

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**Shri Manish Borad, Accountant Member  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 887/Kol/2023  
Assessment Year: 2011-12**

**DCIT-C-1, Kolkata,  
Aaykar Bhawan, P-7,  
Chowringhee Square, 7<sup>th</sup> Floor,  
Room No. 17, Kolkata – 700069 ..... Appellant**

**vs.**

**Naba Dignata Water Management Ltd.,  
Kolkata,  
GN 11-19, Sector V, Salt Lake,  
Kolkata – 700091  
[PAN: AACCN6958P] ..... Respondent**

**C.O. No. 19/Kol/2023  
Assessment Year: 2011-12**

**Naba Dignata Water Management Ltd.,  
Kolkata,  
GN 11-19, Sector V, Salt Lake,  
Kolkata – 700091  
[PAN: AACCN6958P] ..... Appellant**

**vs.**

**DCIT-C-1, Kolkata,  
Aaykar Bhawan, P-7,  
Chowringhee Square, 7<sup>th</sup> Floor,  
Room No. 17, Kolkata – 700069 ..... Respondent**

**Appearances by:**

Assessee represented by : Shri Abhishek Gupta, FCA  
Department represented by : Shri Subhendu Datta, CIT-DR

Date of concluding the hearing : August 26, 2024

Date of pronouncing the order : August 28, 2024

## **ORDER**

### **Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the Revenue and cross objection filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the National Faceless Appeal Centre (NFAC), Delhi, dated 22.02.2023 arising out of Assessment Order dated 15.12.2016, passed under Section 147/143(1) of the Act.

2. The Revenue has raised the following grounds of appeal:

*"1. That in the facts and circumstances of the case, the order of Ld. CIT(A) is erroneous on facts and in law in allowing the assessee's appeal to the extent of Rs.13,47,90,735/- being the unsubstantiated claim for depreciation on asses which is not owned wholly or partly by the assessee completely ignoring the fact that it was merely a provision which is not allowable as per provision of section 32(1)(ii) of the Income Tax Act, 1961.*

*2. That in the facts and circumstances of the case the Ld. CIT(A) has failed to appreciate the fact that before proceeding for disallowances the AO has conducted necessary examination and ground work, which are evident from the recordings of note-sheet.*

*3. That the Department craves leave to add, modify or alter any of the ground(s) of appeal and/ or adduce addition evidence at the time of hearing of the case."*

3. The assessee has raised the following grounds of cross objection :

*"1) CO No. 1-Validity of the reassessment proceedings*

*a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ['CIT(A)'] erred in upholding the reopening the assessment under section 147 of the Income-tax Act, 1961 ('the Act') and Reassessment order by the learned Assessing Officer ('the AO').*

*b) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not appreciating the fact that in the reasons recorded and in the reassessment order,*

*there is no failure on the part of the Respondent to disclose fully and truly all material facts necessary for the assessment.*

*c) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding reopening the assessment based on the same set of facts and materials which were already on the record.*

*d) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred not appreciating the fact that the assessment could be reopened only if the learned AO has reason to believe that income had escaped assessment and not merely on the ground of change of opinion on the same set of facts.*

*e) On the facts and in the circumstances of the case and in law, the Respondent prays that the order passed under section 147 of the Act be quashed as null and void and bad in law.*

*2) CO No. 2-Depreciation claim under section 32(1)(ii) of the Act*

*a) On the facts and in the circumstances of the case and in law, the Respondent prays that depreciation under section 32(1)(ii) of the Act be allowed by considering the 'right/license to build, operate and transfer agreement and collect the charges' as an intangible asset."*

4. At the time of hearing, Ld. DR stated that there is delay of 127 days in filing the appeal before the Tribunal. We after perusing application filed by the Revenue, find that there is a reasonable cause for the delay in filing the appeal by the Revenue. Considering the same, we therefore, condone such delay in filing the appeal by the Revenue.

5. In the instant appeal, the Revenue has raised solitary grounds that the CIT(A) has erred in law on facts by allowing the tax payers un-substantive depreciation claim of Rs. 13,47,90,735/- in the nature of a mere provision on assets neither owned wholly nor in part, which dismissed by AO in his assessment order dated 15.12.2016. The contention of Ld. DR is that the depreciation claimed by assessee in the nature of mere provision on assets neither owned wholly nor in part. Therefore, it is correctly disallowed by the Ld. AO while framing the assessment order, therefore, the view taken by the CIT(A) needs to be set aside by this Tribunal.

6. On the other hand, the Ld. AR stated that there is no dispute that the assessee is a company and awarded contract to build up the entire infrastructural water supply and sewerage network for the Nabadiganta Industrial Township Authority (NDITA) command area, Sector -V, Salt Lake on Build-Operate-Transfer 'BOT' basis in 'Private-Public-Partnership' model. The project would operated and maintained the entire network for 30 years. The taxpayers get all corresponding assets after this operational period of three decades free of cost and the instant issue is covered in favour of the assessee's own case vide ITA No. 2173/Kol/2017, AY 2012-13, ITA No.2301/Kol/2017, AY 2012-13 and CO No. 22/Kol/2018, AY 2012-13, dated 09.08.2019 where on the similar issue the Tribunal has dismissed the appeal of the revenue by holding as under:

*"6. We have given our thoughtful consideration to the instant issue of correctness of assessee's depreciation claim. The Assessee's detailed paper book comprising of the following documents also stands perused:*

Sr No	Particulars
1.	Copy of acknowledgement of ROI filed for AY 2012-13
2.	Copy of Computation of Income for the year ended 31 March 2012
3.	Copy of Financial Statements for the year ended 31 March 2012
4.	Copy of the Tax Audit Report for the year ended 31 March 2012
<b>Ground 1: Disallowance of depreciation under section 32 of the Act; and</b>	
<b>Ground 2: Upfront connection charges received/receivable from customers taxed as revenue receipt</b>	
5.	a. Development agreement dated 8 November 2007 b. Amendment to above mentioned development agreement, made on 4 January 2011 c. Assignment and Novation Agreement dated 19 April 2008 d. NDITA Public notice dated 22 January 2011 (submitted to AO vide letter dated 11 February 2015)
6.	Copy of acknowledgement of ROI filed for AY 2011-12
7.	Copy of computation of total income for AY 2011-12
8.	Copy of Intimation under section 143(1) for AY 2011-12
9.	CBDT Circular No. 9/2014 dated 23 April 2014
10.	CBDT Circular No. 37/2016 dated 2 November 2016
11.	Copy of insurance receipts taken for plant and machinery for water treatment plant
12.	Year wise details of Government Grant received (submitted to AO vide letter dated 20 March 2015)
13.	Copy of computation of total income for AY 2014-15
14.	Copy of the Assessment Order dated 13 December 2016 passed for AY 2014-15
<b>Acknowledged copies of the submissions/details filed with AO during assessment proceedings vide letters dated:</b>	
15.	28 January 2015
16.	11 February 2015
17.	20 March 2015
<b>Acknowledged copy of the written submission filed before the CIT(A) dated 11 January 2017</b>	

7. Ld. CIT(DR) vehemently submits during the course of hearing that the Assessing Officer had rightly disallowed the assessee's impugned depreciation claim since it was a mere provision without any ownership of the corresponding assets forming part of the

*schedule. We find no merit in Revenue's instant arguments seeking to revive the impugned depreciation disallowance on account of the fact that the assessee does not enjoy ownership or title over the relevant block of assets. Hon'ble apex court's landmark decision in Mysore Minerals u CIT [1999] 239 ITR 755 (SC) settled the law long back that the legislative intention behind enactment of Section 32 in the Act would be best fulfilled by allowing depreciation to the person in whom; for the time being, vests the dominion or who is entitled to use the relevant assets in his own right and is using the same for the purpose of the business or profession. When we examine the facts of the instant case, it is sufficiently evident that the Revenue itself is very very fair in accepting the clinching fact that the assessee only enjoys its control over the relevant assets which are used for the purpose of carrying out its business activity.*

*8. Coupled with this, the assessee's detailed paper book in pages 19-54 reveals that the correspondence details of the project authorizing it to develop, design, finance, manage, administer, operate and maintenance the project in question, definition of project's assets including both tangible and intangible categories as part of the project, the assessee's role assuming the entire risk and responsibility, construction/obligations, operations, maintenance, involving right to carry out the project at its own cost with innovations, modifications and technical upgradation for thirty years (supra), its status as a special purpose vehicle, its obligation to bear the cost of insurance, denial and termination stipulations, insertion of the transfer of the water management facility after expiry of thirty years as well as the most crucial depreciation clause for the purpose of the impugned claim, relevant conditions that the selected bidder/person would be deemed to have acquired and owned the assets in question; respectively. All these factual details leave no scope of doubt that it is the assessee only who exercises control and dominion over the project assets for the purpose of running the water management facility. The Revenue has not challenged correctness of any of these details before us. We therefore conclude in view of the foregoing factual and legal position that the CIT(A) has rightly deleted depreciation disallowance of Rs. 15,12,34,168/- made by the Assessing Officer. The Revenue fails in its sole substantive grievance as well the main appeal ITA 2301/Kol/2017 therefore."*

5. We after hearing the submission of both the parties reviewing the available material available on record as well as following the decision previously rendered by the Tribunal in assessee's own case in the case of Naba Diganta Water Management Limited Vs. DCIT in ITA No. 2173/Kol/2017, AY 2012-13, ITA No.2301/Kol/2017, AY 2012-13 and CO No. 22/Kol/2018, AY 2012-13, dated 09.08.2019, the grounds raised by the revenue are dismissed.

6. In the result, appeal of the Revenus is hereby dismissed and cross objection filed by the assessee is not press in view of our findings on forgoing

depreciation issue in revenue's appeal. Accordingly, C.O. filed by the assessee is hereby dismissed as withdrawn.

***Kolkata, the 28<sup>th</sup> August, 2024.***

***Sd/-***  
**[Manish Borad]**  
**Accountant Member**

***Sd/-***  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 28.08.2024.

*AK, PS*

*Copy of the order forwarded to:*

- 1 Naba Dignata Water Management Ltd., Kolkata,
- 2.DCIT-C-1, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

*//True copy//*

By order

Assistant Registrar, Kolkata Benches