

**INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH “C”: NEW DELHI**

**BEFORE**  
**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA Nos. 380 & 381/Del/2018  
Assessment Years: 2013-14 & 2014-15

DCIT, Circle -10(1), New Delhi.	Vs.	M/s. GLF Lifestyle Pvt. Ltd. Flat No. 3A/1, Taj Apartment, Rao Tula Ram Marg, New Delhi-110 002 PAN AAECG3087E
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Ved Jain, Advocate Shri Ashish Goel, Advocate
Department by :	Ms. Anupama Singla, Sr. DR
Date of Hearing	26.05.2022
Date of pronouncement	25 .07.2022

**ORDER**

**PER ASTHA CHANDRA**

The appeals by the Revenue are directed against the orders dated 27.10.2017 of the Ld. Commissioner of Income Tax (Appeals)-35, New Delhi (**“CIT(A)”**) pertaining to the assessment years (**“AYs”**) 2013-14 and 2014-15. Since the issue is common in both the appeals, these were heard together and are being disposed of by this common order.

2. The ground of appeal for AY 2013-14 is as under:-

*“Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) odd in deleting the addition of Rs. 2,25,84,159/- on account of depreciation of goodwill as eligible for depreciation u/s 32(1)(ii) of the I.T. Act 1961.”*

2.1 The ground of appeal for AY 2014-15 is as under:-

*“Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) odd in deleting the addition of Rs. 1,69,38,119/- on account of depreciation of goodwill as eligible for depreciation u/s 32(1)(ii) of the I.T. Act 1961.”*

3. Briefly stated, the facts common to both the AYs are that the assessee company is engaged in trading of luxury garments and other fashion accessories etc.. It was incorporated on 08.07.2011. The assessee filed its return for AY 2013-14 on 01.10.2013 declaring loss of Rs. 2,67,76,883/-. For AY 2014-15 the return was filed on 30.09.2014 declaring loss of Rs. 16,87,55,975/-. The case was selected for scrutiny and notice under section 143(2) was issued for AY 2012-13 on 04.09.2014 and for AY 2014-15 on 31.08.2015. The Ld. Assessing Officer (**“AO”**) completed the assessment on 11.03.2016 for AY 2013-14 including therein disallowance of depreciation on goodwill amounting to Rs. 2,25,84,159/-. In the assessment for AY 2014-15 the Ld. AO in his order dated 19.12.2016 disallowed depreciation on goodwill amounting to Rs. 1,69,38,119/-.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who by his separate orders, both dated 27.10.2017 allowed the appeals of the assessee by observing that similar disallowance was made in AY 2012-13 also. His predecessor vide his order dated 09.06.2016 allowed the assessee's claim of depreciation on goodwill. He, therefore, maintaining judicial discipline and following his predecessor's decision, allowed the appeal of the assessee for both the AYs 2013-14 and 2014-15 against which the revenue is in appeal before the Tribunal.

5. We have heard the Ld. Representatives of the parties, perused the orders of the Ld. AO/CIT(A) as also the material available on record. It has been brought to our notice that the revenue had filed appeal against the order dated 09.06.2016 of the Ld. CIT(A) for AY 2012-13 before the Tribunal. The Tribunal vide order dated 09.12.2021 in ITA No. 4556/Del/2016 confirmed the order (supra) of the Ld. CIT(A) by observing as under:-

“8. We have heard the rival contentions and perused the material available on record. The solitary issue that arises for consideration is whether the Ld.CIT(A) is justified in deleting the addition of Rs.3,01,12,211/- as made by the AO on account of disallowance of claim of depreciation of goodwill. For the sake of effective adjudication, the relevant contents of the impugned order are reproduced as under:-

4. “The ground no. 1 is general in nature. The ground no 2 is regarding the disallowance of depreciation of Rs 3,01,12,211/- on goodwill acquired out of slump sale business. The assessee vide a slump sale agreement acquired, as a going concern, the Samsara business of the transferor-company. The book value of the net tangible assets (assets minus liabilities) acquired was recorded in the balance sheet of the assessee as on the date of transfer as Rs. 12.96 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.12.04 crores over and above the book value of net tangible assets, was allocated by assessee towards acquisition of bundle of business and commercial rights, collectively termed as 'goodwill' in the book of account, which comprised, inter alia, Samsara brand, business contracts, employees, intellectual property rights, business records, trademarks, copyrights etc. as reflecting in clause 2.2 of business transfer agreement at page 59 of paper book. The assessee-company while filing its return claimed depreciation under section 32(1)(ii) with respect to the aforesaid amount as being a price paid for acquisition of above mentioned intangible assets. The Assessing Officer disallowed the depreciation on 'goodwill' as claimed in the return. The Assessing Officer disallowed the claim of the assessee-company on grounds that depreciation under section 32(2)(ii) is not available on goodwill.

The assessee contended that the assessee has paid excess consideration over and above the value of net assets for the Samsara brand, business contracts, employees, intellectual property rights, business records, trademarks, copyrights etc. as reflected in clause 2.2 of business transfer agreement at page 59 of paper book. There is no doubt that goodwill is an eligible intangible asset which is eligible for depreciation u/s 32 of the Income tax Act as held in the case of *Khushal Khemgar Shah v. Mrs. Khorshed Banu Dadiba Boatwalla* AIR 1970 SC 1147. The issue involved is that whether 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/goodwill' or not?

From a perusal of the agreement dated 01.10.2011, it is seen that the total consideration for sale was Rs. 25 crore for tangible and intangible assets. An amount of Rs. 12.04 lakhs which is reflected in

*the balance-sheet as goodwill is for acquisition of a bundle of business or. commercial rights, collectively, termed as goodwill in the books of account, which comprised inter alia the Samsaara brand, business contracts, employees, intellectual property rights, business records, trademarks, copyrights etc. In the circumstances, it is seen that intangible assets, viz. trademarks, copy rights, contracts, employees, are all assets that directly help in the carrying on the business by the assessee. 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.*

*The assessee has relied upon various case laws wherein, intangible assets acquired out of slump sale are treated as goodwill. In the judgement delivered by Hon'ble Supreme Court in CIT v. Smifs Securities ltd (2012) 348 ITR 302 (SC) excess consideration paid by the assessee over the value of net assets acquired has been considered as goodwill. The assessee also relied upon the following decisions of jurisdictional High Court/ Tribunal wherein, the balance payment over and above the book value of net tangible assets, was allocated by the assessee towards acquisition of bundle of business and commercial rights, collectively termed as 'goodwill' in the books of account, which comprised, inter alia, the following:*

*(i) business claims, (ii) business information, (iii) business records, (iv) contracts, (v) skilled employees, (vi) knowhow, and depreciation was allowed:*

*a) Areva T & D India Ltd v DCIT (2012) 345 ITR 421 (Del)*

*b) Triune Energy Services (P.) Ltd. vs DCIT [2016] 65 taxmann.com 288 (Delhi)/[2016] 237 Taxman 230 (Delhi)*

*c) Cyber India Online Ltd .v. Assistant Commissioner of Income tax [2014] 64 SOT 1 (Delhi Trib.)(URO)*

*d) Minda Acoustic Ltd. v .Additional Commissioner of Income tax [2015] 69 SOT 162 (Delhi Trib.)*

*e) ThyssenKrupp Elevator (India) (P.) Ltd. vs ACIT [2015]167 TTJ 131 (Delhi Trib.)*

*I have gone through the assessment order and submissions of the assessee both on facts. and law. Hon'ble Supreme Court has held that as per Explanation 3 of section, the expression 'asset' shall mean an intangible asset, being know how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature. A reading of the words other business or commercial rights of similar nature in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature. In my opinion the*

*intangible assets acquired for Rs 12.04 crores under slump sale agreement are in the nature of "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act for the reasons stated herein above and were accordingly eligible for depreciation. Therefore, depreciation is to be allowed on goodwill and the addition of Rs.3,01,12,211/- is hereby deleted."*

9. *The finding of Ld. CIT(A) is well reasoned and is based on binding precedents. We therefore, do not find any merit into the contention of Ld. Sr. DR that the depreciation is not available on the goodwill. Moreover, this controversy has been set at rest now by the Judgement of Hon'ble Supreme Court rendered in the case of CIT vs Smifs Securities Ltd. [2012] 348 ITR 302 (SC). Looking to the facts of the present case, we are of the considered view that Ld.CIT(A) has rightly applied the ratio laid down by the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (supra). The AO simply disallowed the claim by holding that depreciation was not allowable on the goodwill without bringing any positive material on record suggesting that the facts of the case did not warrant allowance of depreciation on goodwill. We therefore, do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. The ground raised by the Revenue is dismissed."*

6. Since the issue is covered in favour of the assessee and against the revenue by the decision (supra) of the Tribunal for the immediately preceding AY 2012-13, respectfully following the same, we hold that the impugned orders of the Ld. CIT(A) deserve to be confirmed being in conformity with the decision(supra) of the Tribunal. Accordingly, we confirm the impugned orders of the Ld. CIT(A) and dismiss the appeal of the Revenue for both the AYs 2013-14 and 2014-15.

7. In the result, the appeals of the Revenue for the AY 2013-14 and AY 2014-15 are dismissed.

**Order pronounced in the open court on 25<sup>th</sup> July, 2022.**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 25/07/2022

**Veena**

Copy forwarded to -

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	