

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “A”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.142/PUN/2021
निर्धारणवर्ष / Assessment Year : 2017-18

The Deputy Commissioner of Income Tax, Central Circle-1, Nashik.	Vs	M/s. Jaora Nayagaon Toll Road Company Pvt. Ltd., 201, Princess Centre, 6/3, New Palasia, Indore, Madhya Pradesh – 452001. PAN: AABCJ 8790 J
Appellant/ Assessee		Respondent /Revenue

Assessee by	None
Revenue by	Shri B Koteswra Rao – DR
Date of hearing	08/09/2022
Date of pronouncement	27/09/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This Revenue’s appeal for Assessment Year 2017-18 is directed against the Commissioner of Income Tax(Appeal), Pune-12’s order no.ITBA/APL/S/250/2020-21/1031081099(1) dated 28.02.2021, in proceedings u/s.250 of the Income Tax Act, 1961 [in short “the Act”].

2. The Revenue’s sole substantive grievance raised in the instant appeal challenges correctness of the CIT(A)’s action reversing assessment findings dated 22.12.2019 disallowing the assessee’s depreciation claim amounting to Rs.51,39,35,639/- pertaining to its “right to collect toll” as an intangible asset under section 32(1)(ii) of

the Act. The Assessing Officer appears to have amortized the assessee's corresponding amount as per the CBDT's circular issued on 09/2014. The CIT(A) on the other hand has adopted judicial consistency by placing reliance on the tribunal's various decisions deciding the issue in assessee's favour.

3. This leaves the Revenue aggrieved.

4. We have given our thoughtful consideration to vehement rival contentions and find no merit in the Revenue's stand. A perusal of the case file (pages 42 to 45) indicates that the very issue had arisen between these parties in Revenue's appeals ITA No's 1525 to 1527/PUN/2018 for AY's 2012-13 to 2014-15 which stand adjudicated against the department as follows:

"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 ld. CIT(A) deleted the disallowance by observing that similar issue has been decided in faovur of the assessee in earlier years. The ld. 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)."

5. The Revenue is fair enough in its pleadings in not pin-pointing any distinction of facts or law in all these assessment years so far as the assessee's treatment of its right to collect toll as an intangible asset under section 32(1)(ii), is concerned. Faced with this situation, we affirm the CIT(A)'s findings under challenge.

6. This Revenue's appeal is dismissed.

Order pronounced in the open Court on 27th September, 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th Sep, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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