

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 5149/DEL/2014  
[A.Y 2010-11]

M/s Premier Book Company  
11, No. 4792/23, Ansari Road  
Darya Ganj, New Delhi

Vs.

The Addl. C.I.T  
Circle - 30(1)  
New Delhi

PAN : AA EFP 8468 R

[Appellant]

[Respondent]

Date of Hearing : 10.08.2021  
Date of Pronouncement : 11.08.2021

Assessee by : Shri B.K. Anand, CA

Revenue by : Shri Bharat B. Garg, Sr. DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the  
Commissioner of Income Tax [Appeals]- XXV, New Delhi dated  
03.06.2014 pertaining to Assessment Year 2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in upholding the disallowance of depreciation claimed on tenancy rights amounting to Rs. 5,41,406/-

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings and on perusal of the schedule of fixed assets, the Assessing Officer observed that the assessee has claimed depreciation of Rs. 5,41,406/- @ 25% on the tenancy rights. Vide order sheet noting dated 22.02.2013, the Assessing Officer issued show cause notice to the assessee to explain as to why the claim of depreciation on tenancy rights be not disallowed in light of provisions of section 32 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

4. In its reply, the assessee stated as under:

The assessee had some-time back [relevant to A.Y 2008-09 settled the dispute between the legal heirs of a former partner late P.C. Agarwal the amount paid....good will and tenancy rights.....the value of these payments are amortized in the books of the assessee firm and depreciation is claimed in this respect, these being intangible assets whose cast is borne by the assessee business."

5. This reply of the assessee was dismissed by the Assessing Officer who was of the belief that as per section 32(1)(ii) of the Act, depreciation is allowed only in respect of know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after April, 1998. Drawing support from the decision of the Tribunal in the case of M.M. Nissim & Co. 18 SOT 274, the Assessing Officer disallowed Rs. 5,41,406/-.

6. The assessee carried the matter before the ld. CIT(A) but without any success.

7. Before us, the ld. counsel for the assessee drew our attention to the decision of the Hon'ble High Court of Delhi in the case of Hindustan Coco Cola Beverages 198 Taxmann.com 104 and pointed out that the Hon'ble High Court has allowed depreciation on intangible assets.

8. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and relied upon the findings of the ld. CIT(A).

9. We have carefully considered the orders of the authorities below. At the very outset, we have to state that depreciation has been claimed on the written down value as on 01.04.2009 which means that depreciation was claimed in earlier years also. We find that this is not the initial year of claim of depreciation. In our considered opinion, unless claim is disturbed in the initial A.Y of the claim, the same cannot be disturbed in the subsequent A.Y if the facts are same.

10. The Hon'ble High Court of Delhi in the case of Hindustan Coco Cola Beverages [supra] had an occasion to examine the provisions of section 32 of the Act. The relevant part of the judgment reads as under:

"21. It is worth noting, the scope of [Section 32](#) has been widened by the [Finance \(No.2\) Act, 1998](#) whereby depreciation is now allowed on intangible assets acquired on or after 1st April, 1998. As per [Section 32\(1\)\(ii\)](#), depreciation is allowable in respect of know-how, patent, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature being intangible assets. Scanning the anatomy of the section, it can safely be stated that the provision allows depreciation on both tangible and intangible assets and clause (ii), as has been indicated hereinbefore, enumerates the intangible assets on which depreciation is allowable. The assets which are included in the definition of „intangible assets“ includes, along with other things,

any other business or commercial rights of similar nature. The term „similar“ has been dealt with by the Apex Court in [Nat Steel Equipment Pvt. Ltd. v. Collector of Central Excise](#), AIR 1988 SC 631 wherein the Apex Court has opined that the term „similar“ means corresponding to or resembling to in many aspects. In this regard, it would not be out of place to refer to the decision in [Commissioner of Income Tax v. B.C. Srinivasa Setty](#), [1981] 128 ITR 294 (SC) wherein the concept of goodwill has been understood in the following terms:

"Goodwill denotes the benefit arising from connection and reputation. The original definition by Lord Eldon in *Cruttwell v. Lye* 1810 17 Ves 335 that goodwill was nothing more than "the probability that the old customers would resort to the old places" was expanded by [Wood V.C.](#) in *Churton v. Douglas* 1859 John 174 to encompass every positive advantage "that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on or with the name of the old firm, or with any other matter carrying with it the benefit of the business". In *Trego v. Hunt* 1896 A.C. 7 (HL) Lord Herschell described goodwill as a connection which tended to become permanent because of habit or otherwise. The benefit to the business varies with the nature of the business and also from one business to another. No business commenced for the first time possesses goodwill from the start. It is generated as the business is carried on and may be augmented with the passage of time. Lawson in his *Introduction to the Law of Property* describes it as

property of a highly peculiar kind. In *CIT v. Chunilal Prabhudas & Co.* [1970] 76 ITR 566 the Calcutta High Court reviewed the different approaches to the concept (pp.577, 578):

"It has been horticulturally and botanically viewed as „a seed sprouting“ or an „acorn growing into the mighty oak of goodwill“. It has been geographically described by locality. It has been historically described by locality. It has been historically explained as growing and crystallizing traditions in the business. It has been described in terms of a magnet as the „attracting force“. In terms of comparative dynamics, goodwill has been described as the „differential return of profit“.

Philosophically it has been held to be intangible. Though immaterial, it is materially valued. Physically and psychologically, it is a „habit“ and sociologically it is a „custom“. Biologically, it has been described by Lord Macnaghten in *Trego v. Hunt* [1896] AC 7(HL) as the „sap and life“ of the business. Architecturally, it has been described as the „cement“ binding together the business and its assets as a whole and a going and developing concern."

A variety of elements goes into its making, and its composition varies in different trades and in different businesses in the same trade, and while one element may preponderate in one business, another may dominate in another business. And yet, because of its intangible nature, it remains insubstantial in form and nebulous in

character. Those features prompted Lord Macnaghten to remark in *IRC v. Muller & Co.'s Margarine Limited* [1901] A.C. 217(HL) that although goodwill was easy to describe, it was nonetheless difficult to define. In a progressing business goodwill tends to show progressive increase. And in a failing business it may begin to wane. Its value may fluctuate from one moment to another depending on changes in the reputation of the business. It is affected by everything relating to the business, the personality and business rectitude of the owners, the nature and character of the business, its name and reputation, its location, its impact on the contemporary market, the prevailing socio-economic ecology, introduction to old customers and agreed absence of competition. There can be no account in value of the factors producing it. It is also impossible to predicate the moment of its birth. It comes silently into the world, unheralded and unproclaimed and its impact may not be visibly felt for an undefined period. Imperceptible at birth it exists enwrapped in a concept, growing or fluctuating with the numerous imponderables pouring into, and affecting, the business."

22. Regard being had to the concept of „goodwill“ and the statutory scheme, the claim of the assessee and the delineation thereon by the tribunal are to be scanned and appreciated. The claim of the assessee-respondent, as is discernible, is that the assessing officer had treated the transactions keeping in view the concept of business or commercial rights of similar nature and put it in the compartment of intangible assets. To effectively understand what would constitute an intangible asset, certain aspects, like the

nature of goodwill involved, how the goodwill has been generated, how it has been valued, agreement under which it has been acquired, what intangible asset it represents, namely, trademark, right, patent, etc. and further whether it would come within the clause, namely, „any other business or commercial rights which are of similar nature“ are to be borne in mind.

23. On a scrutiny of the order passed by the tribunal, it is clear as crystal that the depreciation was claimed on goodwill by the assessee on account of payment made for the marketing and trading reputation, trade style and name, marketing and distribution, territorial know-how, including information or consumption patterns and habits of consumers in the territory and the difference between the consideration paid for business and value of tangible assets. The tribunal has treated the same to be valuable commercial asset similar to other intangibles mentioned in the definition of the block of assets and, hence, eligible to depreciation. It has also been noted by the tribunal that the said facts were stated by the assessee in the audit report and the assessing officer had examined the audit report and also made queries and accepted the explanation proffered by the assessee. The acceptance of the claim of the assessee by the assessing officer would come in the compartment of taking a plausible view inasmuch as basically intangible assets are identifiable non-monetary assets that cannot be seen or touched or physical measures which are created through time and / or effort and that are identifiable as a separate asset. They can be in the form of copyrights, patents, trademarks, goodwill, trade secrets, customer



lists, marketing rights, franchises, etc. which either arise on acquisition or are internally generated.

24. It is worth noting that the meaning of business or commercial rights of similar nature has to be understood in the backdrop of [Section 32\(1\)\(ii\)](#) of the Act. Commercial rights are such rights which are obtained for effectively carrying on the business and commerce, and commerce, as is understood, is a wider term which encompasses in its fold many a facet. Studied in this background, any right which is obtained for carrying on the business with effectiveness is likely to fall or come within the sweep of meaning of intangible asset. The dictionary clause clearly stipulates that business or commercial rights should be of similar nature as know-how, patents, copyrights, trademarks, licences, franchises, etc. and all these assets which are not manufactured or produced overnight but are brought into existence by experience and reputation. They gain significance in the commercial world as they represent a particular benefit or advantage or reputation built over a certain span of time and the customers associate with such assets. Goodwill, when appositely understood, does convey a positive reputation built by a person / company / business concern over a period of time. Regard being had to the wider expansion of the definition after the amendment of [Section 32](#) by the [Finance Act \(2\) 1998](#) and the auditor's report and the explanation offered before the assessing officer, we are of the considered opinion that the tribunal is justified in holding that if two views were possible and when the assessing officer had accepted one view which is a plausible one, it was not appropriate on the part of the

Commissioner to exercise his power under [Section 263](#) solely on the ground that in the books of accounts it was mentioned as „goodwill“ and nothing else. As has been held by the Apex Court in *Malabar Industrial Co. Ltd. (supra)*, *Max India Ltd. (supra)* and *Commissioner of Income-Tax v. Vimgi Investment P. Ltd. [2007] 290 ITR 505 (Delhi)* once a plausible view is taken, it is not open to the Commissioner to exercise the power under [Section 263](#) of the Act.”

11. Considering the facts of the case in hand in light of the decision of the Hon'ble High Court of Delhi [supra] we direct the Assessing Officer to delete the addition of Rs. 5,41,406/-.

12. In the result, the appeal filed by the assessee in ITA No. 5149/DEL/2014 is allowed.

The order is pronounced in the open court on 11.08.2021 in the presence of both the rival representatives.

Sd/-

**[MADHUMITA ROY]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> August, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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