

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.385/Kol/2023
Assessment year: 2018-19

West Bengal Motor Vehicles Weigh Bridge Corporation Ltd.....Appellant
C/o Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213,
2nd Floor, Kolkata-700069.
[PAN: AAACW4935F]

vs.

PCIT-2, Kolkata.....Respondent

Appearances by:

Shri Subash Agarwal, Advocate, appeared on behalf of the appellant.
Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 13, 2023

Date of pronouncing the order : November 09, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 07.03.2023 of the Principal Commissioner of Income Tax (hereinafter referred to as the 'PCIT') exercising his revision jurisdiction u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts relevant to the issue are that the ld. PCIT observed from the assessment records that the return of income of the assessee was selected for complete scrutiny assessment on the following issue:

Deduction claimed for Industrial Undertaking u/s. 80ID/80IE10A/10AA.

The Id. PCIT further observed that an assessment u/s. 143(3) read with Sections 143(3A) & 143(3B) of the Act was completed on 09-02-2021 on the assessed income of Rs.5,72,781/- accepting the claim of deduction of the assessee. The Id. PCIT further observed that the assessee was engaged in setting up of motor vehicle weighbridge check post under PPP Model with Government of West Bengal in multi-locations in West Bengal. He referring to the Explanation to section 80IA(4) of the Act observed that the construction of motor vehicle weighbridge check post was not covered under the definition of “infrastructure facility” as defined u/s 80IA(4)(i) of the Act. The relevant Explanation to section 80IA(4)(i) of the Act is reproduced as under:

“[Explanation - For the purpose of this clause, "infrastructure facility" means -

a) a road including toll road, a bridge or a rail system;

b) a highway project including housing or other activities being an integral part of the highway projects;

c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

d) a port, a airport, inland waterway [inland port or navigational channel in the seal:]”

The Id. PCIT observed that the assessee was involved for development and setting up of the motor vehicle weighbridge check post, this particular service was not covered in scope of ‘infrastructure facilities’ as defined in section 80IA of the Act. He further observed that bridge and weighbridge were entirely different from each other. He show-caused the assessee in this respect.

3. The assessee explained that the assessment of the assessee was selected for scrutiny purposes for this issue only and the assessee had duly explained about its eligibility to claim deduction u/s 80IA of the Act

on account construction of motor vehicle weighbridge. It was explained to the Assessing Officer that the construction of motor vehicle weighbridge was part of the toll road and the same was constructed under Public Private Partnership (PPP) mode with the Government of West Bengal on multi-locations in the State of West Bengal. The relevant part of the submissions of the assessee as made before the PCIT are reproduced as under:

"5. It is the submission of the assessee that they are engaged in setting up of motor vehicle weighbridge check post under PPP Model with Government of West Bengal at multi locations in the State of West Bengal. On the merit of the claim, the assessee has drawn attention to Article 3 of the Concession Agreement entered into by the assessee with the Government of West Bengal. Article 3 of the Agreement defines the Scope of the Project which includes Police Outpost, Transport Agents Office, Toll Gate, Weighbridges, Warehouses etc. In view of Article 3 of the Agreement it has been stated by the assessee that it is in the business of infrastructure facility for the reasons -

"1. It has a broader network than a mere weigh bridge comprising of road small bridge in form of culverts and most importantly a toll gate' which makes it a toll road' and therefore covered in clause(a) of the Explanation and also.

2. Ours is a 'activity within the meaning of OTHER ACTIVITIES BEING AN INTEGRAL PART OF THE HIGHWAY PROJECTS" and Govt. of WB has allowed us collection of Toll as evidenced by a schedule at end of Agreement, which would not be allowed if it is not an infrastructure project."

The assessee had also relied on TOOL KIT published by Ministry of Finance on Overview of PPP in India, Discussion paper of the Planning Commission on PPP in National Highways and contents of Wikipedia in support of the claim of deduction u/s 801A of Income Tax Act, 1961.

6. By the submission letter dated 21-12-2022, the assessee has objected to the 263 proceeding for the reasons as under:

2.01 In this context, we humbly submit that the order was passed by the Ld. Income Tax Officer NeAC after obtaining all satisfaction by way of various enquiries and a speaking order was passed by him vide order dated 09-02-2021.

The Ld. ITO had issued a detailed questionnaire, which was replied and then sought reasons for claim of deduction under section 80IA and the reply was perused and his order was based on his satisfaction, to which your honour has expressed a difference in opinion.

2.02 Sir, to our understanding, the basis of this notice is not covered in any of the four clauses of Explanation 2 to Section 263 - more importantly in clause (a) and (b) because the ITO has sought complete details of the project, flow chart and the nature and basis of claim under section 80IA - his notice under section 142(1) was quite exhaustive and also the final notice seeking clarification on the basis of claim under section 80IA.

Your honour, therefore, it is not case where order has been passed without inquiries or verification which should have been made and it is also not a case where relief in the form of allowance under section 80IA has been allowed without inquiring into the claim.

Rather it is a case where the ITO formed an opinion that the activities as submitted by the assessee are covered within the scope of Explanation section 80IA(4)(i) and therefore the opinion framed by the ITO is different.”

4. The Id. PCIT however observed that the said weighbridge was not part of the highway. He in this respect has observed as under:

The assessee has entered into Concession Agreement dt. 27-03-2008 with Government of West Bengal represented by the Department of Transport. As per Article 6 relating to charges, concession premium and fees, the assessee was required to construct, build, maintain and operate a weighbridge on NH6 located at Kharagpur to Jharkhand border in between km. 174 to km. 175. The said weighbridge was to be constructed and fees to be collected by the assessee in accordance with Rule 287(2)(a) of the West Bengal Motor Vehicle Rules, 1989. Therefore, the construction of the weighbridge in no way eligible to be a facility in the nature of an integral part of the National Highway Project rather it is an infrastructure to be Constructed under West Bengal Motor Vehicle Rules for collection of fees through weighbridge from all the heavy vehicles up to six-wheelers and beyond six-wheelers.

He therefore held that the business activity of the assessee was not qualified for deduction u/s 80IA(4) of the Act. He accordingly set aside the assessment order dated 09.02.2021 and restored the matter to the file of the Assessing Officer for fresh assessment on this issue after

considering the submissions of the assessee. Being aggrieved by the said order, the assessee has come in appeal before us.

5. We have heard the rival contentions and gone through the record. A perusal of the above submissions made by the assessee before the PCIT as well as further after going through the concession agreement produced by the assessee on the file and after going through the relevant records, we find that the return of assessee was selected for scrutiny on the limited issue of claim of deduction u/s 80IA of the Act. The assessee has duly furnished all the information relevant to the Assessing Officer and answered the various queries raised by the Assessing Officer in this respect. The Assessing Officer was satisfied that the motor vehicle weighbridge along with toll road of 1 kilometre was integral part of the highway/toll road. The Assessing Officer accordingly accepted the claim of the assessee. We find that the ld. PCIT has held that the claim of the assessee was not admissible only on the ground that the said motor vehicle weighbridge was not integral part of the national highway project, rather, it was an infrastructure to be constructed under West Bengal Motor Vehicle Rules for claiming of fees through weighbridge for all the heavy vehicles upto six wheelers and beyond six wheelers. He, therefore, held that the said motor vehicle weighbridge was not integral part of the toll road.

6. In our view, the ld. PCIT has misconstrued the purpose for which the Government has entered into concession agreement for construction of motor vehicle weighbridge along with connecting road with the highway/toll road. The said 'infrastructure facilities' have to be developed under Motor Vehicle Rules alongside the toll road so as to discourage unnecessary movement of heavy vehicles on the toll road and further to collect toll charges from heavy vehicles on account of damage

to the toll road because of the heavy vehicles. The said motor vehicle weighbridge is constructed and connected with the toll road and the heavy vehicles are diverted to the motor vehicle weighbridge toll road and pass to the same and are charged toll charges as per Government Rules according to the weight of the vehicle and then are allowed to pass through the main highway/toll road. Under the circumstances, the motor vehicle weighbridge in, itself, is not a separate infrastructure project, rather, it is a part and parcel of the highway/toll road and is constructed for the purpose of passing and monitoring of movement of heavy vehicles on the toll road and collection of toll charges from the heavy vehicles and the said infrastructure facilities independently will be of no use, rather, it is part and parcel of the highway project. Therefore, in our view, the order of the Assessing Officer was not erroneous. In view of this, the impugned order of the PCIT setting aside the assessment order for de novo assessment is not sustainable and the same is quashed.

6. In the result, the appeal of the assessee stands allowed.

Kolkata, the 9th November, 2023.

Sd/-
[डॉक्टर मनीष बोराड /**Dr. Manish Borad**]
लेखा सदस्य /**Accountant Member**

Sd/-
[संजय गर्ग /**Sanjay Garg**]
न्यायिक सदस्य /**Judicial Member**

Dated: 09.11.2023.

RS

Copy of the order forwarded to:

1. West Bengal Motor Vehicles Weigh Bridge Corporation Ltd
2. PCIT-2, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches