

THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 211/Mum/2008 (Assessment Year 2004-05)
I.T.A. No. 2500/Mum/2010 (Assessment Year 2005-06)

Demag Delaval Industries Turbomachinery Pvt. Ltd. 130, Pandurang Budhkar Marg, Worli Mumbai-400 018. PAN : AABCD8878P (Appellant)	Vs.	ACIT 15(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Percy Pardiwala
Department by	Shri R. Manjunatha Swamy
Date of Hearing	08.09.2020
Date of Pronouncement	16.09.2020

O R D E R

Per Shamim Yahya (AM) :-

These are appeals by the assessee directed against respective orders of learned CIT(A) for assessment years 2004-05 & 2005-06. Since the issues are common and connected and the appeals were heard to is being disposed of by this common order.

2. Grounds of appeal in assessment year 2004-05 read as under :-

1. The learned Commissioner(Appeals) erred in confirming the disallowance of rent of Rs.92,000.
2. The learned Commissioner(Appeals) erred in confirming the disallowance of special adhesive stamps expenses of Rs. 59,17,000 affixed on conveyance deed for assignment of business of Ms/ Alstom Project India Limited.
3. The learned Commissioner (Appeals) erred in disallowing provision for warranty of Rs. 2,76,18,000.
4. Without prejudice, the learned Commissioner (Appeals) ought to have specifically restricted the disallowance of provision for warranty to Rs. 44,10,000 which was actually debited to the profit and loss account.

5. The learned Commissioner (Appeals) erred in disallowing the depreciation of Rs. 90,10,000 claimed by the appellant in respect of customer contracts.
 6. The learned Commissioner (Appeals) erred in holding that the customer contracts cannot be said to be a commercial right or business right which is a depreciable intangible right qualifying for deduction under section 32(1)(ii).
 7. Without prejudice to the above, the Id. CIT(A) ought to have appreciated that the expenditure of Rs. 72,080,000 incurred for acquiring commercial rights should be allowed as revenue expenditure.
 8. The Id. CIT(A) erred in not commenting on the following ground:

"14. The learned Assistant Commissioner erred in initiating penalty proceedings under section 271(1)(c) "
 9. Each one of the above ground of appeal is without prejudice to the other.
3. Grounds of appeal in assessment year 2005-06 read as under :-
- The appellant objects to the order dated 24th November 2009 passed by the Learned Commissioner of the Income Tax (Appeals) - 12 on the following among other grounds of appeals :
1. The Learned Commissioner (Appeals) erred in disallowing depreciation of Rs.15,767,500 claimed by the appellant in respect of customer contracts.
 2. The Learned Commissioner (Appeals) erred in holding that the customer contracts cannot be said to be a commercial right or business right which is a depreciable intangible right qualifying for deduction under section 32(1)(ii).
4. As regards ground No. 1 senior counsel Shri Percy Pardiwala submitted that he should not be pressing for the same. Hence this ground is dismissed as not pressed.

A.Y. 2004-05

Apropos ground No. 1

5. Brief facts on this issue are that assessee has incurred expenditure for cost of adhesive stamp in connection with preparation of deed of transfer and assignment of receivables. The assessee had stated that the same was in connection with acquisition of business and was claimed as revenue

expenditure. Reliance in this regard was placed upon Supreme Court decision in the case of CIT versus Bombay Dyeing and Manufacturing Co.(219 ITR 521) and India Cement Ltd. Vs. CIT (60 ITR 52). However this claim was denied by both authorities on the ground that expenditure was in the capital field for the purpose of acquisition of business and the case laws referred were not applicable. Against the above order the assessee in appeal before us.

6. We have heard both the Counsel and perused the records. The learned senior counsel for the assessee submitted that the expenditure in this regard has been incurred in connection with conveyance deed of receivables which are part of current assets. Hence he pleaded that the expenditure cannot be treated as expenditure for the purpose of acquisition of capital asset. He submitted that expenditure was very much incurred for the purpose of business of the assessee and the same should be allowed as such. In this regard he reiterated his reliance on case laws, in the case of Bombay Dyeing and Manufacturing Co. (supra) and India Cements Ltd. (supra).

Assessee's submission before learned CIT(A) is as under :-

"The appellant submits that the appellant had paid stamp duty of Rs. 59,17,000 on 13 February 2004 in respect of agreement. A copy of the agreement is enclosed at pages 8 to 12 of the compilation. As stated in the said agreement, Alstom agreed to acquire with effect from 31 December 2003 1ST business including the receivables relating thereto which were outstanding and described in the Schedule attached with the agreement. The appellant submits that the appellant had incurred the stamp duty of Rs. 59,17,000 for the purpose of the business of the appellant and therefore the same shall be allowed as a deduction. The appellant submits that the fact that the stamp duty had been paid in respect of agreement for assignment of receivables pertaining to 1ST business on and from 1 January 2004 shall not make the payment of stamp duty as a capital expenditure. The appellant inter-alia relies on the following decisions:-

1. CIT v Bombay Dyeing and Manufacturing Co. Ltd 219 ITR 521 (SC).

The facts in the said decision were that a company was amalgamated with the assessee company. In connection with the amalgamation, the assessee incurred an expenditure of Rs. 10,350 towards professional charges. The appellant claimed deduction for the said amount. The Income tax Officer and the Appellate Assistant Commissioner rejected the claim of the assessee but the Tribunal allowed the claim on the ground that as both the companies

were carrying on complementary business and their amalgamation was necessary for the smooth and efficient conduct of the business, it was an expenditure laid out wholly and exclusively for the purpose of the business of the assessee. The Supreme Court at page 524 referred to its earlier decision in the case of Bombay Steam Navigation Co. Pvt. Ltd. 56 ITR 52 and while holding that the expenditure was allowable as a revenue expenditure, observed as under:-

"It is an expenditure laid out wholly and exclusively for the purpose of the business of the assessee. In view of the said finding and also in view of the decision of this Court in Bombay Steam Navigation Co. (1953) Pvt. Ltd. vs. CIT (1965) 56 ITR 52 (SC) , we are of the opinion that the Tribunal was right in its conclusion. The decision in Bombay Steam Navigation (supra) also pertains to amalgamation of two shipping companies. The assessee-company took over the assets of the other company and part of the price was treated as a loan secured by a promissory note and hypothecation of all movable properties of the assessee company. The loan was to carry simple interest at 6 per cent. The question that arose in the said case was whether the interest paid upon the said loan was deductible as revenue expenditure. It was held by this Court that it was an expenditure deductible under s. 10(2)(xv) of the IT Act. It was held that transaction of acquisition of the asset was closely related to the commencement and carrying on of the assessee's business and, therefore, interest paid on the unpaid balance of the consideration for the assets acquired had, in the normal course, to be regarded as expenditure for the purpose of the business which was carried on in the accounting periods. In the course of the judgment this Court referred to the earlier decision of this Court in State of Madras vs. G. J. Coelho (1954) 53 ITR 186 (SC) wherein it was held that the interest on the amount borrowed for acquiring a capital asset is deductible as revenue expenditure. It is true, that in the said decision this Court reaffirmed the well established principle that any expenditure laid out for acquiring an asset of a permanent character would be capital expenditure, held at the same time that inasmuch as the acquisition of the other company was in the course of carrying on of the assessee's business, the interest paid thereon was deductible under s. 10(2)(xv) of the Act. In this case too, the Tribunal has recorded a finding that the acquisition of Nawrosjee Wadia Ginning & Pressing Co. was necessary for the smooth and efficient conduct of the assessee's business. Following the ratio of the aforementioned decisions of the Court, we hold that the expenditure incurred towards professional charges of the solicitors firm for the services rendered in connection with the said amalgamation was in the course of carrying on of the assessee's business and, therefore, deductible as a revenue expenditure."

2. India Cements Limited v CIT 60 ITR 52 (SC).

The facts in the said decision were that the assessee obtained a loan of Rs. 40 lakhs from the Industrial Finance Corporation secured by a charge on

fixed assets. In connection therewith the assessee spent a sum of Rs. 84,633 towards stamp duty, registration fees, lawyer's fees etc. and claimed the same as a deduction. In the books of account the amounts were capitalized. However, for the purpose of income tax, the expenditure was claimed as a deduction.

The Supreme Court in the above decision held that it was irrelevant to consider the object with which the loan was obtained. The expenditure of Rs. 84,633 was incurred for the purpose of assessee's business and was therefore allowable as a deduction. The Supreme Court held that where there is no express prohibition, on outgoing, by means of which an assessee procures the use of a thing by which he makes a profit, is deductible from the receipt of the business to ascertain the taxable income.

It is submitted that the expenditure of Rs. 59,17,000 was incurred during the course of the appellant's business and therefore no disallowance of the same ought to be made."

7. We may gainfully refer to the order of learned CIT(A) on this issue as under :-

"3.3 I have tried to address the legal issue raised before me on the point of determining the character of expenditure debited at Rs.59,17,000/-. I find that the fact is not in dispute that the impugned expenditure pertained to cost of adhesive stamp which was incurred in connection with preparation of conveyance deed for acquisition of industrial steam turbine of M/s. Alstom Project India Ltd. In other words, the appellant company has acquired an industrial unit of M/s. Alstom Project India Ltd. and the appellant company has to incur some stamp duty in order to prepare the conveyance deed to facilitate the legal transfer of the industrial unit. There is no doubt on the fact that the appellant company has in fact acquired a capital asset on which the appellant company has incurred stamp duty which can be said to be a part & parcel capital cost of acquiring a capital asset. The purchasing of an industrial unit represents the acquiring of a capital apparatus to earn income. Any expenditure directly or indirectly related to acquiring such asset is going to be a part of capital cost by simple & pure logic. It is to be noted that the stamp duty has not been incurred in process of carrying on business but to acquire a business as such in lock & barrel. Regarding the appellant's reliance on decision of Supreme Court in the case of CIT v. Bombay Dyeing, it may be referred that the said decision related to the expenditure of amalgamation towards professional charges. The Hon'ble Supreme Court held that it was a revenue expenditure laid out wholly & exclusively for the purpose of business as the two companies were carrying on complimentary businesses and their amalgamation was necessary for smooth & efficient conduct of business. In this way, the Hon'ble Supreme Court held that the amalgamation expenditure was incurred in course of carrying on business and it has arisen in revenue field. The appellant's case on the other hand is strikingly different in its factual foundation in the sense that the appellant company has acquired an income generating capital apparatus which is altogether operating in capital field. It is to be appreciated that the

purchasing of a industrial unit from other company is altogether a different commercial decision in total contrast of the process of amalgamation between the two companies. These are two different situation of commercial happening which are incomparable in substance operational in two different fields. Therefore, I am in total consonance with the view of the AO that the ratio of the decision of CIT v. Bombay Dyeing Mfg. cannot be made applicable in this case. Further, I also find that the decision of India Cement Ltd. v. CIT, 60 ITR 52 (SC) was in different context where the stamp duty & professional charge was allowed as a revenue expenditure.

3.4 In this connection, I am inclined to refer the decision of Supreme Court in the case of Brooke Bond India Ltd. v. CIT, 225 ITR 798 (SC) wherein the expenditure on fees paid for enhancement of capital was held as capital expenditure. The rationale of decision behind treating the share issue expenses as capital expenditure was that it was a part & parcel of capital apparatus. Following the legal analogy of aforesaid case, it can be safely inferred that stamp duty incurred in respect of a purchase of going on business is an inalienable part of capital cost.

3.5 The line that divides revenue expenditure from capital expenditure is often very thin and hazy. None of the tests evolved from time to time to determine what is attributable to capital and what to revenue is either exhaustive or of universal application. Each case depends on its own facts. To decide, therefore, on which side of the line the expenditure falls, it is necessary to look at the nature of the business, the nature of the expenditure and the nature of the right acquired. If it is incurred by the assessee for the purpose of creating, curing or completing his title to capital, it must be regarded as capital expenditure. But, if it is for the purpose of protecting his business, it would be considered as revenue expenditure. Moreover, it is the true nature of the expenditure that is relevant and not the description given to it by the assessee in his books of account or other documents - Minoo F. Mehta v. CIT (1996) 217 ITR 578 (Bom.). In this particular case of the appellant, I find that the stamp duty is nothing but an expenditure incurred in order to cure or complete the tile to capital. Hence, it is capital expenditure.

8. Upon careful consideration we find that learned CIT(A) has erred in observing that stamp fee is in connection with conveyance deed for acquisition of industrial steam turbine. Hence he inferred that it is for acquiring an industrial unit. However, as submitted by learned Counsel of the assessee as evident from the conveyance deed submitted in paper book page No. 28-32, conveyance deed involving duty of Rs. 59,17,000/- was for the purpose of assignment of receivables. Hence, the case laws referred by learned CIT(A) that when expenditure is for acquiring capital asset and hence in the capital field,

and consequently cannot be allowed as revenue expenditure and are not applicable here. However, learned CIT(A)'s conclusion that the expenditure is to cure and complete the title to capital is without appreciating the facts of the case. This assignment is admittedly for facilitating the business of the assessee by assigning receivables and as the assessee has acquired the said industrial unit for a lump sum consideration. The expenditure is in connection with facilitating recovery of receivables which is a part of current asset. Hence the expenditure in this regard cannot be said to be in the capital field of acquiring business. It is in fact for facilitating the business of the assessee and in this view of the matter expenditure is allowable as business expenditure. The case laws referred by learned counsel of the assessee in the case of Bombay Dyeing Mfg. (supra) and India Cements Ltd. (supra) are accordingly germane and support the case of the assessee. Learned CIT(A) has been in error in holding that the case laws are not applicable here.

Apropos ground No. 3 and 4.

9. The assessee had made provision for warranty of Rs. 2,76,18,000/- which was claimed as expenditure. The same was denied by the Assessing Officer on the ground that it is an unascertained liability and a contingent liability. Learned CIT(A) in principal upheld the action of the Assessing Officer but directed that only the provision made during the year should be disallowed.

10. Against this order assessee is in appeal before us. The learned counsel of the assessee submitted that issue is squarely covered by the decision of honourable Supreme Court in the case of Rotork Controls India P. Ltd. Vs. CIT (314 ITR 62)(SC). He submitted that subsequently the assessing officer and learned CIT appeals have followed this decision of Supreme Court and allowed assessee's claim in subsequent years.

11. Upon hearing both the counsel and perusing the record, we find that Hon'ble Supreme Court in the case of Rotork Controls India P. Ltd. (supra) has been expounded the following :-

“(1) A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized;

(2) A Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits;

(3) A past event that leads to a present obligation is called as an obligating event. The obligating event is an event that creates an obligation which results in an outflow of resources. It is only those obligations arising from past events existing independently of the future conduct of the business of the enterprise that is recognized as provision. For a liability to qualify for recognition there must be not only present obligation but also the probability of an outflow of resources to settle that obligation. Where there are a number of obligations (e.g. product warranties or similar contracts) the probability that an outflow will be required in settlement, is determined by considering the said obligations as a whole;

(4) In the case of a manufacture and sale of one single item the provision for warranty could constitute a contingent liability not entitled to deduction u/s 37 of the said Act. However, when there is manufacture and sale of an army of items running into thousands of units of sophisticated goods, the past event of defects being detected in some of such items leads to a present obligation which results in an enterprise having no alternative to settling that obligation.”

12. Examining the present case on the touchstone of above decision we find that the authorities below have erred in considering the provisions of warranty as contingent liability. As already submitted by learned Counsel of the assessee in assessee's own case, subsequently revenue authorities have allowed the expenditure on the basis of same Hon'ble Supreme Court decision. Hence, we set aside the order of the authority below and decide the issue in favour of the assessee.

Apropos ground No. 5 and 6 & additional ground

13. The assessee has claimed depreciation in respect of customer contracts. The assessee had claimed that the customer contracts are valuable right and therefore capital asset. In this regard assessee referred to the provisions of section 2(11) & 32(1)(ii) of the Act. This was denied by the authorities below it was held that the assessee cannot be allowed depreciation as intangible asset under section 32(1)(ii) on this, as this does not fall under the definition of intangible asset as contained in section 2(11). We may refer to the order of learned CIT(A) as under :-

“5.7 I have considered the entire gamut of arguments taken by the appellant. I find that Sec.2(11) defines "block of asset" which is eligible for depreciation. Sec.2(11)(b) defines 'intangible asset, being know-how, patent, copyright, trademark, licence, franchisee or any other business or commercial right of similar nature. Further, I also find that depreciation has been provided on such 'intangible right' u/s. 32(1)(ii). First of all, it is to be looked into as to whether the 'customer contract'¹ is really representing any 'intangible right' or not which is coming under the purview of Sec.2(11). I find that 'customer contract' cannot be brought within the purview of know-how, patent, copyright, trademark, licence, franchisee by any stretch of imagination. If we try to understand the nature of 'customer contract' which the appellant got it from M/s. Alstom alongwith the purchase of industrial unit, I find that the most, it can be categorised as a commercial advantage accrued in the hand of the appellant by virtue of purchase of business of going concern known as '1ST business'. The customer contract of '1ST business' has been received as a part & parcel of business purchased from M/s. Alstom Project (India) Ltd. The appellant has not paid anything separately for acquiring such customer contract. The agreement between the M/s. Alstom Project India Ltd. and the appellant dtd. 19.01.2004 does not specifically mention about the sale of such customer contract for any specific price. It was a slump purchase of business in essence. Therefore, no separate price has been paid by the appellant for acquiring any specific asset. Such commercial advantage in form of 'customer contract' cannot be said to be a commercial right or business right which is a depreciable intangible right qualifying for deduction u/s.32(1)(ii). The appellant has tried to take advantage of such section to claim depreciation on a artificial value assigned by him based on some valuation report. From the close reading of Sec. 2(11) & Sec.32(1)(ii), I find that depreciation has been contemplated to provide on such intangible asset which has inherent property to get depreciated with the passage of time. The customer contract is not such depreciable intangible asset by any stretch of logic. In fact, the customer contract is such commercial advantage conferred by a business entity which value depends upon the degree of commercial activity carried on by the particular business organisation. Generally, the customer contract has a inherent tendency to go up if the business activity of the entity is intensified in its volume and scope of business. Therefore, it can be concluded that it is not a depreciable asset.

5.8 Further, it may also be pointed out that the connotation "any other business or commercial right of similar nature" has to derive meaning from words know-how, patent, copyright, trademark, licence, franchisee. Here the principle of *ejusdem generis* applies. The maxim *ejusdem generis* serves to restrict the meaning of a general word to things or matters of the same genus as the preceeding particular words (CIT v. Statesman Ltd. (1992) 198 ITR 582 (Cal.). It is a well recognised rule of construction that when two or more words which are susceptible of analogous meaning are coupled together *noscitur a sociis*, they are understood to be used in their cognate sense. They take their colour from each other that is, the more general is restricted to a sense analogous to the less general. The words used together should be understood as deriving colour and sense from each other. They should be read together as one. It normally follows the principle of English decision in *Grenfell v. IRC* (1876) 1 ExD 242. Similar view is taken in US law (*Chests of Tea* 1824 9 Wheaton (S) 430). Indian law has adopted it in a number of cases as in *Motipur Zamindary Co. (P) Ltd. v. State of Bihar* (1962) 13 STC 1 (SC) and in the sales tax law as *Filterco v. CST* (1986) 61 STC 318.) If we apply the principle of *ejusdem generis* in the context of interpretation of Sec.2(ii), I find that the meaning commercial right is to be understood in restricted sense so as to signify the same as synonymous with, know-how, patents, copyrights, trademarks, licences, franchises. It is already said that no way the 'customer contract' can be nearer to the meaning above words. Hence 'customer contract' does not come under purview of Sec.2(ii).

5.9 In view of the above argument, I am convinced that such customer contract could not be qualified for depreciation u/s.32(1)(ii). Hence, the finding of the AQ is confirmed, dismissing the appeal on this point.

14. In this regard learned counsel of the assessee submitted that this issue is covered in favour of the assessee by the same decision of Supreme Court in the case of CIT Vs. Smifs Securities Ltd. (Civil Appeal No. 5961 of 2012 dt. 22.8.2012)(SC). In this connection learned Counsel of the assessee referred to an additional ground. He submitted that on the same basis as customer contract assessee deserves to succeed.

15. We find that the assessee has raised an additional ground before us. It has been submitted that the authorities below should have granted depreciation on goodwill of Rs. 10,61,03,000/- under section 32 of the Income Tax Act.

16. Since the above is a legal ground we admit the same. In this connection learned senior counsel of the assessee submitted that this issue now is

squarely covered in favour of the assessee by the decision of honourable Supreme Court in the case of CIT Vs. Smifs Securities Ltd. (supra)

17. Brief facts as to how this goodwill and customer contract arose is emanating out of schedules to the financial statement continued in paper book page 81 as under :-

Acquisition of the industrial steam turbines business of Alstom Siemens AG acquired the steam and gas turbine business of Alstom worldwide during 2003. In India, as a part of this global transaction, the Company acquired the Industrial Steam Turbine ('IST') business of Alstom effective 1 January 2004 for a purchase consideration of Rs 260,507 thousand. This purchase consideration has been allocated to fixed and intangible assets at fair values based on an independent valuation carried out. All other current assets and liabilities been taken over at carrying values at the date of the transaction net of fair value adjustments as identified by management. The apportionment of purchase consideration to individual assets and liabilities is as set out below:

	Rs.000
Fixed assets	25,122
Technical know-how	48,520
Customer contracts	72,080
Deferred tax asset net	19,297
Receivables net	184,147
Inventories net	178,462
Loans and advances	146,401
Cash	150
	674,179
Less : current liabilities and provisions	(519,775)
Net assets taken over	154,404
Purchase consideration	260,507
Goodwill, being excess of purchase consideration over assets taken over	106,103

18. In this regard we may gainfully refer to the provisions of section 32(1)(ii) Explanation (3), which defines the assets eligible for depreciation as under :-

Explanation 3.—For the purposes of this sub-section, the expression "assets" shall mean—

- tangible assets, being buildings, machinery, plant or furniture;
- intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

19. In this regard we find that Hon'ble Supreme Court in *Techno Shares and Stocks Limited*, BSE membership card can be considered as intangible asset for the purpose of depreciation u/s. 32(1)(ii) (37 ITR 323). From this the ratio emerges that that depreciation is allowable not only on the specified category of intangibles but also for other categories of intangible assets which fall within the purview of the expression "business or commercial rights of similar nature. Another judgment delivered by the Hon'ble Supreme Court in the case of *Commissioner of income Tax Vs. Smifs Securities Ltd.*, allows depreciation on goodwill being an intangible asset. In this case in Civil Appeal No. 5961 of 2012 dated August 22, 2012, the Hon'ble Supreme Court has held that 'goodwill' is an intangible asset eligible for depreciation under the provisions of section 32 of the I.T. Act, 1961. In this case 'goodwill' had arisen as a result of amalgamation of two companies. The difference between the consideration for amalgamation and the net book value of assets of the amalgamating company was regarded as 'goodwill' and depreciation was claimed thereon. It was argued by the assessee that the extra consideration was paid towards the reputation which the amalgamating company was enjoying in order to retain its existing clientele. The Supreme Court has reaffirmed its earlier position taken in *Techno Shares (Supra)*. It was held that the principle of *ejusdem generis* would strictly apply while interpreting the expression "business or commercial rights of similar nature". Consequently, "goodwill" is an asset under Explanation 3(b) to section 32(1) of the Act and is accordingly eligible for depreciation.

20. Here we note that the above decisions are applicable for depreciation on goodwill and similar intangible assets which have been purchased. The customer contract is reflected in page No. 81 of the paper book extracted above is a fair value done by valuer. We note that it is the claim of learned counsel that goodwill arising out of slump sale agreement and customer contract which are akin to the goodwill being an intangible asset are also eligible for depreciation. Although we find that there is no dispute now that goodwill is eligible for depreciation. It will be pertinent to remember here that goodwill has

arisen pursuant to slump sale agreement wherein the assessee has acquired assets, on a purchase consideration of Rs. 7,60,5,07,000/-. In the case of Areva T&D India Ltd. Vs. CIT in ITA No. 315/2010 and others, Hon'ble High Court has held that excess amount paid over and above tangible asset for acquisition of various business and commercial rights and slump sale can be categorised under the goodwill and difference between purchase consideration and value of tangible asset taken over being the balancing figure was held to be goodwill and depreciation thereon was held to be allowable on the touchstone of decision of Hon'ble Supreme Court in the case of Techno Shares and Stocks Ltd. (supra) and CIT Vs. Simfs Securities Ltd. (supra). This decision of Hon'ble Delhi High Court has subsequently been confirmed by Hon'ble Supreme Court. The details of value of tangible assets taken over by the assessee by the slump sale agreement are necessary to be considered for adjudication of this issue. Hence, in our considered opinion the issue of depreciation of goodwill and customer contracts being an intangible asset claimed in this case by the assessee needs to be examined by the Assessing Officer on the touchstone of the aforesaid decision. Accordingly the issue of depreciation of customer contracts and goodwill is remitted to the file of the AO. Needless to add the assessee should be granted an opportunity of being heard.

A.Y. 2005-06

21. Solitary issue raised in this appeal is to depreciation on customer contracts. We have already remitted this issue in assessee's appeal for A.Y. 2004-05. The issue here being consequential, also stands remitted.

22. In the result, these appeals are partly allowed.

Order pronounced on 16.9.2020 under Rule 34(4) of ITAT Rules.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/09/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS