

Leasehold right in premises is an intangible asset, eligible for depreciation at 25%

Summary – The Hyderabad ITAT in a recent case of Tirumala Music Centre (P.) Ltd., (the Assessee) held that payment made to acquire leasehold rights in premises for carrying on business to be recognized as intangible asset eligible for depreciation at rate of 25 per cent.

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 assessment year 2008-09, it filed return of income on December 30, 2008, showing income of Rs. 3,75,45,760. During the course of assessment proceedings, the Assessing Officer found that the assessee had debited a sum of Rs. 15 lakhs to the profit and loss account, showing as goodwill amortised. On the query raised by the Assessing Officer 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 the total amount of Rs. 60,00,000 was paid by them for transfer of leasehold rights for the Vijayawada branch and since the benefit of such payment is over a period of time, the company decided to defer recognising such expenditure over a period of four years and, hence, Rs. 15 lakhs was written off during the current year. The learned authorised representative submitted that the expenditure was wholly and exclusively for the purpose of business of the company and, hence, the same is deductible under section 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 at 25 per cent. The assessee had requested the Assessing Officer to allow the depreciation as the company had not claimed depreciation due to inadvertence. The Assessing Officer, however, rejected the claim of the assessee and observed that the Act does not recognise goodwill as an intangible asset. The Assessing Officer, 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 recognised the same as asset. The Assessing Officer did not allow deduction under section 37 of the Act towards the same and added the amount of Rs. 15 lakhs to the income of the assessee.

On appeal, the Commissioner of Income-tax (Appeals) held that in the absence of any documentary evidence including a 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. Accordingly, the Commissioner of Income-tax (Appeals) confirmed the order of the Assessing Officer in making the addition of Rs. 15 lakhs towards income of the assessee.

After having heard the arguments of both the parties, the ITAT held that the issue in dispute is squarely covered by the decision of the Tribunal, Mumbai in the case of *Kotak Forex Brokerage Ltd. v. Asstt. CIT*

[\[2009\] 33 SOT 237](#). In this case, the assessee paid an amount of Rs. 1.88 crores 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 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 v. Smifs Securities Ltd.* [\[2012\] 348 ITR 302/24 taxmann.com 222](#) held that goodwill is an intangible asset eligible for depreciation under section 32 of the Act. In these circumstances, we remit the issue to the file of the Assessing Officer 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 at 25 per cent.

Accordingly, the ITAT allowed the appeal.