

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.86/Ahd/2020
(Assessment Year: 2016-17)

GTPL Crazy Network 202, Sahajanand Complex, Opp. Swaminarayan Mandir, Shahibaug, Ahmedabad	Vs.	ACIT Circle-1(2), Ahmedabad
[PAN No.AAOF9146R]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Dhinal Shah, A.R.
Respondent by:	Shri Rakesh Jha, Sr. DR
Date of Hearing	12.09.2022
Date of Pronouncement	19.10.2022

ORDER

This appeal is filed by the assessee against the order dated 15.10.2019 passed by the Ld. CIT(Appeals)-10, Ahmedabad for A.Y. 2016-17.

2. The grounds of appeal raised by the assessee read as under:

“1.1 The order passed u/s 250 on 15-10-2019 for A.Y. 2016-17 by CIT(A)-10, Ahmedabad confirming disallowance u/s 32(1) of Rs. 68,75,000/- towards depreciation on intangible assets is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and on facts in confirming disallowance u/s 32(1) of Rs. 68,75,000/- towards depreciation on intangible assets without considering the explanation and evidences produced and thereby violating the principles of natural justice.

2.1 The Ld. CIT(A) has grievously erred in law and on facts in not appreciating valuation of goodwill based on subscriber's valuation.

2.2 The Ld. CIT(A) has grievously erred in law and on facts in not appreciating the recognition of Goodwill and thereby disallowing the claim of depreciation u/s 32(1) of Rs. 68,75,000/-.

2.3 That in the facts and circumstances of the case the Ld CIT(A) ought to have appreciated the recognition of Goodwill and thereby allowed the claim of depreciation u/s 32(1) of Rs. 68,75,000/-.

It is therefore prayed that disallowance u/s 32(1) towards depreciation of Rs. 68,75,000/- confirmed by the CIT(A) deserves to be deleted.”

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3. The assessee partnership firm is engaged in business of cable television networking, cable distribution, Advertising, Distribution and redistribution of television and cable signals and allied Cable Network Business Vastrapur case. The assessee has two partners GTPL Hathway Ltd. and CRAZY NETWORK (proprietary concern of Shri Dharamshibhai M. Desai) having 50% profit sharing ratio each was created via partnership deed dated 10.10.2015 w.e.f. 01.04.2015. The assessee filed return of income on 26.07.2016 with current year loss of Rs. 58,83,655/-. The Assessing Officer asked the assessee to justify the claim of depreciation on goodwill and how the amount of goodwill of Rs. 2,75,00,000/- was arrived along with supporting documents during the assessment proceedings. Assessee filed the detailed submissions dated 12.02.2018, which was duly considered by the Assessing officer. The Assessing Officer made disallowance of Rs. 68,75,000/- in respect of depreciation on goodwill. The Assessing Officer further held as follows:

“4. Without prejudice to above, partnership firm was formed in 10.10.2015, and prior to it so called intangible asset was lying with crazy network only. The claim that partnership was effective from 1.4.2015 is not acceptable to the extended to claim of depreciation on goodwill as whatever intangible assets or other assets having zero value was acquired after formation of partnership deed only and it cannot be retrospectively, therefore, if appellate authority decides that assessee is eligible for claim of depreciation, still since it was acquired after 30.09.2015, therefore, assessee is eligible to claim depreciation @12.5% only being used less than 182 days.”

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that till the merger, proprietary concern was separate and independent entity and the assets lying in the books were exclusively of proprietary concern. It is but natural and very logical that there won't be any goodwill in the books of proprietary concern. The goodwill arose only because of the acquisition of network by the company and this will get

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impacted in the books of acquiring company only for the reason that the acquiring company is paying premium to that extent in order to acquire the business. On the contrary, this premium may be considered as gain in the hands of the proprietary concern. The Ld. AR further pointed out that the Assessing Officer in the order rightly appreciated that the said payment was not pertaining to any asset but it was over and above the value of assets. It was also noted by the Assessing Officer on perusal of books of proprietary concern that there was no asset called Goodwill found in the books of Crazy Network. Therefore, the Ld. AR submitted that the Goodwill is nothing but the extra payment made to acquire the ready business. No prudent businessman would hand over his running business without charging premium called Goodwill. In other words, it is nothing but the future profits of the business gets discounted and by that way, premium is accepted. Accordingly, such excess amount is called as Goodwill and it falls under the category of intangible assets or any other business or commercial rights of similar nature and therefore eligible for depreciation u/s 32(1)(ii) of the Act. The Ld. AR relied upon the decision of the Apex Court in case of CIT vs. Smiff Securities Ltd. 348 ITR 302. As regards the issue of valuation, the Ld. AR submitted that the Assessing Officer should have appreciated that as part of market practice, there is no standard rate nor standard method prescribed for acquisition of such businesses. The valuation of assets is altogether different issue and no such standard valuation method is prescribed. The acquisition price is determined through negotiation and any amount which is paid over and above the book value of assets and liabilities is recognized as Goodwill in the books of acquiring company. It works principally on one to one basis wherein factors such as synergy, weave length, future proximities, area, industry, no of years etc. are facts are considered in determining the business valuation. In this type of businesses, the

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valuation of business is identified generally by way of potential no of subscriber and rates applicable to them. The Ld. AR submitted that the concerned network which was acquired during the year was valued at Rs. 2,75,00,000/- wherein approximately 5000/- potential customers in the area were identified and rate determined was 5520/- per connection. The valuation working was discussed by the Assessing Officer at page 3-4 of the order. The Ld. AR further submitted that the network value determined for this network cannot be considered for the other network as well. Each network is different from other networks in all means. The Ld. AR submitted that genuineness and reasonableness of the impugned payment has not been doubted by the Assessing Officer. The Ld. AR submitted that the Assessing Officer observed that WDV of assets in the books of Crazy Network is zero, therefore, in view of provision of Sec. 43(6) of the Act, the value of so called asset in the books of partnership firm would be zero. The Ld. AR submitted that the Assessing Officer should have appreciated that there was no such asset in the books of Crazy Network and it arose only upon acquisition of business by paying excess amount to the transferee company. In fact, in such situation, Goodwill will never be recognized in the books of Crazy Network. Thus, the Ld. AR submitted that the disallowance of depreciation on goodwill made by the Assessing Officer has to be deleted.

6. The Ld. DR submitted that in view of intangible asset being at zero in Crazy Network, this is a sham transaction from one entity to another within the group and is devoid of merits. In fact, the so called goodwill acquired by the assessee has no base, therefore, in view of provision of Section 43(6) of the Act, value of so called assets is zero in case of partnership firm. Here there are

no assets acquired by the assessee, therefore, the Assessing Officer has rightly made this addition.

7. Heard both the parties and perused all the relevant material available on record. From the perusal of the Partnership Deed dated 10.10.2015 which is effective from 01.04.2015 clause 9 and 37 of the said Partnership Deed states as follows:

“9. Both the Parties have determined and assessed the value of the said Business of CRAZY NETWORK at Rs. 2,75,00,000/- (Rupees Two Crores Seventy five lacs only). The said value includes goodwill of CRAZY NETWORK but does not includes any liabilities, debts, payables, or disputes or claims of CRAZY NETWORK.

.....

37. Second Party undertakes and declares that there is no claim, liability, loan or payable on any asset, properties, material or goodwill of CRAZY NETWORK and the whole said Business of CRAZY NETWORK and all its properties are absolutely freehold and without any encumbrances.”

From perusal of these two clauses it can be seen that value of the business includes assets, properties, material and goodwill, and the assessee is claiming the depreciation on entire amount of Rs. 2,75,00,000/- as goodwill only and not exactly giving the details as to how the goodwill has to be quantified for depreciation. The contention of the assessee is that the subscription fee @ Rs. 5500/- that of 5000 subscriber is a goodwill of the assessee. As per the decision of the Hon’ble Supreme Court in case of CIT vs. Smifs Securities Ltd. (2012) 24 taxaman.com 222 (SC), goodwill is an asset under Explanation 3(b) of Section 32(1) of the Act and therefore stock exchange membership card is an asset eligible for depreciation under Section 32. Thus, the Hon’ble Apex Court has allowed the claim of depreciation of the assessee therein. In the present case, the assessee has quantified the subscription fee in entirety as goodwill which is an intangible asset being service provided to its 5000 subscribers. Thus, the assessee has demonstrated

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that as part of market practice, there is no standard rate or standard method prescribed for acquisition of such businesses. The valuation of assets is altogether a different issue and no such standard valuation method is prescribed. The acquisition price is determined through negotiation and any amount which is paid over and above the book value of assets and liabilities is recognized as Goodwill in the books of the acquiring company. It works principally on a one-to-one basis wherein factors such as synergy, weave length, future proximities, area, industry, number of years etc. are factors considered in determining the business valuation. In this type of businesses, the valuation of business is identified generally by way of potential number of subscribers and rates of subscriber fees applicable to them. In case the subscribers decrease in subsequent to becoming the partnership firm, the depreciation is a claim on that basis. These contentions of the Ld. AR are accepted. Thus, in light of the decision of the Apex Court in case of Smifs Securities Ltd. (supra), the claim of the assessee appears to be proper. The contention of the Ld. DR that it has zero asset shown in the books of CRAZY NETWORK appears to be incorrect when the 5000 subscriber has entered into the partnership firm through CRAZY NETWORK which has added as assets to the partnership firm's assets. Therefore, the Assessing Officer was not right in disallowing the claim of the assessee relating to depreciation on goodwill. Thus, appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

This Order pronounced in Open Court on	19/10/2022
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Sd/-
(Ms. SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 19/10/2022
TANMAY, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad