



## Tax alert: Depreciation on brand name allowable

27 November 2023

The Delhi High Court has held that brand names are a specie of the trademark which are covered within the definition of intangible assets, eligible for depreciation under section 32(1) of the Income-tax Act, 1961.

### In a nutshell



The expression “trademark” under section 32(1)(ii) and Explanation 3(b) to section 32(1) of the ITA would include brand names.



Brand names invest in the owner commercial rights and therefore, fall within the scope of intangible assets which are amenable to depreciation under section 32(1)(i) of the ITA.



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## Background:

- The taxpayer<sup>1</sup> is a company engaged in the paper manufacturing business. During the Financial Year (FY) 2007-08, corresponding to Assessment Year (AY) 2008-09, the taxpayer claimed depreciation on brand names by treating the same as intangible asset within the purview of section 32(1)(ii) of the Income-tax Act, 1961 (ITA) [relating to depreciation].
- During the course of audit proceedings, the Assessing Officer (AO), amongst others, disallowed the claim of depreciation on brand names on the grounds that brand name is not referred to in section 32(1)(ii) of the ITA.
- Aggrieved, the taxpayer filed an appeal and in the course of appellate proceedings the matter reached before the Delhi High Court (HC).

## Relevant provisions in brief:

### Relevant extract of section 32(1) of the ITA

*“(1) In respect of depreciation of...*

*...(ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April 1998, [not being goodwill of a business or profession]<sup>2</sup>,*

*owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed...*

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

*...(b) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature [not being goodwill of a business or profession]<sup>2</sup>.”*

### Relevant extract of section 2 of the Trademarks Act, 1999 (TM Act)

*“2. Definitions and interpretation.*

*(1) In this Act, unless the context otherwise requires...*

*...“(n) “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;”...*

*...(zb) “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and...”*

## Decision of the HC:

The HC noted /observed the following:

- The Supreme Court (SC) in an earlier ruling<sup>3</sup> had held that goodwill is an asset under Explanation 3(b) to section 32(1) of the ITA eligible for depreciation.

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<sup>1</sup> PCIT-1 vs Kuantum Papers Ltd. [ITA 515/2019] (Delhi HC)

<sup>2</sup> Inserted by the Finance Act, 2021 w.e.f. 1 April 2021

<sup>3</sup> CIT vs Smifs Securities Ltd. (2012) 348 ITR 302 (SC)

- A perusal of section 32(1)(ii) of the ITA read with Explanation 3(b) showed that trademarks are covered under the said provision.
- Brand names are a specie of the trademark as evident from the definition of “trademark” and “mark” provided in the Trademarks Act, 1999 (TM Act). A perusal of definition would show that trademark means a mark which is capable of being represented graphically and is capable of distinguishing the goods or services of one person from those of others, and may include the shape of goods, their packaging, and combination of colours. The expression “mark”, defined in section 2(m) of the TM Act, include, among others, a brand.
- Therefore, a conjoint reading of the aforesaid sections clearly showed that the expression “trademark” under section 32(1)(ii) and Explanation 3(b) to section 32(1) would include brand names.
- A perusal of Explanation 3(b) to section 32(1) of the ITA showed that the definition of assets includes commercial rights of similar nature. Brand names certainly invest in the owner commercial rights and therefore, fall within the scope of intangible assets which are amenable to depreciation under section 32(1)(i) of the ITA.

In view of the above, the HC allowed the claim of depreciation on brand names.

**Comments:**

This ruling has held / upheld the following:

- The expression “trademark” under section 32(1)(ii) and Explanation 3(b) to section 32(1) of the ITA would include brand names.
- Brand names invest in the owner commercial rights and therefore, fall within the scope of intangible assets which are amenable to depreciation under section 32(1)(i) of the ITA.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.



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