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
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11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
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12. The date on which the file goes to dispatch section  
for dispatch of the Tribunal Order  
.....
13. Date of Despatch of Order.  
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