

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

BEFORE

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

ITA Nos. 2742 & 2741/Del/2019
Assessment Years: 2014-15 & 2015-16

Geodis Overseas Pvt. Ltd., Building No. 5, Tower B, 10 th Floor, DLF Cyber City, Phase-III, Gurgaon Pin 122 002 PAN AAACC6168L	Vs.	DCIT, Circle-10(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Vishal Kalra, Advocate
Department by :	Ms. Anupama Singla, Sr. DR
Date of Hearing	25.05.2022
Date of pronouncement	29.07.2022

ORDER

PER ASTHA CHANDRA

These appeals by the assessee are directed against the orders dated 14.01.2019 of the Ld. Commissioner of Income Tax (Appeals)- 22, New Delhi (**“CIT(A)”**) pertaining to the assessment year (**“AY”**) 2014-15 and 2015-16. Since common issue is involved, these were heard together and are being disposed of by this common order.

2. The common grievance of the assessee in both the appeals is that the disallowance made by the Ld. Assessing Officer (**“AO”**) of depreciation on goodwill amounting to Rs. 1,16,51,168/- and Rs. 87,38,376/- claimed by the assessee under section 32(1)(ii) of the Income Tax Act, 1961 (**the “Act”**) in AY 2014-15 and 2015-16 respectively has been confirmed by the Ld.

CIT(A) holding that goodwill does not qualify as 'business or commercial rights' as envisaged under section 32(1)(ii) of the Act and all the grounds of appeal relate thereto.

3. The assessee is a company which operates as a wholly owned subsidiary of Geodis International S.A., France. It is engaged in the business of freight forwarding operation.

4. The Ld. AO noticed that the assessee company claimed depreciation on goodwill of Rs. 1,16,51,168/- and Rs. 87,38,376/- in AY 2014-15 and 2015-16 respectively. On query, the assessee submitted that the Geodis group entered into 'Master Asset Purchase Agreement' dated December 1, 2008 with 'International Business Machine' (IBM) to acquire its logistics division world-wide. Pursuant to such agreement, the company had entered into an acquisition agreement dated March 31, 2009 with IBM India Private Limited, Network Solutions Private Limited and IBM Daksh Business Process Services India Private Limited (collectively referred to as 'IBM India') to acquire its logistics division in India. As a part of the Acquisition Agreement, the company acquired from IBM India for consideration of USD 27,83,540 convertible into Rs. 14,78,00,975/- (i) tangible assets in the form of laptops/desktops; and (ii) intangible assets being, supplier contracts, workforce under logistic division and the right to provide to IBM India with logistics services for a period of 15 years. Tangible assets in the form of laptops/desktops were acquired for a total consideration of Rs. 5,07,202/-. The tangible assets have been recognized as capital assets in the books of account of the assessee and depreciation has been claimed on the same as per the rates prescribed under section 32 of the Act. Further, consideration of Rs. 14,72,93,773/- was paid towards acquisition of intangible assets, being workforce, supplier contracts of IBM's freight and forwarding business and the right to provide logistic services to IBM India for a maximum period of 15 years. Further, the intangible assets have been capitalized as goodwill in the books of accounts and depreciation at the rate of 25 percent has been claimed in accordance with the provisions of the Act. Accordingly, for the

year under consideration, the assessee company claimed an amount of Rs. 1,16,51,168/- and Rs. 87,38,376/- as depreciation on intangible assets.

4.1 The assessee placed reliance on a number of decisions including the decisions of Hon'ble Delhi High Court in Hindustan Coca Cola Beverages Pvt. Ltd. (2011) 331 ITR 192 (Del) and in Areva T and D India Ltd. (2012) 20 Taxman 29 (Del).

5. The contentions of the assessee were not acceptable to the Ld. AO who relying on the finding of the Hon'ble DRP in AY 2010-11 to 2013-14 made the impugned disallowance in AY 2014-15 and 2015-16. On appeal, the Ld. CIT(A) confirmed the impugned disallowance in both the AYs 2014-15 and 2015-16 following the decision of his predecessor Ld. CIT(A) vide order dated 20.04.2018 for AY 2013-14.

6. Aggrieved, the assessee is before the Tribunal.

7. We have heard the Ld. Representative of the parties, considered their submissions and perused the material on the records. It has been brought to our notice that assessee had filed appeal against the order dated 20.04.2018 of the Ld. CIT(A)-4 for AY 2013-14 before the Tribunal and the Tribunal in its order dated 10.01.2022 (copy at pages 70-95 of Paper Book), following the Tribunal's order in ITA No. 483/Del/2017 dated 17.03.2021 for AY 2012-13 directed the Ld. AO to allow depreciation on goodwill after recording the following findings:-

"9. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. following the orders of his predecessor disallowed the claim of depreciation on goodwill. We find the Ld. CIT(A) upheld the action of the A.O, the reasons of which, have already been reproduced in the preceding paragraph. We find the issue stands decided in favour of the assessee by the consistent decisions of the Tribunal for the A.Ys. 2010-11, 2011-12 and 2012-13. We find the Tribunal in ITA.No.483/Del./2017 order dated 17.03.2021 for the A.Y. 2012-13 has allowed the claim of depreciation on goodwill by observing as under:

"8. As regards Ground No. 42 in Assessment Year 2011-12, the Tribunal held in Para 17 to 25 are as under:-

“17. The second grievance relates to disallowance of depreciation on goodwill.

18. Facts on record show that the appellant entered into a world-wide multi-year outsourcing agreement with IBM India Private Limited, Network Solutions Private Limited and IBM Daksh Business Process Services Private Limited to acquire the freight forwarding business/ internal global logistics operations of IBM in India for a consideration of Rs. 14, 78 crores.

19. The appellant acquired tangible assets, employees, supplier contracts of IBM. Consideration of Rs. 14.72 crores paid by the appellant represents the value of transferred workforce and supplier contracts including the right to provide logistics services to IBM India for a maximum period of 15 years. The appellant has characterised these as goodwill and claimed depreciation on the same at the rate of 25% under section 32(i)(ii) of the Act.

20. However, the claim of the assessee was dismissed by the Assessing Officer who was of the firm belief that the depreciation on goodwill was not allowable as a deduction in light of the provisions of Explanation 3 to section 32(1) of the Act.

21. Before us, the Id. counsel for the assessee brought to our notice the decision of the co-ordinate bench in assessee’s own case in ITA No. 2305/DEL/2015 for A.Y 2010-11 and pointed out that Tribunal has decided this issue in favour of the appellant.

22. Per contra, the Id. DR supported the findings of the DRP.

23. We find force in the contention of the Id. counsel for the assessee. We are of the considered opinion that this is not the initial year of claim of depreciation and in this year, the assessee has claimed depreciation on the written down value. We find that in the immediately preceding A.Y i.e. 2010-11, this dispute has been settled by the co-ordinate bench in assessee’s own case [supra].

24. The relevant findings read as under :

“40. We have considered the rival arguments made by both the sides, perused the orders of the AO/TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, disallowed depreciation on goodwill on the ground that the assessee has not become the sole logistic service provider to IBM India, the value of workforce does not facilitate the smooth carrying on of the business of the assessee and the supplier contracts forming part of the acquisition agreement have expired in the previous year relevant to the assessment year under consideration. According to the AO, the assessee has not acquired any business during the year and, hence, there is no question of making payment over and above for any commercial or business rights as defined under Explanation 3 to section 32(1). Further, the purchase price is

not verifiable from any calculation or valuation report. According to the AO, there is decline in the business receipts even after paying so much on account of goodwill and, therefore, there is no justification for the payment of such amount. Further, it is also the case of the AO that as per the provisions of law, no depreciation is allowable on goodwill and the legislature provides that depreciation should be allowed on all other intangible assets other than goodwill.

41. *We find, the Hon'ble Delhi High Court in the case of Areva T & D India Ltd. vs. DCIT, 345 ITR 421 has decided an identical issue in favour of the assessee. In that case, the following substantial question of law was admitted: -*

"Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that know-how, business contacts, business information, etc. acquired as part of the slump sale described as „ goodwill' were not entitled for depreciation under Section 32(1)(ii) of the Income Tax Act?"

42. *We find, the Hon'ble Delhi High Court in the said decision has held that specified 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' specified in section 32(I)(ii) and are accordingly eligible for depreciation under that section.*

43. *The relevant observation of the Hon'ble High Court from para 12 to 15 are as under:-*

"12. In the present case, it is seen that the assessee vide slump sale agreement dated 30th June, 2004, acquired, as a going concern, the transmission and distribution business of the transferor Company w.e.f. 1 st April, 2004. As a result thereof, the running business of transmission and distribution was acquired by the transferee lock, stock and barrel minus the trademark of the transferor which was retained by the transferor, for lump sum consideration of Rs.44.7 Crores. It is further seen that the book value of the net tangible assets (assets minus liabilities) acquired was recorded in the balance sheet of the transferor as on the date of transfer as Rs.28.11 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.16,58,76,000/- over and above the book value of net tangible assets, was allocated by the transferee towards acquisition of bundle of business and commercial rights, clearly defined in the slump sale agreement, compendiously termed as "goodwill" in the books of accounts, which comprised, inter alia, the following:- (i) Business claims, (ii) Business information, (iii) Business records, (iv) Contracts, (v) Skilled employees, (vi) knowhow. It is also observed that the AO

accepted the allocation of the slump consideration of Rs.44.7 Crores paid by the transferee, between tangible assets and intangible assets (described as goodwill) acquired as part of the running business. The AO, however, held that depreciation in terms of Section 32(l)(ii) of the Act was not, in law, available on goodwill. The CIT(A) and the ITAT approved the reasoning of the AO thereby holding disallowance of depreciation on the amount described as goodwill. It was thus argued on behalf of the assessee Company that Section 32(l)(ii) would mean rights similar in nature as the specified assets, viz., intangible, valuable and capable of being transferred and that such assets were eligible for depreciation. On behalf of the respondent it was argued that applying the doctrine of noscitur sociis the expression "any other business or commercial rights of similar nature" used in Explanation 3(b) to Section 32(1) has to take colour from the preceding words "knowhow, patents, copyrights, trademarks, licenses, franchises". It was urged that the Supreme Court had clearly held in Techno Shares and Stocks Ltd. (supra) that "Our judgment should not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of section 32(l)(ii) of 1961 Act".

13. In the present case, applying the principle of ejusdem generis, which provides that where there are general words following particular and specific words, the meaning of the latter words shall be .confined to things of the same kind, as specified for interpreting the expression "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act, it is seen that such rights need not answer the description of "knowhow, patents, trademarks, licenses or franchises" but must be of similar nature as the specified assets. On a perusal of the meaning of the categories of specific intangible assets referred in Section 32(l)(ii) of the Act preceding the term "business or commercial rights of similar nature", it is seen that the aforesaid intangible assets are not of the same kind and are clearly distinct from one another. The fact that after the specified intangible assets the words "business or commercial rights of similar nature" have been additionally used, clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate. In the circumstances, the nature of "business or commercial rights" cannot be restricted to only the aforesaid six categories of assets, viz., knowhow, patents, trademarks, copyrights, licenses or franchises. The nature of "business or commercial rights" can be of the same genus in which all the aforesaid six assets fall. All the above fall in the genus of intangible assets that form part of the tool of trade of an assessee facilitating smooth carrying on of the business. In the circumstances, it is observed that in case of the assessee, intangible assets, viz., business claims; business information; business records; contracts;

employees; and knowhow, are all assets, which are invaluable and result in carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a license to carry out the existing transmission and distribution business of the transferor. 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. This view is fortified by the ratio of the decision of the Supreme Court in Techno Shares and Stocks Ltd. (supra) wherein it was held that intangible assets owned by the assessee and used for the business purpose which enables the assessee to access the market and has an economic and money value is a "license" or "akin to a license" which is one of the items falling in Section 32(l)(ii) of the Act.

14. *In view of the above discussion, we are of the view that the specified intangible assets acquired under slump sale agreement were in the nature of "business or commercial rights of similar nature" specified in Section 32(1)(ii) of the Act and were accordingly eligible for depreciation under that Section.*

15. *In view of the above, it is not necessary to decide the alternative submission made on behalf of the assessee that goodwill per se is eligible for depreciation under Section 32(l)(ii) of the Act. In the circumstances, the substantial question of law is decided in the affirmative and this appeal is allowed in favour of the assessee and against the Revenue and the impugned order is set aside. "*

44. *We further find the SLP filed by the Revenue against the aforesaid decision was dismissed by the Hon'ble Supreme Court, vide order dated 23rd September, 2013 vide SLP 21227/2012.*

45. *We further find, the Delhi Special Bench in the case of CLC & Sons Private Ltd. (supra), while allowing depreciation on goodwill has held as under:-*

"7. It is overt from the command of clause (ii) of section 32(1) of the Act that depreciation is permissible in respect of intangible assets listed herein, acquired on or after 01.04.1998. This clause contains certain specified and unspecified species of intangible assets. Whereas the specified intangible assets enshrined in the provision include know-how, patent and copyrights ITA No. 1976/Del/2006 etc., the unspecified intangible assets have been described with the expression 'or any other business or commercial rights of similar nature.' It is nobody's case that goodwill is a specified intangible asset. The

assessee has sought to cover 'goodwill' within the expression deployed to define unspecified intangible assets. Au contraire, the A. O. has canvassed a view that the expression used in the provision for defining unspecified intangible assets cannot embrace something which is inextricably linked with the business of the assessee. He bolstered his point of view by noting that the specified assets in the provision are such which are detachable from the business of the assessee and transferrable individually and separately. In this light, he held that the expression 'or any other business or commercial rights of similar nature' would include only such assets which are transferrable distinctly. Goodwill of a business, being, an intangible asset which cannot be transferred separately de hors the transfer of business, was, ergo, held to be not includible in the expression used in the provision to explain the unspecified intangible assets. In our considered opinion, this issue is no more res integra in view of the judgment of the Hon'ble Summit court in CIT vs. Smifs Securities Ltd. (2012) 348 ITR 302 (SC) in which it ITA No. 1976/Del/2006 has been held: "that goodwill will fall under the expression 'or any other business or commercial rights of similar nature'" and, hence, qualifies for depreciation u/s 32(1) of the Act. We, therefore, answer the legal issue raised in the question before the Special bench in affirmative by holding, in principle, that depreciation is available on genuine goodwill. "

46. *The various other decisions relied on by the Id. Counsel for the assessee also support his case to the proposition that depreciation is allowable on goodwill.*

47. *We further find the allegation of the AO that the year-wise revenue from logistic services to IBM India is showing a declining trend is also incorrect. A perusal of the chart at para 32 of this order shows that there is, in fact, increase of revenue from IBM.*

48. *In view of the above discussion and relying on the decisions cited (supra), we hold that the assessee is entitled to depreciation on goodwill. The ground raised by the assessee is accordingly allowed. "*

25. *Respectfully following the findings of the co-ordinate bench, we direct the Assessing Officer to allow claim of depreciation of good will. This ground is, accordingly, allowed."*

In the present appeal, the issue is identical to that of earlier years and no distinguishing facts pointed out by the Revenue. The DRP has not at all considered the aspect of depreciation on goodwill in correct context as there is a finding identical to that of earlier years, assessee entered into a world-wide multi-year outsourcing agreement with IBM India Pvt. Ltd., Network Solutions Pvt. Ltd. and IBM Daksh Business Process Services Pvt. Ltd. as well as Acquisition Agreement and this is not an initial year of claim of

depreciation on goodwill. Hence, in light of the decision of the earlier years by the Tribunal the appeal of the assessee is allowed.”

9.1 *Respectfully following the decision of the Tribunal in assessee’s own case for the immediately three preceding assessment years and in absence of any contrary material brought to our notice, we set aside the order of the Ld. CIT(A) and direct the A.O. to allow depreciation on goodwill. Accordingly, grounds raised by the assessee are allowed.”*

8. The assessee has brought on record the order of the Tribunal dated 18.05.2020 in ITA No. 2305/Del/2015 for AY 2010-11 and Tribunal’s order dated 28.10.2020 in ITA No. 2242/Del/2016 for AY 2011-12 in its own case in which identical disallowance on goodwill has been allowed (pages 1-52 of the Paper Book).

9. Respectfully following the decision of the Tribunal in assessee’s own case for immediately preceding four AYs (i.e. AY 2010-11, 2011-12, 2012-13 and 2013-14) and in the absence of any adverse material brought on record, we set aside the order of the Ld. CIT(A) and direct the Ld. AO to allow depreciation on goodwill.

10. In the result, the appeals of the assessee for both the AYs 2014-15 and 2015-16 are allowed.

Order pronounced in the open court on 29th July, 2022.

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

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

Dated: 29/07/2022

Veena

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