

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
(Through virtual hearing)

ITA No. 167/NAG/2021
(A.Y. 2016-17)

M/s. Ayodhya Gorakhpur SMS Tolls P. Ltd., 20, IT Park, STPI, Parsodi, Gayatri Nagar, Nagpur. PAN : AALCA 3448 C	vs	Pr.CIT-1, Nagpur.
Appellant		Respondent

Assessee by	:	Mukesh Agrawal, CA
Revenue by	:	Shri Kailash G. Kanojiya, CIT DR
Date of hearing	:	26/09/2023
Date of pronouncement	:	04/10/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Principal Commissioner of Income Tax-1, Nagpur (for short, PCIT'), dated 23.02.2021 for A.Y. 2016-17 as per the grounds of appeal on record.

2. As per the record, this appeal is barred by limitation by 227 days. Ld.AR for the assessee submitted that though the order u/sec. 263 was passed, but not physically served the assessee due to Covid-19 pandemic and relied on the judgment of the Hon'ble Supreme Court in *suo motu* cognizance passed in WP (C) No.03/2020, dated 10/01/2022 submitted that the Hon'ble Supreme Court has

extended the period of limitation in all proceedings before the Courts/ Tribunals w.e.f.15.03.2020 till 02.10.2021, therefore the present appeal is not time barred. By considering the submissions of the Id.AR and as per the directives issued by the Hon'ble Supreme Court, this appeal is heard on merits.

3. That, on perusal of the grounds of appeal filed by the assessee, the solitary grievance that arises is with regard to revisionary jurisdiction assumed by the Id. PCIT and passing the order u/sec. 263 of the Act.

4. The relevant facts are that the assessee is engaged in the business of operating and maintaining toll plaza. In the show-cause notice issued u/sec. 263, it was mentioned that as per record, the case of the assessee had been selected for complete scrutiny. It was also observed that as per profit & loss account (note 17) amount shown Rs.8,41,49,000/- was provided towards overlay expenses. Therefore, the provision was made for Rs. 8,41,49,000/- during the year towards overlay expenses, however, at the end of the year, the total provision had increased to Rs. 17,91,49,000/- as no amount was utilized. Therefore, the Assessing Officer (AO) while finalizing the scrutiny assessment should have looked into/examined the nature of this provision made in the profit & loss account before completing the assessment and since it was not done, the assessment order should have to be held as erroneous as well as prejudicial to the interest of

the Revenue. In reply to the show-cause notice, the assessee had filed detailed written submission which forms part of the impugned order and is not repeated herein for the sake of brevity. That, after considering the submissions of the assessee as well as the assessment order, it was held by the Id.PCIT that the assessee had to incur overlaying cost of Rs.75.69 crores and accordingly provision was made for A.Y. 2015-16 at Rs. 9.50 crores and for A.Y. 2016-17 at Rs. 8,41,49,000/- towards overlay expenses, but in fact, the assessee had actually incurred an amount of Rs. 45.04 crores as expenses in F.Y. 2016-17 relevant to A.Y. 2017-18 towards overlay expenses of roads. This demonstrated that assessee had not incurred any expenses on overlay of road during the relevant A.Y. 2016-17 and A.Y. 2015-16 also. The facts on record precisely demonstrates that the AO has not verified and examined any details of such overlay expenses claimed under the head 'overlay expenditure'. Further, it was also observed that the assessee had entered into an agreement with National Highways Authority of India (NHAI) which consists of 140 pages, whereas the assessee had only uploaded 07 pages out of 140 pages of agreement with NHAI and the AO has not looked into this issue at all. Another argument raised before the PCIT by the assessee was that even if overlay expenses were not allowed, but the toll business was eligible for deduction u/sec. 80IA of the Act. To this contention, it was held by the PCIT that irrespective of deduction u/sec. 80IA, the assessee had to consider the provision made against overlay expenses

for computing the book profit u/sec. 115JB of the Act. But, the assessee had failed to consider this provision while computing the book profit u/sec. 115JB of the Act. This crucial aspect of the assessment has been left unverified by the AO. The assessment order passed u/sec. 143(3) was, therefore, held to be erroneous insofar as to be prejudicial to the interest of the Revenue.

5. Ld.AR could not refute through any evidences the findings of the Id.PCIT. The Id.AR also could not demonstrate whether the AO has actually verified and examined the issue of overlay expenses during assessment proceedings and to what extent it was incurred during the year under consideration. The assessee had actually incurred Rs.45.04 crores as expenses in A.Y. 2017-18 towards overlay expenses of roads. The assessee has not incurred any expenditure on overlay of road during A.Y. 2016-17 and A.Y. 2015-16. We do not find any infirmity with the findings of the Id.PCIT, which is upheld. The grounds of appeal stands dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 04th October, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 04th October, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, Nagpur Bench, Nagpur.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.