

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.212/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Asst. Commissioner of Income Tax,
Circle – 1, Nashik

.... अपीलार्थी/Appellant

Vs.

M/s. Ashoka DSC Katni By-Pass Road Pvt. Ltd.,
Ashoka Marg, Wadala,
Nashik – 422101

.... प्रत्यर्थी / Respondent

PAN: AAECA4746J

अपीलार्थी की ओर से / Appellant by : Shri Prashant Gudekar
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / Date of Hearing : 04.12.2018	घोषणा की तारीख / Date of Pronouncement: 11.12.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by Revenue is against order of CIT(A)-1, Nashik, dated 23.11.2016 relating to assessment year 2013-14 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds of appeal:-

- 1.1 *Whether on the facts & circumstances of the case and in law the Ld CIT(A) has justified in allowing the depreciation @ 25% of Rs.4,90,43,230/- as claimed by the assessee on "License to collect toll".*
- 1.2 *Whether on the facts & circumstances of the case and in law whether the Ld CIT(A) was justified in holding that assessee was eligible to claim depreciation on 'License to collect Toll' considering it as an intangible asset in terms of section 32(1)(ii) of the Act.*
- 2) *The order of CIT(A) may be vacated and that of the Assessing Officer may be restored.*

3. Despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment. However, find that the issue raised in present appeal stands covered by the orders of Tribunal in earlier years, even in the statement of facts it is mentioned that the CIT(A) has relied on earlier decisions of Tribunal in the case of assessee itself relating to assessment years 2006-07 and 2007-08. Hence, we proceed to decide the present appeal after hearing the learned Departmental Representative for the Revenue.

4. The limited issue which is arising in the present appeal raised by Revenue against the order of CIT(A) in allowing depreciation @ 25% on "License to collect Toll". The Assessing Officer had denied the said depreciation to the assessee. However, the CIT(A) held the assessee to be eligible to claim depreciation considering the same to be an intangible asset in terms of section 32(1)(ii) of the Act. The relevant findings of CIT(A) are in para 4.3 which read as under:-

"4.3 I have carefully considered the facts of the case, the assessment order and the rival submissions. It is undisputed that the appellant has got the "Right to Collect Toll" for a specified period which is authorized by Government of Maharashtra, Public Works Division, Dist. Solapur. This "Right to Collect Toll" was considered as an asset by the appellant as the same was acquired as per the Governments order of BOT. This right of the appellant is a valuable right having commercial value. The appellant raised loans by assigning this "Right to Collect Toll" under the BOT scheme. On these facts, it can be said that the

"Right to collect Toll" is an intangible asset covered by the Income Tax Rules, 1962. The submissions and arguments made on behalf of the appellant have merit and, therefore, are accepted. Consequently, the appellant is held to be eligible for depreciation on this asset. This view is supported by the decision of the Hon'ble Tribunal in the case of sister concern of the appellant viz. Ashoka Info Pvt. Ltd. in I.T.A. No.44/PN/07 dated 31/12/2008 - Pune Bench, Ashoka Bridgeways in I.T.A. No. 686/PN/2012 A.Y. 2007-08 dated 29/04/2013 - Pune Bench, and another decision of the Hon'ble Tribunal in the case of Reliance Ports and Terminals Ltd. in I.T.A. Nos.1743 to 45/MUM/07 dated 26/11/2007 - Mumbai Bench. On identical facts in the case of appellant's sister concern namely Ashoka Bridgeways in I.T.A No.NSK/CIT(A)-I/49/2014-15 dated 24/07/2015, I have held that "Right to Collect Toll" is an intangible asset, eligible for depreciation @ 25%. In view of the above findings and respectfully following the orders of the Hon'ble Tribunal (supra) on this issue and to maintain consistency in the judicial orders, therefore, it is held that the "Right to Collect Toll" is an intangible asset and the same is eligible for depreciation @ 25% as per the claim made by the appellant. The AO is directed accordingly to allow depreciation of ₹ 4,90,43,230/-. This ground of appeal is allowed..."

5. The learned Departmental Representative for the Revenue has failed to bring to our notice any decision of the Hon'ble High Court reversing the view of Tribunal but has pointed out that the appeal against group concern is pending before the Hon'ble High Court. Since the issue admittedly, stands covered by the order of Tribunal and following the same parity of reasoning, we uphold the order of CIT(A). The grounds of appeal raised by Revenue are thus, dismissed.

6. In the result, the appeal of Revenue is dismissed.

Order pronounced on this 11th day of December, 2018.

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

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

पुणे / Pune; दिनांक Dated : 11th December, 2018.
GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik;
4. The Pr.CIT-1, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR
'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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