

\$~16 and 17

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 905/2010

COMMISSIONER OF INCOME TAX

..... Appellant

Through : Mr. Puneet Rai, Senior Standing Counsel for Revenue along with Ms.Adeeba Mujahid, Junior Standing Counsel for Revenue and Mr.Nikhil Jain, Advocate.

versus

DAIKIN SHRI RAM AIRCON PVT LTD

..... Respondent

Through : Mr. C.S. Aggarwal, Senior Advocate with Mr.Ravi Pratap Mall, Mr. Uma Shankar and Mr.Mahir Aggarwal, Advocates.

AND

17

+ ITA 130/2013

COMMISSIONER OF INCOME TAX DELHI –IV

..... Appellant

Through : Mr. Puneet Rai, Senior Standing Counsel for Revenue along with Ms.Adeeba Mujahid, Junior Standing Counsel for Revenue and Mr.Nikhil Jain, Advocate.

versus

DAIKIN AIR CONDITIONING INDIA PVT LTD

..... Respondent

Through : Mr. C.S. Aggarwal, Senior Advocate with Mr.Ravi Pratap Mall, Mr. Uma Shankar and Mr.Mahir Aggarwal, Advocates.

%

Date of Decision: 17<sup>th</sup> October, 2022

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**  
**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

**ITA 905/2010**

**ITA 130/2013**

1. Present appeals have been filed by the Appellant, Revenue, under Section 260A of the Income Tax Act, 1961 ('the Act') to set aside the impugned order dated 24<sup>th</sup> October, 2008, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1571/Del/2005 for the Assessment Year ('AY') 2001-02 and impugned order dated 23<sup>rd</sup> December, 2011, in ITA No. 1404/Del/2010 for the AY 2002-03 respectively.

2. On 23<sup>rd</sup> July, 2010, ITA No. 905/2010 was admitted and the following substantial question of law was framed :

*“(1) Whether the ITAT was correct in law in deleting the additions made by the Assessing Officer amounting to Rs.50 lacs on account of depreciation on goodwill and Rs. 2,73,25,000/- on depreciation of patents and trademark?”*

3. On 13<sup>th</sup> March, 2013, ITA No. 130/2013 was admitted and the following substantial question of law was framed :

*“(1) Whether the Income Tax Appellate Tribunal was correct in law in deleting the addition made by the Assessing Officer on account of depreciation of goodwill and on depreciation of patents and trademark?”*

4. The facts giving rise to the present appeals are that the Assessee was

engaged in the business of manufacturing and trading of air conditioners and water coolers. On 01<sup>st</sup> May, 2000, the Respondent, Assessee, entered into a Business Purchase Agreement (the 'agreement') with M/s Usha International Ltd. ('UIL') for the purchase of marketing and business rights for a period of twenty years, including the establishment, as well as the set up for marketing the products of air conditioners and water coolers, along with the benefit of current orders for supply of the air conditioners and the employees of UIL. In consideration for the transfer of the said marketing and business rights, goodwill and on the condition of non-competition, a consideration of Rs. 2,00,00,000 was paid by the Assessee to UIL. This amount was capitalised in the books of accounts of the Assessee under the head 'goodwill' in the schedule of its fixed assets. The Assessee claimed depreciation of Rs. 50,00,000 as per Section 32 of the Act, at the rate of 25% as prescribed in the schedule of rates in respect of intangible assets, for the AY 2001-02 by the Assessee. Depreciation of Rs. 3,75,00,000/- was claimed on this account for AY 2002-03.

5. The Assessee also separately purchased the manufacturing business of M/s SIEL Aircon Ltd. ('SAL') vide an agreement dated 08<sup>th</sup> August, 2000, which included intellectual property rights such as brand name, logo, patents and trademarks (IP rights) for a sum of Rs. 10,93,00,000/-. The Assessee for AY 2001-02 claimed depreciation of Rs. 2,73,25,000/- at the rate of 25% as prescribed in this schedule of rates in respect of intangible assets. Depreciation of Rs. 2,04,93,750/- was claimed on this account for the AY 2002-03.

6. The Assessing Officer ('AO') rejected the aforesaid claim for depreciation on account of purchase of business rights under the agreement

dated 1<sup>st</sup> May, 2000 on the ground that 'goodwill' is not covered under the definition of intangible assets under the provisions of the Act. The Commissioner of Income Tax (Appeals) ['CIT(A)'] after considering the terms of the agreement dated 01<sup>st</sup> May 2000 and the nature of exclusive business rights purchased by the Assessee held that the said rights are valuable and therefore, the consideration paid by the Assessee to UIL is capital in nature and the same is entitled to be nomenclatured as 'goodwill'. The CIT(A) further held that the nature of these exclusive rights are akin to license and within the meaning of an 'intangible asset' and therefore, the Assessee is entitled to claim depreciation on the said amount in accordance with the provisions of the Act and the schedule of rates as prescribed.

7. The AO also disallowed the depreciation of Rs. 2,73,25,000/- claimed by the Assessee on account of purchase of IP rights from SAL only for the reason that the said rights had not been transferred or registered in the name of the Assessee, as recorded by the auditor in Note no. 6 of the audited accounts. The AO held that since trademarks are registered under the Trademarks Act, 1999, in the absence of such a registration, the Assessee is not entitled to claim depreciation on these IP rights.

8. The CIT(A), after perusing the terms of the agreement executed between the Assessee and SAL held that upon payment of consideration for the IP rights, the Assessee had become legally entitled to use the trademarks, brand name and the logos for marketing its products. The CIT(A) has also returned a finding that the facts brought on record evidence that the Assessee had in fact after acquisition of the said rights carried on business using the said brand name, logos and trademark. The CIT(A) relying upon the judgment of the Supreme Court in the case of *Mysore Minerals vs.*

*Commissioner of Income Tax, [1999] 239 ITR 775 and Dalmia Cement (Bharat) Ltd. vs. Commissioner of Income Tax, Delhi, [2001] 247 ITR 267* concluded that the Assessee had become the owner of the IP rights by virtue of the said agreement dated 8<sup>th</sup> August, 2000 and the absence of the registration of the trademarks and other IP rights in the name of the Assessee would not affect its rights to claim depreciation. The CIT(A) directed the AO to allow the Assessee to claim depreciation at the rate of 25%.

9. In the appeal filed by Revenue against the aforesaid findings of the CIT(A), the ITAT after perusing the terms of the agreement dated 1<sup>st</sup> May, 2000, modified the order of the CIT(A) and held that the Assessee is entitled to claim depreciation on account of the aforesaid purchase of exclusive business rights from UIL to the extent of Rs. 1,73,00,000/- and it disallowed the claim of depreciation on goodwill with respect to the amount of Rs.27,00,000/-. The relevant finding of the ITAT with respect to the agreement with UIL reads as under:-

*“7. We have considered the rival submissions. A perusal of the consideration paid as extracted above clearly shows that in regard to the purchase of the business rights, the purchase price has got 3 components, first for the exclusive business rights for an amount of Rs.1,73,00,000/- and the second for Rs.27,00,000/- and the third towards the amount of transferable deposits. A perusal of the business purchase agreement also clearly shows that UIL as agreed to sell to the assessee and the assessee agreed to purchase the business and the goodwill and the other assets thereof. A perusal of the consideration also clearly shows that the agreement is for selling 3 items, first one being the business, second goodwill and third other assets. The purchase consideration also shows the computation of such 3 items being the exclusive business rights for a consideration of Rs.1,73,00,000/-, 27,00,000/- without any specifications and 1 the transferable deposits which would have to*

be considered as other assets. This being so, as the amount of Rs.27,00,000/- as shown in the purchase price has not been shown to be in relation to either exclusive business rights or for transferable deposits. The same would have to be treated as being towards "goodwill". This being so, we are of the view that the amount of Rs.27,00,000/- as paid by the assessee would have to be treated as goodwill. In regard to the balance of 1.73 Crores, it is for the exclusive business rights. A perusal of the provisions of section 32 (1) (ii) clearly specifies the term intangible assets. Goodwill is conspicuous by its absence. Goodwill is also not a right. The Finance (No.2) Act of 1998 w.e.f. 1.4.1999 has broadened the definition of assets so as to include intangible asset for the purpose of depreciation under section 32 (1). The definition of the intangible asset as given in section 32 (1) (ii) identifies various intangible assets as also business or commercial rights similar to the rights which have been treated as intangible assets in the said provision. What is evident from the said provision is that what is being permitted, as an intangible asset to be depreciated is to be rights. It is only such rights, which can be used to run the business. It is only such rights the use of which generate income that have been specified in the provisions of section 32(1)(i) as depreciable intangible assets. This being so, goodwill cannot be said to be a right which can be used as a tool to generate business. In these circumstances, we are of the view that the ld. CIT(A) was right in holding that the assessee was entitled to the depreciation in regard to the purchase of the exclusive business rights to the extent of Rs.1,73,00,000/- and directing the AO to grant depreciation on the same. In regard to the amount of Rs.27,00,000/- as paid by the assessee, as it has not been shown that this amount had been paid for any specific rights, the same would have to be treated as goodwill and the depreciation on the same cannot be granted. In the circumstances, the findings of the ld. CIT(A) on this issue is modified to the extent that the AO is directed to grant the depreciation on the consideration of Rs.1,73,00,000/- paid to UIL. For the purchase of exclusive business rights which are to be treated as intangible assets. The action of the AO in disallowing the depreciation on the goodwill to the extent of Rs.27,00,000/- is confirmed. This amount cannot be also allowed as a business

*expenditure as the same has not been claimed by the assessee as such in its return or before the assessing authority nor before the CIT(A)s and the assessee has not been able to demonstrate before us as to the business expediency or provision under which the claim is being made.”*

(Emphasis supplied)

10. Similarly, the ITAT also concurred with the finding of the CIT(A) and held that with respect to the agreement dated 8<sup>th</sup> August, 2000 with SAL, the Assessee had acquired ownership of the IP rights on payment of valuable consideration and it was therefore, an intangible asset as per Section 32(1)(ii) of the Act on which the Assessee was entitled to claim depreciation. The relevant finding of the ITAT reads as under:-

*“10. We have considered the rival submissions. A perusal of the purchase price consideration as per the business purchase agreement entered into between the assessee and SAL shows that the consideration has been paid for the intellectual property rights. Intellectual property rights are immovable asset. It is also an intangible asset as per the provisions of section 32 (1) (ii) of the Act. It is also undisputed that the assessee has used the intellectual property rights in its business and there has been no claim against the assessee for the use of the said trademarks. In fact as per the agreement in clause 8.1(a)(i) it has been specifically agreed that on completion duly executed instruments of transfer, assignment etc. as the assessee may reasonably be required to complete the transfer, assignments and conveyance of the asset in accordance with the provisions of this agreement shall be delivered to the assessee at a place nominated by the assessee. This clearly shows that once the completion of the agreement is done by payment of the consideration as on the completion date specified in the agreement the assessee would be in possession of the duly executed instruments of transfer, assignment and Conveyances of the assets as specified in the agreement which are basically the intellectual property rights and the fixed assets. This being so, as also the*

*principles as laid down by the Hon'ble Supreme Court in the case of Mysore Minerals Ltd. referred to supra and reaffirmed the decision of Dalmia Cements, it would have to be held that the assessee was the owner of the property and the assessee having used the same in its business was entitled to depreciation on the same. In the circumstances, the finding of the ld. CIT(A) on this issue stands confirmed.”*

(Emphasis supplied)

11. Learned Senior Counsel for the Respondent has relied upon the judgments of Apex Court in *Mysore Minerals Ltd. (supra)* and *Dalmia Cements (supra)*, to contend that registration is not a condition precedent, in order to claim depreciation under Section 32 of the Act. The ITAT and CIT(A) also take note of the said judgments. The ratio in *Mysore Minerals (supra)* reads as follows:-

*“18. An overall view of the aforesaid authorities shows that the very concept the depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset, is utilising the capital asset and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time.*

*19. It is well settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the legislature in enacting Section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent...”*

In our considered view, the ITAT and the CIT(A) has rightly placed reliance on the ratio in *Mysore Minerals (supra)* which was subsequently followed in *Dalmia Cements (supra)*.

12. In the present appeals, during the course of arguments, the learned counsel for the Appellant, Revenue, has only contended that the payment of the consideration by the Assessee to SAL is not recorded in the agreement dated 08<sup>th</sup> August, 2000. In reply, the learned Senior Counsel for the Respondent, Assessee, has drawn our attention to the order of the CIT(A) which categorically records at paragraph No.6 that SAL was a sick company registered with BIFR and with the approval of BIFR, the Assessee entered into an agreement with SAL for the purchase of IP rights for valuable consideration. He states that the consideration of Rs. 10.93 crores was paid by the Assessee to SAL for the purchase of the intellectual property rights under supervision of BIFR. He states that there is no dispute raised on this issue before the appellate authorities with respect to the payment of consideration by the Assessee to SAL.

13. The learned Senior Counsel has further drawn our attention to the fact that in the subsequent AYs 2003-04 and 2004-05, the claim of depreciation for goodwill on exclusive rights acquired from UIL and IP acquired from SAL has been similarly upheld by the ITAT and the said orders have attained finality, as no appeal has been filed by the Department against the said orders. He states that on this count as well the present appeals are not maintainable on the principles of consistency.

14. In these appeals as well the learned Senior Standing Counsel of the Revenue has not disputed the findings of the CIT(A) and the ITAT with respect to the acquisition of exclusive business rights by the Assessee from UIL and transfer of IP rights from SAL. The Revenue does not dispute that the said business is being carried out by the Assessee and the trademarks and logos are being used by the Assessee. The findings of the appellate

authorities that the aforesaid rights constitutes IPR is not disputed by the Revenue and the only contention raised is as regards non-registration of the trademarks in the name of the Assessee, however, the said issue is no longer *res integra* as in light of the judgments relied upon by the appellate authorities. The Revenue has not brought to our attention any provision of law, which disentitles the Assessee from asserting ownership in a trademark in the absence of registration of the assignment under the Trademark Act, 1999.

15. We are of the considered view that there is no infirmity in the finding returned by the appellate authorities that the business rights acquired by the Assessee under its agreement with UIL for valuable consideration constitutes an intangible asset within the meaning of Section 32(1)(ii) of the Act. The learned counsel for the Revenue has not disputed the exclusive nature of rights, payment of consideration and the same being of an enduring nature, since it span for 20 years. In these facts, the capitalisation of the said business rights as an intangible asset has been correctly upheld by the appellate authorities. Therefore, the Assessee was entitled to claim depreciation.

16. Similarly, with respect to the acquisition of IP rights from SAL, the learned counsel for Revenue does not dispute the nature of the rights acquired and the limited contention raised is with respect to confirmation of the payment of consideration recorded in the agreement. The said contention raised by Revenue is firstly a question of fact, which objection is not borne out from the record and secondly, learned Senior Counsel for the Assessee has stated that the said agreement was executed under the aegis of BIFR, since SAL was a sick company and there was no doubt raised by Revenue

with respect to the payment of consideration. The ownership of the IP rights of the Assessee stands proved on record, its use by the Assessee is also not disputed and therefore the appellate authorities have rightly held that the Assessee is entitled to claim depreciation under Section 32(1)(ii) of the Act on the said IP rights.

17. The facts as well as the law were properly and correctly assessed by the CIT(A) and the ITAT. We, therefore, answer the question of law framed in these appeals against the Revenue and in favour of the Assessee. We see no merits in the appeals and accordingly, the present appeals are dismissed.

**MANMEET PRITAM SINGH ARORA, J**

**MANMOHAN, J**

**OCTOBER 17, 2022/msh/kv/j**