

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. AMIT SHUKLA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.6583/Del/2016
Assessment Year: 2013-14

M/s. Premier Book Co. 4792/23 Darya Ganj New Delhi-110002 PAN No. AA EFP8468R	Vs	ACIT Circle – 52 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. B. K. Anand, CA
Respondent by	Sh. T. Kipgen, CIT DR

Date of hearing:	10/02/2022
Date of Pronouncement:	10/02/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A)-18, New Delhi dated 13.10.2016 for A.Y. 2013-14.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the disallowance of depreciation of Rs.2,28,406/- in respect of tenancy rights acquired in respect of the premises used

by the assessee wholly and exclusively for the purpose of its business.

3. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has claimed depreciation of Rs.228406/- @ 25% on tenancy rights. The assessee was asked to justify the claim. In its reply the assessee stated that it had claimed depreciation in respect of tenancy rights for the first time in A.Y. 2008-09 and thereafter similar claims were made in subsequent assessment years. It was further pointed out that similar disallowance was made for the first time in A.Y.2010-11. The AO was of the opinion that since similar disallowance was made in earlier assessment years, therefore, proceeded by disallowing Rs.228406/-.

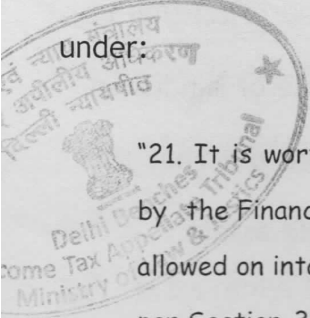
4. The assessee carried the matter before the CIT(A) but without any success.

5. We have carefully perused the orders of the authorities below. We find that this Tribunal in A.Y. 2010-11 in ITA No.5149/Del/2014 order dated 11.08.2021 as allowed the claim of depreciation. The relevant findings of the coordinate Bench read as under :-

9. We have carefully considered the orders of the authorities below. At the very outset, we have to state that depreciation has been claimed on the written down value as on 01.04.2009 which means that depreciation was claimed in earlier years also. We find that this is not the initial year of claim of depreciation. In our considered opinion, unless claim is disturbed in the initial A.Y of the claim, the same cannot be disturbed in the subsequent A.Y if the facts are same.

10. The Hon'ble High Court of Delhi in the case of Hindustan Coco Cola Beverages [supra] had an occasion to examine the provisions of section 32 of the Act. The relevant part of the judgment reads as

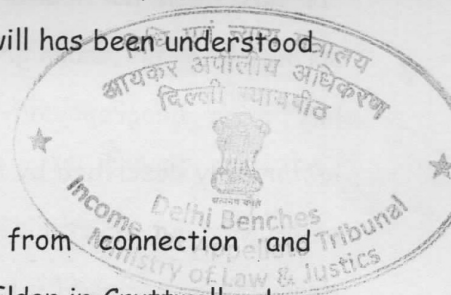
under:



"21. It is worth noting, the scope of Section 32 has been widened by the Finance (No.2) Act, 1998 whereby depreciation is now allowed on intangible assets acquired on or after 1st April, 1998. As per Section 32(1)(ii), depreciation is allowable in respect of know-how, patent, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature being intangible assets. Scanning the anatomy of the section, it can safely be stated that the provision allows depreciation on both tangible and intangible assets and clause (ii), as has been indicated hereinbefore, enumerates the intangible assets on which depreciation is allowable. The assets which are included in the definition of „intangible assets“ includes, along with other things,

any other business or commercial rights of similar nature. The term „similar“ has been dealt with by the Apex Court in Nat Steel Equipment Pvt. Ltd. v. Collector of Central Excise, AIR 1988 SC 631 wherein the Apex Court has opined that the term „similar“ means corresponding to or resembling to in many aspects. In this regard, it would not be out of place to refer to the decision in Commissioner of Income Tax v. B.C. Srinivasa Setty, [1981] 128 ITR 294 (SC) wherein the concept of goodwill has been understood in the following terms:

"Goodwill denotes the benefit arising from connection and reputation. The original definition by Lord Eldon in *Cruttwell v. Lye* 1810 17 Ves 335 that goodwill was nothing more than "the probability that the old customers would resort to the old places" was expanded by Wood V.C. in *Churton v. Douglas* 1859 John 174 to encompass every positive advantage "that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on or with the name of the old firm, or with any other matter carrying with it the benefit of the business". In *Trego v. Hunt* 1896 A.C. 7 (HL) Lord Herschell described goodwill as a connection which tended to become permanent because of habit or otherwise. The benefit to the business varies with the nature of the business and also from one business to another. No business commenced for the first time possesses goodwill from the start. It is generated as the business is carried on and may be augmented with the passage of time. Lawson in his *Introduction to the Law of Property* describes it as



property of a highly peculiar kind. In *CIT v. Chunilal Prabhudas & Co.* [1970] 76 ITR 566 the Calcutta High Court reviewed the different approaches to the concept (pp.577, 578):

"It has been horticulturally and botanically viewed as „a seed sprouting" or an „acorn growing into the mighty oak of goodwill". It has been geographically described by locality. It has been historically described by locality. It has been historically explained as growing and crystallizing traditions in the business. It has been described in terms of a magnet as the „attracting force". In terms of comparative dynamics, goodwill has been described as the „differential return of profit".

Philosophically it has been held to be intangible. Though immaterial, it is materially valued. Physically and psychologically, it is a „habit" and sociologically it is a „custom". Biologically, it has been described by Lord Macnaghten in *Trego v. Hunt* [1896] AC 7(HL) as the „sap and life" of the business. Architecturally, it has been described as the „cement" binding together the business and its assets as a whole and a going and developing concern."

A variety of elements goes into its making, and its composition varies in different trades and in different businesses in the same trade, and while one element may preponderate in one business, another may dominate in another business. And yet, because of its intangible nature, it remains insubstantial in form and nebulous in

character. Those features prompted Lord Macnaghten to remark in IRC v. Muller & Co.'s Margarine Limited [1901] A.C. 217(HL) that although goodwill was easy to describe, it was nonetheless difficult to define. In a progressing business goodwill tends to show progressive increase. And in a failing business it may begin to wane. Its value may fluctuate from one moment to another depending on changes in the reputation of the business. It is affected by everything relating to the business, the personality and business rectitude of the owners, the nature and character of the business, its name and reputation, its location, its impact on the contemporary market, the prevailing socio-economic ecology, introduction to old customers and agreed absence of competition. There can be no account in value of the factors producing it. It is also impossible to predicate the moment of its birth. It comes silently into the world, unheralded and unproclaimed and its impact may not be visibly felt for an undefined period. Imperceptible at birth it exists enwrapped in a concept, growing or fluctuating with the numerous imponderables pouring into, and affecting, the business."

22. Regard being had to the concept of „goodwill“ and the statutory scheme, the claim of the assessee and the delineation thereon by the tribunal are to be scanned and appreciated. The claim of the assessee-respondent, as is discernible, is that the assessing officer had treated the transactions keeping in view the concept of business or commercial rights of similar nature and put it in the compartment of intangible assets. To effectively understand what would constitute an intangible asset, certain aspects, like the

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nature of goodwill involved, how the goodwill has been generated, how it has been valued, agreement under which it has been acquired, what intangible asset it represents, namely, trademark, right, patent, etc. and further whether it would come within the clause, namely, „any other business or commercial rights which are of similar nature“ are to be borne in mind.

23. On a scrutiny of the order passed by the tribunal, it is clear as crystal that the depreciation was claimed on goodwill by the assessee on account of payment made for the marketing and trading reputation, trade style and name, marketing and distribution, territorial know-how, including information or consumption patterns and habits of consumers in the territory and the difference between the consideration paid for business and value of tangible assets. The tribunal has treated the same to be valuable commercial asset similar to other intangibles mentioned in the definition of the block of assets and, hence, eligible to depreciation. It has also been noted by the tribunal that the said facts were stated by the assessee in the audit report and the assessing officer had examined the audit report and also made queries and accepted the explanation proffered by the assessee. The acceptance of the claim of the assessee by the assessing officer would come in the compartment of taking a plausible view inasmuch as basically intangible assets are identifiable non-monetary assets that cannot be seen or touched or physical measures which are created through time and / or effort and that are identifiable as a separate asset. They can be in the form of copyrights, patents, trademarks, goodwill, trade secrets, customer

lists, marketing rights, franchises, etc. which either arise on acquisition or are internally generated.

24. It is worth noting that the meaning of business or commercial rights of similar nature has to be understood in the backdrop of Section 32(1)(ii) of the Act. Commercial rights are such rights which are obtained for effectively carrying on the business and commerce, and commerce, as is understood, is a wider term which encompasses in its fold many a facet. Studied in this background any right which is obtained for carrying on the business with effectiveness is likely to fall or come within the sweep of meaning of intangible asset. The dictionary clause clearly stipulates that business or commercial rights should be of similar nature as know-how, patents, copyrights, trademarks, licences, franchises, etc. and all these assets which are not manufactured or produced overnight but are brought into existence by experience and reputation. They gain significance in the commercial world as they represent a particular benefit or advantage or reputation built over a certain span of time and the customers associate with such assets. Goodwill, when appositely understood, does convey a positive reputation built by a person / company / business concern over a period of time. Regard being had to the wider expansion of the definition after the amendment of Section 32 by the Finance Act (2) 1998 and the auditor's report and the explanation offered before the assessing officer, we are of the considered opinion that the tribunal is justified in holding that if two views were possible and when the assessing officer had accepted one view which is a plausible one, it was not appropriate on the part of the

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Commissioner to exercise his power under Section 263 solely on the ground that in the books of accounts it was mentioned as „goodwill“ and nothing else. As has been held by the Apex Court in Malabar Industrial Co. Ltd. (supra), Max India Ltd. (supra) and Commissioner of Income-Tax v. Vimgi Investment P. Ltd. [2007] 290 ITR 505 (Delhi) once a plausible view is taken, it is not open to the Commissioner to exercise the power under Section 263 of the Act.”

11. Considering the facts of the case in hand in light of the decision of the Hon'ble High Court of Delhi [supra] we direct the Assessing Officer to delete the addition of Rs. 5,41,406/-.

6. Respectfully following the decision of the coordinate Bench (supra) we direct the AO to delete the addition of Rs.228406/-. The appeal filed by the assessee is allowed.

7. The order is pronounced in the open court on 10.02.2022 in the presence of both the rival representatives.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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

NEHA

Date:-10.02.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	10.02.2022
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	14.02.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	