

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2514/AHD/2016
(Assessment Year: 2013-14)**

DCIT, Ahmedabad	Circle-1(1)(2),	V/S	M/s. Chittorgarh Kota Tollway Pvt. Ltd. 222, Adwait Complex, Nr. Sandesh Press, Vastrapur, Ahmedabad
(Appellant)			(Respondent)

PAN: AA ECC3027C

**Appellant by : Shri Lalit P. Jain, Sr. D.R.
Respondent by : Shri Jaimin Shah**

(आदेश)/ORDER

Date of hearing : 12 -02-2019

Date of Pronouncement : 26 -04-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 22.07.2016 pertaining to A.Y. 2013-14 and following ground has been taken:

1. " That the Id. CIT(A) erred in law and on facts in deleting the addition of Rs. 4,10,06,609/- made on account of disallowance of Project Facilities Expenses."

2. DISALLOWANCE OF PROJECT FACILITY FOR RS. 4.10.06,609/-:

3. The Ld. A.O has made the observation in para no. 3 of the assessment order as under:

"A careful perusal of the explanation of the assessee, It can be seen that it has based its claim on two counts. Firstly, It is the contention of the assessee that construction of Metal Crash Barrier is a contractual obligation and secondly, the project facility do not creat any assets or benefit of enduring nature to the assessee. Before discussing the assessee's contractual liability, I would like to discuss factual position of expenditure of Rs. 4,83,71,954/-claimed by the assessee.

As per the assessee's own submission, the expenditure claimed is revenue in nature. From the ledger account filed by the assessee, It is seen that there is an opening balance of Rs. 4,10,08,609/- and during the year the assessee has incurred expenditure mainly on labour charges of Rs.73,65,345/-. If the assessee's own submission that this is a revenue expenditure then the assessee ought to have claimed such expenditure in the year in which it incurred. The assessee failed to offer any convincing explanation for not claiming such expenditure in the year in which it incurred. As stated above, there is an opening balance of Rs. 4,70,06,609/-which clearly shown that majority of the expenditure claimed during the year was incurred in earlier years. When the assesses is maintaining its account in mercantile system, such expenditure would have been claimed in the . year in which such expenditure was incurred.

For claiming expenditure of Rs. 4,10,06,609/- during the year, it is the explanation of the assessee that the project is completed during the year under consideration. A careful perusal of the Schedule-B to clause-2.1 of Concession Agreement, It can be seen that the assessee has to construct safety barrier

(metal beam crash barrier), pavement marking, traffic signal etc. From the details of work to be completed by the assessee, it is crystal clear that there is no big project which could be completed in a year and such expenditure is to be shown as WIP. For example, the expenditure incurred on marking of pavement to be applied need not be shown as WIP. As regards, the construction of safety barrier, as per the terms of contract the assessee has to prepare a safety crash barrier along the highway upto 20000 Mtrs. The assessee failed to offer any explanation why the expenditure incurred in the earlier years has not been claimed in the year in which it incurred. The assessee itself admitted that the project facility do not create any assets to the assessee while incurring the expenses. At this juncture, it is worthwhile to point out here that in the immediately preceding year the assessee has shown profit before tax at Rs. 65.79 lakh and claimed deduction of Rs. 46,50,756/- u/s. 801A of the Act. Had the expenditure of Rs. 4,10,06,609/- was claimed in the year 2011-12, the net result would be loss in that year and the assessee was not entitled to claimed deduction u/s. 801A of the Act. This clearly shows that the assessee has maintaining its books of account in such a manner that it take undue benefit of construction granted in the Act. Such an unethical practice has no place in the Act.

It may further pointed out here that as per the concession Agreement, the assessee has to complete, the construction of crash barrier within 180 days of COD (Commercial Operation Date). The date of COD of the project is 01/08/2011 hence, the assessee ought to have complete these works before February - 2012. As stated above, the profit of the assessee for the immediately preceding year was only Rs. 65.79 lakh excluding the expenditure of Rs. 4.16/- crore. The expenditure of Rs. 4,10,06,609/- claimed by the assessee in the F.Y. 2011-12 relevant to A.Y. 2012-13, the claim of deduction of Rs. 65.79 lakh u/s. 801A of the Act would not have arisen. From the above it is crystal clear that the expenditure of Rs. 4,10,06,609/- was incurred in the earlier year and the assessee has not claimed the same for obtaining undue benefit of claiming deduction u/s. 801A of

the Act by maintaining its books of account to suite the assessee's claim. As stated above, the expenditure of Rs. 4,10,06,609/- claimed by the assessee is not incurred during the year and as such the same is disallowed. The assessee furnished Form No. 10CCB and as per the Form No. 10CCB, and the auditor has worked out deduction u/s. 80IA of the Act to the tune of Rs. 1,26,00,532/- and as such the deduction u/s. 80IA of the Act is allowed to the extent of Rs. 1,26,00,532/- as worked out by the auditor. Penalty proceedings u/s. 271(1)(c) of the Act are being separately initiated."

4. The Ld. A.O. has not considered the submission made by appellant on 10.09.2015 wherein the appellant has mentioned that the expenditure was required to be incurred as per the contractual obligation as the agreement entered in to with NHAI.
5. The Ld. A.O. has not considered the fact that the expenditure incurred for project metal barrier which was contractual obligation which was required to be fulfilled by the company as per agreement entered in to with NHAI. As these project facilities are required to be built up on the national highway owned by the government, management was of the opinion that these project facilities do not create any asset or benefits of enduring nature and hence are revenue expenditure and are treated accordingly as and when the project facilities are ready for use.
6. The part of the expenditure of Rs. 4,10,06,609/- on project facilities were incurred by the appellant company in previous year and kept as work in progress under non-current expenses and disclosed in the balance sheet of previous year and claimed the entire expenditure of Rs. 4,83,71,954/- on completion of the project facilities in the current year.

7. The statutory auditor has also considered the same as current year expenses and no adverse or other comments for the said expenses as prior period expenses were made in the audited balance sheet or tax-audit report. But ld. A.O. was not agree with the contention of the assessee and disallowed expenses of Rs. 4,10,06,609/- .
8. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the assessee.
9. Now revenue has come before us.
10. We have gone through the relevant record and impugned order. Assessee company carries on the business of providing operation, maintenance and transfer services (OMT) to Chittorgarh-Kota National Highway-76 in the Rajasthan state for collection of toll tax/fee. On verification of the ledger account of Project Facilities Expense, it is noticed that the assessee has debited an amount of Rs. 4,83,71,954/- under the head Project Metal Crass Barrier Expense. The expenditure incurred for project metal crass barrier is a contractual obligation to be fulfilled by company as per Schedule-B of the concession agreement entered in to with NHAI. Company does not have right of any reimbursement or claim of money from NHAI for the said facilities. As these project facilities are required to be built up on the national highway owned by government, Management is of opinion that these project facilities do not create any assets or benefit of enduring nature and assessee/ appellant made expenses of Rs. 4,10,06,609/- for safety barrier pavement marking, traffic signal etc. as per term and agreement of the contract with the NHAI. But ld. A.O. disallowed the claim of the appellant on the ground that above said

amount was spent in earlier year and not in the year under consideration. In this case, the rate of tax are same as compared to earlier year and there is no loss to the revenue.

11. In support of its contention, ld. A.R. cited a judgment of Delhi High Court in the case of Vishnu Industrial Gases P. Ltd. vs. CIT which was followed in the case of CIT vs. Nagri Mills 33 ITR 681 wherein it is held that “ *where the department had not disputed that the expenditure was deductible in principle but was only disputing the year in which the deduction could be allowed. Held, castigating the department, that as the tax rates were the same in both years, the department should not fritter away its energies in raising questions as to the year of deductibility/ taxability.*”

12. Respectfully following the aforesaid judgment, we dismiss appeal of the department.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 26 - 04- 2019

Sd/-

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 26/04/2019

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad