

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.2919/M/2013
Assessment Year: 2008-09**

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| M/s. PPG Asian Paints Pvt. Ltd. (Formally known as Asian PPG Industries Ltd.), 158, Vidya Nagari Marg, Dani Wooltex Compound, Kalina, Santacruz, Mumbai – 400 098 PAN: AAACA8832H | Vs. | ACIT – LTU, Center 1 World Trade Center, Curr Parade, Mumbai – 400 005 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Madhur Agrawal, A.R.
Revenue by : Smt. Parminder, CIT D.R.

Date of Hearing : 12.02.2015
Date of Pronouncement : 15.04.2015

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as the CIT (A)] dated 31.01.2013 relevant to assessment year 2008-09.

2. Earlier, the said appeal was decided by the Tribunal vide order dated 12.03.2014. However, the assessee thereafter brought an application under section 254 of the Act pleading that the ground No.4 of the appeal of the assessee, which was relating to the claim of depreciation on goodwill has remained unadjudicated. The Tribunal vide order dated 01.08.2014 passed in MA No.136/M/2014 recalled the order dated 12.03.2014 to the limited extent

for adjudication on ground No.4 of the assessee's appeal. Thus, the appeal of the assessee has been heard for adjudication on to the issue taken vide ground No.4 of the appeal i.e. regarding the claim of depreciation on goodwill. The said ground No.4 of the appeal, for the sake of convenience, is reproduced as under:

“Ground No.4 : NOT GRANTING DEPRECIATION ON GOODWILL

1. On the facts and in the circumstances of the case and in law, the CIT(A)-LTU erred in not granting depreciation on goodwill of Rs.3,23,15,044/- on the ground that goodwill is not covered u/s 32(1)(ii) of the Act.
2. The Appellant prays that AO be directed to allow depreciation on goodwill paid as per the provision of Section 32 of the Act.”
3. We have heard the rival contentions of the Ld. Representatives of both the parties and have also gone through the record. The lower authorities have rejected the claim of depreciation on goodwill observing that the ‘goodwill’ does not fall within the definition of eligible intangible assets for the claim of depreciation there upon under section 32(1)(ii) of the Income Tax Act.
4. The Ld. A.R. of the assessee at the outset has stated that the issue relating to the depreciation of goodwill has now been settled by the Hon’ble Supreme Court in the case of “CIT Kolkata vs. Smifs Securities Ltd.” (2012) 24 taxmann.com 222 (SC) The Hon’ble Supreme Court while adjudicating the issue relating to the claim of depreciation on goodwill has categorically held as under:

“4. Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading 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 right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b).

5. In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act."

5. In view of the categorical finding of the Hon'ble Supreme Court that the goodwill also falls under the expression 'any other business or commercial right of a similar nature' and thus would be an asset under Explanation 3(b) to section 32(1) of the Act, we accordingly hold that the assessee is entitled to the claim of depreciation on goodwill. This issue is accordingly decided in favour of the assessee.

6. Before parting with the order, it is clarified that our above observations will not be having any effect or in any way disturb the findings given by the Tribunal vide order dated 12.03.2014 on the other issues/grounds taken by the assessee in the above titled appeal and the same will remain as such.

7. In the result, the appeal of the assessee on the limited point/ground No.4 is allowed.

Order pronounced in the open court on 15.04.2015.

**Sd/-
(R.C. Sharma)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 15.04.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai

The DR Concerned Bench
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.