

TAX FLASH NEWS

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Depreciation on goodwill is available on acquisition of business operations of a company

The Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Geodis Overseas Private Limited¹ (the taxpayer) allowed depreciation on goodwill on acquisition of business operations of a company. The AO had alleged that the year-wise revenue from logistic services to I Co. India was showing a declining trend. However, this observation was incorrect because there was an increase in revenue from I Co. The Tribunal relied on the decision of the Delhi High Court in the case of Areva T&D India Ltd.² and on the Special bench of Delhi Tribunal in the case of CLC & Sons Private Ltd³ to allow depreciation on goodwill on acquisition of business operations.

Facts of the case

The taxpayer is engaged in the business of transportation of time sensitive packages, documents and cargo to various destinations in the domestic and international sectors and offers a range of freight forwarding, consolidation and break-bulk services. The main divisions of the taxpayer are operations, cargo, quality, business development, finance, information technology, administration and human resources.

On 31 March 2009, the taxpayer entered into a world-wide multi-year outsourcing agreement with a foreign company and acquired its internal global logistics operations. Pursuant to the said agreement, the taxpayer had entered into a contract with Indian companies (affiliate of foreign company) to acquire the freight forwarding business for a certain consideration.

The taxpayer has been transferred tangible assets (comprising of laptops), supplier contracts of foreign company's freight and forwarding business (in house logistics department) and also the right to provide logistics services to such foreign company for a maximum period of 15 years, with an option to extend for an additional term of 7 years. During the Assessment Year 2010-11, the taxpayer had made addition of the above assets in goodwill and claimed depreciation at 25 per cent.

The Assessing Officer (AO) disallowed the claim of depreciation on goodwill on the ground that depreciation should be allowed on all other intangible assets other than goodwill. The definition of the goodwill in the agreement was not as contended by the taxpayer as the company has not become any sole logistic service provider, the value of existing workforce does not facilitate the smooth carrying on of business being sole criteria to claim goodwill as any other business or commercial rights of similar nature.

As far as the value of third-party contracts already existing with the foreign company, the AO observed that the expiry date of these contracts has already been expired in the year itself i.e. December 2009 as evident from the details of such contracts. Further, foreign company has not given its brand name to the taxpayer. As per the agreement, the foreign company has not transferred any commercial knowledge or technical know-how so that the taxpayer can claim the same as business or commercial rights of similar nature. Similarly, the purchase price of goodwill was also not verifiable from any calculation or valuation report as evident from clause of purchase price. The statutory expression of the provision granting depreciation on intangible assets does not include all the intangible assets and that the residual clause with

¹ Geodis Overseas private limited v. DCIT (ITA No. 2305/Del/2015) – Taxsutra.com

² Areva T & D India Ltd. vs DCIT [2012] 345 ITR 421 (Del)

³ CLC & Sons Private Limited v. ACIT [2018] 95 taxmann.com 219 (Del) (SB)

any other business or commercial rights of similar nature must be of similar nature to the intangible assets eligible for depreciation enumerated in the said provision prior to the aforesaid expression. Accordingly, the AO rejected the claim of depreciation on goodwill. The Dispute Resolution Panel (DRP) upheld the order of the AO.

Tribunal's decision

The Tribunal relied on the decision of the Delhi High Court in the case of Areva T&D India Ltd. wherein it was held that specific intangible assets, viz., business claims, business information, business records, contracts, employees and know-how acquired by taxpayer under slump sale agreement were in nature of 'business or commercial rights of similar nature' specified in Section 32(1)(ii) and were eligible for depreciation. Further the Special Leave Petition (SLP) filed by the tax department against the aforesaid decision was dismissed by the Supreme Court⁴.

The Tribunal relied on the decision of the Special Bench of Delhi Tribunal in the case of CLC & Sons Private Ltd. where it was held that the goodwill will fall under the expression 'or any other business or commercial rights of similar nature' and hence, qualifies for depreciation under Section 32(1). Therefore, the Delhi Tribunal held that depreciation is available on genuine goodwill.

The allegation of the AO that the year-wise revenue from logistic services to I Co. is showing a declining trend was incorrect. It was observed that there was an increase in revenue from I Co. Accordingly, the Tribunal held that the taxpayer is entitled to depreciation on goodwill.

Our comments

Allowability of depreciation on goodwill has been a matter of debate before the Courts/Tribunal.

In some of the cases the Courts/Tribunal⁵ have held that depreciation is not allowable on goodwill because it is not of similar nature to that of intangible assets viz. know-how, patents, trademarks, licences, franchise, etc. as specified under Section 32. In other words, it will not get covered under the expression 'any other business or commercial rights of similar nature'.

However, Courts/Tribunal in various cases⁶ have held that all the intangible rights mentioned under Section 32 are similar to the rights under goodwill and hence eligible for depreciation. Section 32 allows depreciation on both tangible and intangible assets. All these rights are similar to the rights under goodwill.

The Supreme Court in the case of Smifs Securities Ltd.⁷ held that the goodwill being a difference between the amount paid and cost of shares in case of amalgamation scheme, was an asset eligible for depreciation under Section 32. The Supreme Court has applied the principle of ejusdem generis and held that the expression 'any other business or commercial rights of a similar nature' includes goodwill for the purpose of allowability of depreciation.

The Delhi Tribunal in the present case has held that the taxpayer is eligible for depreciation on goodwill on acquisition of business of a company.



⁴ SLP No. 21227/2012, dated 23 September 2012

⁵ Bharatbhai J. Vyas v. ITO [2005] 97 ITD 248 (Ahd), R.G. Keswani v. ACIT [2009] 116 ITD 133 (Mum), Borkar Packaging (P.) Ltd. v. ACIT [2010] 131 TTJ 99 (Panaji), CIT v. Mangalore Ganesh Beedi Works [2003] 128 Taxman 351 (Kar)

⁶ CIT v. Hindustan Coca Cola Beverages (P) Ltd. [2011] 198 Taxman 104 (Del), B. Raveendran Pillai v. CIT [2010] 194 Taxman 477 (Ker), KEC International Ltd. v. ACIT [2010] 41 SOT 43 (Mum), India Capital Markets P Ltd v. DCIT (ITA.No.2948/Mum/2010)

⁷ CIT v. Smifs Securities Ltd. [2012] 348 ITR 302 (SC)

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