

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No. 402/Bang/2018
Assessment year : 2013-14

The Deputy Commissioner of Income Tax, Circle 6(1)(1), Bangalore.	Vs.	M/s. Sapa Extrusion India Pvt. Ltd., No.54, Virgo Nagar, Old Madras Road, Bangalore – 560 049. PAN: AAOCS 4633C
APPELLANT		RESPONDENT

Appellant by	:	Shri M. Rajasekhar, Addl.CIT(DR),ITAT, Bengaluru.
Respondent by	:	Shri H.V. Gowthama, CA

Date of hearing	:	04.06.2018
Date of Pronouncement	:	06.07.2018

ORDER

Per N.V. Vasudevan, Judicial Member

This is an appeal by the revenue against the order dated 17.07.2017 of the CIT(Appeals)-IV, Bengaluru relating to assessment year 2013-14.

2. The grounds raised by the revenue reads as follows:-

- “1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2. On the facts and in circumstances of the case whether the CIT(A) is right in holding that the assessee is eligible for depreciation on account of non compete fee which is paid on

account of trade and commerce and is a commercial right to enforce performance of the terms of the agreement.

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
4. The appellant craves leave to add, alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

3. There is a delay of about 49 days in filing this appeal by the revenue. The delay has been explained as owing to administrative and procedural hurdles. Accepting the reasons given in the application for condonation of delay, we condone the delay in filing the appeal of the revenue.

4. The assessee is a company engaged in the business of manufacturing and distribution of Aluminum extrusion profiles. The assessee had paid a sum of Rs.28 crores to M/s. Alufit India (P) Ltd. for not carrying out any extrusion business within the specified territories directly or indirectly. The above payment of Rs.28 cores is non-compete fees was made under an agreement dated 9.5.2011. According to the assessee, payment of non-compete fee gave the assessee, commercial right to carry on manufacturing activity without competition from one major manufacturer. The assessee was also able to retain old customers consequent to the non-compete agreement. The assessee claimed that payment of non-compete fee resulted in acquisition of an intangible asset and the assessee was entitled to claim depreciation on such intangible asset. Assessee submitted that it had acquired the intangible asset which falls within the meaning of the expression “or any other business or commercial rights of

similar nature” occurring in section 32(1)(ii) of the Income-Tax Act, 1961 [“the Act”]. The assessee in support of the aforesaid contention placed reliance on the decision of the Hon’ble High Court of Karnataka in the case of *Ingersoll Rand International Ltd. 48 taxman.com 349 (Kar)* wherein it was held that non-compete fee confers commercial rights which is akin to know-how, patents, copyrights, trademarks licenses, franchises and commercial rights, and therefore was intangible asset on which depreciation has to be allowed as per the provisions of section 32(1)(ii) of the Act.

5. The AO, however, did not allow claim of assessee on the ground that the department has not accepted the correctness of the decision of the Hon’ble High Court of Karnataka referred to by the assessee. According to the AO, because of low tax effect, no appeal was filed against the decision of the Hon’ble High Court of Karnataka. The AO referred to the decision of the Hon’ble Delhi High Court in the case of *Sharp Business System v. CIT 2012(211 Taxman 576(Del)*, wherein the Hon’ble Delhi High Court took a view that non-compete right cannot be treated as an intangible asset for the purpose of allowing depreciation u/s. 32(1)(ii) of the Act. The AO therefore disallowed the claim of assessee for depreciation of Rs.5.06 crores.

6. On appeal by the assessee, the CIT(Appeals) allowed the claim of assessee by following the decision of the Hon’ble High Court of Karnataka in the case of *Ingersoll Rand International Ltd. (supra)*. Following were the observations of the CIT(Appeals):-

“8. It is noted that in the assessment order the AO disallowed depreciation on non compete fee amounting to Rs.5,06,00,000/-. IN this context, it is noted that the jurisdictional High Court of Karnataka in the case of M/s. Ingersoll Rand (2014) 48 taxmann.com 349 (Karnataka) / (2014) 227 Taxman 176 (Karnataka) held that expenditure incurred for acquiring non

compete right is capital in nature entitled to depreciation u/s. 32(1)(ii).

9. In the light of the above judicial decision of Hon'ble jurisdictional High Court of Karnataka which is squarely applicable in the instant appeal, and in view of the fact that the decision is binding, and since judicial discipline requires that wisdom of higher authorities prevail, the AO is directed to allow depreciation to appellant by following above judicial decision.”

7. Aggrieved by the order of CIT(Appeals), the revenue is in appeal before the Tribunal.

8. The Id. DR relied on the order of AO. The Id. counsel for the assessee relied on the order of CIT(Appeals).

9. We are of the view that in the light of the undisputed factual position that payment by the assessee in the present case is similar to payment that was considered by the Hon'ble High Court of Karnataka in the case of *Ingersoll Rand International Ltd. (supra)*, we are of the view that the order of CIT(Appeals) does not call for any interference. In fact, in para 6 of the judgment of the Hon'ble High Court of Karnataka, the decision of the Hon'ble Delhi High Court has been considered, but the Hon'ble High Court of Karnataka has still decided the issue in favour of assessee, while concluding that non-compete fee paid is an intangible asset acquired by the assessee on which depreciation has to be allowed u/s. 32(1)(ii) of the act. In the given facts and circumstances of the case and the law laid down by the jurisdictional High Court, we are of the view that the order of CIT(Appeals) does not call for any interference. Consequently, the appeal by the revenue is dismissed.

10. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 06th day of July, 2018.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 06th July, 2018.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.