IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "D", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. Nos.1339 TO 1346/DEL/2017	
	A.YRS. : 2006-07 TO 2013-14	
DCIT, CENTRAL CIRCLE, ROOM NO. 229, 2ND FLOOR, CGO COMPLEX-I, HAPUR CHUNGI, GHAZIABAD	VS.	KUANTUM PAPERS LTD., (FORMERLY KNOWN AS M/S ABC PAPERS LTD.,) SCO-18-19, FIRST FLOOR, SECTOR-8C, MADHYA MARG, CHANDIGARH (PAN: AADCA2231K)
(ASSESSEE)		**(RESPONDENT)**

Revenue by : Sh. Vijay Verma, CIT(DR)
Assessee by : Sh. Mukul Bagla, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed these 08 Appeals against the common impugned Order dated 20.12.2016 of the Ld. CIT(A)-IV, Kanpur relevant to assessment years 2006-07 to 2013-14 respectively. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with assessment year 2006-07.

2. The grounds raised in these Appeals are similar and common, hence, we are only reproducing the grounds in respect of assessment year 2006-07 as under:-

1. That the Ld. CIT(A) has erred in law and on facts in allowing the depreciation on paper brands, which is a non-depreciable asset because its life is not limited.

2. That the Ld. CIT(A) has erred in law and on facts in not appreciating the fact that the assessee has purchased paper brand from its sister concern, which is not an actual transfer but it is a "colorable device" for tax avoidance.

3. That the Ld. CIT(A) has erred in law and on facts in allowing the depreciation on Chemical Recovery Plant despite the fact that the AO has established that the Chemical Recovery Plant was not put to use in the month of March, 2008.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating the fact that for claiming depreciation, it is mandatory that the asset has to be put to use in that particular financial year, which is not the position in this

case, as the Chemical Recovery Plant was pt to use in the month of April, 2008.

5. That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the AO be restored.

6. That the appellant craves leave to add or amend any one or more of the ground of appeal as stated above as and when need for doing so may arise.

3. The brief facts of the case are that a search and seizure action was conducted u/s. 132 of the Income Tax Act, 1961 (hereinafter referred as the Act) on 4.5.2011 on the premises of the assessee. Further, in response to notice u/s. 153A of the Act, assessee filed his return declaring income of Rs. 17,53,54,906/- for AY 2008-09. Later on, notices u/s. 143(2) and 142(1) of the Act were also issued and AO completed the assessment vide order dated 31.3.2015 passed u/s. 143(3) of the Act by making addition of Rs. 4,10,67,290/- for AY 2008-09 on account of depreciation claimed. Aggrieved with the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 20.12.2016 has partly allowed the appeal by respectfully following the Ld. CIT(A)-IV, New Delhi order dated 16.2.2012 passed in Appeal No. 98/2010-11. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the contrary, Ld. Counsel of the assessee has relied upon the order of the Ld. CIT(A) and stated he has passed a well reasoned order which does not need any interference. During the hearing, Ld. Counsel of the assessee has filed a letter dated 6.7.2017 stating therein that in the case of the assessee, AO has passed an assessment order u/s. 143(3) of the Act dated 30/12/2010 for assessment year 2008-09 and made the addition of Rs. 99,01,500/- on account of disallowed depreciation on paper brand on the ground that brands are not covered under intangible assets as per Section 32(1)(ii) of the Act and Rs. 7,44,36,019/- on account of disallowance depreciation on chemical recovery plant on the ground that the plant was not put to use upto 31.3.2008. Ld. Counsel submitted that against order u/s. 143(3) of the Act dated 30.12.2010, the assessee company had filed an appeal before the Ld. CIT(A)-IV, New Delhi who vide order dated 16.2.2012 deleted the disallowances made by the AO in full. Against the order of the Ld. CIT(A), the Department has filed the appeal before the ITAT and the ITAT, 'A' Bench, New Delhi vide its order dated 11.5.2017 in ITA No. 2263/Del/2012 (AY 2008-09) in the matter of assessee i.e. DCIT vs. ABC Paper Ltd. has upheld the order of the Ld. CIT(A) and

dismissed the appeal of the Revenue. For the sake of ready reference, he filed the copy of the order of the ITAT, 'A' Bench, New Delhi dated 11.5.2017 in ITA No. 2263/Del/2012 (AY 2008-09) in the matter of assessee i.e. DCIT vs. ABC Paper Ltd. Ld. Counsel of the assessee further submitted that search and seizure operations were conducted at the premises of the assessee on 4th May, 2011. Pursuant to the search, the Income Tax assessments from Assessment Year 2006-07 to Assessment Year 2012-13 were reassessed u/s 153A of the Income Tax Act. The orders u/s 153/143(3) in respect of Assessment Year 2006-07 to Assessment Year 2012-13 were passed on 31.03.2015 wherein the AO has made the disallowance on the same grounds in respect of which disallowance was made in Assessment Year 2008-09 vide order dated 30.12.2010. The aforesaid disallowance was made in orders u/s 153A dated 31.03.2015 just to keep the issues raised in Assessment Year 2008-09 alive as at that time the department appeal for Assessment Year 2008-09 was pending before the ITAT. He further stated that order u/s 143(3) dated 06.08.2015 was passed in respect of Assessment Year 2013-14 wherein again the same disallowances were made. Against the order u/s 153/143(3) for Assessment Year 2006-07 to Assessment Year 2013-14 the appellant company had filed appeals with CIT(A) - IV, Kanpur and

the CIT(A) - IV, Kanpur vide order dated 20.12.2016 has allowed the appeals in favour of the assessee company and deleted all the disallowances made by the Ld. AO. Against the order of the Hon'ble CIT(A)-IV, Kanpur dated 20.12.2016, the Income Tax Department has filed appeals before the ITAT for the aforesaid Assessment Years vide appeal No. 1339/Del/2017, 1340/Del/2017, 1341/Del/2017, 1342/Del/2017, 1343/Del/2017, 1344/Del/2017, 1345/Del/2017 & 1346/Del/2017. In view of the above, he requested that respectfully following the ITAT, 'A' Bench decision dated 11.5.2017 on the additions in dispute, all the Appeals of the Revenue may be dismissed.

6. We have heard both the parties and perused the relevant records, especially the impugned order. For the sake of convenience, we are reproducing herewith the relevant portion of the impugned order passed by the Ld. CIT(A):-

> *"With regard to the addition on account of depreciation on chemical recovery plant, I have carefully gone through the assessment order, written submission filed as well as verbal argument of the Ld. ARs. Moreover, it is seen that the AO has made addition only to keep the*

matter live. Nothing has been mentioned in assessment order as to how it is related to evidence collected in search. Although AY 2013-14 is not a search year but addition, here also, has been made only to keep matter liver. During the course of appellate proceedings, Ld. AR of the appellant has submitted that the addition made by AO on this ground in assessment u/s. 143(3) of the Act for AY 2008-09 has already been deleted by Ld. CIT(A)-IV, New Delhi vide his order in appeal no. 98/2010-11 dated 16.2.2012. I have carefully gone through the aforesaid appeal order and the detailed submission of appellant and case law relied upon by him. I find merit in the submission of appellant in light of cases relied upon by him i.e.

i) *Capital Bus Service (P) Ltd. vs. CIT, New Delhi (1980) 123 ITR 404.*

ii) *CIT-IV vs. Insilco Limited (2010) 320 ITR 322.*

iii) *CIT vs. Gates (India) Pvt. (2008) 218 CTR 103*

iv) *CIT vs. M/s EIH Limited (ITA No. 3 of 2011) on 31st March, 2011.*

v) *CWT vs. Ramararaju Surgical Cotton Mills Limited (1967) 63 ITR 478.*

vi) *CIT vs. Piccadily Agro Industries Ltd. (2009) 311 ITR 24.*

vii) *CIT, West Bengal-IV, Calcutta vs. Norplex Oak India (2011) 198 Taxman 470/10 taxman.com 163 (Cal.)*

I do not find reason to differ from the decision of the Ld. CIT(A)-IV, New Delhi. Therefore, respectfully following the same addition made by AO on account of depreciation claimed on chemical recovery plant for 2008-09 to 2013-14 assessment years are hereby deleted."

6.1. We further find that ITAT, 'A' Bench, New Delhi vide its order dated 11.5.2017 in ITA No. 2263/Del/2012 (AY 2008-09) in the matter of assessee i.e. DCIT vs. ABC Paper Ltd has dealt the similar and identical issues. For the sake of convenience, we are reproducing the relevant portion of the order of ITAT, 'A' Bench, New Delhi as under:-

"5. We have heard the rival submissions and have perused the relevant material on record. It

is seen that the Ld. CIT (A) has discussed and adjudicated the issue relating to depreciation on the paper brand in Para 5.2 of the impugned order which reads as under:-

> *"5.2 I have carefully considered the assessment order and the submissions made by the Id. AR on the above issue. For the sake of clarity, I would like to reproduce the provisions of Section 32(1)(ii) of the Act which is as under:*
>
> *"32. (1) In respect of depreciation of-*
>
> (ii) know-how, patents, copyrights, trade marks, licences, franchises or *any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,*
>
> owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed"
>
> *As can be seen from the above, the definition of "intangible assets" under Section 32(1)(ii) is an inclusive definition which not only includes know-how, patents, copyrights, trademarks, licences, franchises but also any other business or commercial rights of similar nature. Therefore, the interpretation of the AO - that since "brand" is not specifically*

mentioned in Section 32(1) (ii), it cannot be equated with "trade mark" and hence, depreciation on the same is not admissible - appears to be based on lack of proper appreciation of the provisions of the above Section which specifically includes not only "trade mark'' but also "any other business or commercial rights of similar nature". Further, since "trade mark" has not been specifically defined under the I T. Act, as pointed out by the Ld. AR vide written submission reproduced supra, we have to rely on the definition of "trade mark" under the Trade Marks Act, 1999. As per Section 2(zb) of the Trade Marks Act, 1999 "trade mark" includes "mark" and the definition of "mark" as per Section 2(m) of the above Act specifically includes "brand" as follows:

> *"mark" includes a device, brand, heading, label, ticket, name, signature, or any combination thereof."*

Further, as pointed out by the Ld. AR, as per para 7, 8 and 9 of the Accounting Standard 26 (AS 26) issued by the ICAI, the definition of "intangible asset" and trade mark specifically includes "brand names". Even, the dictionary meaning of "brand name" as per the Illustrated Oxford Dictionary is "an identifying trade mark", "label" etc. The Ld. AR has also relied

upon a large number of case laws, viz. in the case of KEC International Ltd. Vs. Addl. CIT (ITA no. 4420/Mum/2009) wherein it was held by the Hon'ble Mumbai Tribunal that brand is an intangible asset eligible for depreciation under Section 32 of the Act. Further, the Hon'ble Bombay High Court in CIT Vs. Techno Shares and Stocks Ltd. (ITR 323(69) Mumbai) held that "brand" is an intellectual property which can be equated with "trade mark". Further, the Hon'ble ITAT, Pune vide its recent order dated 23.08.2011 in the case of M/s Dilbris International Pvt. Ltd. Vs. DCIT (ITA no. 1361 PN/2010) relying on the decision of the Hon'ble ITAT, Delhi in Hindustan Coca Cola Beverages (P) Ltd. Vs. DCIT has held that brand name is eligible for depreciation. The relevant portion of the order is extracted below:

> *"The special Bench of the Tribunal in the case of Amway India has held that if the software is useable/used for more than 2 years, it is a capital expenditure and if it is for less than 2 years, it is revenue expenditure. We thus following the ratio laid down therein come to the conclusion that in the present case, since the assessee had purchased the user of brand name, trademark, logo for 3 years and similarly, the intellectual property right such as design, drawings, manufacturing processes and technical knowhow in respect of the products manufactured by unit was acquired, we hold that the expenditure incurred in this regard as valued by the approved valuer is capital expenditure on which the claimed depreciation was allowable. In this regard we also find support from the cited decision of Delhi Bench of the Tribunal in the case*

of Hindustan Coca Cola Beverages (P) Ltd Vs. DCIT holding that even if an amount is termed as 'goodwill' in the books of account but it is a business or commercial right in the nature of know-how, patent, copyrights, trademarks, licenses, franchises, the claim of depreciation is indeed admissible thereupon. We accordingly direct the A.O to allow the claimed depreciation on the above assets."

In view of the facts and circumstances and statutory provisions as discussed above and respectfully following the judicial pronouncements on the issue cited supra and also considering the rule of consistency as the assessee's claim for depreciation on the said brands has been allowed by the AO in the earlier two assessment years, I find that the impugned addition of Rs.99,01,500/- made by the AO cannot be sustained. The same is, therefore, deleted."

5.1 This finding of the Ld. CIT (A) could not be controverted by the department before us. The department also could not point out any judicial precedents in favour of the revenue on this issue. We, therefore, uphold the finding of the Ld. CIT (A) on this issue and dismiss this ground of appeal of the department."

6.2 After perusing the aforesaid finding of the Tribunal, we are of the considered view that the issue in dispute in the present appeal, relating to allowing the depreciation on paper brand is squarely covered by the aforesaid decision of the ITAT, hence,

we respectfully follow the aforesaid decision of the ITAT and decide the issue against the Revenue. We also note that the factual finding of the Ld. CIT(A) on the issue in dispute also could not be controverted by the department during the proceedings before us and we, therefore, find no reason to interfere with the findings of the Ld. CIT(A) on this issue as well and while upholding the same.

7. With regard to another issue relating to Depreciation on Chemical Recovery Plant is concerned, we find that the same is also squarely covered by the decision of the ITAT, 'A' Bench, New Delhi vide its order dated 11.5.2017 in ITA No. 2263/Del/2012 (AY 2008-09) in the matter of assessee i.e. DCIT vs. ABC Paper Ltd. wherein the Tribunal has held as under-

> *"5.2 Similarly, the issue relating to depreciation on the chemical recovery plant has been discussed at length in Para 6.5 and 6.6 of the impugned order which are being reproduced hereunder for a ready reference:*
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> -
>
> *"6.5 I have carefully considered the assessment order and the remand report of the AO and the submissions*

made by the Ld. AR alongwith the documents placed on record. I find that the additional evidence submitted by the appellant are merely by way of further corroboration of the claim of the assessee made in the return of income and during assessment proceeding that the said Chemical Recovery Plant had been commissioned and put to use during the year under consideration, thereby making the assessee eligible for depreciation and additional depreciation on the same as per rules. Further, the said evidences were provided to the AO and were duly examined and verified by the AO during the remand proceeding. The said evidences are also related to the issue on which the addition has been made and the grounds of appeal. It is also submitted by the appellant that the said evidences could not be produced during the assessment stage due to paucity of time as the assessment proceedings were taken up by hearings conducted on 16.12.2010 to 26.12.2010 and the depreciation issue was raised by the AO at the very fag end of the assessment proceeding. Considering

the above, the said additional evidences are admitted in the interest of natural justice under Rule 46A of the I.T. Rules, 1962.

6.6 Coming to the merit of the case, I find that the AO has disallowed the above claim of depreciation by taking a view that the Chemical Recovery Plant was not put to use during the year under consideration as certain parts were still under construction / testing stage as per details retrieved from "details of addition of fixed assets" submitted by the assessee on sample basis. However, as argued by the Id. AR, the total depreciation (including additional depreciation) claimed by the assessee for the above plant was Rs.7,67,09,481/- *which included depreciation on factory building at Rs.22,73,462/- and depreciation on plant and machinery at Rs.7,44,36,109/-. The Assessing Officer has disallowed the depreciation on plant and machinery, but has allowed depreciation on the factory building which is part and parcel of the same Chemical Recovery Plant. It*

is argued by the Ld. AR, both the building and plant and machinery were compositely completed and put to use together in March 2008. It is argued that the AO's action in partly allowing depreciation on the above factory while disallowing depreciation on the remaining part is bad in law and facts. Further, it is argued by the Ld. AR that the said Chemical Recovery Plant was fully commissioned on 21.03.2008 and it started its operations from the said date. The said plant generated 1823 tonnes of steam and 33 tonnes of caustic soda totaling Rs.21,49,205/- during the year ended 31.03.2008. Further, the said expansion project was appraised and financed by the State Bank Group led by SBI which appointed M/s R.R. Dehra & Associates, an independent firm of Chartered Engineers to monitor the implementation of above project and to submit periodical reports / certificates with regard to the progress of the said project. A copy of the reports / certificates dated 30.04.2008 issued by the above Chartered Engineer firm certifying that the said project was

commissioned on 21.03.2008 was filed before the AO during the assessment proceeding, copy of which is filed by the appellant as part of the Paper Book. It is further argued by the Id. AR that a copy of the publication regarding status of implementation of the above project as per the Stock Exchange and SEBI guidelines was also submitted before the AO. Further, copy of Board Resolution of the assessee company dated 29.04.2008 stating that the date of commissioning of the Chemical Recovery Plant was 21.03.2008 was also filed before the AO. The assessee has also charged in its book an amount of Rs. 19,98,090/- as depreciation on the above plant for the period of one month as per the Companies Act. Copies of al! the bills relating to addition to fixed assets including machineries for the above plant were produced before the AO. It is submitted by the Id. AR that the AO's observation that some assets were still under construction / testing stage based on some samples of bills is completely erroneous as the said bills nowhere mentioned that the assets were

at construction / testing stage. Further, the appellant during the appellate proceeding submitted copy of the relevant records of the Central Excise registers and statutory returns filed with the Central Excise Department for the purpose of Cenvat credit as well as the Inward Gate Passes (IGP) showing receipt of incoming materials / items in the factory premises. Copies of the IGPs in respect of items contained in the invoices mentioned by the AO in the assessment order were also submitted. As mentioned earlier in this order, the above documentary evidences were forwarded to the AO during the remand proceeding for examination. The AO vide his remand report dated 31.01.2012 has mentioned that he has duly verified the statutory Excise returns filed with the Central Excise Department alongwith Cenvat credit records wherein the said Cenvat credit pertaining the Chemical Recovery Plant (CRP) was entered and also its corresponding entries in the Excise records - RG 23 C Part II (Entry book of duty credit of capital goods) and tallied the same with the Central Excise

records, original invoices and original IGPs. The original IGPs which are made at the time receipt of the material were also produced before the AO during the remand proceeding and were duly verified by him and tallied with the relevant invoices. The AO has not made any adverse comment whatsoever on merit. Considering the above, I find that the impugned addition of Rs.7,44,36,109/- *made by the AO cannot be sustained on facts or in law. The same is, therefore, deleted."*

7.1 Keeping in view of the facts and circumstances of the present case as well as the finding of the ITAT, as reproduced above, we are of the view that the issue in dispute has already been decided by the Tribunal against the Revenue and in favour of the assessee, therefore, respectfully following the aforesaid decision of the ITAT, we decide the issue in dispute against the Revenue. We also note that the factual finding of the Ld. CIT(A) on the issue in dispute also could not be controverted by the department during the proceedings before us and we, therefore, find no reason to interfere with the findings of the Ld. CIT(A) on this issue as well and while upholding the same.

8. In the result, all the 08 appeals filed by the department stands dismissed.

Order pronounced in the Open Court on 01/09/2017.

Sd/-	**Sd/-**
[PRASHANT MAHARISHI] **ACCOUNTANT MEMBER**	**[H.S. SIDHU]** **JUDICIAL MEMBER**

Date: 01/09/2017

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches