

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA Nos.1525 to 1527/PUN/2018

निर्धारण वर्ष / Assessment Years : 2012-13 to 2014-15

ACIT, Central Circle-1, Nashik	Vs.	M/s. Jaora Nayagaon Toll Road Company Pvt. Ltd., 201, Princess Centre, 6/3, New Palasia, Indore, MP – 452001 PAN : AABCJ8790J
Appellant		Respondent

Assessee by  
Revenue by

Shri Peeyush Kumar Jain  
Shri Mohit Jain

Date of hearing

11-01-2022

Date of pronouncement

11-01-2022

आदेश / ORDER

PER R.S.SYAL, VP :

These three appeals by the Revenue are directed against the consolidated order dated 13-06-2018 passed by the CIT(A)-12, Pune in relation to the assessment years 2012-13 to 2014-15. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2012-13 :

2. The only issue raised in the appeal is against the deletion of disallowance of depreciation amounting to Rs.1,51,60,79,840/- claimed by the assessee at 25% on “License to collect toll”.

3. Succinctly, the facts of the case are that the assessee constructed road on BOT basis. A return was filed declaring Nil income and business loss of Rs.140.75 crore was claimed for carry forward. During the course of assessment proceedings, it was observed by the AO that the assessee claimed a sum of Rs.151.60 crore as depreciation on “Concessionaire Right”. The assessee had capitalised the expenditure incurred on BOT projects and claimed depreciation on the written down value accordingly. The AO observed that the assessee could not be treated as the ‘owner’ of the property as the Road which was developed by it on BOT basis was not owned by it. On being confronted, the assessee submitted that the expenditure incurred by it on constructing and maintenance of road facility was actually incurred towards “Acquiring right to collect toll” which formed an ‘Intangible asset’ eligible for depreciation u/s.32(1)(ii) of Act. Not convinced, the AO made disallowance of depreciation of Rs.151.84 crore which got allowed

in the first appeal. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

4. We have heard both the sides through Virtual Court and gone through the relevant material on record. The issue in question is about allowing depreciation on cost of construction of Roads against which the assessee has been made entitled to collect toll tax. The AO denied depreciation on the ground that the assessee was not the owner of the roads which were constructed on BOT basis. As against that, the Id. CIT(A) deleted the disallowance by observing that similar issue has been decided in faovur of the assessee in earlier years. The Id. AR has placed on record a copy of the order passed by the Tribunal for the immediately two preceding assessment years: 2010-11 and 2011-12. Vide order dated 29-11-2017, the Tribunal in *ITA Nos. 379 & 380/PUN/2016* dealt with such issue and held the assessee to be eligible for depreciation on the “Right to collect toll”, being, an intangible asset. The Tribunal, in turn, followed another order of the Coordinate Bench in *Ashoka Highways (Bhandara) [ITA No.1299/PUN/2015]* which held that the cost of constructing road was akin to “Right to collect toll”, being, an intangible asset. The

ld. DR fairly admitted the position in this regard. Respectfully following the Tribunal order passed in the assessee's own case for the immediately preceding two assessment years, we uphold the impugned order.

5. The other two years, namely, assessment years 2013-14 and 2014-15 involve identical issue of granting depreciation on 'Intangible asset' of 'Right to collect toll' by the ld. CIT(A) amounting to Rs.1,57,86,56,832/- and Rs.1,20,18,37,835/- respectively. Both the sides are in agreement that the facts and circumstances in these appeals are *mutatis mutandis* similar to those of the assessment year 2012-13. Following the view taken hereinabove, we countenance the view taken by the ld. CIT(A).

6. In the result, all the appeals are dismissed.

Order pronounced in the Open Court on 11<sup>th</sup> January, 2022.

Sd/-  
**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 11<sup>th</sup> January, 2022  
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The Pr.CIT, Central, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A',  
ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	11-01-2022	Sr.PS
2.	Draft placed before author	11-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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