

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 1165/Del/2023
(Assessment Year- 2018-19)**

M/s Metro Tyres Ltd., 101, Comm. Complex, Jyoti Bhawan, Dr. Mukherjee Nagar, New Delhi, Delhi-110009.	Vs.	Assistant Commissioner of Income Tax, Central Circle-5, New Delhi.
PAN No: AAACM3394A		
APPELLANT		RESPONDENT

Assessee by : Ms. Ananya Kapoor, Adv.
Shri Shivam Yadav, Adv.
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 24.02.2025
Date of Pronouncement : 24.02.2025

ORDER

PER SUDHIR PAREEK, JM

The aforesaid appeal by the Assessee preferred against the order of Ld. Commissioner of Income Tax (Appeals)-24, New Delhi-110055, [hereinafter referred to as the Ld. CIT(A)] vide order dated

28.02.2023 pertaining to Assessment Year 2018-19. The Assessee has raised the following ground of appeal:

“1. That, in view of facts and circumstances of the case and in law, the assessment order dated 05.03.2021 passed by the Assessing Officer (‘AO’) under section 143(3) of the Income Tax Act, 1961 (‘the Act’) for Assessment Year (‘AY’) 2018-19 and the order of Commissioner of Income Tax (Appeals) [‘CIT(A)’] dated 28.02.2023, and also the addition / disallowance made therein are illegal, bad in law, and without jurisdiction.

2. That in view of facts and circumstances of the case and in law, the AO/CIT(A) has erred in not appreciating that the addition of Rs. 6,92,920/- is illegal and bad in law and the same is liable to be deleted.

3. That in view of the facts and circumstances of the case and in law, the Appellant had substantiated its claim of depreciation on non-compete fee) and as such the same is allowable in law.

4. That in view of facts and circumstances of the case and in law, the AO/CIT(A) has erred in not appreciating that non-compete fee is an intangible asset as per the provisions of Section 32(1)(ii) of the Act and hence, depreciation is allowable on the same.

5. That, without prejudice, the AO/CIT(A) has erred in not appreciating that the said expense was incurred and non-compete was paid for the purposes of protecting the business of the Appellant and as such is an allowable business expense.

6. That, even otherwise, the AO/CIT(A) has erred in referring to Section 40A(2)(b) of the Act and the same is not attracted in the present case.

7. That, the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the addition/disallowance.

8. The Appellant craves leave to add to, alter, amend, and/or withdraw any ground or grounds of appeal either before or during the course of hearing the appeal.”

2. Subsequently, the assessee also raised the additional ground of appeal for adjudication as follows:

“5. That without prejudice to other grounds and in the alternative, the non-compete fee paid by the Appellant is allowable expense and the same may kindly be allowed on amortized basis in the year under consideration.”

3. Facts of the case may be concisely summarized as that the assessee filed return of income for the A.Y. 2018-19, declaring Rs. 20,74,65,120/- and income which was processed u/s 143(1) of the I.T. Act and in the meantime, the case was selected for complete scrutiny through CASS. In pursuance thereof, notices u/s 143(2) and 142(1) of the Act were issued on different dates, and in compliance of the abovesaid notices, details furnished by the assessee/ appellant company. The Ld. AO found that Rs. 7,02,596/- has been claimed in respect of non-compete fees, out of which Rs. 6,92,920/- claimed on account of depreciation on non-compete fees. For this purpose, the assessee / appellant asked to explain the non-compete fees reflected in the fixed asset's chart of the company and the depreciation claimed thereof vide notice u/s 142(1) dated 25.02.2021. After completion of said assessment proceedings, the Ld. AO held that non-compete fees is not an

intangible asset enumerated in Section 32(1)(ii) of the Act and therefore depreciation claimed amounting to Rs. 6,92,920/- disallowed and added back to the income of the assessee for the year under consideration.

4. By Aggrieving with the same, the assessee / appellant company assailed it by way of appeal and the Ld. CIT(A) dismissed the appeal by observing that the non-compete fees cannot be termed as intangible asset and the claim of depreciation of the appellant is not as per law and is not allowable.

5. Heard rival submissions and carefully scanned the material available on record.

6. The Ld. AR reiterating the grounds of appeal, submitted that he had substantiated its claim of depreciation on non-compete fees and as such the same is allowable in law, but both the lower authorities reluctant to consider that non-compete fee is an intangible asset as per the provisions of section 32(1)(ii) of the Act, and so depreciation is allowable on the same.

7. The Ld. DR relied upon the orders of the authorities below.

8. In the course of hearing, the Ld. AR relied upon the order of Coordinate Bench of ITAT, in assessee's own case i.e. Metro Tyres Ltd. VS. Add. CIT in ITA No.- 1031/Del/2013 and others, of which the relevant para no. 5 to 9 is reproduced as under:

" 5. It is in this factual backdrop that the instant issue of the assessee's claim raised qua its non-compete fees arises for our apt adjudication. It is evident to us during the course of hearing that this is not the first year of the assessee having claimed the impugned depreciation on non-compete fees as our attention is invited to the relevant non-compete agreement dated 24.10.2005 followed by the assessment records for the corresponding A.Y. 2006-07 comprising of the Assessing Officer's notice dated 10.09.2008 asking for the relevant non-compete fees details (pages 103 to 104 of the paper book), the taxpayer reply to this effect dated 24.09.2008 (pages 105 to 106) followed by the Assessing Officer's section 143(3) assessment dated 30.12.2008 not making disallowance in the said preceding assessment year. any such

6. Mr. Kapoor vehemently submits in light of these facts that once the assessee's impugned depreciation claim stood accepted in the immediate preceding assessment year, the learned lower authorities could not have ignored the settled legal proposition that the corresponding "block of assets" u/s 2(1) r.w.s 32(1)(ii) of the Act is not to be disturbed in the subsequent assessment years as per CIT Vs. Oswal Agro MillsLtd. in ITA 161/2006 & others connected cases, decided on 24.12.2010 as under:

"24. We now proceed on the basis that particular assets, viz., assets of Bhopal Unit were not used for the purpose of business in the concerned Assessment Years. Whether the assessee would still be entitled to depreciation as it has been claiming depreciation on entire block of assets". Counsel for the Revenue had argued that conditions laid down in Section 32 of the Act are to be necessarily satisfied and it has to be shown that asset is used for business. Insofar as concept of block of assets" is concerned, It is only a mode of calculation. On the other hand, the learned counsel for the assessee had argued that after the introduction of block of assets" concept in Section 2(11) by amendment made with effect from 01.04.1988, the assessee was entitled to claim

depreciation on the entire block of assets and it was no more open to the Revenue as to whether particular asset is put to use or not.

25. We have considered these submissions of the learned counsel for the parties and are of the opinion that the arguments of the learned counsel for the assessee have to prevail. Mr. Aggarwal, learned Senior counsel for the assessee is right in his submission that the position concerning the manner in which the depreciation is to be allowed, has gone a sea change after the amendment of Section 32 by the Taxation Laws (Amendment) Act, 1986. Section 32(1) of the Act allows the depreciation on the written down value of the assets.

26. Section 2 (11) of the Act defines the term "block of assets" as under:

"2(11) "Block of assets" means a group of assets falling within a class of assets comprising - (a) Tangible assets, being buildings, machinery, plant or furniture;

(b) Intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed;"

27. Along with the aforesaid amendment, definition of written down value as contained in Section 43(6) has also been amended and the amended provisions read as under: "43(6) "Written down value" means

(a)...

(b)

(c) In the case of any block of assets,

(1) In respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year; and

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

(ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i)."

28. Thus, for the assessment year 1998-99, the W.D.V. of any block of assets shall be the aggregate of the W.D.V. of all the assets falling within that block of assets at the beginning of the previous year. From this, the adjustment has to be made for the increase or reduction in the block of assets during the year under consideration. The deduction from the block of assets has to be made in respect of any asset, sold discarded or demolished or destroyed during the previous year.

29. As per amended Section 32, deduction is to be allowed "In the case of any block of assets, such percentage on the written down value thereof as may be prescribed". Thus, the depreciation is allowed on block of assets, and the Revenue cannot segregate a particular asset therefrom on the ground that it was not put to use. 30. With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the block of assets" at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of block of assets" has been introduced, which is relevant for calculating the depreciation. It would be of benefit to take note of the Circular issued by the Revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No.469 dated 23.09.1986, wherein the rationale behind the aforesaid amendment is described as under:

"6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the recordkeeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation lump sum amount of depreciation for the entire block of depreciable assets in

each of the four classes of assets, namely, buildings, machinery, plant and furniture."

31. It becomes manifest from the reading of the aforesaid Circular that the Legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of asset falling within the same class of assets.

32. Another significant and contemporaneous development, which needs to be noticed is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which was previously allowable under section 32(1)(iii) and also taxing of balancing charge under section 41(2) in the year of sale. Instead of these two provisions, now whatever is the sale proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assesseees are not required to maintain particulars of each asset separately and in the absence of such particular, It cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1)(iii). This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

33. Having regard to this legislative intent contained in the aforesaid amendment, it is difficult to accept the submission of the learned counsel for the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of block of assets". Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the Revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the block of assets" even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short term capital gain, which would be exigible to tax and for this reason, we say that there is no loss to Revenue either.

34. The upshot of the aforesaid discussion is that though we are not entirely agreeing with the reasoning of the Tribunal contained in the impugned judgment, we are upholding the conclusion of the Tribunal based on the block of assets" as discussed above. The consequence

would be to dismiss these appeals. However, there will be no order as to costs."

7. Faced with this situation, learned CIT-DR quotes hon'ble jurisdictional high court's decision in *Sharp Business System Vs. CIT* (2012) 211 taxmann.com 576 (Del) holding that such a depreciation claim is not admissible since a non-compete clause does not form an intangible asset. Ms. Chaudhary vehemently contends therefore, that once the issues standsettled in the preceding terms, we ought to confirm the learned lower authorities action rejecting the assessee's depreciation claim.

8. We find no merit in the Revenue's submissions as their lordships subsequent decision in *PCIT Vs. Pepsico India Holding Pvt. Ltd.* order in ITA 166/2023 dated 16.04.2024; pronounced after "*Sharp Business System*" has reiterated the fact that the Impugned disallowance could not be made once corresponding depreciation stood accepted in the preceding assessment years as under:

4. That only leaves us to deal with the question of depreciation on non-compete fee. We note that the Issue of depreciation on non-compete fee is an issue which is no longer *res integra* and stands answered by our Court in *Sharp Business System v. Income Tax-III*, [2012 SCC OnLine Del 5639] in favour of the appellant.

5. However, insofar the present case is concerned, the ITAT has taken into consideration the following facts as would be evident from paragraph no.26, which is reproduced as under:

"26. We have gone through the details of the non-compete fees Incorporated at page No. 70 of the paper book which clearly reveals that for the earlier years, namely, 2005-06 to 2007-08 the Revenue accepted the depreciation claimed at Rs. 63,54,176/-, Rs. 47,65,632/-, and Rs.35,74,224/-, but in respect of the assessment year 2008-09 the depreciation on the capitalized non-compete fee claimed that Rs.26,80,668/-was disallowed. Reasoning given by the Assessing Officer to disallow this claim is that the issue hinges around the interpretation of the phrase "business or commercial rights of similar nature" used In clause (II) of section 32, and a careful reference to the language of the provisions in section 32 makes it clear that all the specific awards that a preceding general words "business or commercial rights of similar nature" are related to a class of rights which are intellectual property rights whereas the alleged payment is for non-compete fee. Further, according to the learned Assessing Officer the right to non-compete acquired by the assessee is only a right in *personam* and therefore the assessee is not entitled to

claim depreciation on the non-compete fee. Learned Assessing Officer does not refer to any change of circumstances from the earlier years so as to deviate from the view that was taken for earlier years. We therefore do not find anything illegality or irregularity in the Ld. CIT(A) following the view taken for the earller years under identical circumstances. Ground No. 6 is accordingly devoid of merits and is dismissed."

6. The ITAT has essentially followed the principle of consistency Insofar as the case of the respondent assessee is concerned.

7. We consequently find no justification to interfere with or disturb the ultimate conclusions rendered by the ITAT, notwithstanding it having failed to notice or consider the judgment rendered in Sharp Business System.

8. We find sufficient merit in the path that we propose to take since although the issue which arises inter parties and for the year in question would be rendered a quietus consequent to the disposal of the present appeal, the question of law already stands settled by Sharp Business System and would govern the issue if it arise in any subsequent adjudication.

9. The appeal consequently fails and shall stand dismissed."

9. It is thus clear that their lordship's above latter decision has settled the issue in assessee's favour that even inspite of the case law "Sharp Business System", once the assessee's corresponding depreciation stood duly accepted in the preceding assessment year, it's relevant "block of assets" could not have been interfered with by the learned departmental authorities. We accordingly find merit in the assessee's instant first and foremost substantive ground and accept its impugned depreciation claim non-compete fees. The assessee's on succeeds in its instant first and foremost substantive ground in the "lead" appeal (supra) and its latter twin cases ITA No. 5966/Del/2016 and 4734/Del/2017 for A.Y. 2013-14 and 2014-15, respectively, raising this sole substantive issue succeed in very terms."

9. Respectfully following and maintaining the rule of consistency the abovesited order in assessee's own case, we find material

substance in the submissions advanced on behalf of the assessee /
appellant and inclined to allow the appeal.

10. Consequently, the appeal of the assessee allowed as indicated
above.

Order pronounced in the Open Court on 24.02.2025.

-Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

-Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 24/02/2025
Pooja, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI