

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA Nos.540 and 541/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2005-06 and 2007-08

Asst.Commissioner of Income Tax,  
Central Circle, Kolhapur.

..... अपीलार्थी /  
Appellant

बनाम v/s

M/s.Dimension Construction  
Private Limited, 1148, E Ward,  
Sykes Extension, Kolhapur.

..... प्रत्यर्थी /  
Respondent

PAN : AABCD2744C

Assessee by : Shri M.K. Kulkarni.

Revenue by : Shri Vivek Aggerwal.

सुनवाई की तारीख / Date of Hearing : 19.12.2017	घोषणा की तारीख / Date of Pronouncement: 05.01.2018
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

These two appeals filed by the Revenue u/s 143(3) r.w.s. 147 of the Act are emanating out of a consolidated order of Commissioner of Income Tax (A) – 2, Kolhapur dt.05.01.2016 for the assessment years 2005-06 and 2007-08.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the Revenue are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and the Ld.CIT(A) has also passed a consolidated order and therefore the

submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus, both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts for assessment year 2005-06.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of construction of infrastructural facilities. Assessee filed its original return of income for A.Y. 2005-06 on 30.10.2009 declaring total loss of Rs.12,96,400/-. The return was initially processed u/s 143(1) of the Act on 28.02.2006. Thereafter, it was noticed by the AO that assessee had claimed depreciation on asset "Road over bridge" at Rs.75,58,208/-. AO was of the view that there is no specific provision under the I.T. Act to allow depreciation on such assets and therefore the claim made by the assessee is erroneous. Accordingly, notice u/s 148 dt.06.02.2009 was issued and served on the assessee. Thereafter, assessment was framed u/s 143 r.w.s. 147 of the Act vide order dt.30.10.2009 and the total loss before setting up of losses was determined at Rs.62,61,808/- by inter-alia disallowing the claim of depreciation. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who following the order of Tribunal in assessee's own case for A.Ys. 2002-03, 2003-04, 2004-05 and 2006-07 decided the issue in favour of the assessee by holding as under :

*"7. I have considered the submissions of the appellant. I find that the issue of depreciation on intangible asset viz. right to collection of toll from road over bridge, have been decided by the honourable Tribunal in the appellant's favour. The order of the ITAT, Pune Bench, A, Pune in*

*ITA No.222, 223, 233 and 857/PN/2009 is reproduced hereunder :*

*4..... In this regard, the learned AR pointed out that this issue is covered by the order of the Tribunal Pune Bench, Pune in the case of Ashoka Info (P) Ltd. Vs. Asstt. CIT (2009) 123 TTJ (Pune) 77 wherein with regards to intangible assets and toll collection rights the Tribunal observed that the investment made by the assessee towards construction of a road on built, operate and transfer (BOT) basis in terms of an agreement with the State Government and thereafter an independent right in the form of a licence of toll collection was granted to the assessee for a fixed period of 16 years and 9 months. Applying the doctrine of ejusdem generic for the purpose of interpretation of sec. 32(1)(ii), the word "licence" could be read along with the Page 4 of 6 ITA No. 222, 223, 233 & 857/PN/2009 Dimension construction A.Y. 2002-03, 2004-05, 2003-04 & 2006-07 words "commercial rights of similar nature". Therefore, the licence granted by the State Government for collection of toll was held as an intangible asset and depreciation was held to be allowable thereon. Nothing contrary was brought to our knowledge. Facts being similar, so following the same reasoning, we hold that the assessee was entitled to claim of depreciation on intangible asset viz. right to collect toll from the road over the bridge on the parity of reasoning that the assessee was not the owner inspite of the fact that the collection was treated as income of the assessee company and was also approved by the State Government.*

*Respectfully following the above decision of the jurisdictional Tribunal I hereby delete the additions made on account of depreciation in both the years under consideration. This ground of appeal is allowed."*

4. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

*"1. On the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the assessee was owner of the Right to Collect Toll as an intangible asset eligible for Depreciation under section 32(1) of the Income Tax Act, 1961, when no proof regarding ownership either actively or constructively.*

*2. On the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in accepting ownership of the assessee over the Right to Collect Toll when there was no proof provided by the assessee in support of the same.*

*3. The order of the Ld.CIT(A) may be vacated and the Assessing Officer be restored."*

5. Before us, Ld.D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that Ld.CIT(A) had rightly allowed the claim of depreciation of assessee by following the decision of Tribunal in

assessee's own case in ITA No.222, 223, 233 & 857/PN/2009 for A.Ys.2002-03, 2003-04, 2004-05 & 2006-07 dt.18.03.2011. He placed on record the copy of the aforesaid order and pointed to the relevant finding of the Tribunal. He further submitted that the facts in the year under consideration are identical to that of earlier years. He therefore submitted that the grounds raised by the Revenue needs to be dismissed.

6. We have heard the rival submissions and perused the material on record. We find that identical issue of depreciation on the intangible asset namely, right to collection of toll from 'road over bridge' was decided by the Co-ordinate Bench of the Tribunal in A.Ys. 2002-03, 2003-04, 2004-05 and 2006-07 in assessee's favour. We find that Co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2003-04 observed as under :

*"4. The next issue is regarding depreciation on intangible asset namely right to collection of toll from the road over bridge on the parity of reasoning that the assessee was not the owner. In this regard, the learned AR pointed out that this issue is covered by the order of the Tribunal Pune Bench, Pune in the case of Ashoka Info (P) Ltd. Vs. Asstt. CIT (2009) 123 TTJ (Pune) 77 wherein with regards to intangible assets and toll collection rights the Tribunal observed that the investment made by the assessee towards construction of a road on built, operate and transfer (BOT) basis in terms of an agreement with the State Government and thereafter an independent right in the form of a licence of toll collection was granted to the assessee for a fixed period of 16 years and 9 months. Applying the doctrine of ejusdem generic for the purpose of interpretation of sec. 32(1)(ii), the word "licence" could be read along with the words "commercial rights of similar nature". Therefore, the licence granted by the State Government for collection of toll was held as an intangible asset and depreciation was held to be allowable thereon. Nothing contrary was brought to our knowledge. Facts being similar, so following the same reasoning, we hold that the assessee was entitled to claim of depreciation on intangible asset viz. right to collect toll from the road over the bridge on the parity of reasoning that the assessee was not the owner inspite of the fact that the collection was treated as income of the assessee company and was also approved by the State Government."*

7. The aforesaid decision of the Tribunal has not been set aside, stayed or over-ruled by Higher Judicial Authorities. Before us,

Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case in the year under consideration and that of earlier years nor has placed any contrary binding decision in its support. In view of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A). Thus, the grounds of Revenue are dismissed.

**8. In the result, the appeal of the Revenue in ITA No.540/PUN/2016 for A.Y. 2005-06 is dismissed.**

9. As far as the grounds raised in appeal in ITA Nos.541/PUN/2016 for A.Y. 2007-08 is concerned, in view of the submission of both the parties that the facts of the case in the years being identical to the facts and issue of the case in ITA No.540/PUN/2016 for A.Y. 2005-06, we therefore for the reasons stated herein while disposing of the appeal in ITA No.540/PUN/2016 for A.Y. 2005-06 and for similar reasons, dismiss the grounds of appeal of Revenue. **Thus, the grounds of the Revenue are dismissed.**

**10. In the result, both the appeals of the Revenue are dismissed.**

Order pronounced on 5<sup>th</sup> day of January, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 5<sup>th</sup> January, 2018.

Yamini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Kolhapur.
4. The CIT-I/II, Kolhapur / CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,  
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// TRUE COPY //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.