

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri S.Rifaur Rahman, Accountant Member**

**ITA No.800/Hyd/2016**  
(Assessment Year: 2010-11)

Apna Incable Broad Band Services Private Ltd Nizamabad PAN:AAHCA3357L (Appellant)	Vs	Dy. Commissioner of Income Tax, Circle-1 Nizamabad (Respondent)
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For Assessee :	Shri A. Srinivas
For Revenue :	Shri Murthy Naik, DR

Date of Hearing:	13.02.2019
Date of Pronouncement:	27.02.2019

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A)-5, Hyderabad, dated 29.02.2016.

2. Brief facts of the case are that the assessee company, engaged in the Cable TV business, filed its return of income for the A.Y 2010-11 on 30.09.2010 returning loss of (-) Rs.30,52,838/-. The case was selected for scrutiny and necessary notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. The assessee appeared through its representative and furnished the details called for.

3. The AO observed that the assessee has entered into an agreement dated 18.11.2008 for purchase of Cable TV business of M/s. Apna Cable Network for a total consideration of Rs.2,30,00,000/-. He observed that the said amount included the consideration for equipment & material of Rs.24,91,620/- cables of Rs.37,56,800/-and deposits to the tune of Rs.5,01,580/- totaling to Rs.67,50,000/-. The AO observed that as per schedule C, fixed assets, the company has claimed depreciation on network rights of Rs.1,62,66,250/- i.e. the balance amount. The AO was of the opinion that the network rights are not intangible assets and therefore, depreciation is not allowable thereon. The AO treated the network rights as “goodwill” and observing that no depreciation is allowable on goodwill u/s 32(1)(ii) of the Act, he disallowed the claim of depreciation and brought it to tax.

4. Further, the AO also observed that the assessee has paid a sum of Rs.18,75,000.- to M/s. IndusInd Media & Communications Ltd as technical and management fees. The AO required the assessee to furnish the nature and details of the services rendered by them and to substantiate the same with necessary evidence. Vide letter dated 24.02.2013, the assessee submitted as under:

*“During the year under assessment, company has paid a sum of Rs.18.75 lacs to IndusInd Media & Communications Ltd as technical and management fees. AIBBSPL, being a small MSO, administratively managed by IMCL, its’ holding company. IMCL is one of the largest MSO in India and considering its experience in the field of Cable TV business, provides technical/administrative support to AIBBSPL to operate its business. Following are the main services provided by IMCL to AIBBSPL:*

Providing technology required for delivering of CATV signals to the subscribers directly or through Local Cable Operators.

Helping the company to negotiate with broadcasters for carriage fee income and pay channel.

Overseeing the overall management of the company including maintenance of head end, accounting, compliance, billing and other day to day operations”

5. Observing that the assessee has not furnished any evidence in support of the above contention and also observing that the assessee also has claimed to have incurred expenses towards salaries, wages and staff welfare totaling to Rs.18,29,569, the AO held that further incurrance of expenditure of Rs.18.75 lacs is not genuine and disallowed the same and brought it to tax.

6. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO that the “Network Rights” are not intangible assets and therefore, no depreciation can be allowed. Further, he also disallowed the expenditure towards technical and management services on the ground that the assessee has not filed any evidence on the nature of payment, services rendered, mode of payment etc. Aggrieved, the assessee is in further appeal before us by raising the following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the CIT (A) has erred in upholding a disallowance of Rs.35,58,242/- by disallowing depreciation on “Network Rights” only on account of non-appearance as the hearing notice was not received by the appellant and ignoring the facts submitted along with the appeal. The learned CIT (A) has erred in law in not considering the payment made for transfer of the “Cable TV Network” and “Cable Network Associated Rights”, as “Intangible Assets”, since the payment represents acquisition of*

*intangible rights by the Appellant relating to subscriber base of the vendor u/s 32(1)(ii) of the Act.*

*2. On the facts and circumstances of the case and in law, the CIT (A) has erred in disallowing a sum of Rs.18,29,569/- paid towards overall management including maintenance, accounting compliances to the appellant's holding company.*

*The appellant reserves its right to add to, alter, amend, modify or delete any of the grounds taken in this appeal”.*

7. The learned Counsel for the assessee Shri A. Srinivas, while reiterating the submissions made by the assessee before the authorities below submitted that the findings of the AO that the Network Rights is not an intangible asset but is a “goodwill” has not been disturbed by the CIT (A). Therefore, he submitted that the assessee accepts the said network rights to be “goodwill” and as per the judgment of the Hon'ble Supreme Court in the case of CIT Kolkata vs. Smifs Securities Ltd reported in 348 ITR 302 (S.C), “goodwill” is an intangible asset and depreciation is allowable thereon. Thus, he prayed for allowance of depreciation. The learned DR, on the other hand, supported the orders of the authorities below.

8. Having regard to the rival contentions, we find that the findings of the AO that “Network Rights” is “goodwill” has not been disturbed by the CIT (A) and as held by the Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd (Supra), depreciation is allowable on “goodwill”. Respectfully following the judgment of the Hon'ble Apex Court, we direct the AO to allow depreciation on “network Rights”.

9. As regards Ground of Appeal No.2, we find that though the assessee has stated that services rendered by M/s. IndusInd Media & Communications Ltd are technical and managerial, it has not filed any evidence either before the AO or before the learned CIT (A) to substantiate the claim. Even before us, no evidence is filed. The learned Counsel for the assessee only reiterated the submissions made before the authorities below and prayed that the issue may be remitted to the file of the AO before whom, the assessee is willing to file all the relevant evidence. The learned DR also reiterated the findings of the authorities below. Having regard to the rival contentions, we deem it fit and proper to remit the issue to the file of the AO with a direction to verify whether the assessee has actually made the payment and if such payment is made, then to allow the same as it is for business purposes of the assessee. Therefore, Ground of appeal No.2 is treated as allowed for statistical purposes.

10. In the result, assessee' appeal is partly allowed.

Order pronounced in the Open Court on 27<sup>th</sup> February, 2019.

**Sd/-**  
**(S.Rifaur Rahman)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 27<sup>th</sup> February, 2019.  
**Vinodan/sps**

Copy to:

- 1 Apna Incable Broad Band Services (P) Ltd, In Centre, 49/50  
MIDC, 12<sup>th</sup> Road, Andheri (East) Mumbai 400093
- 2 Dy.CIT, Circle-1 Nizamabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*