

# Recasting Goodwill to Intangible Workforce:

— A DOUBLE EDGED SWORD —

“ In tax, how you describe value can matter as much as the value itself. ”

## THE CONUNDRUM

### Can Workforce Be Owned?

Ownership is a prerequisite to claim depreciation under tax law.

**Composite Value**  
Absorbs multiple elements of a business.

**Recognised by Law**  
Supreme Court in Smifs Securities recognised goodwill as a depreciable intangible asset.

**No Dissection Required**  
Remains a blend, avoids scrutiny of individual parts.



**Contractual, Not Proprietary**  
Employees are engaged, not owned. They can leave.

**Ownership Test Unclear**  
Can workforce ever satisfy the legal requirement of ownership?

**Depreciation Conundrum**  
Can it depreciate in the conventional sense?

Breaking value into parts invites scrutiny. What is classified must first be justifiable.

#### WHY IT MATTERS

**TIMING**  
Pre 1 April 2021, goodwill was depreciable. Post that, it is not.

**TAXPAYER INSTINCT**  
Recast value into specific intangibles to claim depreciation.

**RISK**  
Relabelling without substance can lead to rejection and litigation.

#### A SUSTAINABLE APPROACH

- Customer Contracts
- Databases & Digital Assets
- Content Libraries
- Platform Technology
- Brand & Domain Rights
- Licensing Arrangements

Allocate to well-defined, identifiable intangibles aligned with “business or commercial rights” backed by documentation, valuation and commercial substance.

#### THE TAKEAWAY

In tax, how you describe value can matter as much as the value itself. Sometimes, a broader classification protects more than a narrow one. The answer may not lie in breaking value apart, but in knowing when to let it remain whole.



## **Recasting Goodwill as an Intangible Workforce: A Doubled Edged Sword?**

### **Introduction**

There is a certain discipline in how enduring brands position themselves. Melody toffee never resolved the question it posed. It did not declare whether it was chocolate or coffee. By deliberately avoiding that classification, it retained a wider appeal and avoided being confined within a narrower identity.

The recent decision of the hon'ble ITAT in the case of '*T.V. Today Network ltd vs. ACIT*' [TS-716-ITAT-2026(DEL)], presents a comparable moment in tax law. It raises a question not merely about the allowability of depreciation, but about the consequences of choosing to define a component of business value too precisely. The ruling accepts depreciation claim on an acquired business workforce, classified as an intangible asset, yet the manner in which the claim has been structured, brings into focus, deeper issues relating to classification, statutory interpretation and long-term sustainability.

### **Factual Background and Structure of the Transaction**

The assessee acquired the digital business operations of its holding company, Living Media India Limited, as a going concern under a business transfer agreement dated 1 January 2018. The transaction was structured as a slump sale for a total consideration of Rs. 20 crores. Out of this, an amount of Rs. 6.10 crores was earmarked and capitalised as intangible assets and depreciation was claimed at the prescribed rate.

The assessee's position was that this amount did not represent goodwill. It was specifically contended that an identifiable intangible asset in the nature of an acquired business workforce had been acquired, supported by a valuation report of the valuer PWC, dated 9 November 2017. The workforce, particularly content creators and editorial personnel, was described as the core asset of the digital business and therefore justified separate valuation.

### **Contentions of the Assessing Officer**

The Assessing Officer disallowed depreciation of Rs. 1.52 crores on the said intangible assets.

The primary objection was that the amount capitalised arose from the difference between the consideration paid and the value of net assets acquired. Such excess, in substance, represented goodwill. The valuation was viewed as an artificial allocation designed to inflate the depreciable base.

It was further observed that the intangible asset did not exist in the books of the predecessor entity. Accordingly, applying the scheme of section 32 of the Income Tax Act, 1961, read with the sixth proviso, the Assessing Officer concluded that the cost of such asset in the hands of the successor would effectively be nil. On this basis, depreciation was denied.

The Assessing Officer also recorded that the assessee had not provided sufficient evidence to show that the alleged intangible asset was akin to recognised categories such as know-how, patents, copyrights, trademarks, licences or franchises.

### **Findings of the Commissioner (Appeals)**

The Commissioner (Appeals) upheld the disallowance.

It was held that the provisions of section 32, including the fifth and sixth provisos, applied to the facts of the case. The Commissioner (Appeals) observed that where the predecessor had not claimed depreciation on such asset, the successor could not claim depreciation merely on account of payment of consideration.

### **Assessee's Submissions Before the Tribunal**

Before the Tribunal, the assessee advanced a central plea that both the Assessing Officer and the Commissioner (Appeals) had failed to appreciate that no depreciation had been claimed on goodwill. The asset in question was a distinct intangible asset in the form of acquired business workforce, forming part of the business transfer agreement and supported by an independent valuation.

It was emphasised that in a digital media business, workforce, particularly content creators, constituted the heart and soul of the enterprise. The valuation of such workforce was therefore commercially justified.

The assessee also submitted that the Revenue had accepted the sale consideration in the hands of the transferor and could not adopt an inconsistent position in the hands of the transferee. It was further argued that no independent enquiry had been conducted by the Assessing Officer either with the transferor or the valuer, and that the disallowance was based on surmises.

In the alternative, reliance was placed on judicial precedents to contend that even goodwill, if properly valued, is a depreciable asset.

### **Tribunal's Observations and Findings**

The hon'ble Tribunal, after considering the rival submissions, allowed the claim of depreciation.

A significant part of the Tribunal's reasoning rests on the interpretation of section 32(1)(ii). The Tribunal rejected the contention of the Revenue that intangible assets must strictly fall within the specifically enumerated categories such as know-how, patents, copyrights, trademarks, licences or franchises. It observed that the statutory language, particularly the phrase "any other business or commercial rights of similar nature", is intended to cover a wider class of intangible assets.

Relying on the decision of the hon'ble Delhi High Court in *'Areva T&D India Ltd. v. DCIT* [345 ITR 421], the hon'ble Tribunal emphasised that the legislature deliberately used broad language to include intangible assets that may not be exhaustively enumerated. The Tribunal reproduced and relied upon the reasoning that such rights must be understood as part of the "tool of trade" of the assessee, facilitating the smooth conduct of business.

The hon'ble Tribunal further noted that in the present case, the workforce had been transferred as part of the Business Transfer Agreement and constituted an integral component of the

running business. It was not merely an incidental element but formed part of the commercial apparatus that enabled the assessee to carry on the business without interruption.

An additional factor that weighed with the hon'ble Tribunal was the absence of any adverse finding against the valuation report. The Assessing Officer had not conducted any enquiry with the valuer nor brought any material on record to demonstrate that the valuation was erroneous or inflated. Further, the consideration of Rs. 20 crores had been accepted in the hands of the transferor entity. In these circumstances, the Tribunal held that the transaction could not be treated as colourable.

On this basis, the hon'ble Tribunal concluded that the workforce constituted an intangible asset in the nature of "business or commercial rights of similar nature" and was therefore eligible for depreciation.

### **The Double-Edged Nature of the Assessee's Position**

The assessee's central plea operates as a double-edged proposition.

On one hand, it provides a structured basis for the allocation of consideration. It aligns with the commercial reality of the business and counters any allegation of inflated valuation.

On the other hand, it narrows the legal foundation of the claim.

By expressly disclaiming goodwill and asserting workforce as a distinct asset, the assessee stepped away from the well-settled jurisprudence on allowability of goodwill as a depreciable intangible asset up to AY 2020-21. The claim must now independently satisfy the requirements of section 32, without the benefit of that broader framework.

This introduces an additional layer of vulnerability.

### **Legislative Background: Goodwill as a Depreciable Asset up to AY 2020-21**

It is relevant to note that the statutory framework governing depreciation already provides a well-settled treatment for excess consideration arising in business acquisitions.

Thus, it is important to situate the present case within its legislative context. For the relevant assessment years, being AYs 2019-20 and 2020-21, the legal position was clear. The hon'ble Supreme Court in '*CIT v. Smifs Securities Ltd*' [348 ITR 302], had explicitly recognised and held goodwill as a depreciable intangible asset under section 32(1)(ii) of the Income Tax Act, 1961.

The statutory framework supported this position. Section 32 operated as an enabling provision, allowing depreciation on intangible assets including "business or commercial rights of similar nature". Goodwill, being a composite commercial right, encompassing various elements including reputation, customer base, and organisational capabilities, fell squarely within this expression.

The sixth proviso to section 32(1)(ii) does not operate as a disallowance provision. It merely ensures that where the same asset is used by both transferor and transferee in the year of succession or amalgamation, the total depreciation is apportioned between them. It does not

apply to assets that come into existence for the first time in the hands of the transferee. Nor does it apply to assets on which the predecessor could not have claimed depreciation.

Goodwill arising on acquisition clearly falls within this category. It is a new asset, not shared or duplicated, and therefore remains governed by the main enabling provision.

### **Acceptance of Sale Consideration and the Absence of Colourable Device**

A significant aspect of the case, which weighed with the hon'ble Tribunal, was that the sale consideration of Rs. 20 crores had been accepted by the Revenue in the hands of the transferor holding company.

This aspect assumes considerable importance. Once the Revenue has accepted the consideration in the hands of the seller, any allegation in the hands of the buyer that the purchase consideration is artificially inflated becomes difficult to sustain. Such a position would amount to the Revenue adopting inconsistent stands in respect of the same transaction.

The assessee's contention that the Assessing Officer was effectively blowing hot and cold at the same time carries weight in this context. If the consideration is accepted as genuine in one hand, its character cannot be selectively questioned in the other without cogent material.

In that sense, the objection of the Assessing Officer regarding artificial inflation of consideration appears overstated. However, this also leads to a larger strategic point. There was no pressing necessity to justify the excess consideration by specifically earmarking it to workforce. The same could have been retained within a broader and legally more stable classification.

### **The Path Not Taken**

Against this backdrop, the excess consideration in the present case could have been retained within the broader fold of goodwill, supported by a clear and settled line of judicial authority. For the subject AYs 2019-20 and 2020-21, there was a clear and settled legal basis to claim depreciation on goodwill itself.

The excess consideration arising in the transaction could have been retained within the broader fold of goodwill, supported by established judicial authority and statutory framework. Goodwill, by its nature, is a composite intangible asset. It subsumes within it various elements of business value, including workforce, brand, database, customer relationships and operational capabilities.

By choosing to carve out a portion of this excess and assign it specifically to workforce, the assessee altered the nature of the enquiry.

What could have been examined as part of a settled category now required independent justification as a distinct intangible asset. The claim moved away from a well-recognised legal foundation to a narrower and less settled proposition.

### **The Consequence of Narrowing the Classification**

Once excess consideration is characterised as goodwill, it is treated as a composite commercial right. It does not require further dissection. Its constituent elements are subsumed within it and are not required to be independently established.

However, once a part of that consideration is carved out and labelled as workforce, that component must stand independently.

This shift has significant consequences.

The enquiry is no longer whether goodwill is depreciable. That question stands settled. The enquiry becomes whether workforce, as defined, constitutes an identifiable intangible asset satisfying the requirements of section 32, for the purpose of claiming depreciation.

This moves the analysis from a broad and judicially accepted category to a narrower and more contested one. Each element of the claim must now be independently justified, both in terms of its existence and its legal character.

### **The Mandatory Ownership Requirement and Its Implications**

Although the ownership condition was not specifically contested by the Revenue in this case, it remains an essential and mandatory pre-condition for the purpose of claiming depreciation under section 32.

Depreciation is allowable only on assets that are owned by the assessee. In the case of goodwill, this requirement is generally not in dispute, as goodwill is recognised as a commercial right capable of being owned and transferred. Workforce, however, raises conceptual issues. Employees are engaged through contractual relationships. The employer does not possess proprietary rights over individuals. The continuity of workforce is contingent and cannot be guaranteed.

Once workforce is treated as a distinct asset, the question of whether such asset can be said to be “owned” becomes relevant. This issue, though not contested by the revenue, may assume significance in further appellate proceedings. The assessee’s position, while commercially appealing, may therefore be susceptible to challenge on this ground.

### **Depreciation and the Concept of Wear and Tear**

Depreciation is premised on the concept of wear and tear of an asset over time.

The application of this principle to workforce is not straightforward. Human capital does not necessarily diminish with use. On the contrary, it may enhance in value through experience and skill development.

This raises a conceptual question as to whether workforce, by its nature, is amenable to depreciation in the conventional sense.

### **Accounting and Tax Treatment of Such Workforce’s Salary Expenditure, Post Acquisition**

An additional concern relates to accounting treatment. If workforce has been capitalised, the treatment of subsequent salary payments becomes relevant. As per established accounting

principles and Income Computation and Disclosure Standards, salaries are treated as revenue expenditure.

If such expenditure continues to be claimed as revenue, while the workforce itself is capitalised and depreciated, it creates a conceptual inconsistency. This aspect remains unexplored in the present ruling.

### **Analytical Perspective on the Areva Decision**

The hon'ble Tribunal's reliance on the Areva judgment is central to its conclusion and therefore requires careful examination.

In Areva, the hon'ble Delhi High Court dealt with a slump sale where the transferee acquired a bundle of intangible assets including business claims, contracts, records, know-how and skilled employees. These were collectively described as goodwill in the books of the assessee.

The hon'ble High Court held that such bundle of rights constituted "business or commercial rights of similar nature" and were eligible for depreciation. The emphasis was on the collective nature of these rights as forming part of the tool of trade that enabled the assessee to carry on the business seamlessly.

A critical nuance in Areva is that employees were not treated as a standalone asset. They were one element within a broader cluster of intangible rights. The decision does not isolate workforce as an independent category but recognises it as part of an integrated business structure.

In contrast, the present case proceeds on a fundamentally different footing. The entire claim is centred on workforce as a distinct and separately identifiable intangible asset. The extension of Areva to support such a proposition involves a shift from recognising a composite bundle of rights to recognising a single component in isolation.

### **Post-2021 Implications and Emerging Trends**

In the post-1 April 2021 regime, where goodwill has been excluded from the block of depreciable intangible assets by the Finance Act 2021, the present ruling may influence taxpayer behaviour.

There may be a tendency to attribute excess consideration to workforce or similar intangibles instead of goodwill. However, such an approach does not address the underlying legal issues. The requirements of identification, separability and ownership continue to apply.

Such positions are likely to be closely scrutinised and may give rise to litigation.

### **Alternative Allocation and Its Justifiability**

An alternative approach that merits consideration in structuring such transactions is the allocation of excess purchase consideration to specifically identifiable intangible assets, rather than retaining it within the broad ambit of goodwill or attributing it narrowly to workforce.

Such identifiable intangibles may include customer contracts, subscription databases, advertiser relationships, distribution networks, content libraries, brand usage rights, domain

names, platform technology, editorial processes, proprietary databases, or non-compete rights. In the context of a digital media business, this may further extend to user analytics, algorithmic curation systems, digital archives, licensing arrangements, or long-term content supply agreements. These assets are, by their nature, more readily capable of identification, documentation and, in many cases, enforceable transfer.

From a statutory standpoint, such rights align more naturally with the expression “business or commercial rights of similar nature” under section 32(1)(ii), particularly where they exhibit attributes of separability and identifiable economic benefit. For instance, a subscription database or a long-term advertiser contract represents a measurable revenue stream, while a content repository or digital archive constitutes a definable and transferable business resource.

This approach can therefore offer a more structured and defensible basis for allocation, provided it is grounded in the transaction documentation, supported by a reasoned valuation, reflective of genuine commercial segmentation, and demonstrative of the asset’s role in generating income.

Viewed in this light, allocating excess consideration to a cluster of identifiable intangible assets can represent a principled and justifiable pathway, especially in asset-light and knowledge-driven businesses, while remaining aligned with statutory requirements and commercial substance.

### **Concluding Reflections**

The ruling in the T.V Today Network case reflects a judicial willingness to recognise the economic importance of human capital in modern businesses. At the same time, it highlights the legal complexities that arise when intangible assets are narrowly defined.

The assessee’s approach of attributing value specifically to workforce, while commercially justified, introduces questions that would not have arisen under a broader classification such as goodwill. These questions relate to the nature of the asset, its ownership and its amenability to depreciation.

Alternative structuring, such as allocating consideration to identifiable intangibles like customer contracts, subscription databases, advertiser relationships, distribution networks, content libraries, brand usage rights, domain names, platform technology, editorial processes, proprietary databases, or non-compete rights, may offer a more defensible pathway in certain cases, when these are firmly anchored in transaction documentation, supported by robust valuation, and reflective of genuine commercial substance.

Melody toffee never confined itself to a single identity, and that is precisely why the tagline resonates so deeply. Melody khao, khud jaan jao. It remained a blend and, in doing so, retained its strength.

In tax as well, there are moments where not over-defining may, in fact, be the more enduring position.

[This Article has been authored by our Founder, Shri Mayank Mohanka, FCA].