

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA NO. 5750/Del/2019		
A.YR. : 2014-15		
KRIBHCO INFRASTRUCTURE LTD. A-60, Kailash Colony, New Delhi – 48 (PAN: AADCK7285P)	VS.	ACIT, CIRCLE 14(2), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Salil Kapoor, Adv. & Sh. Tarun Chanana, Adv., Shri Shivam Yadav, Adv. & Ms. Ananya Kapoor, Adv.
Respondent by : Shri Om Parkash, Sr. DR.
Date of hearing : 17.12.2024
Date of pronouncement : 19.12.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. Commissioner of Income Tax(Appeal-5), New Delhi dated 26.4.2019, relating to assessment year 2014-15 on the following grounds:-

- 1. That the order of the Ld. CIT(A) is bad both on law and facts.*
- 2. Tat the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of a sum of Rs. 30,71,878/-, being the amount of annual right off from out of the lease amount paid to Rajasthan State Industrial Development and Investment Corporation*

(RIICO) for obtaining the above land on lease for a period of 99 years and a sum of 1369667/- being the amount of annual right off from out of the lease amount paid to Uttar Pradesh Industrial Corporation (UPSIDC) for obtaining the above land on lease for a period of 90 years, debited under the head "Amortization on Lease Hold Land" legitimately claimed by the Assessee,, by completely foregoing the facts brought on records.

3. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of a sum of Rs. 2,11,43,000/-. The Assessee paid a sum of Rs. 50 cr to Indian Railways for obtaining specific rights to use railway network under the concessionaire agreement to access railway terminals and develop, operate. The Assessee acquired the assets as per the provisions of section 32(1)(ii) Explanation 3(b) and claimed depreciation of a sum of Rs. 46143000/- as per the rates prescribed. The learned assessing officer allowed the deduction of a sum of Rs. 25000000/- only towards amortization and thus disallowance the balance sum of Rs. 2,11,43,000/-, the learned Commissioner of Income Tax (Appeals) erroneously sustained the said disallowance.

4. That the Assessee craves leave and prays that the relief claimed above or any other relief, to which the Assessee is entitled, may kindly be allowed.

2. The brief facts of the case are that against the returned loss of (-) Rs. 29,63,01,064/-, the AO assessed the assessee at a loss of (-) Rs. 27,18,83,666/- by making addition/disallowance of Rs. 30,71,878/- by not allowing depreciation on lease hold land. On this issue, the assessee claimed this amount as 'amortization on lease hold land' and shown as depreciation on lease hold land appearing in the fixed assets. The AO disallowed the same on the basis that assessee is not entitled for this depreciation on the land, which has

been taken from RIICO and UPSIDC on lease. In appeal, Ld. CIT(A) noted the submissions of the assessee that it is contended by the Assessee that there are two lease hold lands, taken from RICO for 99 years and UPSIDC for a period of 90 years, respectively. The Assessee has paid a lump sum amount and amortized the same over the lease period and claimed deduction on annual basis for Rs. 17,02,211/- and 13,69,667/- totaling to Rs. 30,71,878/-. It is stated that the lease of land is for construction of ICD through an agreement wherein it is mentioned as premium paid. It is also contended that the claim can also be considered from the point of view of rent, which the Assessee has to pay for using the lease hold land. The Assessee does not get any ownership rights nor it can sell off the said land without permission of the respective authorities. It is vehemently argued that the lump sum amount has been paid for the uses of this land, which is spread for a period of 99 years and 90 years respectively and therefore to be allowed on pro-rata basis, pertaining to each year. The Assessee also relied upon the judgment by Hon'ble Supreme Court in the case of Madras Industrial Investment Cooperation Ltd. vs. CIT 225 ITR 802 to justify that payment made in 1 year can be claimed by spreading over to the ensuing years. It has also relied upon the decision by Hon'ble Gujarat High Court in the case of Sun Pharmaceutical Ind. Ltd. 227 CTR (Guj).

3. However, Ld. CIT(A) was not convinced with the aforesaid contention of the assessee and he proceeded to confirm the AO's action. Against this order, the assessee is in appeal before us.

4. We have heard both the parties and perused the records. Ld. Counsel for the assessee made the following submissions before us:-

“Disallowance of depreciation/ amortization of Rs. 30,71,878 on leasehold land

During the year ending 31 March 2014, the Assessee has claimed depreciation/ amortization amounting to Rs.30,71,878 on leasehold land

on lump sum amount paid in respect of lease premium of the following lands:

Sr. No.	Particulars	Amount of Amortization claimed (Rs.)
1.	Land at Hindaun City for construction of ICD	17,02,211
2.	Land at Shahjahanpur for construction of ICD	13,69,677
	Total	30,71,878

The claim was based on lump sum payments made as lease premiums for two pieces of land intended for the construction of Inland Container Depots (ICDs).

The Assessee argues that the leasehold land was not acquired but leased for 99 years (Hindaun City) and 90 years (Shahjahanpur), respectively. The Assessee paid a lump sum lease premium and nominal annual rent for the land, which was not adjustable against the lease premium.

The Assessee submits that the payment for the lease premium is akin to rent, which should be deductible as an expense. Also, the payment for the lease does not change the capital structure, does not initiate or extend business, and does not bring any capital asset. It merely provides a facility to carry on business.

The Assessee further claims that a portion of the lease premium equivalent to the expired lease period should be deductible (1/99th for Hindaun City and 1/90th for Shahjahanpur).

It is pertinent to note that the Assessee had previously claimed amortization on leasehold land for AY 2012-13. The said claim was assessed under section 143(3) of the Income Tax Act, and the amortization was duly allowed to the Assessee in AY 2012-13.”

4.1 Upon careful consideration, we agree with the assessee’s contention that the payment for the lease premium is akin to rent, which should be deductible as

an expense. Also, the payment for the lease does not change the capital structure, does not initiate or extend business, and does not bring any capital asset. It merely provides a facility to carry on business. Furthermore, assessee's claim of amortization on lease hold land for AY 2012-13 was duly allowed u/s. 143(3) of the Act. In this regard, we place reliance of the Hon'ble Supreme Court in the case of CIT vs. Excel Industries 358 ITR 295, wherein it has been held that when in earlier asstt. years the revenue accepted the order of the tribunal in favour of the assessee, then Revenue cannot be allowed to flip flop on the issue and it ought let the matter rest rather than spend the tax payers money in pursuing litigation for the sake of it. In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, we set aside the orders of the authorities below on this issue and decide the same in favour of the assessee. Accordingly we allow the ground raised by the assessee.

5. As regards disallowance of Rs.2,11,43,000/- out of depreciation on license fees paid to railways is concerned, AO noted that during the period under consideration the assessee has claimed depreciation of Rs. 4,61,43,000/- on the license fees paid to Railways, treating the said license fees as intangible asset, @ 25%. The assessee entered into an agreement with the Railway for a period of 20 years towards operation of container trains of Indian Railway Network and paid Rs.50,00,00,000/- as a fees for using IR Network over the period of agreement. After expiry of 20 years, the Assessee again needs to pay the fees if it wishes to continue the operations. The right under this agreement is to access Railway terminal, develop, operate and maintain but does not give any ownership to the Assessee company. The AO treated this payment of Rs. 50 cr. for a period of 20 years as a usage fees paid in advance and allowed the deduction of 2,50,00,000/- on annualized basis, as business expenditure and not the depreciation. The AO has rejected the claim of Assessee that it is an intangible asset for allowance of depreciation @ 25% and the differential

amount of RS. 2,11,43,000/- has been added. In appeal, Ld. CIT(A) noted the contention of the assessee that this agreement has been entered between Assessee company and the Indian Railways for running container trains for operating domestic and EXIM Rail freight services, as required under the CTO Rules. It is further clarified that the payment of license fees of Rs. 50 cr. was made to Indian Railways, originally paid by the Krishak Bharti Cooperative Ltd. (KRIBHCO) at the time of concessionaire agreement with the Ministry of Railways Govt. of India. Subsequently KRIBHCO transferred this agreement to its 100% subsidiary company M/s Kribhco Infrastructure Ltd. i.e. Assessee company. Instead of making the repayment to KRIBHCO, the Assessee company allotted the shares to KRIBHCO for a consideration of Rs. 50 cr. It is further contended that in the case of Assessee, a right has been created granting non exclusive right to haul the Assessee's container trains carrying EXIM/domestic traffic. It is also stated that this payment of 50 cr. has not been made for operation of running container trains on the Indian Railway Network. This amount has been paid for acquiring right towards operation and right to haul which is intangible asset and Assessee is entitled for benefit of depreciation.

6. However, Ld. CIT(A) was not convinced with the aforesaid contention of the assessee and he proceeded to confirm the AO's action. Against this order, the assessee is in appeal before us.

7. We have heard both the parties and perused the records. Ld. Counsel for the assessee made the following submissions before us:-

“1. The Assessee claimed depreciation of Rs.4,61,43,000 on license fees paid to the Railways amounting to Rs.50,00,00,000 for the year ending March 31, 2014.

2. *The Assessing Officer (AO) allowed only Rs. 2,50,00,000 as a business expense and disallowed the balance, resulting in a net disallowance of Rs.2,11,43,000. The Assessee has a concession agreement with Indian Railways to operate container trains and has paid Rs.50 crores for the license for a period of 20 years. Accordingly, the AO has given the deduction in the form of amortization of the amount paid over the period of the license.*

3. *The Assessee argues that the license fee is for a non-exclusive right to operate on Indian Railway tracks and is an intangible asset eligible for depreciation at 25% as per section 32(1)(ii) of the Income Tax Act. The license provides an enduring benefit and is a valuable commercial right, thus qualifying for depreciation. Further, explanation 3 to section 32(1) of the Act includes "licence" in the definition of intangible assets.*

4. *Reliance is placed on the decision of Delhi Tribunal in case of Container Corporation of India Ltd vs DCIT, Circle 3(1) [ITA No. 5098/DEL/2014 & 5101/DEL/2014/ and ACIT vs. Central Warehousing Corporation (ITA No. 5449/DEL/2017 & C.O. No. 222/DEL/2017] wherein it was held that intangible asset (railway license) acquired by the Assessee is eligible for depreciation u/s 32(1)(ii) of the Act. The aforesaid rulings also form part of the Legal paper book which was submitted by the Assessee.*

5. *It is pertinent to note that the Assessee had previously claimed depreciation on the railway license for AY 2011-12*

and 2012-13. These claims were assessed under section 143(3) of the Income Tax Act, and the depreciation was duly allowed to the Assessee in those years”

7.1 Upon careful consideration, we agree with the assessee's contention that license fee is for a non-exclusive right to operate on Indian Railway tracks and is an intangible asset eligible for depreciation at 25% as per section 32(1)(ii) of the Income Tax Act. The license provides an enduring benefit and is a valuable commercial right, thus qualifying for depreciation. Furthermore, explanation 3 to section 32(1) of the Act includes "license" in the definition of intangible assets. Further, reliance is placed on the decision of Delhi Tribunal in case of Container Corporation of India Ltd vs DCIT, Circle 3(1) [ITA No. 5098/DEL/2014 & 5101/DEL/2014/ and ACIT vs. Central Warehousing Corporation (ITA No. 5449/DEL/2017 & C.O. No. 222/DEL/2017] wherein it was held that intangible asset (railway license) acquired by the Assessee is eligible for depreciation u/s 32(1)(ii) of the Act. Furthermore, it is noted that assessee had previously claimed depreciation on the railway license for AY 2011-12 and 2012-13. These claims were assessed under section 143(3) of the Income Tax Act, and the depreciation was duly allowed to the Assessee in those years. In this regard, we place reliance of the Hon'ble Supreme Court decision in the case of CIT vs. Excel Industries 358 ITR 295, wherein it has been held that when in earlier asstt. years the revenue accepted the order of the tribunal in favour of the assessee, then Revenue cannot be allowed to flip flop on the issue and it ought let the matter rest rather than spend the tax payers money in pursuing litigation for the sake of it. In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, we set aside the orders of the authorities below on this issue and decide the same in favour of the assessee. Accordingly we allow the ground raised by the assessee.

8. In the result, the Appeal filed by the Assessee stands allowed in the aforesaid manner.

Order pronounced on 19/12/2024.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar