

IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'H' (SPECIAL BENCH) NEW DELHI

Before Shri. Vimal Gandhi, President, R P Tolani, Judicial Member and Deepak R Shah,
Accountant Member

ITA No.1976/Del/2006

(Assessment year: 2001-02)

M/s CLC & Sons Pvt. Ltd,
A-60, Okhla Industrial Area,
Phase-II, New Delhi
(Appellant)

Vs. Asstt Commissioner of Income-tax,
Circle 3(1), New Delhi
(Respondent)

Appellant By: Shri. C. S. Aggarwal
Respondent By:

ORDER

The learned Senior Advocate Shri C.S. Aggarwal appeared for the appellant and raised following preliminary objections to hearing of this appeal by the Special Bench:-

1. The question as framed does not raise the actual controversy in appeal, therefore, requires modification.
2. In subsequent year i.e. A.Y. 2003-04 similar issue i.e. allowability of depreciation-on-goodwill came up for consideration of ITAT in the case of associated concern namely, CLC Global Pvt. Ltd., at the instance of the revenue. ITAT has taken a view in favour of the assessee and revenue has filed an appeal before the Hon'ble Delhi High Court, the same is fixed for admission on 15th July, 2010. A prayer is made by Id. Counsel that the present hearing may be kept in abeyance, as the findings which may be given by Special Bench may impinge upon the facts of findings given by ITAT in the sister concern's case which is pending before Hon'ble High Court and may prejudice the interest of either party.
3. Hon'ble Judicial Member on this Special Bench has already taken a view about allowability of depreciation on goodwill in the case of Bharat Bhai J Vyas, 97 ITD 248 (Ahd.) In this eventuality the judicial discipline requires that this Special Bench should consist of persons who have not already taken a view.

The learned DR in reply contends as under:-

- (i) There is no objection to modify the question.
- (ii) The facts in the case of CLC Global Pvt. Ltd. are different and distinct. Therefore, the hearing of present appeal by Special Bench may not be kept in abeyance.

(iii) For re constitution of the Bench the issue is left to the Hon'ble President, ITAT.

After hearing both the parties, we are inclined to take following view on the issues:-

1. The question proposed by Ld. Sr. Advocate is as under:-

"1. Whether on a true and correct interpretation of the expression "any other business or commercial rights of similar nature", occurring in section 32(i)(ii) of the I.T. Act the appellant is entitled to claim of depreciation on the intangible asset acquired by it in the shape of business or commercial rights?

2. In the alternative and without prejudice in the event it is held that the appellant is not eligible to the claim of depreciation on the amount of expenditure incurred on which depreciation had been claimed, would not the expenditure incurred is an allowable-deduction u/s 37(1) of the Income Tax Act?"

The question proposed by the Ld, DR is as under:-

"Whether on the facts and in the circumstances of the case, the assessee is entitled to claim depreciation under section 32 of the Income Tax Act on the intangible assets' termed 'Goodwill' acquired by the assessee for Rs.10 crore."

Or

"Whether on the facts and in the circumstances of the case, the assessee is entitled to claim depreciation under section 32 of the Income Tax act on the intangible assets acquired by the assessee."

In our opinion the controversy in the present appeal will be answered if the appeal answers the following question:-

"Whether on the facts and in the circumstances of the case, the assessee is entitled to claim depreciation under section 32 of the Income Tax Act on the intangible assets termed 'Goodwill' acquired by the assessee for Rs. 10 crore."

For this purpose the matter be placed before Hon'ble the President, ITAT to re frame the question.

2. The issue in the case of associate concern CLC Global Pvt. Ltd. is pending adjudication before Hon'ble High Court and in our view any finding of Special Bench on the issue before it can call for analysis of earlier ITAT findings and may cause prejudice to the interest of either party. In our view the interest of justice would be better served if the matter is considered after the decision of the High Court is available. The matter should therefore, be kept in abeyance.

3. Shri R.P. Tolani, J.M. has expressed his opinion that having already taken a view on the issue of allowability of depreciation on goodwill, it will be in the interest of judicial discipline to recuse himself from the hearing of this appeal. The Hon'ble President ITAT will take an appropriate decision on the constitution of the Special Bench. The hearing of the matter is accordingly adjourned. The file be placed before the President for an appropriate action as stated above.

Pronounced.

Sd/-

New Delhi

Dated: 19th March 2010