

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad Benches, 'B' Bench, Hyderabad
(Through Video Conference)**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member**

**ITA Nos. 1818 & 1819/Hyd/2017
A.Ys: 2010-11 & 2011-12**

M/s Madhucon Agra Jaipur
Expressways Limited
Hyderabad

Vs
Dy.CIT, Circle 16(2)
Hyderabad

PAN:AAECM4426F

(Appellant)

(Respondent)

For Assessee : Sri P. Murali Mohana Rao, AR

For Revenue : Smt. Divya KJ, DR

Date of Hearing: 08.10.2020

Date of Pronouncement: 12/10/2020

ORDER

PER P.MADHAVI DEVI, J.M.

These are assessee's appeals for A.Y. 2010-11 and 2011-12 respectively against separate orders of the CIT(A)-4, Hyderabad dated 31.08.2007.

The appeals were taken up for hearing through video conference on 08.10.2020, and both the parties were heard.

2. Brief facts of the case are that the assessee company, engaged in the business of infrastructure development, filed its return of income for relevant A.Ys. During the assessment proceedings u/s 143(3) of the

I.T.Act, 1961, the AO observed that the assessee has claimed 25% depreciation on roads and bridges. However, the AO restricted the depreciation @ 10% instead of 25% by relying on the Concession Agreement. Aggrieved, assessee preferred an appeal before the CIT(A), and the CIT(A) has disposed of the appeal ex parte since none appeared on behalf of assessee. Aggrieved the assessee is in second appeal before us by raising the following grounds of appeal.

For A.Y. 2010-11

- 1) *The order of the Ld. CIT (A)-4, Hyderabad is erroneous both on facts and in law.*
- 2) *The Ld. CIT (A) erred in dismissing the appeal.*
- 3) *The Ld. CIT (A) ought to have considered and discussed on the grounds raised by the assessee.*
- 4) *The Ld. CIT (A) ought to have appreciated the fact that the provisions of the Income tax Act cannot be influenced, defined or overturned with agreements by outside parties.*
- 5) *The Ld. CIT (A) ought to have considered the fact that the Appellant is not the owner of the Road project; but they are only concessionaire; which are supposed to act on the basis of the concession agreement entered with NHAI.*
- 6) *The Ld. CIT (A) ought to have appreciated that the A.G. erred in finalizing the cost of the project on the basis of the Concession agreement Clause No. XXXVIII, wherein it was written that for the purposes of claiming tax depreciation, the property representing the capital investment made by the Concessionaire shall be deemed to be acquired and owned by the Concessionaire ignoring the fact that the cost of the asset would be determined as per the provisions of the Income tax Act; and not on the basis of the agreements of outside parties.*
- 7) *The Ld. CIT (A) ought to have appreciated that the Clause No. XXXVIII: Rights and Title over the Site, wherein it was drafted that the Concessionaire shall have exclusive rights to the use of the site in accordance with the provisions of this agreement and for this purpose it may regulate the entry and use of the project highway by third parties.*
- 8) *The Ld. CIT (A) ought to have appreciated the fact that the assessee claimed depreciation @ 25% on the "Carriageways" which is shown under assets in books of accounts.*
- 9) *The Ld. CIT (A) ought to have appreciated the fact that the assessee company has not constructed any buildings and roads cannot be considered under Building categories.*
- 10) *The Ld. CIT (A) ought to have appreciated the fact that right to collect toll in Concession Agreement is an intangible asset under section 32(1)(ii) of the Act and accordingly depreciation should be allowed @ 25%.*
- 11) *The Ld. CIT (A) ought to have appreciated the AO erred in incorrectly calculating the total cost of project at Rs. 295,30,55,057/- instead of Rs. 326,70,55,057/- as calculated by the assessee company.*
- 12) *The Ld. CIT (A) ought to have appreciated that considering clause 23.3 of the agreement between the assessee and the NHAI, wherein it was*

stated that the amount of grant received by the assessee will be treated as a part of the shareholders fund.

- 13) *The Ld. CIT (A) ought to have appreciated the fact that entire expenditure of Rs. 3,26,70,55,057/- incurred from internal funds and should be taken as the total cost of the project without reducing any grant amount received from NHAI.*
- 14) *The Ld. CIT (A) ought to have appreciated the fact that NHAI Grant is not for the purpose of acquiring any particular asset and hence it should not be deducted from Cost of the Project.*
- 15) *The assessee may add, alter or modify or substitute any other point to the Grounds of appeal at any time before or at the time of hearing of the appeal.*

For A.Y. 2011-12

- 1) *The order of the Ld. Commissioner of Income Tax (Appeals) - 4, Hyderabad is erroneous both on facts and in law.*
- 2) *The Ld. CIT (A) erred in not giving proper opportunity of being heard to the appellant.*
- 3) *The Ld. CIT (A) erred in confirming disallowance of depreciation of Rs.34,64,09,947 / - which is not correct.*
- 4) *The assessing officer ought to have appreciated the fact that the assessee company has capitalized the expenditure of Rs. 61,25,72,823/- as per the CBDT circular no.9/2014.*
- 5) *The Ld. CIT (A) ought to have considered the information which was available on file.*
- 6) *The Ld. CIT (A) ought to have appreciated the fact that the Appellant is not the owner of Road Project; but they are only concessionaire; which are supposed to act on the basis of the concession agreement entered with NHAI.*
- 7) *The Ld. CIT (A) ought to have appreciated the fact that the provisions of the Income Tax Act cannot be influenced, defined or overturned with agreements by outside parties.*
- 8) *The Ld. CIT (A) ought to have appreciated that the A.G. erred in applying the rate of depreciation at 10% instead of 25%, which is applicable to the owners of the property; whereas in the case of appellant, the depreciation was calculated on the right of toll collection, which is intangible asset and the rate applicable is 25%, as per the Depreciation schedule of I.T Act.*
- 9) *The Ld. CIT (A) ought to have appreciated the fact that the assessee claimed depreciation @ 25% on the "Carriageways" which is shown under the Intangible assets in books of accounts.*
- 10) *The Ld. CIT (A) ought to have appreciated the fact the assessee company has not constructed any buildings and roads cannot be considered under Building categories.*
- 11) *The Ld. CIT (A) ought to have appreciated the fact that right to collect toll in Concession Agreement is an intangible asset under section 32(1)(ii) of the Act and accordingly depreciation should be allowed @ 25%.*
- 12) *The Ld. CIT (A) ought to have appreciated that the AO erred in incorrectly calculating the total cost of project at Rs. 295,30,55,057/- instead of Rs. 326,70,55,057/- as calculated by the assessee company.*

- 13) *The Ld. CIT (A) ought to have appreciated that the A.O. erred in reducing the NHAI equity grant of Rs.38.40 crores from the cost of the road project, which is the part of the equity capital as part of the tender agreement.*
- 14) *The Ld. CIT (A) ought to have appreciated that the AO erred in deducting the capital grant of Rs. 38.40 Crores without considering clause 23.3 of the agreement between the assessee and the NHAI, wherein it was stated that the amount of grant received by the assessee will be treated as a part of the shareholders fund.*
- 15) *The Ld. CIT (A) ought to have appreciated the fact that entire expenditure of Rs.3,26,70,55,057/ - incurred from internal funds and should be taken as the total cost of the project without reducing any grant amount received from NHAI.*
- 16) *The Ld. CIT (A) ought to have appreciated the fact that NHAI Grant is not for the purpose of acquiring any particular asset and hence it should not be deducted from Cost of the Project.*
- 17) *The assessee may add, alter or modify or substitute any other point to the Grounds of appeal at any time before or at the time of hearing of the appeal.*

3. As seen from the assessment order as well as from the order of CIT(A), the assessment was completed u/s 143(3) r.w.s. 144 of the I.T.Act, 1961 and the first appeals before the CIT(A) have been dismissed as none appeared for the assessee and no information was furnished before the CIT(A). Ld.Counsel for the assessee submitted before us that the assessee has all the relevant details and if given an opportunity, the assessee is ready to submit all the details before the A.O. Assessee therefore prayed for remand of the issue to the file of A.O.

3.1. Ld.DR did not seriously object to the remand of the matter to the file of A.O.

4. In view of the same, we deem it fit and proper to set aside the assessments for both the A.Ys, and remand the issues to the A.O. for de-novo consideration in accordance with law after affording the assessee an opportunity of hearing. Assessee is directed to furnish all the relevant details before the A.O. within a period of 01 month from

the date of receipt of this order and cooperate with the AO for early completion of the assessment proceedings.

5. In the result, appeals of the assessee for both the AYs are treated as 'allowed for statistical purposes'.

Order pronounced in the Open Court on 12th October, 2020.

Sd/-
(A. Mohan Alankamony)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Dated: 12th October, 2020

*Gmv

Copy to:

1. M/s Madhucon Agra Jaipur Expressways, C/o P.Murali&Co., C.As, 6-3-655/2/3, 1st floor, Somajiguda, Hyderabad 500 082.
2. Dy.CIT, Circle 16(2) Hyderabad.
3. CIT(A)-4, Hyderabad.
4. Pr.CIT-4, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard File.