

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
DR. BRR KUMAR, ACCOUNTANT MEMBERR**

ITA No. 7354/Del/2018
Assessment Year: 2014-15

Sagar Ratna Restaurants Pvt. Ltd. C-7 Third Floor, Malviya Nagar, New Delhi 1100 17.	Vs.	ACIT, Circle-77(1), New Delhi.
PAN :AAPCS5289R		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Umesh Takyar, Sr. DR

Date of hearing	24.02.2022
Date of pronouncement	.03.2022

ORDER

PER SAKTIJIT DEY: JUDICIAL MEMBER:

This is an appeal by assessee against the order dated 23.07.2018 of learned Commissioner of Income-Tax (Appeals)-8, New Delhi for assessment year 2014-15.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case.
3. Considering the nature of dispute and the fact that the issue is covered by the decision of the Hon'ble jurisdictional High Court, we

proceed to dispose of the appeal ex parte qua the assessee after hearing the learned Departmental Representative and based on material available on record.

4. We have heard learned Departmental Representative and perused the material on record.

5. Briefly, the facts are that assessee is a resident-company. For the assessment year under dispute, assessee filed its return of income on 29.11.2014 declaring loss of Rs.23,12,53,397. In course of assessment proceedings, assessing officer, while verifying the return of income filed by the assessee, noticed that the assessee has claimed deduction of Rs.1,94,33,166, being depreciation on non complete fee. Being of the view that depreciation on non complete fee is not in the nature of an intangible asset as per Section 32(1)(ii) and explanation to the said section, the assessing officer called upon the assessee to show cause why the depreciation claimed should not be disallowed. Ultimately, the assessing officer completed the assessment disallowing the claim of depreciation by following the ratio laid down by the Hon'ble Delhi High Court in case of Sharp Business System Vs. CIT (2012) 211 Taxman 576 (Del). Assessee contested the aforesaid disallowance

before learned Commissioner (Appeals). However, relying upon the aforementioned decision of the Hon'ble Delhi High Court, learned Commissioner (Appeals) upheld the disallowance.

6. It is evident, by virtue of an agreement entered in June 2011, assessee acquired a restaurant in the name and style of Sagar Ratna. As per the terms of the agreement, the transferor had transferred all its rights, copyrights, trademarks etc. in respect of the restaurant Sagar Ratna. It appears from record, assessee treated the payment made towards non compete fee to the transferor as capital expenditure in the year of acquisition and assessee's claim of depreciation on such expenditure in assessment years 2012-13 and 2013-14 was allowed. To justify its claim of depreciation, in course of proceedings before the departmental authorities, assessee has submitted that since depreciation was allowed in preceding assessment years, the same cannot be disallowed in the impugned assessment year as Rule of Consistency would apply. However, we are unable to agree with the aforesaid submission made by the assessee before the departmental authorities. It appears, at the time of allowing depreciation in assessment years 2012-13 and 2013-14, the departmental authorities

did not have the benefit of the ratio laid down by the Hon'ble jurisdictional High Court in case of Sharp Business System Vs. CIT (supra). In the aforesaid decision, the Hon'ble jurisdictional High Court, while dealing with identical dispute relating to allowability of depreciation on non compete fee, has held that non compete fee though is an intangible asset, however, it is not similar to know how, patent, copy right, their trademark, licenses, franchises or any other business or commercial right of similar nature. The reasoning of the Hon'ble jurisdictional High Court for coming to such conclusion is, unlike the rights mentioned in Section 32(1)(ii) which an owner can exercise against the world at large and can be traded or transferred, in case of non compete fee, the advantage is restricted only against the seller. Therefore, it is not a right in rem but in personem. We are conscious of the fact that some other non-jurisdictional High Courts have held that non compete fee is an intangible asset coming within the ambit of Section 32(1)(ii) of the Act and have allowed depreciation. However, since, we are bound by the decision of the Hon'ble jurisdictional High Court rendered in case of Sharp Business System Vs. CIT(supra), respectfully, following the ratio laid down in

case of Sharp Business System (supra), we hold that assessee's claim of depreciation on non compete fee is unacceptable. Accordingly, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds raised.

6. In the result, the appeal is dismissed.

Order pronounced in the open court on 31st March, 2022

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 31st March, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	09.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	09.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	09.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	31.03.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	31.03.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	