

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.747/Hyd/2019		
Assessment Year: 2013-14		
Dy. CIT Circle 17(2) Hyderabad (Appellant)	Vs.	Vishal Personal Care (P) Ltd, Hyderabad PAN:AADCV9905H (Respondent)
Assessee by:	Shri M Chandramouleshwara Rao, CA	
Revenue by:	Shri Shakeer Ahmed, DR	
Date of hearing:	09/08/2023	
Date of pronouncement:	09/08/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the Revenue is directed against the order dated 05.02.2019 of the learned CIT (A)-1, Hyderabad, relating to A.Y.2013-14.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of cosmetic herbals for internal and external use. It filed its return of income on 28.09.2013 admitting loss of (-) Rs.7,96,58,427/-. The case was selected for scrutiny through CASS. Statutory notices u/s 143(2) & 142(1) were issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details.

3. During the course of assesment proceedings, the Assessing Officer noted that the assessee has claimed depreciation of Rs.1,76,57,248/- on intangible asset, comprising of brand value of Rs.7,06,28,993/-. On being asked by the Assessing Officer to justify the claim, the assessee filed a note on the addition to intangible assets which has been reproduced by the Assessing Officer in the body of the order and which reads as under:

“During the year the assessee company has taken Over all the assets and liabilities including intangible assets from Vishal industries. The intangible assets comprising brand value of Rs.7,06,28,993/- and goodwill Rs.25,00,000/. The assets and liabilities statement together with the agreement with the above party is enclosed herewith.

The assessee company claimed depreciation @ 25% on Rs.7,06,28,993/- in accordance with Part B Rule 5 of the I T Rules, 1962. Similarly in the case of Good Will, the assessee company claimed depreciation @ 25%.

Considering the above provisions of 1T Act as well as judicial pronouncements the assessee company is eligible to claim depreciation @ 25% of intangible asset.”

4. The assessee also filed a copy of the business take over agreement dated 31.3.2013, copy of minutes of Board meeting of the assessee in Schedule I, signed by one Director by name Smt. Sunanda and copy of statement of assets and identified liabilities in Schedule II, signed by proprietor of M/s. Vishal Industries. Relying on various decisions, it was argued that the assessee is entitled to claim depreciation u/s 32(1) on account of intangible assets.

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and rejected the claim of depreciation of Rs.1,76,57,238/- on brand value by observing as under:

The claim of the assessee has been thoroughly examined and it is held that the assessee is not entitled to the depreciation, for the following reasons :

Sri Pawan Kumar Ladha is none other than the proprietor of M/s Vishal Industries which is claimed to have been acquired by the assessee. Sri Pawan Kumar Ladha is also the Managing Director of the assessee company so-called business take over agreement dated 31.03.2012 is signed by Sri Pawan Kumar Ladha and Smt.SunandaW/o Sri Pawan Kumar Ladha. She is also Director in the in the assessee company. Business takeover agreement is not signed by any witnesses which shows that it is self-generated evidence. Copy of the Board meeting of the assessee company in Schedule I is signed by only single Director by name Smt. Sunanda. No other person signed this Board resolution for acquiring the sole proprietary concern. Since it is signed by only one person i.e Smt. Sunanda, the Director, the resolution itself is not a valid one.

Further, the statement of Assets & Identified Liabilities filed in Schedule II is also signed by Sri Pawan Kumar Ladha and his wife Smt. Sunanda. The figures mentioned therein under the heads Fixed Assets, Investments, Current Assets, Intangible Assets, Liabilities (secured loans, unsecured loans, current liabilities & provisions) and the totals thereon are not at all matching with the actual figures available on income tax record for year ending 31.03.2012 in the case of M/s Vishal Industries, Hyderabad, a proprietary concern which was assessed in Circle 15(1), Hyderabad. It is, therefore, held that the acquisition of intangible asset for Rs.7,06,28,993/-and the claim of depreciation on the same for Rs.1,76,57,248/-a colourable device adopted by the assessee's company in order to reduce the tax liability . The Hon'ble Supreme Court in the case of CIT Vs. M.C. Dowell and Company Ltd 148 ITR 154 (SC) has categorically pointed out such dubious methods of tax evasion.

The case laws relied on by the assessee in this regard are distinguishable on facts. Therefore, the depreciation claimed of Rs.1,76,57,248/-on brand value is disallowed and added to the income. //

6. Similarly, the Assessing Officer made addition of Rs.6,25,000/- being depreciation claimed on goodwill of Rs.25,00,000/- on the ground that the same is a colourable device adopted by the assessee company in order to reduce tax liability.

7. In appeal, the learned CIT (A) allowed the claim of depreciation on intangible assets by observing as under:

“6.3 I have carefully considered the facts of the case, assessment order and the submissions of the appellant. The details and case laws furnished by the appellant is verified. Respectfully following the Supreme Court's decision in the case of CIT vs. Smifs Securities Ltd (S.C) 2012: 248 ITR 302, the appellant is eligible for depreciation on intangible assets i.e. brand value. Hence the addition made by the Assessing Officer is deleted”.

7.1 So far as depreciation on goodwill is concerned, the learned CIT (A) allowed the claim of the assessee by observing as under:

“7.3 I have carefully considered the facts of the case, assessment order and the submission of the appellant. The goodwill of 25% was paid and also keeping in view of the case laws relied b the appellant as supra, the submissions of the appellant is accepted and the appellant is eligible for depreciation on this goodwill. Therefore, the addition made by the Assessing Officer is deleted”.

8. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following revised grounds:

- 1) Whether the ld CIT(A) is correct in allowing the depreciation claimed by the assessee company on intangible assets said to have been acquired by takeover of the proprietary concern of its director, ignoring the facts brought out in the assessment order wherein the A.O had found the acquisition of the intangible assets at a considerable price without any basis for valuation to be a colourable device adopted to reduce its tax liability?
- 2) Whether the ld CIT(A) is correct in allowing the claim of the assessee company by relying on the decision of the Hon'ble Supreme Court in the case of CIT vs Smif Securities which dealt with the issue of whether goodwill is a depreciable asset within the meaning of S.32 whereas the issue in the instant case is whether the intangible assets namely goodwill and brand value on which depreciation is claimed by the assessee, genuinely exist or not?
- 3) Whether the ld CIT(A) is correct in ignoring the facts brought on record by the assessing officer with regard to the glaring defects in the business takeover agreement, and the mismatch in assets and liabilities statement of the assessee company vis-a-vis figures reported by the proprietary concern in its income tax returns, that indicate that the entire exercise is a colourable device adopted to reduce its tax liability?
- 4) Whether the ld CIT(A) is correct in not appreciating the principles of colourable device of tax evasion as laid down by the Hon'ble Supreme Court in the case of CIT vs MC Dowell & Company Ltd 148ITR 154 (SC) in the present case.
- 5) Any other ground(s) that may be urged at the time of hearing.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. A perusal of the order of the CIT (A) shows that she has allowed the claim of depreciation on intangible assets in a very sketchy, cryptic and non-speaking order without addressing the various issues raised by the Assessing Officer, details of which have been

reproduced in the preceding paragraph. Similar is the case on allowability of depreciation on goodwill. A perusal of the assessment order shows that the Assessing Officer, while rejecting the claim of depreciation on intangible assets, has stated that the so-called business takeover agreement is a self-generated agreement. He has categorically mentioned that the copy of the Board meeting of the assessee company in Schedule-1 is signed only by single Director by name Smt. Sunanda and no other person has signed and there is no witness. Accordingly, the Assessing Officer held the resolution to be a not valid one. Similarly, the Assessing Officer has further observed that the figures mentioned in the statement of assets and identified liability in Schedule-II signed by Shri Pawan Kumar Ladha and his wife Smt. Sunanda are not at all matching with the figures available with the income tax record for the year ending 31.3.2012 in the case of Vishal Industries Ltd, Hyderabad, a proprietary concern which has been taken over by the company. The Assessing Officer relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Mc Donald has categorically held that the business take over agreement is nothing but a colourable device adopted by the assessee company in order to reduce its tax liability. However, the order of the learned CIT (A) is completely silent on this issue and the learned CIT (A) has not at all addressed any of the points raised by the Assessing Officer while disallowing depreciation claimed on the intangible assets. Similar is the case on the issue of depreciation on goodwill. Under these circumstances and considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the CIT (A) with a direction to pass a speaking order on the issue of depreciation on intangible assets and depreciation on goodwill by addressing the issues raised by

the Assessing Officer. Needless to say, the CIT (A) shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

10. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court at the time of hearing itself i.e. on 9th August, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 9th August, 2023

Vinodan/sps

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3	Pr. CIT-1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order