

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2419/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2013-14)

DCIT Cir. 2(1)(2), Ahmedabad, 1 st Floor, Navjivan Trust Building Ahmedabad- 380014	बनाम/ Vs.	M/s. Landmark Cars (East) Pvt. Ltd. Sun Court, Survey No. 383/P, FP-37 & 38, Near sola Flyover, S.G. Road, Ahmedabad- 380059
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAC CL4 207 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Rajesh Meena, Sr. DR.
प्रत्यर्थी की ओर से / Respondent by :	Ankit Talsania, AR

सुनवाई की तारीख / Date of Hearing	14/03/2019
घोषणा की तारीख /Date of Pronouncement	27/03/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the CIT(A)-02, Ahmedabad ('CIT(A)' in short), dated 07.07.2016 arising in the assessment order dated 28.03.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2013-14.

2. The grievance of the Revenue as per its Grounds of Appeal reads as under:

“1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 93,75,000/- made on account of depreciation on goodwill without properly appreciating the facts of the case and the material brought on record.”

3. Briefly stated, the assessee company is stated to have dealership of Mercedes-Benz in Gujarat and Madhya Pradesh and as per the ongoing business strategy, it wanted to further expand its business in North-East Region of the country. As stated, in pursuance of its aforesaid strategy, the assessee company acquired the business of going concern namely Interkrafts Autocity Pvt. Ltd. which was holding dealership of Mercedes-Benz in Kolkata. The business of the aforesaid concern was claimed to be acquired for a total consideration of Rs. 12.85 crores for all its assets aggregating to Rs. 5,34,61,607/-. The liabilities of the concern were also acquired and directly paid by the assessee. In the process, the excess consideration of Rs. 7.50 crores over and above the value of the tangible assets was claimed to have been incurred for acquiring various business and commercial rights categorized under the head ‘goodwill’ in the books of the assessee. The assessee claimed depreciation on such ‘goodwill’ pegged at Rs. 7.50 crores. In the course of the scrutiny assessment, the AO however denied the claim of such depreciation on ‘goodwill’.

4. Aggrieved the assessee preferred appeal before the CIT(A). The CIT(A) after consideration of relevant facts found the claim of the assessee to be in consonance with law enunciated by way of judicial precedents. Relevant operative para of the order of the CIT(A) is reproduce hereunder for ready reference:-

“3.3. Decision:

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AO has made the disallowance of the claim of depreciation of Rs.93.75 lacs made in the year under consideration on the goodwill. It has been noticed that the appellant had paid an amount of Rs.7.50 crores towards goodwill during the F.Y. on

01/01/2013 as per the bill of Rs. 7.5 crore raised by M/s. Interkraft Autocity Pvt. Ltd., Kolkata. The AO observed that the appellant has acquired the tangible and intangible assets from M/s. Interkrafts Autocity Pvt. Ltd., Kolkata for a total consideration of Rs.12.85 crore and the entire sale consideration has been paid towards the outstanding liabilities of M/s. Interkrafts Autocity Pvt. Ltd., Kolkata. The total consideration of Rs.12.85 crores including VAT was paid in lieu of the acquisition of the business with all its assets including spare parts worth of Rs.5,34,61,406/- and the balance payment of Rs.7.50 crores for acquiring various business and commercial rights categorized under the right of the goodwill in the books of the appellant. The AO had not granted the depreciation for various reasons given in the assessment order. The same are briefly as under.

3.4. As per the AO, the appellant has not justified with any of the corroborative evidences to prove that it was worth paying such substantial amount of goodwill to M/s. Interkrafts Autocity Pvt. Ltd., Kolkata. Further observed by the AO that the appellant has paid substantial amount of goodwill to the company which does not have that much repute and standing as compared to Mercedes Benz. The substantial amount of goodwill paid to aforesaid company who was a franchise of a Mercedes Benz is not believable as it was the promoter of Mercedes Benz and the customers know M/s. Interkrafts Autocity Pvt. Ltd., Kolkata due to the brand name of Mercedes Benz. The AO also observed that in the balance sheet of Landmark Car Pvt. Ltd. who was a group company has shown the amount of Rs.12 crore as short term loans and advances to the appellant for making the payment of the liabilities of Interkraft Autocity Pvt. Ltd., Kolkata. It has not been shown as investment in the books of Landmark Cars Pvt. Ltd. The AO also observed that in the financial statements of M/s. Interkrafts Autocity Pvt. Ltd., Kolkata for A. Y. 2012-13, the opening balance of the goodwill as on 01/04/2013] was at Rs.1 crore which was at the same value as on 31/03/2012. Thus in a span of 10 to 11 months from 31/03/2012, the transaction of the acquisition of the business would not make the value of the goodwill at Rs. 7.50 crores. Hence, the claim of creation of goodwill falls unacceptable as per the AO. The AO also observed that the appellant has failed to justify the valuation of goodwill and in absence of any justification and certificate of qualified Chartered Accountant, the claim of Rs.7.50 crores raised through the invoice was held to be erroneous.

3.5. On the other side, the appellant has submitted a detailed written submission during the assessment proceedings and thereafter in the appellate proceedings and the same have been reproduced in the preceding paras of this order.

3.6. Having considered the facts and submission, it is found that the appellant group was already having the dealership of Mercedes Benz in Gujarat and M.P. and as per the business development strategies it wanted to expand its business in the North East region of the country. Before such acquisition, the appellant had a market share of about 9% of the all India sale of the Mercedes Benz and after acquisition it has acquired the market share of 12% of the entire sale of Mercedes Benz.

3.7. Further, the commercial considerations behind the acquisition was to have the expansion geographically, earning goodwill of Mercedes Benz at the Kolkata dealership which was not being operating to the satisfaction of Mercedes Benz, have better terms of new dealership as promised by Mercedes Benz after acquisition of the Kolkata establishment and to have the ready and established business and infrastructure instead of setting up of the dealership afresh which has saved the time and efforts without much efforts. In fact, the appellant had the offer from Mercedes Benz to purchase the Interkraft Autocity Limited, Kolkata and in turn it promised to give certain concessions and operational supports to the appellant.

3.8. Further, with this market share of Landmark Cars Pvt. Ltd. and the appellant company was expected to increase its market share near to 12% of All India Mercedes Benz sale. Considering all the due diligence on the properties and business prospects, the appellant found it to meet its objective as it was able to get the ready business, rights to use substantial area perpetually without any competition, dealership in Eastern area of India with complete infrastructure for marketing, sales and servicing of vehicles which was different to the established by the appellant. The appellant company got the strategically located show room, service station franchised perpetually by the Interkraft and continuity in the business through the name of Interkraft only.

3.9. The total consideration of Rs. 12.84 crores was agreed for acquiring a ready to do business along with all requisite assets. The appellant company was allowed to use the name '**Interkraft**' which enabled continuity of business and service. In the competitive business segment of luxury cars, it was essential that there is seamless transfer of business interest without impacting customers service levels. The appellant company was allowed to use existing show rooms as well as service stations without wasting time on setting up the premises, ordering for the plant and machinery, equipments and availability of trained and ready manpower etc. It has been contended that with this acquisition of the ready to business use including tangible and intangible assets such as business and commercial rights, the appellant could achieve the substantial growth since 2013 till 2015 as evident from the sales effected year wise as under:-

Period upto 31.03.2013	8.45 Crores
Year Ended 31.3.2014	92.33Crores
Year Ended 31.3.2015	136.85 Crores
9 months ended 31.12.2015	117.05 Crores
Total	354.68 Crores

3.10. It has been submitted that for acquiring such various business and commercial rights categorized under the head of goodwill comprises of dealership, readymade infrastructure including working process, procedures, trade employees and the approved facilities and other requisites, besides use of premises, business information, business contracts and contacts, use of trade mark "Interkraft" allowed by the appellant company to access data and customer base and similar other business commercial rights relating to business. It is not in dispute that after acquisition of the Interkraft, Kolkata the business of the Landmark group rose to 12% of the All India sales of Mercedes Benz and obviously this is

because of the acquisition only for which the goodwill was paid considering the long term benefits. The appellant company had acquired the business as per its commercial wisdom in an advantageous bargain as a businessman and such business prudence cannot be decided by the AO.

3.11. It has been noticed that the AO has not placed on record the basis of which it could be said that the Interkraft, Kolkata had not so much of reputation and no goodwill was to be paid. It is true that Mercedes Benz have much more reputation than the Interkraft, Kolkata but it does not mean that the Interkraft, Kolkata itself did not have any reputation. It is also out of place to mention that the amount of goodwill in respect of Mercedes Benz would be far more than what has been paid to the Interkraft, Kolkata. It is also noticed that the loans of Rs.12 crores has been paid by Landmark Car Pvt. Ltd. to the appellant, and therefore, the same has been shown as loans and advances in the balance sheet of LCPL. Since no shares against such advance have been issued by the appellant, therefore, there was no question of showing the same as investment in the balance sheet of LCPL. Even this reason does not connect in any way for disallowance of the claim of depreciation on the goodwill. Thus, the AO's observation in this regard is untenable.

3.12. It has also been noticed that in the books of accounts of Interkraft, Kolkata, the book value of the goodwill has been shown at Rs. 1 crore, which itself shows that the Interkraft, Kolkata had the goodwill which has been recorded in the balance sheet. It is a different thing that in the books of accounts, it has the value of Rs. 1 crore but the appellant has to pay Rs.7.5 crore against the same since the AO has brought nothing on record that the goodwill paid by the appellant was excessive. In absence of any details of the initial year of the goodwill creation in the books of the Interkraft, Kolkata, the present value of the goodwill in the year under consideration could not be evaluated. It is not known for how long this goodwill was appearing in the books of accounts of Interkraft, Kolkata and in which year the Interkraft, Kolkata has purchased / valued the goodwill at the value of Rs.1 crore. Therefore, from these facts, it is apparent that the Interkraft, Kolkata had the goodwill in existence for which the appellant was required to pay against the same.

*3.13. The appellant also relied upon the Accounting Standard - 14. As per the general accepted accounting principles, the purchase consideration was at Rs.12.85 crores and the tangible assets acquired were of Rs.5.35 crores. Therefore, the excess of the purchase consideration over the total value of the assets acquired was determined at Rs.7.50 crores which was paid obviously for the goodwill. In this regard, reliance has been placed on the judgment of **Hon'ble Delhi High Court in the case of Areva T & D India Ltd. Vs. DCIT [345 ITR 421]**, whereby it has been held that in the case of acquisition of an undertaking the balance amount over and above of the net tangible asset was treated as goodwill and the Delhi High Court has allowed the depreciation claim on such goodwill following the judgment of **Hon'ble Supreme Court in the case of Techno Shares and Stock Limited Vs. CIT [2010] 327 ITR 323 and CIT Vs. Hindustan Coco-cola Beverages Pvt. Ltd. [2011] 331 ITR 192.***

3.14. Since in the case of appellant, intangible assets in the form of business and commercial rights such as dealership, readymade infrastructure including working process, procedures, trained employees, MB approved facilities and other requisites, use of premises, business information, business contracts and contact, use of trade marks (Interkraft, Kolkata) are all assets which are invariable and result in carrying on the business by the appellant which was hitherto being carried out by the Interkraft, Kolkata. In the absence of aforesaid intangible assets, the assessee would 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 the running business.

3.15. It has been noticed that in the assessment proceedings, the appellant has submitted the binding term sheet between the appellant and Interkraft, Kolkata dated 29/12/2012 and the interim receipt for payment for the transfer of assets and 12 separate invoices dated 07/03/2013. It has been noticed that through the aforesaid invoices, the appellant had purchased the various assets including the goodwill at Rs. 12,84,61,607/-. The details of the interim receipt is reproduced as under:-

Invoice No.	Date	Description	Amount	VAT	Total
1	02/02/2013	Air Conditioner	62,882	9,118	72,000
2	07/03/2013	Structural	1,36,59,162	0	1,36,59,162
3	07/03/2013	CCTV	3,22,589	43,550	3,66,139
4	07/03/2013	Vehicles	25,48,319	1,01,933	26,50,252
5	07/03/2013	Television	3,64,006	52,781	4,16,787
6	07/03/2013	Refrigeration	8,82,003	1,27,891	10,09,894
7	07/03/2013	Kitchen Equip.	2,40,195	32,426	2,72,621
8	07/03/2013	Furniture	4,82,22,824	6,51,081	54,73,905
9	07/03/2013	Computer	30,49,528	1,21,981	31,71,509
10	07/03/20)3	Plant & Machine	1,02,73,631	13,86,940	1,16,60,571
11	07/03/2013	Goodwill	7,50,00,000	0	7,50,00,000
12	07/03/2013	Spare Parts	1,41,43,045	5,65,722	1,47,08,767
			12,53,68,184	30,93,423	1 2,84,61,607/-

3.16. Since the AO has not doubted the other 11 invoices in respect of various assets, then there was no question to doubt the Invoice No. 11 dated 07/03/2013 to purchase the goodwill at Rs.7.50 crore. Intact, through the aforesaid receipt the Interkraft Autocity Pvt. Ltd. had acknowledged the payment having made by the appellant towards the various liabilities of Interkraft directly paid to each of them and not to Inerkraft, Kolkata of which details are noted as under:-

Sr. No.	Name of the party and address	Amount of payment	Mode of payment	Bank Name	Cheque No.	Date of payment
1	WB VAT Department	5,000,000	E-Payment	SBI	—	02/02/2013
2	WB VAT Department	20,844,444	E-Payment	SBI	—	19/02/2013
3	DPS-Chennai	50,000,000	Cheque	KVB	000107	16/02/2013
4	Tata Capital Financial Services Ltd., Kolkata	1,299,828	Cheque	KVB	000110	21/02/2013
5	Tata Capital Financial Services Ltd., Kolkata	3,235,868	Cheque	KVB	000109	21/02/2013
6	Tata Capital Financial Services Ltd., Kolkata	2,425,187	Cheque	KVB	000108	21/02/2013
7	Punjab & Sindh Bank, Kolkata	3,404,444	Cheque	KVB	000118	28/02/2013
8	Punjab & Sindh Bank, Kolkata	39,277	Cheque	KVB	000122	04/03/2013
9	Kotak Mahindra Prime Limited	631,260	Cheque	KVB	000631	29/03/2013

10	Kotak Mahindra Prime Limited	270,540	Cheque	KVB	000632	29/03/2013
11	DPS - Chennai	24,507,328	Cheque	KVB	000111	31/03/2013
12	DFS- Chennai	5,437,927	Cheque	KVB	000117	31/03/2013
13	Incentive of Edwin Aviet	42,129	E-Payment	ICICI	—	12/04/2013
		117,138,232				

3.17. It is noticed from the above that it is not a case that the appellant has made the payment to Interkraft, Kolkata but the outstanding liabilities of Interkraft, Kolkata has been paid by the appellant directly to each of them through cheques and e-payments. The details of cheque no., date of payment, amount paid and the party to whom paid are mentioned above which has not been doubted by the AO. Even the balance payment of Rs. 1,13,23,375/- (Rs. 12,84,61,607/- - Rs. 11,71,38,232/-) has been paid by the appellant in the subsequent year which is supported by the ledger account copies of Interkraft Autocity Pvt. Ltd. available before the AO in the assessment proceedings. There is no information and evidence on record that the payments made to various outstanding liabilities of Interkraft, Kolkata or to Interkraft have returned back in cash to the appellant. Therefore, there is no reason to doubt the genuineness of the payments towards goodwill made to Interkraft, Kolkata which was justified in view of the business requirements and business expediency discussed in the preceding paras of this order. Since there was no doubt by the AO in respect of payment of the goodwill to the outstanding creditors of M/s. Interkraft, Kolkata and therefore, the depreciation upon the goodwill is an allowable expenditure in the hands of the appellant as per the judgments / decisions of honourable courts briefly noted as under:-

Hon'ble Supreme Court in the case of CIT SMIFS Securities Ltd. [2012] 348 ITR 302, has held that a goodwill is an asset under Explanation 3(b) to Section 32(1) of I. T. Act and entitled for depreciation.

Hon'ble Himachal Pradesh High Court In the case of CIT Vs. RFCL Limited [2015] 57 Taxmann.com 17, has held that the assessee is entitled to claim depreciation on consideration paid and accounted for as goodwill.

Hon'ble ITAT, Delhi in the case of Cyber India Online Ltd. Vs. ACIT [2014] 42 Taxmann.com 108, has held that where assessee company acquired running business of a company for a lump sum consideration and it recorded book value of net tangible assets in balance sheet and balance part was allocated in balance sheet as goodwill, the assessee was entitled to depreciation on goodwill.

ACIT Vs. Bharti Teletech Ltd. [2014] 46 Taxmann. com 26 & ACIT (OSD) Vs. Sahitya Mudranalaya Pvt. Ltd.[2014] 33 ITR (Trib) 108] (Ahd) have held that depreciation on goodwill, which is an asset as per section 32 is allowable.

Hon'ble ITAT, Mumbai in the case of ACIT Vs. Worldwide Media Pvt. Ltd. [2014] 43 Taxmann.com 18(Mum) has held that where assessee acquire business as ongoing concern, and claimed depreciation in respect of amount paid for acquiring intangible assets, the depreciation was allowable on goodwill like any other intangible asset.

Hon'ble ITAT, Delhi in the case of Thyssen Kurup Elevators (1) Pvt. Ltd. Vs. ACIT [2014] 50 Taxmann.com, has held that where the assessee acquired business of another company on slump basis, excess consideration paid by assessee over and above value of net assets was to be considered as goodwill under section 32(1)(ii), eligible for depreciation.

Hon'ble ITAT, Mumbai in the case of CIT Vs. Birla Global Asset Finance Co. Ltd. [2014] 41 Taxmann.com 262, have held that even intangible assets constitute goodwill on which depreciation would be allowable.

Hon'ble Karnataka High Court in the case of CIT Vs. Manipal Universal Learning Pvt. Ltd. [2013] 34 Taxmann.com 9, has held that the depreciation is allowable on amount paid for goodwill being future profits.

Hon'ble Kerala High Court in the case of B, Ravindran Pillai Vs. CIT [332 ITR 531] has held that the amount paid for the goodwill for ensuring retention and continued business was one for acquiring business and commercial rights and the same was comparable with trademark, franchise and copy right etc. So goodwill was covered by the provisions of section 32(1)(ii) entitling the assessee for depreciation.

Hon'ble ITAT, Mumbai in the case of Kotak Forex Brokerage Ltd. Vs. ACIT [2010] 131 TTJ 404 has held that goodwill is a bundle of rights which include inter alia patent trademarks, licenses, franchises etc. and they assume importance in commercial world as they represent a particular benefit or reputation build by a person over a period of time and customers associate themselves with such assets, hence, depreciation would be allowable on same.

3.18 In view of the facts of the case and judicial pronouncements, the allowability of the depreciation on the goodwill paid by the appellant is not in doubt and the depreciation has been correctly claimed by the appellant. Hence, the claim of depreciation on the goodwill for the part period of the year is allowed to the appellant. Thus, the grounds of appeal are allowed.

5. Aggrieved by the relief granted by the CIT(A), the Revenue preferred appeal before the tribunal. The Ld. DR for the Revenue relied upon the order of the AO and submitted that the assessee has

failed to demonstrate before the AO towards the bona fides of creation of 'goodwill'.

6. Per contra, the Ld. AR for the assessee extensively referred to the agreement entered into for acquisition of assets and liabilities with Interkrafts Autocity Pvt. Ltd. and also a statement of assets and liabilities of the aforesaid concerned. It was contended that the assessee has paid Rs. 7.50 crores over and above the net value of the tangible assets which represents cost of 'goodwill' which came to the assessee along with the going concern. The Ld. AR also pointed out that the aforesaid statement is self explanatory and no separate valuation of goodwill *per se* is required from any independent professional. The cost of goodwill is determined in commercial world to represent the extra consideration paid over the net value of assets acquired. The fact towards payment of extra consideration has not been disputed. Therefore, the cost of goodwill requires amortized over a period of time as per law.

7. The Ld. AR also pointed out that apart from the judicial precedents noted by the CIT(A), the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd. 348 ITR 302 (SC).

8. We have carefully considered the rival submissions and the order of the authorities below. The essential controversy involves maintainability of claim of depreciation on cost of goodwill by the assessee. The assessee has claimed extra consideration paid towards acquisition of net value of assets of Interkraft Autocity Pvt. Ltd. with a view to acquire the dealership of Mercedes-Benz embedded with the concern covering the state of West Bengal and entire North-East. Thus, there can be no quarrel that extra consideration paid for acquisition of assets and the business of the concern represents cost of goodwill. This being so, the assessee would be entitled in law for

claim of depreciation thereon in view of the decision of Hon'ble Gujarat High Court in the case of DCIT vs. TGB Banquets & Hotels Ltd. Tax Appeal No. 470 of 2012 dated. 21.06.2016 (Guj.) and also the decision of Hon'ble Supreme Court in the case of Smiffs Securities Ltd. supra. Therefore, we find no infirmity in the conclusion drawn by the CIT(A) in favour of the assessee. Thus, we decline to interfere.

8. In the result, appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 27/03/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad: Dated 27/03/2019

Tanmay

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आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।