ITAT justified categorization of fees for use of trademark as capital exp. as it was having an enduring benefit

Summary – The Hyderabad ITAT in a recent case of GMR Airport Developers Ltd., (the Assessee) held that where assessee claimed onetime consolidated fees paid to its holding company, GRM, for use of trademark as revenue expenditure, since same had an enduring benefit and was applicable till assessee ceased to be subsidiary of GRM, Assessing Officer was justified treating same as capital expenditure

Where an amount of annual recurring license fee paid by assessee was allowed by Assessing Officer in later two assessment years as revenue expenditures, in absence of any change same was to be allowed as revenue expenditure in relevant assessment year

Facts

- The assessee-company in terms of trademark and license agreement entered with GMR had paid an amount of Rs. 3.73 crores towards one time initial consolidated fees for use of trademark and artistic works and an amount of Rs. 36 lakhs was paid towards regular license fee payable on the basis of the turnover achieved. The assesseee filed its return of income and claimed deduction of same as revenue expenditure.
- The Assessing Officer disallowed the entire amount holding that same was capital in nature incurred to acquire a benefit of enduring nature. However, it was submitted by the assessee that in the event the said amount paid was treated as capital asset, assessee should be eligible for depreciation as per section 32(1)(*ii*).
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal to the Tribunal :

Held

- As seen from the agreements, there are two types of payments made by assessee. An amount of Rs. 3. 37 50,000 has been paid as one-time license fee and an amount of Rs. 35,90,450 towards annual recurring license fee. The amount of annual recurring license fee payable on the basis of certain percentage on the net annual turnover is in the naurre of revenue expenditure, which the Assessing Officer has allowed in later two assessment years. Therefore, the amount of Rs. 35,90,480 is allowed as revenue expenditure and to that extent, the orders of Assessing Officer and the Commissioner (Appeals) stand modified and they are directed to allow the above amount as revenue expenditure.
- The one-time consolidated amount paid can be considered as a payment for use of the trademark in the business of assessee. Since it has an enduring benefit and is applicable till assessee ceases to be

a subsidiary of GRM Holding/GRM Group, it is noted that this amount is to be treated as 'capital asset' and depreciation on that under section 32(1)(*ii*) is allowable. It is admitted that without acquiring the aforementioned trademark and license, assessee would have had to commence business from scratch and through the gestation period and by acquiring aforesaid business rights/license, assessee could incidentally boost its revenues. It is to be noted that the onetime consolidated payment is in the nature of 'intangible asset' as specified in section 32(1)(*ii*) and are accordingly eligible for depreciation on the cost at which they are acquired. Thus, the amount of Rs. 3,37,50,000 is to be considered as capital asset under section 32(1)(*ii*) and necessary depreciation is to be allowed. There is no dispute with reference to commercial expediency or with reference to being capital in nature. The Assessing Officer and Commissioner (Appeals) disallowed the entire amount as capital expenditure, but they failed to consider whether the said amount is eligible for depreciation under section 32(1)(ii). The Assessing Officer is directed to allow depreciation on the amount of Rs. 3,37,50,000 treating it as capital asset and allow the balance amount of Rs. 35,90,480 paid towards annual recurring license fee as revenue expenditure, in tune with the amounts allowed in later years. Assessee's grounds are accordingly considered allowed party, the appeal of the assessee is partly allowed.