

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

ITA No.499/LKW/2010  
Assessment Year 2007-08

Dy. Commissioner of Income Tax-6, Kanpur	Vs	M/s J.K. Cement Ltd. Kamla Tower, Dwarikadheesh Road, Kanpur  PAN AABCJ 0355 R
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ITA No.247/LKW/2011  
Assessment Year 2008-09

Dy. Commissioner of Income Tax-6, Kanpur	Vs	M/s J.K. Cement Ltd. Kamla Tower, Dwarikadheesh Road, Kanpur  PAN AABCJ 0355 R
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ITA No.180/LKW/2012  
Assessment Year 2009-10

Dy. Commissioner of Income Tax-6, Kanpur	Vs	M/s J.K. Cement Ltd. Kamla Tower, Dwarikadheesh Road, Kanpur  PAN AABCJ 0355 R
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ITA No.570/LKW/2012  
Assessment Year 2010-11

Dy. Commissioner of Income Tax-6, Kanpur	Vs	M/s J.K. Cement Ltd. Kamla Tower, Dwarikadheesh Road, Kanpur  PAN AABCJ 0355 R
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ITA No.668/LKW/2014  
Assessment Year 2011-12

Dy. Commissioner of Income Tax-6, Kanpur	Vs	M/s J.K. Cement Ltd. Kamla Tower, Dwarikadheesh Road, Kanpur  PAN AABCJ 0355 R
(Appellant)		(Respondent)

Appellant by	Shri A.K. Singh, CIT.DR
Respondent by	Shri Ajay Vohra, Advocate
Date of hearing	04/09/2015
Date of pronouncement	30/10/2015

**ORDER**

**PER SUNIL KUMAR YADAV, JM.**

These appeals are preferred by the Revenue against the respective orders of the CIT(A)-Kanpur on common grounds. Therefore, these appeals were heard together and the same are being disposed of through this consolidated order, except Appeal No. 247/LKW/2011 and in all these appeals, the Revenue has assailed the order of the CIT(A) mainly on two grounds; one is with regard to depreciation on good will claimed by the assessee and other is with regard to the nature of subsidy received by the assessee.

2. So far as first issue/ground relating to depreciation on good will is concerned, it was contended before us that this issue is squarely covered by the order of the Tribunal in assessee's own case for AYs 2005-06 & 2006-07 in which the Tribunal has categorically held that assessee is entitled for depreciation on good will. The copy of the order of the Tribunal is placed on record on pages 268 to 279 of the compilation of the assessee. The relevant observations of the Tribunal in this regard are extracted hereunder:-

"10. Our attention was also invited to Explanation 3 below section 32(1) of the Act. While allowing the claim of the assessee, the Id. CIT(A) has held that issuance of shares for Rs.7.44 crores was a part payment of purchase consideration towards cost of acquisition of cement undertaking, therefore, the cost of shares issued to the shareholder of JKSL is eligible for depreciation and the Id. CIT(A) has also held that even if it is considered to be the cost of goodwill of JKSL, still the assessee is entitled for depreciation. During the course of hearing of the appeal, the Id. D.R. has placed emphasis that this cost of shares issued to JKSL is not part of purchase consideration towards cost of acquisition of cement undertaking but it is a cost of goodwill and is not eligible for depreciation. There is no quarrel on the proposition of law that if the cost of shares allotted to the shareholders of JKSL is considered as the payment of purchase consideration towards cost of acquisition to the cement undertaking, then the assessee is eligible for depreciation of the said cost. The dispute was raised that it is not a part of payment of purchase consideration towards cost of acquisition of cement undertaking. It was rather called to be the cost of goodwill which was transferred to the assessee. In this regard, we have carefully perused the judgments referred to by the parties.

11. In the case of R.G. Keswani vs. ACIT (supra) and DCIT vs. Toyo Engineering India Ltd. (supra), the Mumbai Benches of the Tribunal have taken a view that no depreciation would be allowed on goodwill, but the controversy with regard to the allowance of depreciation on goodwill has been set at rest by the Hon'ble Apex Court in the case of CIT vs. Smifs Securities Ltd. (supra) in which their Lordships have held that the difference between the cost of an asset and amount paid constituted goodwill and that the assessee-company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-company stood increased. Therefore, the assessee is entitled for depreciation on the said goodwill. The relevant observations of the Hon'ble Apex Court are extracted hereunder in order to understand the legal proposition and controversy raised therein:-

"We quote hereinbelow Explanation 3 to section 32(1) of the Act:

"Explanation 3.—For the purposes of this sub-section, the expressions 'assets' and 'block of assets' shall mean—

- (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 :"

Explanation 3 states that the expression "asset" shall mean an intangible asset, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of

similar nature. Areading the words "any other business or commercial rights of similar nature" in clause (b) of Explanation 3 indicates that goodwill would fall under the expression "any other business or commercial right of a similar nature". The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

In the circumstances, we are of the view that "goodwill" is an asset under Explanation 3(b) to section 32(1) of the Act.

One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income-tax (Appeals) ("the CIT(A)", for short) has come to the conclusion that the authorised representatives had filed copies of the orders of the High Court ordering amalgamation of the above two companies ; that the assets and liabilities of M/s. YSN Shares and Securities P. Ltd. were transferred to the assessee for a consideration ; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-company stood increased. This finding has also been upheld by the Income-tax Appellate Tribunal ("the ITAT", for short). We see no reason to interfere with the factual finding.

One more aspect which needs to be mentioned is that, against the decision of the Income-tax Appellate Tribunal, the Revenue had preferred an appeal to the High Court in which it had raised only the question as to whether goodwill is an asset under section 32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove.

For the aforesaid reasons, we answer question No. (b) also in favour of the assessee."

*12. In the case of Areva T and D India Ltd. vs. DCIT (supra), the Hon'ble Delhi High Court has examined this issue in the light of legal provisions of the Act and various judgments of the Hon'ble Apex Court and finally concluded that specified intangible assets acquired under slump sale agreement were in the nature of "business or commercial rights of similar nature" specified in section 32(1)(ii) of the Act and were accordingly eligible for depreciation. Their Lordships has further held that even in the alternative the assessee is entitled for depreciation. The facts of that case are quite similar to the facts of the present case and we extract the findings of the Hon'ble Delhi High Court in this case as under:-*

“ In the present case, it is seen that the assessee, vide slump sale agreement dated June 30, 2004, acquired, as a going concern, the transmission and distribution business of the transferor company with effect from April 1, 2004. As a result thereof, the running business of transmission and distribution was acquired by the transferee lock, stock and barrel minus the trade mark of the transferor which was retained by the transferor, for lump sum consideration of Rs. 44.7 crores. It is further seen that the book value of the net tangible assets (assets minus liabilities) acquired was recorded in the balance-sheet of the transferor as on the date of transfer as Rs. 28.11 crores. The said assets and liabilities were recorded in the books of transferee at the same value as appeared in the books of the transferor. The balance payment of Rs. 16,58,76,000 over and above the book value of net tangible assets, was allocated by the transferee towards acquisition of bundle of business and commercial rights, clearly defined in the slump sale agreement, compendiously termed as "goodwill" in the books of account, which comprised, inter alia, the following : (i) business claims, (ii) business information, (iii) business records, (iv) contracts, (v) skilled employees, (vi) know-how. It is also observed that the Assessing Officer accepted the allocation of the slump consideration of Rs. 44.7 crores paid by the transferee, between tangible assets and intangible assets (described as goodwill) acquired as part of the running business. The Assessing Officer, however, held that depreciation in terms of section 32(1)(ii) of the Act was not, in law, available on goodwill. The Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal approved the reasoning of the Assessing Officer thereby holding disallowance of depreciation on the amount described as goodwill. It was thus argued on behalf of the assessee-company that section 32(1)(ii) would mean rights similar in nature as the specified assets, viz., intangible, valuable and capable of being transferred and that such assets were eligible for depreciation. On behalf of the respondent it was argued that applying the doctrine of noscitur sociis the expression "any other business or commercial rights of similar nature" used in Explanation 3(b) to section 32(1) has to take colour from the preceding words "know-how, patents, copyrights, trade marks, licences, franchises". It was urged that the Supreme Court had clearly held in *Techno Shares and Stocks Ltd.* [2010] 327 ITR 323 (SC) that "Our judgment should not be understood to mean that every business or commercial right would constitute a "licence" or a "franchise" in terms of section 32(1)(ii) of the 1961 Act".

In the present case, applying the principle of *ejusdem generis*, which provides that where there are general words following particular and specific words, the meaning of the latter words shall be confined to

things of the same kind, as specified for interpreting the expression "business or commercial rights of similar nature" specified in section 32(1)(ii) of the Act. It is seen that such rights need not answer the description of "know-how, patents, trade marks, licences or franchises" but must be of similar nature as the specified assets. On a perusal of the meaning of the categories of specific intangible assets referred to in section 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature", it is seen that the aforesaid intangible assets are not of the same kind and are clearly distinct from one another. The fact that after the specified intangible assets the words "business or commercial rights of similar nature" have been additionally used, clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate. In the circumstances, the nature of "business or commercial rights" cannot be restricted to only the aforesaid six categories of assets, viz., know-how, patents, trade marks, copyrights, licences or franchises. The nature of "business or commercial rights" can be of the same genus in which all the aforesaid six assets fall. All the above fall in the genus of intangible assets that form part of the tool of trade of an assessee facilitating smooth carrying on of the business. In the circumstances, it is observed that in the case of the assessee, intangible assets, viz., business claims ; business information ; business records ; contracts; employees ; and know-how, are all assets, which are invaluable and result in carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a licence to carry out the existing transmission and distribution business of the transferor. In the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee got an up and running business. This view is fortified by the ratio of the decision of the Supreme Court in Techno Shares and Stocks Ltd. [2010] 327 ITR 323 (SC) wherein it was held that intangible assets owned by the assessee and used for the business purpose which enables the assessee to access the market and has an economic and money value is a "licence" or "akin to a licence" which is one of the items falling in section 32(1)(ii) of the Act.

In view of the above discussion, we are of the view that the specified intangible assets acquired under slump sale agreement were in the

nature of "business or commercial rights of similar nature" specified in section 32(1)(ii) of the Act and were accordingly eligible for depreciation under that section.

In view of the above, it is not necessary to decide the alternative submission made on behalf of the assessee that goodwill per se is eligible for depreciation under section 32(1)(ii) of the Act. In the circumstances, the substantial question of law is decided in the affirmative and this appeal is allowed in favour of the assessee and against the Revenue and the impugned order is set aside."

*13. This judgment of the Hon'ble Delhi High Court was approved by the Hon'ble Apex Court as the SLP filed by the Department was dismissed on merit also.*

*14. Similar view was expressed by the Hon'ble Karnataka High Court in the case of CIT vs. Manipal Universal Learning Pvt. Ltd. (supra) by holding that Explanation 3 to section 32(1) of the Act defines expression "asset" to include intangible asset like goodwill and goodwill is an asset under Explanation 3(b) to section 32(1) of the Act, therefore, depreciation is allowable even on the goodwill.*

*15. Again in the case of CIT vs. Hindustan Coca-Cola Beverages (P) Ltd., 331 ITR 192, the Hon'ble Delhi High Court has examined the issue of depreciation on goodwill in detail and finally concluded that goodwill is a valuable commercial asset similar to other intangible assets mentioned in the definition of block of assets and hence eligible for depreciation. The view taken by the Hon'ble Delhi High Court in the case of CIT vs. Hindustan Coca-Cola Beverages (P) Ltd. (supra) was approved by the Hon'ble Apex Court.*

*16. In the light of this legal proposition, we are of the view that first of all the cost of shares allotted to the shareholders of JKSL is part of payment of purchase consideration towards the cost of acquisition of cement undertaking on which assessee is eligible for depreciation. Even in the alternative, if the cost of shares allotted to the shareholders of JKSL is considered to be the cost of goodwill acquired by the assessee, as it was shown as part of means of finance, even then it is eligible for depreciation in the light of the aforesaid judgments of the Hon'ble High Court and the Hon'ble Apex Court. Therefore, we are of the considered opinion that the Id. CIT(A) has rightly adjudicated the issue and we do not find any infirmity therein. Accordingly we confirm his orders in both the years."*

3. During the course of hearing, the Ld. DR simply placed reliance upon the order of the AO on this issue, whereas the Ld. counsel for the assessee has placed heavy

reliance upon the aforesaid order of the Tribunal. Since no contrary view has been brought before us by the Revenue, we find no justification to differ from earlier view taken by the Tribunal on this issue, we accordingly following the order of the Tribunal decide the issue in favour of the assessee. Consequently, the order of the CIT(A) in this regard is confirmed.

4. The next ground in these appeals relate to the nature of interest subsidy received by the assessee. The facts born out from the records are that the assessee company, M/s J.K. Cement has purchased cement division of J.K. Synthetics Ltd. The assessee company has taken loan from various financial institutions in order to buy cement division, which are already engaged in production of cement. As per the scheme of the Rajasthan Government known as Raj Investment Promotion Policy-2003, assessee has applied for subsidy and Rajasthan Government has granted 5% interest subsidy and 50% exemption from electricity duty. The exemption granted for electricity duty has declared as Revenue receipt whereas interest subsidy was declared as capital receipt. The interest subsidy has been granted by the Rajasthan Government against 50% payment of RST/CST and VAT paid by the assessee company. The assessee company has utilized the interest subsidy in payment of loan taken from financial institutions. The assessee has treated receipt of interest subsidy as capital receipt but the Assessing Officer was not convinced with treatment given by the assessee and he was of the view that subsidy has been granted as incentive to the assessee company to run the business of manufacturing of cement in the State of Rajasthan. He accordingly treated the interest subsidy received by the assessee as a Revenue receipt.

5. The assessee preferred an appeal before the CIT(A) with the submission that assessee company has acquired the cement undertaking from sick company J.K. Synthetic Ltd. against a total cost of Rs.475.39 crores. The assessee has taken loan amounting to Rs.497 crores from various banks and at the time of loan from banks, the assessee company's debt equity ratio was substantially high at 10 is to one. The Government of Rajasthan has considered the case of the assessee company for



subsidy under the aforesaid scheme of Government of Rajasthan keeping in view that cement unit did not become sick and suspend their operations due to high debt. Pursuant to the scheme, the assessee company became entitled inter alia for 5% interest subsidy. As per the eligibility certificate, the maximum amount of interest subsidy was not to exceed 50% of the State and Central sale tax paid by the company in any year. The basis for calculation of the subsidy under scheme of correlate with the interest liability payable on the outstanding banks loans taken by the assessee company from time to time. It was further contended that one of the main condition of the scheme of Rajasthan investment Promotion Scheme 2003 is that the amount of subsidy is to be utilized for repayment of loan only and the assessee company had to repay the installment of loans on due date and there should be no default as such for repayment by assessee-company. It was further clarified that if any part of the subsidy is not utilized for the repayment of loan it shall be disallowed. The copy of Raj Investment Policy 2003 issued by the Government of Rajasthan was placed before the CIT(A). The assessee has placed reliance on various Tribunal orders before the CIT(A), in support of his contention that since the subsidy was received for the repayment of the loans obtained for acquiring the capital assets it should be treated to be capital receipt. The CIT(A) has reexamined the issue in the light of detailed submission of the assessee. Being convinced with it, the CIT(A) has treated the receipt of interest subsidy as capital receipt. Accordingly, the addition made by the AO was deleted. The relevant observations of the CIT(A) are extracted hereunder for the sake of reference:

*"11.1 After having considered the matter and having perused the various judgments, the scheme as pronounced by the Rajasthan Govt. etc., I am of the view that the AO has failed to correctly apply the ratio-decidenti of the Hon. SC in the case of Ponni Sugars (supra). It has been rightly argued by the appellant that it would make no difference if the unit was a sugar unit or a cement unit. One should examine the scheme under which the subsidy is granted. If the purpose of the scheme of subsidy is to give by way of assistance to the assessee in carrying on of his trade or business, it has to be treated as trading receipt. However, if the purpose was to help the assessee set up its business or complete a project, the monies must be treated as to have been received for capital purposes. In the instant incase,*

*it is an admitted position that the appellant was not having any manufacturing unit it acquired these sick units through the scheme of the BIFR and to acquire such units, the appellant had admittedly made considerable borrowings (on which it was paying interest). As I have understood the Scheme of subsidy (formulated by the Govt. of Rajasthan), one of the eligibility conditions in the scheme in the instant case was that there has been no default in repayment of dues against term loan of concerned financial institution(s) and/or Bank(s). This fact has been which has written to the assessee :*

**' Please ensure that the subsidy amount is utilized for repayment of loans and there is no defaults in repayment of dues to the banks in respect of these loans in terms of clause 9(b) (vii) of RIPS 2003,'**

*11.2 If the object of the subsidy scheme was to enable the assessee to run the business more profitably, then the receipt was on revenue account; on the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up or acquire a new unit or to expand its existing units, it would be clearly on capital account. The form of the mechanism through which the subsidy is given is irrelevant. The AO has also confirmed in the assessment order that the impugned subsidy amount had been utilized for repayment of loans taken from Financial Institutions. Based on the legal pronouncements and considering the facts of the case, it can be concluded that the Assessee company's claim to treat the subsidy received by it from Government of Rajasthan as Capital Receipt is justified. The addition made is, therefore, deleted."*

5. Aggrieved, the Revenue has preferred an appeal before the Tribunal. Ld. DR simply placed reliance upon the order of the AO whereas the Ld. counsel for the assessee besides placing his reliance upon the order of the CIT(A) has contended that the main object of the subsidy was to assist the assessee in the repayment of loan. He has also invited our attention to various clauses of the schemes, which were reproduced by the CIT(A) in his order and from these clause Ld. counsel for the assessee has tried to demonstrate that the object of the subsidy was to assist the assessee in acquiring the capital assets. Therefore, the nature of subsidy is a capital receipt in the light of the judgment of the Hon'ble Apex Court in the case of Sahney Steel Works Ltd. Vs. CIT reported in 228 ITR 253 (S.C.) and in the case of

Ponni Sugars and Chemicals Ltd. Vs. CIT reported in 306 ITR 392 (SC). Besides Ld. counsel for the assessee has also placed reliance upon the following judicial pronouncements of which copies are placed on record:

- i) ACIT Vs. Shree Cement Ltd. ITA No.614, 615& 635/JP/2010.
- ii) DCIT Vs. Sutlej Textiles and Industries Ltd. ITA No. 5142/Del/2013
- iii) Sutlej Textiles and Industries Appeal No.386/11-12
- iv) Shree Balaji Alloys Vs. CIT reported in 198 Taxman 122
- v) CIT Vs. Sham Lal Bansal ITA No. 472 of 2010
- vi) CIT Vs. Birla VXL Ltd. 215 Taxman 117
- vii) Maruti Suzuki India Ltd. Vs. ACIT ITA No. 5120/Del/2010

6. Having carefully examined the orders of the lower authorities, in the light of rival submission, we find that as per Raj Investment Policy 2003 appearing at page nos. 38 to 49 of the compilation of the assessee, the scheme will be applicable to all new investments and investments made in the existing units and enterprises for Modernization/Expansion/Diversification, subject to the condition that such units commence commercial production/operations owing to such investment during the operative period of the scheme. As per clause 3 and 7 the subsidy shall be available to the investors for seven years from the date of first repayment of interest in case of interest subsidy and first payment of wages/employment in case of wage employment subsidy. Various conditions are spelt out in the scheme which are required to be fulfilled by the assessee for claiming the subsidy. We also find that scheme was launched to assist to the corporate sector in acquiring or expanding their units. Certain conditions are also made in this scheme, which are required to be fulfilled by the corporate sector in order to avail the benefit of subsidy. Our attention was also invited to eligibility certificate issued by the Government of Rajasthan, copy which is at page no. 51 of the compilation in which the Government has imposed pre condition for offering the benefit of subsidy. The condition is that the subsidy amount is utilized for repayment of loans and there should not be any defaults in

repayment of dues to the banks in respect of these loans, in terms of clause 9B(viii) of the RIPS, 2003. Our attention was also invited to the judgment of Appellate Authority for Industrial & Financial Reconstruction (AAIFR) in which the assessee has proposed to obtain a loan from the bank in order to acquire the cement division of the JK Synthetic Ltd. A copy of this order is placed on pages 52 to 73 of the compilation of the assessee. From this aforesaid documents, it has been emerged that the assessee has obtained a loan from the financial institutions to acquire a cement division as a capital assets from the JK Synthetic Ltd. and the repayment of loan was facilitated by grant of subsidy by the Rajasthan Government to assist the assessee in the repayment of loan to the financial institutions.

7. We have also carefully perused the judgment of the Apex Court in the case of Sahney Steel Works Ltd. Vs. CIT (Supra) and in the case of Ponni Sugars and Chemicals Ltd. Vs. CIT (Supra) and we find that in the case of Sahney Steel Works Ltd. character of the subsidy in the hands of the recipient-whether revenue or capital will have to be determined having regard to the purpose for which the subsidy is given. The source of the fund is quite immaterial. If the purpose is to help the assessee to set up its business or to complete a project, the monies must be treated as to have been received for capital purpose. But if the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of the trade. In the case of Ponni Sugars and Chemicals Ltd. their lordship has held that the nature of subsidy is to be determined in respect of purpose for the subsidy is granted. The character of subsidy is to be determined with respect to subsidy is granted. In other words one has to apply the purpose test. The point of time as subsidy paid is not relevant. The source is immaterial if the object of the subsidy is to enable the assessee to run the business more profitably then the receipt is of revenue receipt. On the other hand, object of the assistance under the subsidy scheme is to enable the assessee to setup a new unit or to expend an existing unit then the receipt of the subsidy is a receipt in capital account. Their lordship has further held that after reversing the judgment of the High Court that

main eligibility condition in the schemes was that the incentive had to be utilized for repayment of loans taken by the assessee to setup new units or for substantial expansion of an existing unit. Their lordship accordingly held that the subsidy received by the assessee was not in the course of trade but was of capital nature.

8. We have also carefully perused the orders of the Tribunal referred by the assessee and we find that in the case of ACIT Vs. Shree Cement Ltd ITA No. 614, 615 & 635/JP/2010 an identical fact that the interest subsidy was considered to be the capital subsidy. Therefore, in the light of aforesaid judgments, we are of the view that the CIT(A) has rightly treated the interest subsidies as a capital receipt as it was received only for repayment of loan acquired for acquisition of capital assets. Accordingly, the Revenue fails on this issue.

**ITA No. 247/Lkw/2011 (A.Y. 2008-09)**

9. Besides aforesaid grounds the Revenue has assailed the order of CIT(A) on one more ground in this appeal that the CIT(A) has erred in law on facts not appreciating the fact that the expenses incurred before commencement of the business was covered by the provisions u/s 35D of the Act. In this regard, the facts born out from the orders of the lower authorities are that the AO has observed that during the course of assessment proceeding, the assessee company has debited a preliminary or pre-operative expenses to the extent of Rs.4,20,000/- in the P&L Account. In reply thereto, it was stated that the said amount was written off being 1/5<sup>th</sup> of the expenses on account of expenses incurred for making the company. The contention of the assessee was not accepted and AO accordingly made disallowance of Rs.4,20,000/-, against which an appeal was filed before the CIT(A) with the submission that an identical issue was examined by the CIT(A) in earlier years and allowed the relief to the assessee therefore, no disallowance is called for.

10. The CIT(A) has made a reference of his order for the AY 2005-06 and allowed the claim of the assessee. Now, the Revenue is in appeal before the Tribunal and

similar argument was raised by the assessee before us. In support of his contention, he has filed the order of the CIT(A) for the AY 2005-06, which is appearing at page 250 of the compilation of the assessee. It was further contended that the order of the CIT(A) was accepted by the Revenue as no appeal was preferred on this ground before the Tribunal. Copy of the grounds of appeal filed before the Tribunal is also placed on record at page no. 263 and from the careful perusal of the order of the CIT(A) and grounds of appeal filed before the Tribunal, we are of the view that the CIT(A) has set aside the addition following its earlier order and the said order was accepted by the Revenue. We, therefore, find no force in the submission of the Ld. DR. Accordingly, we confirm the order of CIT(A).

11. In the result, appeals of the Revenue are dismissed.

Sd/-  
**(A.K. GARODIA )**  
**Accountant Member**

Sd/-  
**(SUNIL KUMAR YADAV)**  
**Judicial Member**

**Dated: 30/10/2015**

**Aks**

**Copy of the order forwarded to :**

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Lucknow

Asstt. Registrar