

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER**

ITA No. 37/HYD/2012
Assessment Year: 2008-09

M/s Tirumala Music Centre (P) Ltd., ***... Appellant***
Hyderabad.
(PAN - AACT8339A)

Vs.

Asst. Commissioner of Income-tax, ***... Respondent***
Circle - 2(3), Hyderabad.

ITA No. 1482/HYD/2012
Assessment Year: 2009-10

Asst. Commissioner of Income-tax, ***... Appellant***
Circle - 2(3), Hyderabad.

Vs.

M/s Tirumala Music Centre (P) Ltd., ***... Respondent***
Hyderabad.
(PAN - AACT8339A)

Assessee by : Shri B. Satyanarayana Murthy
Revenue by : Smt. Amisha S.Gupt

Date of Hearing : 18/06/2013
Date of Pronouncement : 28/06/2013

ORDER

PER ASHA VIJAYARAGHAVAN, J.M.:

The appeal being ITA No. 37/H/12 by the assessee and appeal being ITA No. 1482/Hyd/12 by the revenue are directed against separate orders of CIT(A) for the assessment years 2008-09 and 2009-10 respectively.

ITA No. 37/Hyd/12 – appeal by the assessee

2. Briefly the facts of the case are that the assessee is a company engaged in the business of retail trading in electronic goods and home appliances. For the AY 2008-09, it filed return of income on 30/12/2008, showing income of R. 3,75,45,760/-. During the course of assessment proceedings, the AO found that the assessee had debited a sum of Rs. 15.00 lakhs to the profit and loss account, showing as goodwill amortized. On the query raised by the AO for justifying such claim of deduction, the assessee had submitted that the said amount was paid to one M/s Krishna Electronics, Vijayawada, towards transfer of leasehold rights of premises to the assessee. It was stated that total amount of Rs. 60,00,000/- was paid by them for transfer of leasehold rights for Vijayawada Branch and since the benefit of such payment is over a period of time, the company decided to defer recognizing such expenditure over a period of four years and, hence, Rs. 15 lakhs was written off during the current year. The learned AR of the submitted that the expenditure was wholly and exclusively for the purpose of business of the company and, hence, the same is deductible u/s 37 of the Act, and the same also falls under intangible asset as per the provisions of section 32(1)(ii) and is eligible for depreciation @ 25%. The assessee had requested the AO to allow the depreciation as the company had not claimed depreciation due to inadvertence. The AO, however, rejected the claim of the assessee and observed that the Act does not recognize goodwill as intangible asset. The AO, however, pointed out that the assessee had not shown such expenditure under fixed assets, but had shown the goodwill in the balance sheet as miscellaneous expenditure and, hence, the assessee has not recognized the same as asset. The AO did not allow deduction

u/s 37 of the Act towards the same and added the amount of Rs. 15 lakhs to the income of the assessee.

3. On appeal, the CIT(A) held that in the absence of any documentary evidence including copy of agreement from the assessee, it is difficult to believe that the said amount had been paid for transfer of leasehold rights of such premises. The CIT(A) concurred with the view taken by the AO. The CIT(A) observed that the assessee has however separately shown such payment under miscellaneous expenditure in the balance sheet and, therefore, cannot be allowed as deduction u/s 32(1)(ii) of the Act, the same cannot be treated as intangible asset. Accordingly, the CIT(A) confirmed the order of the AO in making the addition of Rs. 15 lakhs towards income of the assessee.

4. Aggrieved the assessee is in appeal before us.

5. Ground No. 1 is general in nature. Ground Nos. 4 & 5 regarding the addition of Rs. 8,46,440/- and disallowance of amount of Rs. 2,33,000/- have not pressed by the learned counsel for the assessee, therefore, the same are dismissed as not pressed.

6. The substantive grounds to adjudicate are ground Nos. 2 & 3 wherein it was stated that the amount of Rs. 15 lakhs qualifies for inclusion under the head intangible asset as provided u/s 32(1)(ii) of the Act and has entitled to depreciation @ 25% on Rs. 60.00 lakhs.

7. We have heard the arguments of both the parties, perused the record and have gone through the orders of the authorities below. We find that the issue in dispute is squarely covered by

the decision of the Tribunal, Mumbai in the case of Kotak Forex Brokerage Ltd. Vs ACIT (33 SOT 237)(Mum.). In this case, the assessee paid an amount of Rs. 1.88 crore towards the use of the name 'Kotak' and claimed depreciation thereon terming it as depreciation on goodwill. The Tribunal held that business or commercial rights are rights obtained for effectively carrying on the business or commerce. Commerce is a wider term, which encompasses business in its fold. Therefore, any right which is obtained for carrying on the business effectively and profitably has to fall within the meaning of intangible asset. The Tribunal held that goodwill was similar to the specified assets and accordingly the assessee was allowed depreciation. The Hon'ble Supreme Court in the case of CIT Vs. Smifts Securities Ltd. held that goodwill is an intangible asset eligible for depreciation u/s 32 of the Act. In these circumstances, we remit the issue to the file of the AO to decide the issue in the light of the said decisions to consider the allowability of depreciation on intangible assets after getting bifurcation of payment of Rs. 75 lakhs and to allow depreciation on the goodwill @ 25%.

8. In the result, appeal being ITA No. 37/Hyd/12 is partly allowed for statistical purposes.

ITA NO. 1482/Hyd/12 – appeal by the revenue

9. In this case, the CIT(A) has held that the assessee had taken the transfer of lease hold rights of M/s Krishna Electronics, Vijayawada, which is running its business along with equipments, interiors and good will, and in turn paid Rs. 75,00,000/- as consideration. Accordingly, the assessee amortized Rs. 15,00,000/- by showing only Rs. 60,00,000/- as consideration and the assessee had claimed depreciation at 25%. The CIT(A)

held that the assessee has taken possession of premises along with plant and machinery, furniture & fittings, and also lease rent paid, which is not disputed by the AO. Therefore, running business of the assessee at Vijayawada premises in which M/s Krishna Electronics is running the same business of electronic goods and handed over as it is, 'as is where is' basis. In turn the assessee has paid an amount of Rs. 75 lakhs as per the agreement. The CIT(A) held that this amount includes certain plant & machinery like, air conditioners, computers and furniture & fittings and goodwill. Therefore, the CIT(A) categorized the entire amount of Rs. 75 lakhs in the least of block of assets as furnitures & fittings and allowed depreciation @ 10% on the amount of Rs. 75 lakhs.

10. Aggrieved, the revenue is in appeal before us raising a ground that the CIT(A) has wrongly given 10% depreciation on the amount of Rs. 75 lakhs.

11. In the grounds of appeal before the CIT(A) at ground No. 3 the assessee himself has submitted that the learned AO should have appreciated that during the previous year relevant to the AY 2008-09 the amount of Rs. 60 lakhs paid by the assessee company for deduction of Rs. 15 lakhs in question qualifies for inclusion under the head 'intangible asset' as provided u/s 32(1)(ii) and is entitled to a depreciation @ 25% on intangible assets. Hence, we direct the AO to allow depreciation on goodwill at 25% on the intangible assets and with respect to furniture and fittings depreciation to be allowed at 10% since they fall under block of assets as furniture and fittings. The assessee is directed to give bifurcation of good will and furniture and fittings.

12. In the result, appeal of the revenue being ITA No. 1482/Hyd/12 is partly allowed.

13. To sum up, the appeal being ITA No. 37/Hyd/12 is partly allowed for statistical purposes and the appeal being ITA No. 1482/Hyd/12 is partly allowed.

Pronounced in the open court on 28/06/2013.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Hyderabad, Dated: 28th June, 2013.

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Copy to:-

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- 4) *The CIT-II, Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*