

## **Compensation paid by firm to its retiring partner is treated as goodwill, eligible for depreciation**

**Summary – The High Court of Gujarat in a recent case of Swastik Industries., (the Assessee) held that Payment of compensation made by assessee-firm to its retiring partners was to be treated as goodwill and, since, goodwill is an asset under Explanation 3(b) to section 32(1), assessee's claim for depreciation on said payment was to be allowed**

### **Facts**

- The assessee was a partnership firm engaged in the business of doing job work of embroidery. The assessee paid certain amount to the retiring partners as compensation on retirement from the business of the firm and, in the books of account, said payment was technically shown as 'goodwill'. The assessee also claimed depreciation on amount so shown as goodwill.
- The Assessing Officer as well as the Commissioner (Appeals) held that no commercial rights had been acquired by the firm by making payment in question and, thus, no depreciation was admissible on goodwill.
- The Tribunal proceeded on the footing that the payment was in the nature of 'goodwill' by placing reliance upon the decision of the Supreme Court in the case of *CIT v. SMIFS Securities Ltd.* [\[2012\] 348 ITR 302/210 Taxman 428/24 taxmann.com 222](#). Accordingly, assessee's claim for depreciation was allowed.
- On revenue's appeal:

### **Held**

- The Supreme Court in the case of *SMIFS Securities Ltd. (supra)* was dealing with the question as to whether 'goodwill' is an asset within the meaning of section 32, and whether depreciation on 'goodwill' is allowable under the said section. The Supreme Court held that *Explanation 3* states that the expression "asset" shall mean intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading of 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 rights of similar nature". The principle of *ejusdem generis* would strictly apply while interpreting the said expression which finds place in *Explanation 3(b)*. Thus, it is opined that "goodwill" is an asset under *Explanation 3(b)* to section 32(1).
- It is an undisputed fact from the findings recorded by authorities below that the payment made to the retiring partners has been considered to be goodwill. The Supreme Court in the case of *SMIFS Securities Ltd. (supra)* has held that goodwill is an asset under the *Explanation 3(b)* to section 32(1). Thus, the Tribunal has merely applied the above decision of the Supreme Court to the facts of the case. Under the circumstances, it is not possible to state that there is any infirmity in the impugned

order passed by the Tribunal so as to give rise to a question of law, much less, a substantial question of law, warranting interference.

- The appeal, therefore, fails and is accordingly, dismissed.