

## Trademark eligible for dep. if it was used for sales & marketing of product: HC

**Summary – The High Court of Delhi in a recent case of Sinochem India Co. (P.) Ltd., (the Assessee) held that where assessee acquired trademark and sold its products with such trademark and, thus, used it for sales and marketing purpose in its business, assessee was eligible to claim depreciation on such trademark**

### Facts

- The assessee had made an addition on account of acquisition of intellectual property right to the existing assets in the form of trademark acquired from one, PIL. The assessee had claimed depreciation on the said block of assets.
- The Assessing Officer made an addition by disallowing depreciation on the intellectual property right for the reasons that the assessee had only purchased finished products from MV in bulk and had sold them in the convenient packagings. Thus, the assessee had not used its assets towards manufacturing activities.
- On appeal, the Commissioner (Appeals) deleted the disallowance and allowed depreciation.
- On further appeal, the Tribunal also upheld the order of the Commissioner (Appeals).
- On revenue's appeal to the High Court:

### Held

- The claim for depreciation was disallowed on the ground that the capital asset in form of intellectual property rights was not used for manufacturing activities. Cost of acquisition, ownership and eligibility to claim depreciation was not disputed. Depreciation as claimed was disallowed on the ground of absence of the intellectual property rights being put to use for manufacturing activities.
- The Commissioner (Appeals) deleted the disallowance and allowed depreciation observing that the assessee was engaged in manufacturing job work and trading in agro-chemical (*i.e.* pesticides etc). The intellectual property rights acquired were in respect of (a) product registration (b) right to reference and use of registration data in support of the product registration (c) benefits of continuing business contracts (d) business information (e) business intellectual property rights (f) trademarks and (g) all the seller's rights against third parties, including rights and warranties, conditions, guarantees or indemnities relating to such assets.
- The assessee had purchased products from MIL and had thereafter sold these products with the acquired and purchased trademarks. Sales were through chain of dealers and retailers. Trademarks acquired and owned by the assessee were advertised for sale promotions. Total sales had increased and jumped from Rs.8.19 crores in the last year to Rs. 100.19 crores in the period relevant to the Assessment year 2009-10. Business and market intelligence information acquired was put to use in

the sales and marketing activities. Section 32 does not make any distinction between trading business or manufacturing business. As long as the intellectual property rights were used for the purpose of business, condition of section 32 that the asset should be used for business would be satisfied and met.

- The purchase of intellectual property rights by the assessee are not disputed. Consideration paid is also not disputed. The nature and character of the intellectual property rights, as noticed in the order passed by the Commissioner (Appeals), are again not disputed. The intellectual property rights purchased by the assessee included trademarks 'Lasso', 'Machete' and 'Fast Mix', rights to reference and use of registration data in support of product registration, benefits of business contracts, business information, business intellectual property right, trademarks and rights against third parties. It is an accepted and admitted position that the products sold by the respondent-assessee had borne the trademarks acquired by assessee. Substantial advertisement and sales promotion expenditure was incurred. Use of intellectual property rights for sales and marketing was not questioned and commented upon in the assessment order. Depreciation was disallowed as the asset had not been put to use for manufacturing activities. This cannot be a ground and reason to hold that the assessee had not "put to use" the intellectual property rights assets in the year in question and mere purchase of the products, from third party or the fact that assessee was not engaged in manufacturing activity, would not make any difference.