

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

I.T.A. No. 91 & 92/Ran/2019

(Assessment Year-2013-14 and 2014-15)

(Virtual Hearing)

Jharkhand Road Projects Implementation Company Limited, Road No. 5, Ashok Nagar, Ranchi-834002 PAN No. AACJ 2207 M	Vs.	D.C.I.T., Central Circle-1, Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Bhupal Rupalli, A.R.
Department represented by	Shri Sanjay Kumar, CIT-DR.
Date of hearing	11/03/2025
Date of pronouncement	11/03/2025

ORDER

PER: BENCH

1. These appeals by the assessee are directed against the two separate orders of the learned Commissioner of Income Tax (Appeals), Ranchi [in short, the Id. CIT(A)] both dated 12/12/2018 for the Assessment Year (AY) 2013-14 and 2014-15 respectively. These appeals of the assessee are having common facts and grounds, therefore, with the consent of parties, both these appeals are clubbed and heard together and being decided by this consolidated order. For appreciation of facts, we take ITA No. 92/Ran/2019 for A.Y. 2014-15 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in not allowing depreciation u/s 32(1)(i) of Act @ 15% on "Plant and Machinery"- project Road forming part of block of assets.

2. *Without prejudice to Ground No. 1, as an alternative claim, the Appellant prays that depreciation u/s 32(1)(i) of the Act @ 10% on "Building"- Project Road forming part of block of assets may be allowed.*
3. *Without prejudice to Ground No and Ground No. 2, as an alternative claim, the Appellant prays that depreciation u/s 32(1)(ii) of Act @ 25% on "Intangible Assets"- Project Road forming part of block of assets may be allowed.*
4. *Without prejudice to the grounds No. 1 to 3, as an alternative claim, the Appellant prays that the entire cost of ₹ 101,02,37,176 incurred during the year on "Project Road" should be allowed as revenue expenditure.*
5. *Without prejudice to the Grounds No. 1 to 4 and on the facts and circumstances of the case, the learned Assessing Officer/CIT(A) have erred in granting lower amount of amortization.*

The appellant craves leave to add, alter or amend the grounds of appeal which are without prejudice to one other."

2. The facts of the case in brief are that, the assessee company was engaged in the business of setting up of infrastructure facility in terms of construction of roads at various locations in Jharkhand. As per the Concession Agreement, the appellant company was engaged to develop, design, engineer, finance, procure, construct, operate and maintain 6/4/2 laning roads in the State of Jharkhand on Build, Own and Transfer (BOT) on annuity basis. During the course of assessment proceedings, the assessee was asked to submit total cost of the 'project road' constructed and capitalized under the head fixed assets during the year and justify the amount of depreciation claimed as plant @ 15%. The assessee was asked to submit as to why the total cost of project road constructed and capitalized under the head 'fixed assets' during the year should not be amortized evenly over the concessionaire period in the light of tripartite agreement with Government of Jharkhand and in the light of CBDT Circular No. 9 of 2014 on clarification regarding treatment of expenditure incurred for development of roads/highways under Build, Own and Transfer (BOT) agreements.

3. In response to the above query, the assessee submitted all the details and also produced books of account and were duly examined by the Assessing Officer. The assessee also placed reliance on various decisions in support of its claim of depreciation. The Assessing Officer considered the same but disallowed the depreciation amounting to ₹ 1,62,10,53,316/- claimed as Plant and Machinery under Section 32 of the Income Tax Act, 1961 (in short, the Act) on the following grounds:

- (i) The assets are not owned by the assessee and vests with the State Government.
- (ii) The CBDT Circular No. 9 of 2014 has clarified that instead of allowing depreciation the same should be authorized by treating it as an allowable business expenditure.
- (iii) The case laws on which the assessee has placed reliance do not support the case of the assessee.

Accordingly, the Assessing Officer allowed the expenditure to be amortized over the concessionaire period of 17.5 years.

4. Aggrieved by the order of Assessing Officer, the assessee filed appeal before the Id. CIT(A), who vide impugned order dated 12/12/2018, confirmed the disallowance made by the Assessing Officer and justified the action of Assessing Officer to allow the assessee to amortize the claim as business expenditure during the concessionaire period on the ground that the ownership of the project road vests with the government and not with the appellant and the appellant does not have absolute right of enjoyment of the asset without any restriction. The government has only granted the right of maintenance to the appellant whereas other rights like collection of toll tax

etc rests with the government or any other person authorized by the government and not with the appellant.

5. The Id. CIT(A) also did not agree with the alternative submission of the assessee that the road project may be treated either as building or as a intangible asset because if the road project is treated as plant and machinery then depreciation @ of 15% will be allowed and if the road project is treated as building then deprecation @ of 10% should be allowed and if it is treated as intangible asset as an alternative claim, then depreciation @ 25% may be allowed.
6. The Id. CIT(A) also rejected the various case laws on which the appellant had placed reliance on the ground that the cases are distinguishable from the facts of the present case.
7. Aggrieved by the impugned order of the Id. CIT(A), this appeal has been preferred before this Tribunal.
8. Before us, at the outset, the learned Authorised Representative (Id. AR) of the appellant submitted that the claim of depreciation made in the A.Y. 2013-14 and 2014-15, though disallowed in these two years, the department has allowed the same in subsequent years starting from the A.Y. 2015-16 onwards.
9. It was further submitted by the appellant that the appellant is entitled to claim depreciation on the road under Section 32 of the Act treating the same as plant and machinery, therefore, the appellant submitted that the depreciation may be granted as per provisions of Section 32 of the Act treating the road as plant and machinery. Further it was submitted that if the

road is not treated as plant and machinery for the purpose of granting depreciation then depreciation @ 10% may be granted treating the said 'Road Project' under the category of building and allow the depreciation @ 10%. It was further submitted that right to set up infrastructure facility and collect revenue being license/business or commercial rights is an intangible asset in terms of provisions of Section 32(1)(ii) of the Act. The appellant submitted that it had constructed the road as a part of the concessionaire agreement entered into between the government of Jharkhand and Jharkhand Accelerated Road Development company Limited and the assessee company and the project was awarded to the appellant on BOT and annuity basis. The appellant also placed reliance on the decision of Hon'ble Supreme Court in the case of PCIT Vs. GVK Jaipur Expressway (2018) 100 taxmann.com 96 (SC)/(2018) 259 Taxman 429 (SC) dated 05/10/2018 wherein the Hon'ble Supreme Court had allowed depreciation on different roads treating the same as building @ 10%.

10. On the other hand, the Id. CIT-DR for the revenue has supported the orders of the lower authorities.
11. We have considered the above submission and it is found and duly confirmed by the Id. CIT-DR that from the A.Y. 2015-16, the claim of the assessee has been accepted by the revenue and the depreciation has been allowed @ 10% treating the same as building. Thus, we also hold that the assessee/appellant is entitled for a claim of depreciation @ 10% in view of the decision of Hon'ble Supreme Court in the case of PCIT Vs. GVK Jaipur Expressway

(supra). In the result, the grounds of appeal raised by the assessee are partly allowed.

12. In the result, this appeal of assessee is partly allowed.
13. Similarly in ITA No.91/Ran/2019 for the A.Y. 2013-14, we find that in the assessee has raised similar grounds of appeal. We also find that the facts of the case and the grounds of appeal as raised in ITA No. 92/Ran/2019 for A.Y. 2014-15 are similar, where we have partly allowed the appeal of assessee. Therefore, keeping in view the principle of consistency on similar set of facts, this appeal of assessee is also partly allowed with similar direction. In the result, grounds of assessee's appeal are partly allowed.
14. In the result, both these appeals of assessee are partly allowed.

Order announced in open court on 11th March, 2025.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 07/04/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi