

# 'Depreciation can be Claimed on Goodwill'

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The Supreme Court has ruled that 'goodwill' is an asset on which companies may claim depreciation. The apex court order dated August 22 ends a long-standing dispute on whether depreciation can be booked on the intangible asset. The appeal was filed by commissioner of income tax, Kolkata, against a high court ruling in favour of Smif Securities, the taxpayer company.

The case before the court relates to an amalgamation of YSN Shares & Securities with Smif Securities with effect from 1998.

Following the amalgamation, assets and liabilities of YSN Shares & Securities had been transferred to Smif Securities.

The difference between the consideration paid by the taxpayer company and the net asset value of YSN, according to Smif Securities, was the extra consideration that was paid for the goodwill (or reputation) of YSN Shares & Securities. The taxpayer company treated 'goodwill' as an asset and claimed a depreciation of ₹54 lakh under section 32(1)(ii) of the Income-Tax Act.

The income-tax department rejected the claim that goodwill is an asset and therefore rejected the claim for depreciation, too. The tri-

bunal and high court had upheld the claim for depreciation following which the income tax department moved the Supreme Court.

The Supreme Court dismissed the appeal. Quoting the relevant provision in the Income-Tax Act, the court said, "Explanation 3 to Section 32 states that the expression 'asset' shall mean an intangible asset, being knowhow, patents, copyrights, trademarks, licences,

franchises, or any other business or commercial

**The Supreme Court ruling is significant as it will have a bearing on all mergers and acquisitions**

rights of similar nature". The apex court explained that goodwill may be categorised under "any other business or commercial rights or commercial rights of similar nature".

The apex court further said that there is no dispute over the fact that the difference between the consideration paid by the taxpayer and the net value of assets of the amalgamating company is "goodwill" and the tax tribunal and high court had accepted the position. Sanjay Sanghvi, tax partner at the law firm Khaitan & Co said, "This is an important judgement that will have a bearing on all mergers and acquisitions".

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