

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5961 OF 2012
(Arising out of S.L.P. (C) No.35600 of 2009)

Commissioner of Income Tax, Kolkata ...Appellant(s)

Versus

Smifs Securities Ltd. ...Respondent(s)

O R D E R

None appears for the respondent, though served. Heard learned counsel for the Department. Leave granted. This civil appeal concerns the Assessment Year 2003-2004. Three questions arise for determination by this Court. They are as follows:

Question No.[a]: "Whether Stock Exchange Membership Cards are assets eligible for depreciation under Section 32 of the Income Tax Act, 1961? Whether, on the facts and in the circumstances of the case, deletion of Rs.53,84,766/- has been made correctly?"

Answer: Learned Additional Solicitor General fairly concedes that the said question is covered by the decision of this Court in the case of Techno Shares and Stocks Limited vs. Commissioner of Income Tax, reported in [2010] 327 I.T.R. 323, in favour of the assessee.

Question No.[b]: "Whether goodwill is an asset within the meaning of Section 32 of the Income Tax Act, 1961, and whether depreciation on `goodwill' is allowable under the said Section?"

Answer: In the present case, the assessee had claimed deduction of Rs.54,85,430/- as depreciation on goodwill. In the course of hearing, the explanation regarding origin of such goodwill was given as under:

"In accordance with Scheme of Amalgamation of YSN Shares & Securities (P) Ltd with Smifs Securities Ltd (duly sanctioned by Hon'ble High Courts of Bombay and Calcutta) with retrospective effect from 1st April, 1998, assets and liabilities of YSN Shares & Securities (P) Ltd were transferred to and vest in the company. In the process goodwill has arisen in the books of the company."

It was further explained that excess consideration paid by the assessee over the value of net assets acquired of YSN Shares and Securities Private Limited [Amalgamating Company] should be considered as goodwill arising on amalgamation. It was claimed that the extra consideration was paid towards the reputation which the Amalgamating Company was enjoying in order to retain its existing clientele.

The Assessing Officer held that goodwill was not an asset falling under Explanation 3 to Section 32(1) of the Income Tax Act, 1961 ['Act', for short].

We quote hereinbelow Explanation 3 to Section 32(1) of the Act:

"Explanation 3.-- For the purposes of this sub-section, the expressions 'assets' and 'block of assets' shall mean-- [a] tangible assets, being buildings, machinery, plant or furniture;

[b] intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature."

Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act.

One more aspect needs to be highlighted. In the present case, the Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax (Appeals) ['CIT(A)', for short] has come to the conclusion that the authorised representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT', for short]. We see no reason to interfere with the factual finding.

One more aspect which needs to be mentioned is that, against the decision of ITAT, the Revenue had preferred an appeal to the High Court in which it had raised only the question as to whether goodwill is an asset under Section 32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove.

For the afore-stated reasons, we answer Question No.[b] also in favour of the assessee.

Question No.[c]:

The last question raised in this civil appeal is regarding cancellation of disallowance of an amount of Rs.83,02,976/- as a bad debt.

Answer:

It has been stated on behalf of the Revenue that, since the Tax Audit Report indicated the amount to have been incurred on capital account, the assessee was not entitled to deduction on account of bad debt Both the CIT(A) as well as the ITAT concluded that the assessee has satisfied the provisions of Section 36(1)(vii) of the Act. They have held that bad debt claimed by the assessee was incurred in the normal course of business and, therefore, the assessee was entitled to deduction under Section 36(1)(vii) of the Act. It is well-settled now by a catena of decisions that the manner in which the assessee maintains its accounts is not conclusive for deciding the nature of expenditure.

In the present case, the concurrent finding of facts recorded by the authorities below indicate that the assessee was entitled to claim deduction in the course of business under Section 36(1)(vii) of the Act. For the afore-stated reasons, we answer all the three questions in favour of the assessee and against the Revenue. The civil appeal filed by the Department stands dismissed with no order as to costs.

.....CJI.

[S.H. KAPADIA]

.....J.

[MADAN B. LOKUR]

New Delhi, August 22, 2012.