

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Aby T. Varkey (JM)

I.T.A. No. 4912/Mum/2012 (A.Y. 2008-09)

ACIT-2(3) Room No. 552 5 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Water Health India Pvt. Ltd. Lentin Chambers 4 <sup>th</sup> Floor, Dalal Street Mumbai-400 001.  PAN : AAACW5652P
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Raj Singh Meel
Date of Hearing	01.02.2024
Date of Pronouncement	07.02.2024

O R D E R

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 23.5.2012 passed by the learned CIT(A)-6, Mumbai and it relates to A.Y. 2008-09. The only issue urged by the Revenue is whether the Ld CIT(A) was correct in holding that "Right to operate community water system" is an intangible asset eligible for depreciation under section 32(1)(ii) of the Act.

2. None appeared on behalf of the assessee. We noticed from the record that the registry has sent several notices to the assessee, but most of them have been returned unserved. Further the appeal is very old appeal, i.e., it was filed in the year 2012 by the Revenue. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. We heard learned DR and perused the record. The assessee is engaged in the business of development, operation and maintenance of water treatment system. From the Balance sheet of the assessee, the Assessing

Officer noticed that the assessee has disclosed a sum of Rs. 28.14 crores as intangible asset. Further it was seen that the assessee has amortized a sum of Rs. 2.42 crores out of the intangible asset and claimed the same as deduction. When inquired about the same, the assessee submitted that it has incurred expenditure on setting up of community water system alongwith the right to operate the same from Local government. It was submitted that the “right to operate community water system” is an intangible asset and the assessee has amortized the same over the period of terms of contract. The Assessing Officer took the view that the provisions of amortization of expenses is available in section 35DD and 35DDA only and both these provisions will not apply to the case of the assessee. Accordingly he disallowed the claim of amortization expenses.

4. The learned CIT(A) held that the “right to operate community water system” is intangible asset accordingly he directed the Assessing Officer to allow depreciation @ 25% on the expenditure incurred by the assessee. He also directed the assessee to furnish recasted Profit and Loss account. The Revenue is aggrieved.

5. We heard learned DR and perused the record. We noticed that the learned CIT(A) has granted relief with following observations :-

2.3.1 The AO's observation is correct that there is no provision under the Income Tax Act to allow amortization of expense except for as provided u/s 35DD and 35DDA. The 'Guidance Note on Accounting for Service Concession Arrangements' published by the Accounting Standard Board of ie Institute Chartered Accountants of India dated 10<sup>th</sup> November 2008 cannot override the provision of Income Tax Act wherein specific provisions are there to provide deduction for amortization and the appellant's amortization claim does not come within the purview of section 35DD & 35DDA.

2.3.2 The right to operate the community water system is an intangible asset of the appellant and the same comes within the purview of section 32(1)(ii) as these rights are business or commercial rights granted to the appellant as per agreement with the Village Panchayat to operate and collect user fee for the specified period. The cost of intangible asset to the appellant would not be as per the method of accounting followed by the

appellant as the cost of intangible assets is actually shown as Value' in the books of the appellant and the same keeps on changing subject to the surplus or deficit for the year out of user fee collected. The cost of the intangible asset of the appellant would be 'the agreed sale price of the community water system credited in P & L A/c less the upfront payment received', and on such cost of community water system the depreciation @25% is allowable.

2.3.3 So far as, the user fee of the appellant is concerned the same is required to be considered as revenue of the appellant and is required to be credited in the P&L A/c and the expenses for operating the community water system is required to be claimed as deduction.

2.3.4 These steps are required as the appellant's system of maintaining accounts in accordance with 'Guidance Note on Accounting for Service Concession Arrangements' published by the Accounting Standard Board of the Institute Chartered Accountants of India dated 10<sup>th</sup> November 2008 needs to be adjusted as per the provisions of the Income Tax Act.

2.3.5 The appellant shall furnish a recasted P&L A/c in accordance with the decisions above at Para 2.3.2 & 2.3.3 and the AO after verifying the same shall recompute the income of the appellant accordingly.”

6. We notice that the assessee has incurred expenditure in setting up of community water system and hence it has been given right to operate the same subject to collection of user fees from the consumers. Since the income is generated by the assessee on account of its right to operate community water system, we are of the view that the learned CIT(A) was justified in holding that the right to operate community water system is an intangible asset and the same is eligible for depreciation under section 32(1)(ii) of the Act. Accordingly, we do not find any infirmity in the decision rendered by the learned CIT(A).

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 7.2.2024.

Sd/-  
(Aby T. Varkey)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 07/02/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai