

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2641/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Deputy Commissioner of Income Tax,  
Central Circle – 1, Nashik

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Mahakaleshwar Tollways Pvt. Ltd.,  
202-A, MSJ House, 17/1-South Tukoganj,  
Indore – 452001

PAN : AAFCM7676Q

.....प्रत्यर्थी / Respondent

Assessee by : Shri K. Venkata Chalam  
Revenue by : Shri S.B. Prasad

सुनवाई की तारीख / Date of Hearing : 06-02-2019

घोषणा की तारीख / Date of Pronouncement : 11-02-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-13, Pune dated 29-07-2016 for the assessment year 2011-12.

2. The solitary issue in appeal is : Whether the assessee is eligible to claim depreciation on 'license to collect toll' considering it as an intangible

asset in terms of section 32(1)(ii) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

3. The brief facts of the case as emanating from records are : The assessee is engaged in development and construction of four laning of Indore-Ujjain Road on S.H. No. 27 from Chainage 5/2 at Indore to Chainage 53 at Ujjain on Build, Operate and Transfer (BOT) basis. The assessee claimed depreciation on ‘license to collect toll’ in its return of income. The Assessing Officer disallowed assessee’s claim holding that no intangible asset has been acquired by the assessee. In first appeal the Commissioner of Income Tax (Appeals) following the order of Tribunal in the case of M/s. Ashoka Infrastructure Limited Vs. ACIT in ITA No. 989/PUN/2010 allowed depreciation to the assessee, holding that the right to collect toll acquired by assessee is a depreciable intangible asset. Against the said findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal.

4. Shri K. Venkata Chalam appearing on behalf of the assessee vehemently defended the order of Commissioner of Income Tax (Appeals) and further draws strength by placing reliance on the following decisions of Tribunal :

- i. ACIT Vs. Ashoka Infracore (P.) Ltd., 33 taxmann.com 499 (Pune-Trib.);
- ii. ACIT Vs. M/s. Ashoka DSC Katni By-Pass Road Pvt. Ltd. in ITA No. 1637/PUN/2016;
- iii. Income Tax Officer Vs. M/s. Ashoka Highways (Bhandara) Ltd. in ITA No. 1630/PUN/2016.

5. On the other hand Shri S.B. Prasad representing the Department supported the order of Assessing Officer. The ld. DR submitted that the Revenue has filed appeal against the order of Tribunal in the case of M/s. Ashoka Infrastructure Limited Vs. ACIT (supra).

6. Both sides heard. The issue raised in present appeal was considered by the Co-ordinate Bench of the Tribunal in the case of M/s. Ashoka Infrastructure Limited Vs. ACIT (supra). The Tribunal held that 'right to collect toll' is an intangible asset and the assessee is entitled to claim depreciation on same. We find that consistent view has been taken by the Tribunal in various other cases where depreciation has been claimed on 'right to collect toll', considering it to be an intangible asset. The Hyderabad Special Bench of the Tribunal in the case of ACIT Vs. M/s. Progressive Construction Limited reported as 191 TTJ 549 has held that National Highway constructed on BOT basis gives rise to an intangible asset in the form of right to collect toll charges u/s. 32(1)(ii) and the assessee is eligible to claim depreciation on such asset. Thus, in view of the above decisions of the Tribunal we find no infirmity in the impugned order. Accordingly, the same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

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

Order pronounced on Monday, the 11<sup>th</sup> day of February, 2019.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(Vikas Awasthy)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> February, 2019.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-13, Pune
4. The DGIT (Inv), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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