

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

**ITA No.12 of 2014 with ITA Nos.15, 4 and
13 of 2014.**

Reserved on: 09.12.2014.

Pronounced on: December 31, 2014.

1. ITA No.12 of 2014:

Commissioner of Income Tax

.....Appellant.

versus

RFCL Limited

.....Respondent.

2. ITA No.15 of 2014:

Commissioner of Income Tax

.....Appellant.

versus

RFCL Limited

.....Respondent.

3. ITA No.4 of 2014:

Commissioner of Income Tax

.....Appellant.

versus

RFCL Limited

.....Respondent.

4. ITA No.13 of 2014:

Commissioner of Income Tax

.....Appellant.

versus

RFCL Limited

.....Respondent.

Coram

The Hon'ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr.Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes.

For the Appellant(s): Mr.Vinay Kuthiala, Senior Advocate, with
 Ms.Vandana Kuthiala, Advocate.

For the Respondent(s): Mr.R.P. Bhatt, Senior Advocate, with
 Mr.Vijay Verma, Advocate.

...2...

Mansoor Ahmad Mir, C.J.

All these appeals have been preferred by the Commissioner of Income Tax, Shimla, (hereinafter referred to as the Revenue), under Section 260-A of the Income Tax Act, 1961.

2. ITA Nos.12 and 15 of 2014 are directed against the composite order, dated 29th April, 2013, passed by Income Tax Appellate Tribunal, Chandigarh, (for short, the Appellate Tribunal), in ITA Nos.189 & 190/Chd/2013, pertaining to assessment years 2006-07 and 2009-10, while ITA Nos.4 and 13 of 2014 have been preferred by the Revenue against the common order, dated 2nd April, 2013, passed by the Appellate Tribunal, in ITA Nos.293 and 294/Chd/2012, qua the assessment years 2007-08 & 2008-09, whereby the appeals filed by the assessee (respondent herein) came to be allowed in terms of the impugned orders and the Assessing Officer was directed to allow the claim of the assessee vis.-a-vis. the depreciation on goodwill and also depreciation on intangible assets.

...3...

3. Feeling aggrieved, the Revenue has challenged the orders of the Appellate Tribunal by the medium of these appeals.

4. All these appeals have been admitted on the following analogous substantial questions of law, on 3rd September, 2014:

1. *Whether the ITAT was justified in applying the ratio of the judgment in CIT vs. SMIFS Securities (SC) wherein there was a categorical finding by the CIT(A) that the difference between the cost of asset and total amount paid constituted goodwill whereas in the present case the finding of the CIT (A) is that the amount paid over and above the value of assets is nothing but a premium paid which has been given the nomenclature of 'goodwill' and does not comprise of any type of business or commercial rights u/s 32.*

2. *Whether the impugned judgment is perverse as the ITAT failed to appreciate that the judgment in SMIFS Securities case was based on the finding of fact of the CIT(A) that the assessee had acquired capital right in the form of "goodwill" whereas in the present case the claim of the assessee of acquiring goodwill has not been accepted by the CIT(A).*

...4...

5. As common questions of law are involved in all these appeals, we deem it proper to determine all these appeals by this common judgment.

6. We have heard the learned counsel for the parties and have perused the record.

7. Mr.Vinay Kuthiala, learned Senior Advocate, appearing for the appellant-Revenue conceded that the Appellate Tribunal rightly came to the conclusion, in all the appeals, while directing the Assessing Officer to allow the claim(s) in regard to depreciation on goodwill.

8. Mr.Bhatt, learned Senior Advocate appearing for the assessee-respondent, while supporting the impugned orders, argued that in view of the latest judgments of the Apex Court, discussed by the Appellate Tribunal, the assessee was entitled to depreciation on goodwill, which was wrongly taken away by the Authorities below. It was further argued that the assessment came to be reopened, for which the foundation was made the decision of the Bombay High Court in Commissioner of Income Tax vs. Techno Shares

...5...

and Stocks Ltd., which decision was set aside by the Apex Court, vide judgment dated 9th September, 2010, in **Techno Shares and Stock Ltd. vs. Commissioner of Income Tax, [2010] 327 ITR 323 (SC)**, mention of which has been made by the Appellate Tribunal in the impugned order. It is apt to reproduce paragraph 25 of the said decision of the Apex Court hereunder:

"We answer the question at page 6 in the affirmative by holding that on the facts and circumstances of these cases the Tribunal was right in holding that depreciation was allowable on the cost of the membership card under Section 31(1)(ii) of the 1961 Act. Accordingly, the impugned judgment(s) of the Bombay High Court is set aside and the appeal(s) filed by the nominated non-defaulting continuing member stands allowed with no order as to costs."

9. The Appellate Tribunal, after making discussions, in paragraphs 27 & 28 has rightly applied the ratio of the judgment of the Apex Court in **Commissioner of Income Tax vs. SMIFS Securities Ltd., [2012] 348 ITR 302 (SC)**, and held that the authorities i.e. the Assessing Officer and the CIT(Appeals) have wrongly made the order and the Assessing Officer was directed to allow the claim of the assessee vis.-a-vis. the depreciation on

goodwill. It is apt to reproduce paragraphs No.27 and 28 of the impugned order hereunder:

"27. The second aspect of the issue is that the assessee had booked the said consideration of Rs.12.62 crores as goodwill in its books of account. In this regard also the assessee is entitled to the claim of depreciation on the goodwill as the Hon'ble Supreme Court in CIT Vs. SNIFS Securities Ltd. (supra) held that the goodwill by itself was an intangible asset under Explanation 3(b) to section 32(1) of the Act and is eligible for deduction. The relevant portion of the ratio laid down by the Hon'ble Supreme Court is as under:

"The Assessing Officer held that goodwill was not an asset falling under Explanation 3 to Section 32(1) of the Income Tax Act, 1961 {'Act', for short}. We quote hereinbelow Explanation 3 to Section 32(1) of the Act.

"Explanation 3- For the purpose 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, trademarks, 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, trademarks, licences, franchises or any other business or commercial rights of similar nature.

A reading of 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).

...7...

In the circumstances, we are of the view that Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act"

28. *In view of the ratio laid down by the Hon'ble Supreme Court in CIT vs. SNIFS Securities Ltd. (supra), it is held that the goodwill simpliciter was eligible for depreciation and the assessee having paid consideration of Rs.12.74 crores for acquisition of the said goodwill and having accounted for the same in its books of account as goodwill, was entitled to the claim of depreciation. We accordingly direct the Assessing Officer to allow the claim of the assessee vis-a-viz the claim of depreciation on goodwill of Rs.12.74 crores."*

10. The learned Senior Counsel appearing for the appellant-Revenue has stated that it is a fact that the judgment of the Bombay High Court stands set aside and the very foundation of the case has lost its efficacy.

11. Now, the only question remains to be determined is whether the respondent-assessee was entitled to depreciation on intangible assets. The Appellate Tribunal, while discussing the facts of the case and the effect of the judgment of the Bombay High Court, read with the judgment of the Apex Court, held that the assessee was also entitled to depreciation on intangible assets. The Appellate Tribunal had made

discussion in paragraphs 28, 29, 33, 35 and 38 of the order impugned in ITA Nos.4 and 13 of 2014. We are of the considered view that the discussion made is based on facts, law applicable, read with the judgment of the Apex Court.

12. It is apt to record herein that the Delhi High Court in **Areva T and D India Ltd. vs. Deputy Commissioner of Income Tax, [2012] 345 ITR 421 (Delhi)** discussed and laid down what is the meaning of intangible assets and how the assessee is entitled to depreciation. It is apt to reproduce paragraphs 13, 14, 15 and 16 of the said decision hereunder:

"13. 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 "knowhow, patents, trademarks, licenses 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 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., knowhow, patents, trademarks, copyrights, licenses 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 case of the assessee, intangible assets, viz., business claims; business information; business records; contracts; employees; and knowhow, 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 license 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 "license" or "akin to a license" which is one of the items falling in Section 32(1)(ii) of the Act.

...10...

14. 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.

15. 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.

ITA No.1151/2010 and ITA No.1152/2010

16. In these appeals, the Income-tax Appellate Tribunal, relying upon the decision in assessee's own case I.T.A. No.336/Del/08 dated July 6, 2009, pertaining to assessment year 2005-06, held:-

"5. On careful consideration of rival submission, we are of view that learned Commissioner Income-tax (Appeals) has rightly allowed relief to the assessee after considering relevant facts and circumstances of the case. The assessee has not claimed depreciation on goodwill it acquired commercial rights to sell products under the trade name and paid consideration in dispute for acquiring marketing and territorial rights to sell through dealers and distributors i.e. the network created by the seller for sale in India. Under the agreement. It become entitled to use of infrastructure developed by the seller. Rights were acquired since April 1, 1998 and these rights have all along been treated as an asset entitled to depreciation and depreciation was actually allowed in the past. The learned Assessing Officer, in our view was not correct in making a departure from the past and in holding that payment was made for acquisition of "goodwill". Payment had been made for acquisition of commercial rights on which depreciation is permissible. The Assessing Officer was

...11...

further not justified in treating entries in the books of account as conclusive and in taking payment in dispute as consideration for acquisition of goodwill. It is now more or less settled that entries in books cannot be treated as conclusive and true nature of transaction has to be determined with reference to law. The learned Commissioner of Income-tax (Appeals) in the impugned order examined the issue with reference to agreement and found that payment was made for acquisition of commercial rights. On facts and circumstances of the case, we do not find any error in the approach of the learned Commissioner of Income-tax (Appeals)). His action is hereby confirmed."

13. The judgment of the Delhi High Court supra was assailed by means of Special Leave Petition before the Apex Court, which stands dismissed on 23rd September, 2013 i.e. after the judgment made by the Appellate Tribunal.

14. The Appellate Tribunal has rightly discussed the facts, circumstances, the law applicable, including the judgments of the Bombay High Court and Delhi High Court and various other judgments, in paragraphs No.19, 20, 24, 25 and 26 in the order impugned in ITA Nos.13 and 4 of 2014, which are reproduced hereunder:

"19. The issue arising before us is whether the assessee is entitled to the claim of depreciation on the said acquisition of intangible assets in line with the acquisition of business of

Animal Health Care and Diagnostics Business divisions of Ranbaxy and/or also whether the assessee is entitled to the claim of depreciation on the amount booked under the head goodwill simpliciter.

20. Under the amended provisions of section 32 of the Act w.e.f. 1.4.1999, ambit of depreciation has been enlarged to cover both the tangible and intangible assets. The depreciation on buildings, machinery plant of furniture being tangible assets was being allowed subject to satisfaction of the conditions laid down under section 32 of the Act i.e. the assets should be owned wholly or partly by the assessee and used for the purpose of business or profession of the assessee. The rate of depreciation for such assets was provided in Schedule attached to the Income Tax Act. However, after the amendment by the Finance (No.2) Act, 1998, w.e.f. 1.4.1999 the depreciation is also to be allowed on intangible assets i.e. know-how, patent and copyrights, trademarks, licences or franchises or any other business or commercial rights of similar nature. The Hon'ble Delhi High Court in *Areva T and D India Ltd. Vs. DCIT (supra)* applied the principle of ejusdem generic to interpret the expression "business or commercial rights of similar nature" referred to in section 32(I)(ii) of the Act and held 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. The Hon'ble Court further held that in the circumstances, the nature of business or commercial rights could be of the same genus in which all

the aforesaid six assets fall and thus intangible assets i.e. business claims; business information; business records; contracts; employees; and know-how, were held to be assets which are invaluable and result in carrying on the business of the assessee, without any interruption and are comparable to a licence or akin to a licence which is one of the items falling in section 32(1)(ii) of the Act.

24. The above said ratio was referred to by Mumbai Bench of the Tribunal in *M/s India Capital Markets P. Ltd. Vs DCIT (supra)* wherein the purchase of clientele business by the assessee from *M/s AFC* was held to be right which could be used as a tool to carry on the business and the consideration paid for which was held eligible for depreciation.

25. As pointed out in paras hereinabove the assessee in addition to building plant & machinery, furniture, fixtures, vehicles and net current assets alongwith brands valued at Rs.49.26 crores had also acquired the under mentioned assets:

S.No	Details of Intangible Assets acquired	Paper Book Reference Page Numbers
1.	Stockist Agreements	51-75
2.	Distribution Agreements	76-79
3.	Lease Agreements	81
4.	Distribution and Marketing Agreements	82
5.	List of Employees	83-86
6.	List of Licenses and Permissions (Export Registrations)	126

...14...

7.	Various Products – Enlarged product range and customer base	108-120
8.	Name license	45
9.	Manufacturing know bow, specifications and test methods, manufacturing and packaging instructions, master formulae, validations reports, stability data, analytical methods and any other documents necessary to manufacture, control and release the products.	36-37

26. The perusal of the Schedules to BPA comprising of the above said list of Stockist Agreements, Distribution Agreements, Lease Agreements and also Distribution and Marketing Agreements, alongwith List of Licenses and Permissions and List of various Products, the name license and also the manufacturing know-how etc., alongwith List of employees are assets, which are invaluable and instrumental in carrying on the business of Animal Health Care and Diagnostics Business divisions acquired by the assessee from M/s Ranbaxy Laboratories Ltd. as per BPA. The acquisition of the above said items is bundle of rights acquired by the assessee for which lump sum price was fixed and no break up in the value of price was determined either by the assessee or by the auditors but the same constituted bundle of rights akin to a licence or comparable to a license to carry on the business of Animal Health Care and Diagnostics Business divisions which was being carried on by the seller i.e. M/s Ranbaxy Laboratories Ltd. the above said assets

...15...

acquired by the assessee were the 'business or commercial rights or licence acquired' in order to carry on new business acquired by the assessee including list of employees and also various licences owned by Ranbaxy Laboratories Ltd. In line with the ratio laid down by the Hon'ble Delhi High Court in Areva T and D India Ltd. Vs. DCIT (supra), we are of the view that the consideration of Rs.12.74 crores paid by the assessee was for acquisition of the intangible assets on which the assessee is entitled to the claim of depreciation under section 32(1) (ii) of the Act."

15. In the given circumstances, the questions framed are decided in favour of the assessee/respondent and against the Revenue/appellant.

16. Having said so, the impugned orders made by the Appellate Tribunal need no interference and the same are upheld. Accordingly, the appeals are dismissed. The Registry is directed to place a copy of this judgment on each file.

(Mansoor Ahmad Mir)
Chief Justice.

December 31, 2014.
(Tilak)

(Tarlok Singh Chauhan)
Judge.