

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos.1832 & 1833/Ahd/2016
(Assessment Years : 2012-13 & 2013-14)

DCIT, Patan Circle,
Patan-384 265

Vs. M/s. Ranjit Projects Pvt.
Ltd., 110, Old Market Yard
Unjha – 384 170.

[PAN No. AACCR 1363 Q]

(Appellant)

..

(Respondent)

Appellant by :

Shri S. K. Dev, Sr. D.R.

Respondent by :

Shri S. N. Soparkar, A.R.

Date of Hearing

09.01.2019

Date of Pronouncement

04.04.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

These two appeals filed by the revenue are against the order dated 28.04.2016 passed by the Commissioner of Income Tax (Appeals) - Gandhinagar, Ahmedabad under section 154 of the Income Tax Act, 1961 (hereinafter referred as to “The Act”) arising out of the order dated 22.02.2016 for the Assessment Year 2011-12 and dated 29.04.2016 passed by the Commissioner of Income Tax (Appeals) - Gandhinagar, Ahmedabad under section 143(3) of the Act arising out of the order dated 30.12.2015 for A.Y. 2012-13.

Since both the appeals relate to same assessee those are heard analogously and are being disposed of by a common order.

ITA No.1832/Ahd/2016 for A.Y. 2012-13:

2. In this instant appeal the revenue has challenged the order passed by the Learned CIT(A) in allowing amortization expenses of Rs.1,91,11,255/-. In the assessment proceeding u/s 143(3) of the Act for A.Y. 2012-13, the appellant filed revised computation of income claiming amortization expenses as per CBDT Circular along with the copy of the Memorandum of Understanding (MOU) dated 31.12.2001 and further agreement dated 02.01.2015. The AO, however, did not allow the amortization expenses claimed but allowed depreciation as claimed in the return of income at Rs.80,46,626/- without any adjudication of the claim. The amortization expenses claimed by and under letter dated 02.01.2015 in terms of CBDT Circular. The appeal preferred by the assessee for allowing such amortization expenses was further rejected by the Learned CIT(A) wherein application u/s 154 dated 14.09.2015 has been filed before the Learned AO to rectify the assessment u/s 154 and to allow amortization expenses of Rs.1,92,64,308/- in terms of the CBDT Circular No. 09/2014 dated 28.04.2014.

Thereafter, by and under letter dated 21.12.2015 certain documents including certified copies of the Chartered Accountant in respect to depreciation admissible under both method i.e. WDV and SLM under the Companies Act, 1956 for F.Y. 2011-12 relevant to A.Y. 2012-13 along with the details of depreciation claimed in the earlier years, used in the current year while changing method of depreciation as well as the complete working of the depreciation so claimed for the year under reference were called for by the Learned AO. However, the said certificate was not furnished by the assessee on the ground that the same was not required. The Learned AO was pleased to reject the claim on the ground that the documents as asked for were not furnished by the assessee. Furthermore, the claim of deduction of amortization expenses was claimed only before the Learned CIT(A) during the appellate proceeding and not in the return of income who

in turn rejected such claim on 07.08.2015. No mistake, therefore, found apparent from the records which could have been rectified by the Learned AO and hence rejected. In appeal, the same was allowed, hence the instant appeal filed by the Revenue before us.

3. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the amortization expenses is allowable in view of the CBDT Circular dated 23.04.2014 and the same was not required to be supported by CA Certificate. Furthermore, the claim of amortization was not rejected by the AO on merit. The Learned Counsel further contended before us that the Learned AO in A.Y. 2011-12 allowed amortization of Rs.90,39,827/- by and under its orders dated 23.07.2014 based upon expenditure already incurred upon upto A.Y. 2011-12 and also the same was allowed for A.Y. 2013-14 u/s 143(3) of the Act. Aggregate amortization allowable as per CBDT Circular Rs.1,91,11,255/- as against the claim of appellant for Rs.1,92,64,309/- was thus allowed by the Learned CIT(A). On the contrary the Learned DR relied upon the order passed by the Learned AO.

4. We have heard the respective parties, we have also perused the relevant materials available on record and also the CBDT Circular relied upon by the appellant in the proceeding below. The CBDT Circular being No.09/2014 dated 28.04.2014 has clarified as under:

“4. There is no doubt that where the assessee incurs expenditure on a project for development of roads/highways, he is entitled to recover cost incurred by him towards development of such facility (comprising of construction cost and other pre-operative expenses) during the construction period. Further, expenditure incurred by the assessee on such BOT projects brings to it an enduring benefit in the form of right to collect the toll during the period of the agreement. Hon’ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. vs. CIT in 225 ITR 802 allowed spreading over of liability over a number of years on the ground that there was continuing benefit to the company over a period. Therefore, analogously, expenditure incurred on an infrastructure project for

development of roads/highways under BOT agreement may be treated as having been made/incurred for the purposes of business or profession of the assessee and same may be allowed to be spread during the tenure of concessionaire agreement.”

It appears from the CBDT Circular that the claim of amortization is bound to be allowed. Neither the CBDT Circular provides that the amortization of cost need to be allowed on the basis of CA Certificate. It is also on record that the Learned AO has already allowed such expenditure incurred for A.Y. 2011-12 while finalizing assessment u/s 143(3) of the Act. We have carefully considered the order passed by the Learned CIT(A). Taking into consideration the detailed computation the Learned CIT(A) passed orders in favour of the assessee in the manner as follows:

4.3 I have considered the facts of the case, order passed by the AO and submission made by the appellant. Appellant has claimed depreciation of Rs.86,10,762/- including depreciation, of Rs.80,46,626/-on bridge project. The claim of deprecation was allowed by the AO while passing the assessment order u/s 143(3). The appellant has filed appeal against the above order u/s 143(3) dated 13/2/2015 for various other additions made by the AO and also raised ground of allowing amortization of bridge expenses in view of Circular No.9/14 dated 28/4/2014. The above claim was rejected by the undersigned vide order dated 7/8/2015 on the ground that same is not emanating from assessment order. Subsequently, appellant vide application dated 14/9/2015 u/s 154 of the Act requested the AO to allow amortization of bridge expenses in view of CBDT's Circular and same is not supported by CA Certificate and claim is already rejected by CIT(A) in quantum proceedings.

On careful consideration of entire facts, it is observed that CBDT Circular is binding on AO and AO is bound to allow claim as per such Circular. It is observed that claim of amortization was not rejected by the undersigned on merits. It is also observed that CBDT Circular nowhere provides that amortization of cost of project need be allowed on the basis of CA Certificate. It is pertinent to note that AO while giving effect to appeal order of AY 2011-12 has already allowed amortization of Rs.90,39,827/- vide order dated 23/07/2014 based upon expenditure already incurred upto AY 2011-12. Even AO has particularly allowed such amortization while passing the assessment order u/s 143(3) for AY 2013-14, hence, AO cannot reject such claim on the ground that same is not supported by CA's Certificate.

So far as quantum of amortization is concerned, appellant has claimed deduction of Rs.1,92,64,309/- as under:

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|----|--|--------------|
| 1. | Expenditure incurred upto AY 11-12 is not allowed as deduction (net of depreciation) A | 7,23,18,615 |
| 2. | Amortization' of such expenditure upto agreement | 8 years |
| 3. | Allowable Amortization [A/B] in AY 11-12 (D) | 90,39,827 |
| 4. | Balance Expenses[A-D] (E) | 6,43,50,162 |
| 5. | Additional Expenses incurred in AY 12-13 (F) | 7,05,00,000 |
| 6. | Total Expenses G=E + F | 13,48,80,162 |
| 7. | Claim of Amortization [G/7] | 1,92,64,309 |

It is observed that upto AY 2011-12, bridge cost net of depreciation is Rs.7,33,89,929/- and balance period of agreement is 8 years hence AO is directed to allow amortization cost. For such expenses at Rs.90,39,027/- as allowed while giving effect to appeal order of AY 2012-13.

So far as additional cost of Rs.7,05,00,000/- incurred in AY 2012-13, it is observed that appellant has excluded Rs.7,05,00,000/- from cost of bridge against guarantee of Ranjit Construction Co., to compensate in certain contingent event and now as per agreement dated 13/11/2011, guarantee is revoked hence it was claimed as cost and amortization, was claimed. It is pertinent to note that in return of income, as appellant was claiming depreciation, it has considered Rs.7,05,00,000/- as cost and after notionally computing depreciation from AY 2003-04 to 2011-12, revised WDV was considered at Rs.2,88,30,547/- and on the same depreciation was claimed. This claim was allowed by the AO, hence, he had accepted cost of Rs.7.05 crore towards bridge construction. Now, when appellant is entitled to amortization and depreciation thereof is actually not allowed if, it is entitled to amortization for 7 years as per CBDT Circular. This claim of appellant is found to be correct and same is supported by copy of MOD .dated 31/12/2001 and agreement dated 13/11/2011 filed with AO on 02/01/2005 during assessment proceedings. Thus, appellant is entitled to amortization of Rs.1,00,71,428/- on such expenditure. Thus aggregate amortization allowable as per CBDT Circular is Rs.1,91,11,255/- as against claim of appellant for Rs.1,92,64,309/-. The AO while giving effect to this order will withdraw depreciation on bridges construction already allowed in assessment order.

Subject to above direction, the grounds of appeal are allowed.”

In fact during the assessment proceeding A.Y. 2011-12, the assessee filed the details of depreciation claimed on BOT Project Cost for the A.Y. 2010-11 and on the basis of such facts the amortization expenses was allowed at Rs.90,39,827/- for A.Y. 2011-12.

In this case, it appears that taking into consideration the CBDT Circular as discussed above against the claim of the appellant for amortization, the Learned CIT(A) had given a reasoned order as to why the appellant is entitled to amortization for seven years which is further supported by the MOU dated 31.12.2001 and also the agreement dated 13.11.2011. We find no infirmity in such order, hence the same is upheld. The revenue's appeal thus devoid on merit is dismissed.

ITA No.1833/Ahd/2016 for A.Y. 2013-14:

5. In this appeal, the revenue has challenged the order passed by the Learned CIT(A) in allowing deduction of Rs.3,51,14,918/- claimed u/s 80IA(4)(i) of the Act and in allowing amortization expenses of Rs.1,91,11,255/- as against disallowance made by the AO of Rs.1,00,71,428/-. At the very outset of the proceeding the Learned Counsel appearing for the assessee submitted before us that the issue relating to the deduction u/s 80IA(4) is covered by the judgment passed by the Co-ordinate Bench in ITA No.2296, 2304 & 2305/Ahd/2014 for A.Y. 2009-10, 2010-11 & 2011-12 respectively in assessee's own case. He therefore prayed for the same relief. A copy of the said order dated 27.10.2017 passed by the Hon'ble Tribunal has already been handed over to us by the Learned AR. However, the Learned DR failed to controvert the contentions made by the Learned AR in this respect.

6. We have heard the respective parties and perused and perused the relevant materials available on record. It appears by and under an order dated 27.10.2017, the Learned Tribunal disposed of the appeal preferred by the revenue in favour of the assessee with the following observation:

“9. Learned AR cited an order of ITAT Bench (Pune) [2016] 69 taxmann.com 78 (Pune-Trib), in the case of Kirloskar Brothers Ltd. vs. DCIT. In this case, it was also contended by the Revenue is that the assessee does not fulfil the condition prescribed in sub-clause (b) of clause (i) to sub-section (4) of section 80IA of the Act. In terms of the said objection, the Revenue contends that assessee has entered into a works contract agreement with SSNNL which is not an entity specified in sub-clause (b) of section 80IA(4)(i) of the Act. According to the Revenue, SSNNL is not a Central Government or State Government or a local authority or any other statutory body, so as to be considered as an entity specified in sub-clause(b) of section 80IA(4)(i) of the Act. As per the Revenue, SSNNL is a company registered under the Companies Act, 1956 and does not fall within the prescription of sub-clause (b) of section 80IA(4)(i) of the Act. As per the Revenue, though the entire share capital in the said company is owned either by the Central or the State Government, yet it can only be called a 'Government company' but it does not come within the purview of the entities specified in sub-clause (b) of clause (i) of section 80IA(4) of the Act.

In this matter, the learned counsel for the assessee has vehemently reiterated the position of the assessee taken before the lower authorities to the effect that the contract with SSNNL fulfills the condition prescribed in section 80IA(4)(i)(b) of the Act. The arguments of the assessee were two-fold. Firstly, it has referred to the judgements of the Hon'ble Supreme Court in the case of (i) Som Prakash Rekhi vs. Union of India & AIR 1981 SC 212; and, (ii) Pradeep Kumar Biswas & Ors. vs. Indian Institute of Chemical [Appeal (Civil No.992 of 2002, dated 06/04/2002], In this judgements, it is canvassed that an entity, like SSNNL, is liable to be considered as an instrumentality or an agency of the Government, and thus, it qualifies to an entity specified in section 80IA(4)(i) of the Act. Secondly, it is sought to be made out that having regard to the background and peculiar features of SSNNL, the said concern is executing Governmental functions and is not engaged in any commercial activities.

All kinds of infrastructure facilities referred in section 80IA(4)(i) of the Act, like Railways, ports, dams, bridges, roads, etc. are always owned by the Government and cannot be owned by private owners. So however, for an efficient execution and handling of such infrastructure facilities, the governments form a

Special Purpose Vehicle (SPV) in the form of separate entity registered under the Companies Act, 1956. It was, therefore, contended that even if such like entities are incorporated under the provisions of the Companies Act, 1956 still having regard to the functions performed, they have to be considered as mere extensions of the Government.

Hon'ble Supreme Court in the case of Som Prakash Rekhi (supra) and Pradeep Kumar Biswas & Ors. (supra) are fulfilled and SSNNL is liable to be considered as a 'statutory body' falling within the meaning of section 80IA(4)(i)(b) of the Act.

10. Similarly in this case, the entire project was clearly not only executed in agreement with GSRDC but the Gujarat Government directly was involved in the agreements for the project.

11. In our considered opinion, assessee has developed, operated and was to transfer the project in agreement with the constitutional body i.e. an agency as defined under section 2(e) of the Gujarat Infrastructure Development Act, 1999 under the Gujarat Government Act and also in direct and explicit agreement and approval of Gujarat government which has given land and allowed to collect toll fee.

Assessee company fulfills the conditions as required under [section 80IA\(4\)](#) including [Section 80IA\(4\)\(i\)\(b\)](#) and has developed, operated and was to transfer the infrastructure facility and therefore, is eligible for the deduction claimed under the section.

12. With the above observation, we are of the considered opinion that GSRDC is an extended arms of the Gujarat State and is entitle to eligible for deduction. Therefore, we dismiss all three appeals in ITA Nos. 2296, 2304 & 2305/Ahd/2014 for Asst. Years 2009-10, 2010-11 & 2011-12 respectively.”

Respectfully relying upon the said judgment, we decide the matter in favour of the assessee having no infirmity found in the order passed by the Learned CIT(A) as impugned before us. Thus ground of appeal preferred by revenue is dismissed.

The issue relates to allowing amortization by the Learned CIT(A) has already been dealt with by us hereinabove in ITA No.1832/Ahd/2016 for A.Y. 2012-13 and in the absence of any change of circumstances the same shall apply modus operandi. Hence, this appeal of revenue is also dismissed.

7. In the result, both the revenue's appeals are dismissed.

This Order pronounced in Open Court on

04/04/2019

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 04/04/2019

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-Gandhinagar, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad