

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE S. RIFAUH RAHMAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 261/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2016-17)

ACIT, Circle-2(1)(1) Room No.561, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	Infrasoft Technologies Ltd. 904, 9 th Floor, Ackruti Star, Central Road, MIDC, Andheri (E), Mumbai- 400096.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACB2817R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Anuj Kishnadwala	
Revenue by:	Shri Mehul Jain (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 23/12/2021

घोषणा की तारीख /Date of Pronouncement: 31/01/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 21.02.2020 passed by the Commissioner of Income Tax (Appeals) -44, New Delhi [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2016-17.

2. The revenue has raised the following grounds: -

“1. Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing depreciation on goodwill and customer contracts under section 32(1) of the Income-tax Act, 1961 (“the Act”) amounting to Rs.1,53,72,581/- on the ground that the same was disallowed in previous years.



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2. The appellant prays that the order of the Ld. CIT(A) on the above grounds should be disallowed.”

3. The brief facts of the case are that the assessee filed his return of income on 30.11.2016 declaring total income to the tune of Rs.9,32,06,680/-. Thereafter, the assessee filed the revised return of income on 30.03.2017 declaring total income to the tune of Rs.9,82,98,190/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of sale of software products and offers solutions and services for banks and financial institutions in India and abroad. On verification, it was found that the assessee has shown intangible assets as on 31.03.2015 i.e., goodwill amounting to Rs.2,70,55,743/- and in customer contract amounting to Rs.3,44,34,585/-. It is also mentioned that in the assessment made in the earlier A.Ys. from 2012-13 to 2015-16 depreciation/amortization expenditure claimed on such assets was disallowed. Show cause notice was issued to the assessee and after the reply of the assessee, depreciation/amortization claimed on such intangible asset on goodwill amounting to Rs.67,63,935/- and on customer contract amounting to Rs.86,08,646/- claimed on such alleged intangible assets was disallowed and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.10,85,79,261/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

ISSUE NO.1



4. Under this issue the revenue has challenged the allowance of depreciation on goodwill and customer contracts under section 32(1) of the Income tax Act, 1961 amounting of Rs.1,53,72,581/-. Before going further, we deem it necessary to advert the finding of the CIT(A) on this issue: -

“I have considered the facts in the circumstances of the case. I have also perused the order of the AO as well as the submission of the appellant and the judgments of the Tribunals and the Courts relied upon by the appellant, the various grounds of appeal are discussed below after duly considering the above mentioned documents,

6.1 Ground No. 1 (including 1.1 to 1.4):

Ground No. 1 (including 1.1 to 1.4) pertains to the contention of the appellant that the AO had erred in disallowing depreciation on goodwill and customer contracts under section 32(1) of the Act and making an addition amounting to Rs. 1,53,72,581. The appellant stated that the only reason for disallowing the above expenditure by the AO was that the same had also been disallowed in the assessment orders of previous years.

The issue has been decided in favour of the appellant by the order of the CIT(A)4 in AY 201516 in Appeal No. 504/2017-18 dated 26/12/2018 where it has been held as follows: -

6. Examination of the Issue & Decision:

6.1 Grounds of appeal no. 2 & 3: Disallowance amounting to Rs.2,04,96,776/@f account of depreciation/amortization claimed on intangible assets i.e. goodwill and customer contracts:



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61.1 Brief facts of the case are that the appellant company had entered into > business transfer agreement with KPIT Cummins infosystems Ltd. in FY 2011-12 i for acquiring software business of the said company, which comprised of following intangible assets:

a) Value of existing business contracts - Rs.10,89,00,000/-

b) Goodwill - Rs.8,04,00,000/ (part of which was capitalized in FY 2011-12 as per Business Transfer Agreement)

6.1.2 The appellant has been claiming depreciation on such intangible assets from assessment year 2012-18 onwards which are being disallowed by the AO since said assessment year onwards.

6.1.3 During the course of assessment proceedings, It was noticed by the AO that during the year under consideration the assessee has claimed depreciation/ amortization expenditure on goodwill amounting to Rs.8,04,00,000/- and on customer contract amounting to Rs.10,88,00,000/-. In earlier assessment years (2012-13 to 2014-15), depreciation/amortization expenditure claim on such assets was disallowed by the then AOs. During the year under consideration, observing that since the facts and circumstances of the case remains the same as in above mentioned earlier assessment years, the AO, following the orders of his predecessors disallowed depreciation/amortisations on goodwill amounting to Rs.90,58,581/- and on customer contracts amounting to Rs.1,14,78,195/ and thus making an addition of Rs.2,04,96,776/-.

6.1.4 I have perused the assessment order and have also considered the written submission/arguments put forward by the appellant. The above disallowance has been made by the AO merely following the



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orders of his predecessor AOs for assessment years 2012-13, 2013-14 and 2014-15 on the issue. This issue of admissibility of the claim of the appellant of depreciation/amortization on goodwill and customers contract have been decided in the case of appellant by me in my appellate orders for AY 2013-14 and 2014-15 In the favour of the appellant after making detailed discussion on the issue. For the sake of reference and record, the following concluding paragraphs of the appellate order for AY 2014-15 are reproduced as hereunder:

“ 6.16 Now, the prime question of importance here is whether, amount of Goodwill end Customer business contracts would be eligible for claim of depreciation, being intangible assets. in this connection, the applicant has placed reliance on @ number of case laws. My attention was also drawn towards AS-26 issued by ICAI prescribing accounting treatment in case of intangible assets have examined the same.

6.17 in this regard Hon'ble Apex Court in the case of GT w Smifs Securities ltd. (2012) 24 taxmann.com 222 (SC) has held goodwill to be an asset being eligible for depreciation as intangible asset at the rate of 25% Hon'ble Court held a3 under: “explanation & states that the expression ‘asset’ shall mean en Intangible asset. being know-how, potents, copyrights, trademarks, Kcences, franchises or any other business or commercial rights of similar nature. A reading of the words ‘any other business or commercial rights of similar nature’ in clause (b) of Explanation 8 indicates that goodwill would fall under the expression ‘any other business or commercial rights of a similar nature’. The principle of ajusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3 (b).



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in the circumstances, we are of the view the goodwill an asset under Explanation 3/b) to Section 32(1) of the Act

One more aspect needs to be highlighted. in the present case, the Assessing Officer, as a matter of fact came to the conclusion that ne amount was actually hold an account of goodwill. This is @ factual finding. The Commissioner (Appeals) has come to the conclusion that the assessee had filed copies of the orders of the High Court ordering amalgamation of the above two companies; that the assets and Labilities of 'V' Led. were transferred to the assessee for a consideration; that the difference between the cost of asset and the amount paid constituted goodwill and that the assessee-company in the process of amalgamation had acquired capital right in the form of goodwill because of which the market worth of the assessee-company stood increased. This finding has also been upheld by Tribunal. There is no reason to interfere with the factual finding.

Also in the case of Cyber India Online Ltd. Vs. ACIT [2014] 42 taxmenn.com 108 (Del Trib.), the Hon'ble ITAT, Delhi has held that ... "The goodwill denotes is Intangible asset end is required for its business and commercial rights. Therefore, the lower authorities had erred in following depreciation on goodwill."

6.18 in view of the aforesaid judgments and considering the transaction end the valuation Report, the excess consideration paid and allocated as goodwill by the appellant company, it is held that claim of appellant of depreciation on goodwill is justified not the case of self-generated goodwill. The appellant has paid the consideration and acquired the business for which he has also mode payment for goodwill.



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6.19 Thus, in view of the aforesaid decision of the Hon'ble Supreme Court, I find merits in the submission of the appellant and hold that depreciation should have been allowed by the AO on the goodwill.

6.20 Now, here, it is important to consider the claim of the appellant with regard to @depreciation on the amount paid is consideration for acquisition of customer contracts.

6.21 On the same issue, Hon'ble income Tax Appellate Tribunal, Hyderabad, has rendered its judgment in the case of SKS Micro Finance Ltd. v. OCIT [1S-283-ITAT-2013(Myd). In the said matter, the ITAT has discussed upon the issue whether customer contracts & intangible asset and hence, whether the same is exigible to claim of depreciation. in the said matter, Tribunal as under "Client acquisition cost paid by the assessee was towards acquiring an intangible asset and therefore eligible for depreciation allowance.

Tribune referred to Memorandum of understanding between the assessee and the seller and observed that the customer base acquired by the assessee was an assured source of economies benefit and provided impetus to the business of the assessee as the customers acquired has proven track record since they had already been trained. credit checked and risk filtered"

6.22) I have considered the said judgment, in the light of this judgement, I have looked into the issue, Hon'ble Tribunal has held that customer contracts fall within the term "or any other a business of commercial rights of similar nature" provided in Section 32(1)(ii) and held the some to be intangible asset eligible for depreciation,



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6. 23 *Further, here, for the purpose of allowing depreciation, it Is also necessary to consider whether such intangible is used for the purpose of the business in terms of the provisions of H 32 of the Act.*

6.24 *Upon perusal of the business transfer agreement, it is understood that the customer contracts acquired are in form of an assured source of economic benefit to the appellant. Further, it Is also worth taking note that the appellant has actually derived economic benefit out of the contracts purchased because of which they also made further payments to KPIT as per the terms of the agreement.*

6. 25 *Thus, on the basis of the findings of the Hon'ble Tribunal in the aforesaid judgment having similar facts as those in the present case, it is held that the consideration paid for acquisition of customer contracts is an intangible asset eligible for depreciation. 626 In view of the above discussion, it is held that appellant deserves depreciation on intangible assets being goodwill and customer contract. According, addition of Rs.2,73,29,036/- made by AO on account of disallowance of depreciation is held unjustified and hence deleted.*

The grounds of appeal, in this regard, stands allowed...”

6.1.5 *Since the facts and circumstances of the case remains the same during the year under consideration, following my decision on the same issue for the [assessment years 2013-14 and 2014-15, It Is held that depreciation claimed on goodwill and customer contracts deserves to be allowed to the appellant. Accordingly, addition of Rs.2,04,96,776/Is deleted. Grounds of appeal are allowed.*

The CIT(A) in AY 2015-16 has relied upon the order of his predecessors in AYs 2013-14 & 2014-15 who in turn had relied upon



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the order of the apex court in the case of CIT v/s Smifs Securities Ltd 2012 24 taxman.com 222(SC) to hold that goodwill was an intangible asset on depreciation was to be allowed. In accordance with the principle of consistency, the doctrine of judicial discipline and respectfully following the orders of the CIT(A) in AYs 2013-14, 2014-15 and 2015-16, it is held that depreciation claimed on goodwill and customer Contracts deserves to be allowed to the appellant, Accordingly, the addition of Rs. 1,53,72,581 made by the AO is deleted, Ground of Appeal No, I (including 1.1 to 1.4) is decided in favour of the appellant.”

5. On appraisal of the above mentioned finding, we noticed that the issue has squarely been covered in favour of the of the assessee by the order of the CIT(A) for the A.Ys. 2012-13 to 2015-16 also. The CIT(A) has decided the matter of controversy on the basis of the decisions of the Hon'ble Supreme Court in the case of **CIT Vs. Smif Securities Ltd. (2012) 24 taxmann.com 222 (SC)**. The issue has also been decided in favour of the assessee by the decision of the Hon'ble ITAT for the A.Y. 2012-13 bearing ITA. No.3475/Del/2018, for the A.Y.2013-14 bearing ITA. No.3850/Del/2018, for the A.Y. 2014-15 bearing ITA. No.4330/Del/2018 and for the A.Y. 2015-16 bearing ITA. No.1637/Del/2018 dated 20.10.2020. Since the issue has squarely covered by the decision of the Hon'ble ITAT in the assessee's own case (Supra), therefore, we are of the view that the finding of the CIT(A) is quite correct which is not liable to be interfered with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2



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6. Issue no. 2 is formal in nature which nowhere required any adjudication.

7. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 31/01/2022

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2022

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai