

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

**Before Sh. Saktijit Dey, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2335/Del/2019 : Asstt. Year: 2012-13**

|   |     |   |
|---|-----|---|
| ACIT,<br>Circle-4(2),<br>New Delhi-110002 | Vs. | M/s Beacon Higher Education Services<br>Pvt. Ltd., S-40, 2 <sup>nd</sup> Floor, Vasant<br>Square Mall, Plot-A, Sector-B, Pocket-V,<br>Vasant Kunj, New Delhi-110070 |
| (APPELLANT)                               |     | (RESPONDENT)  |
| <b>PAN No. AAECB1283F</b>                 |     |   |

**Assessee by : Sh. Ajay Vohra, Sr. Adv.**

**Sh. Deepesh Jain, Adv.**

**Revenue by : Sh. P. Praveen Sidharth, CIT DR**

**Date of Hearing: 18.04.2023**

**Date of Pronouncement: 17.07.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-2, New Delhi dated 21.12.2018.

2. Following grounds have been raised by the Revenue:

*"1. Whether on the facts and in the circumstances of the case, the Id. CIT(A) is legally justified in deleting the addition of Rs.2,15,00,000/- made on account of depreciation claimed on non-compete Fee by holding that non-compete fee cannot be claimed as revenue expenditure in P&L account but depreciation can be claimed being capital asset."*

3. In this case assessee company has filed income tax return declaring loss of Rs.12,39,10,240/- on 29.09.2012. The case was selected for scrutiny and assessment was completed u/s

143(3) of the IT Act, 1961 on 29.01.2015 at an assessed loss of Rs.2,00,95,210/-.

4. Assessment record revealed that assessee company had entered into service continuation agreement with Shri V Sankaran for Rs.3,60,00,000/- and Non compete Agreement with Shri Mahendran for Rs.5,00,00,000/- in May/June 2011 and had allowed depreciation of Rs.2,15,00,000/- at the rate of 25% on the same. Later on, placing reliance on the judgment of Hon'ble High Court of Delhi in the case of Sharp Business System vs. the Commissioner of Income Tax-III vide ITA 492/2012 & CM APPL 14836/2012 dated 05.11.2012, the AO passed an order u/s 154 disallowing the depreciation allowed earlier.

5. Aggrieved the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) held that non-compete fee is not revenue in nature and cannot be claimed as revenue expenditure. Having said so, the Id. CIT(A) allowed depreciation on the amount of non-compete fee.

6. Aggrieved, the Revenue filed appeal before us.

7. The Id. DR relied on the judgment of Hon'ble jurisdictional High Court in the case of Sharp Business Systems Vs. CIT 211 Taxmann 576 wherein it was held that the amount paid as non-compete fee do not qualify for depreciation u/s 32(1)(ii) of the Income Tax Act, 1961 nor is the same allowable as revenue expenditure.

8. On the other hand, the Id. AR relied on the following case laws:

- CIT Vs. Ingersoll Rand International Ind. Ltd. 227 Taxman 176 (Kar.)
- CIT Vs. Areva T&D India Ltd. 434 ITR 604 (Mad. HC)
- CIT Vs. Ferromatic Milacron India (P.) Ltd. 99 Taxman 154 (Guj.)
- Dodrej Agrovet Ltd. Vs. DCIT 230 Taxman 633 (Bom.)
- Pentasoft Technologies Ltd. Vs. DCIT 222 Taxman 209 (Mad.)
- PCIT Vs. Piramal Glass Ltd. in ITA No. 556 of 2017 (Bom.)
- PCIT Vs. Zyduz Wellness Ltd. 247 Taxman 397 (Guj.)

9. Under the facts and circumstances of the instant case and keeping in view, the judgment of Hon'ble Jurisdictional High Court in the case of Sharp Business Systems Vs. CIT (supra), wherein the issue has been held in favour of the revenue, the appeal of the Revenue is hereby allowed.

10. In the result, the appeal of the Revenue is allowed.

Order Pronounced in the Open Court on 17/07/2023.

Sd/-

**(Saktijit Dey)**  
**Vice President**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 17/07/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**