

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

**BEFORE SHRI VIMAL KUMAR, HON'BLE JUDICIAL MEMBER
&
MRS. RENU JAUHRI, HON'BLE ACCOUNTANT MEMBER**

ITA No. 1867/DEL/2020; Assessment Year: 2016-17

Beacon Higher Education Services Pvt. Ltd S-40, 2 nd Floor, Vasant Square Mall, Plot A, Sector B Vasant Kunj, New Delhi-70	Vs	ACIT CIR 4(2) New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAECB1283F		

ITA No. 2574/DEL/2024; Assessment Year: 2017-18

DCIT Circle-4(2) Delhi	Vs	Beacon Higher Education Services Pvt. Ltd S-40, 2 nd Floor, Vasant Square Mall, Plot A, Sector B Vasant Kunj, New Delhi-70
(APPELLANT)		(RESPONDENT)
PAN No. AAECB1283F		

Assessee by : Shri Y K Kapur, Advocate

Revenue/Department by : Shri Jitender Singh, CIT DR

Date of Hearing: 22.01.2026	Date of Pronouncement: 11.02.2026
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ORDER

PER RENU JAUHRI :

1. The above captioned appeals are filed by the Revenue as well as assessee against the orders u/s 250 of The Income Tax Act, 1961

(hereinafter referred to as, “Act”), dated 18.09.2020 and 26.03.2024, passed by CIT(A), Delhi for A.Y 2016-17 & 2017-18 respectively.

2. The assessee in ITA No. 1867/Del/2020 [A.Y. 2016-17] has raised following grounds of appeal:

“ 1. Under the facts and circumstances of the case, the Ld. CIT (A) has grossly erred on facts of the matter under applicable provisions confirming order passed by the Ld. AO, which is arbitrary and has ignored the fact decided in judicial orders being against the principles of natural justice and the provisions of IT Act, 1961.

2. The Ld. CIT (A) has grossly erred on facts to extend an opportunity to examine any additional evidence being against the principles of natural justice.

3. The Ld. CIT(A) has grossly erred to confirm the disallowed depreciation of Rs. 2,92,67,578/-claimed u/s 32 (1) (ii) on intangible asset i.e. non-compete fee, as per definition u/s 2 (f) without going into the merit of fact of assessee and upheld the AO's addition based on a judicial order, which is not related to the matter of assess at all, and didn't accepted the already passed order (AY 12-13) by his predecessor in the same issue.

4. The Ld. CIT(A) has grossly erred confirming to disallow the brought forward accumulated losses of Amalgamating Company aggregating of Rs 618,27,952/- which was not claimed by the assessee u/s 72A of the Act, on the ground that section 72A is not applicable to assessee during the AY 2016-17.

5. The Ld. CIT (A) has grossly erred to accept the order of AY 2012-13, passed by his predecessor on the same issue allowing depreciation on intangible asset i.e. non compete fee and acceted that referred judicial order is not applicable to the assessee.

6. *The appellant craves leave to add, alter, modify and withdraw any ground of appeal before or during the appellate proceedings. ”*

3. The revenue in ITA No. 2574/Del/2024 [2017-18] has raised the following grounds of appeal.

“(1) Whether the Ld. CIT(A) has erred in not considering the fact that jurisdictional High Court, in the case of Sharp Business Systems Vs. CIT, has held that depreciation is not allowable on non-compete fee.

(2) The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal. ”

4. We first take up the assessee’s appeal for A.Y. 2016-17. The appeal was earlier dismissed by the Hon’ble co-ordinate bench *ex parte* vide order dated 30.10.2023. The order was recalled in pursuance to the order dated 27.06.2025 on M.A. filed by the assessee. Brief facts are that the return declaring income of Rs. 7,87,460/- and long term capital loss of Rs. 21,06,14,092/- was filed for A.Y. 2016-17 on 17.06.2016. Subsequently, on account of amalgamation order dated 31.03.2017, passed by the NCLT, approving merger with its 100% subsidiary company, a revised return was filed. The case was selected for scrutiny and assessment completed u/s 143(3) assessing total income at Rs. 9,18,82,989/- after making disallowance of depreciation claimed on non-compete fee.

5. Ground No. 3 relates to the disallowance of the claim of depreciation of Rs. 2,92,67,578/- on non-compete fee which was shown as an intangible asset.

5.1 Brief facts of this issue are that the assessee company had executed ‘Non-Competition’ and ‘Non-Solicitation Agreements’, with 3 entities on

17.06.2011 and 20.07.2011 respectively. Pursuant to these agreements, assessee paid one-time non-compete/non-solicitation fees totalling Rs. 37Cr. to the three parties during the F.Y. 2011-12. The same was treated as an intangible asset and the expenditure was booked as capital expenditure on which depreciation @ 25% was claimed u/s 32(i)(ii) of the Act in the return filed for A.Y. 2012-13. Subsequently, for A.Ys 2013-14 to 2017-18, the cases were selected for scrutiny and claim of depreciation was disallowed. In the present case, Ld. AO disallowed the claim in view of the judgement of the Hon'ble jurisdictional High Court in the case of ***M/s Sharp Business System vs CIT III [2012] 254 CTR233(Del)*** wherein it was held that depreciation is not allowable on the payment of non-compete fee which is not in the nature of acquiring intangible assets. Aggrieved, the assessee preferred an appeal before Ld. CIT(A).

5.2 The appeal of the assessee was dismissed by the Ld. CIT(A) in view of the decision of the Hon'ble Delhi High Court in the case of ***Sharp Business System (supra)***. Further aggrieved, the assessee is in appeal before the Tribunal.

6. Before us, Ld. AR has submitted that that on appeal, the Hon'ble Supreme Court has held in the same case that the expenditure incurred for payment of non-compete fee is revenue in nature and thus allowable u/s 37(1) of the Act.

6.1 In the light of the above legal position, Ld. AR has submitted that even though the assessee is entitled to claim the entire expenditure as revenue in the first year itself in the light of the decision of the Hon'be Apex Court in ***Sharp Business Systems (supra)***, but having claimed depreciation treating it as capital expenditure over several years, has requested as under vide written submission dated 28.01.2026:

“13. Difficult to give effect of the judgment of the Hon’ble Supreme Court:

*It is the utmost humble submission of the Assessee that to give effect to the judgement of the Hon’ble Apex Court to the assessments of a particular Assessee, those have attained finality in some years and pendency of some assessments before judicial forum, may not be possible and therefore, following the **rule of consistency** and keeping in mind the past and the future assessments those have attained finality, the pending assessment may kindly be finalized by allowing the depreciation/amortization of the assessee, also in the subject assessment years, ie., 2016-17 and 2017-18. ”*

6.2 Ld. DR on the other hand, has relied on the orders of the lower authorities.

7. We have heard the rival submissions and perused the material placed before us. We note that in view of the settled legal position as discussed above, the assessee is entitled to claim the entire payment as revenue expenditure u/s 37(1) in the relevant A.Y. 2012-13. However, having claimed depreciation over several years after treating the same as capital expenditure, the assessee has requested for allowing depreciation as claimed, owing to practical difficulty in revising the computation of income across multiple assessment years. Since this amounts to claiming the expenditure over multiple years instead of in the initial year, we are inclined to allow the assessee’s claim in the light of written submissions filed by it. Since the whole exercise is revenue-neutral, Ld. DR has not objected to the said proposition.

7.1 Accordingly, we decided this ground in favour of the assessee and direct the Ld. AO to allow the claim of depreciation of Rs. 2,92,67,578/- u/s 32 of the Act.

8. Ground No. 4 relates to the disallowance of the brought forward accumulated losses of amalgamating company of Rs. 6,18,27,952/- on the ground that section 72A is not applicable to the assessee during A.Y. 2016-

17. The assessee has not pressed this ground of appeal. Hence, the same is hereby dismissed.

8.1 In the result, the appeal of the assessee is partly allowed.

ITA No. 2574/Del/2024 [2017-18]

9. This appeal is filed by the revenue against the order of Ld. CIT(A) as he did not follow the decision of the Hon'ble jurisdictional High Court in the case of *Sharp Business Systems (supra)* while allowing the appeal of the assessee in respect of claim of depreciation on non-compete fee. As the issue involved and facts and circumstances are identical, the above decision in A.Y. 2016-17 will apply *mutatis mutandis* to A.Y. 2017-18 also.

10. Accordingly, the revenue's appeal for A.Y. 2017-18 is dismissed.

Order pronounced in the Open Court on 11-02-2026.

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

Dated: 11.02.2026

Pooja Mittal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi