

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' DB-A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.285 & 286/Hyd/2018**
(निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15)

Dy. Commissioner of Income Tax, Circle 16(2) Hyderabad	Vs.	Madhucon Agra Expressway Ltd Hyderabad PAN:AAECM4426F
(Appellant)		(Respondent)

आ.अपी.सं / **ITA No308/Hyd/2021**
(निर्धारण वर्ष/Assessment Year: 2013-14)

Mahu Bharartpur Expressway Ltd(formerly known as Madhucon Agra Expressways Ltd Hyderabad PAN:AAECM4426F	Vs.	Dy. Commissioner of Income Tax, Circle 16(2) Hyderabad
(Appellant)		(Respondent)
राजस्व द्वारा/Revenue by:	Shri B Balakrishna, CIT (DR)	
निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA	
सुनवाई की तारीख/Date of hearing:	17/04/2025	
घोषणा की तारीख/Pronouncement:	02/06/2025	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These two appeals by the Revenue for the A.Ys 2013-14 and 2014-15 and cross appeal by the assessee for the A.Y 2013-14 are directed against the 2 separate orders of the learned CIT (A) both dated 27/11/20187. First, we take up the appeals filed by the Revenue for the A.Y 2013-14 wherein the grounds raised by the Revenue are as under:

“1. The learned CIT (A) erred in holding that the grant from NHAI of Rs.38,40,00,000/- shall not be reduced from cost of project before allowing amortization of cost of project, contrary to Explanation 10 below section 43 of the Act.

2. The learned CIT (A) erred in allowing an amount of Rs.14,42,00,000/- being 1/5th of provision made for maintenance, ignoring the fact that it is not an ascertained liability.

3. Any other ground that may be urged at the time of hearing”.

2. Ground No.1 is regarding the addition made by the Assessing Officer on account of grant received from National Highway Authority of India (NHAI) of Rs.38,40,00,000/- by reducing the cost on Written Down Value (WDV) to the extent of the said grant deleted by the learned CIT (A). The assessee company is a Special Purpose Vehicle for construction of highways awarded by NHAI on Built-Operate & Transfer (BOT). The assessee filed its return of income for the year under consideration on 30/09/2013 declaring loss of Rs.55.46 crores.

During the scrutiny assessment, the Assessing Officer noted that an amount of Rs.38.40 crores is shown as NHAI grant as part of reserve and surplus. The Assessing Officer further observed that as per the concessional agreement, the grant received from NHAI shall be applied for meeting the capital cost of the Project and shall be treated as part of the shareholders fund. Since the purpose of grant was to meet the capital cost of the project, the Assessing Officer proposed to reduce the cost of the capital asset to the extent of the said grant of Rs.38.40 crores and the remaining amount was allowed to be capitalized and consequently, disallowed the claim of depreciation to the tune of Rs.43,43,34,676/-. The assessee challenged the action of the Assessing Officer before the learned CIT (A) and contended that the cost of an asset can be reduced only as per the provisions of Explanation 10 to section 43(1) of the I.T. Act, 1961. The assessee relied upon the judgment of the Hon'ble Supreme Court in the case of CIT vs. P.J. Chemicals Ltd (210 ITR 830) as well as other judgments to buttress the point that if government subsidy is an incentive not for specific purpose of meeting a portion of cost of asset, though quantified as percentage of such cost, it does not partake the character of the payment intended directly or indirectly to meet the cost. The learned CIT (A) accepted the claim of the assessee and consequently, deleted the addition made by the Assessing Officer on this account while passing the impugned order.

3. Before the Tribunal, the learned DR has submitted that article 23.1 of the concessional agreement clearly states that NHAI had agreed to provide cash support by way of an outright grant equivalent to the sum as set forth in the bids of consortium. Further, article 23.2 of the agreement provides year-wise details of grant during the construction period and the operation period. The grant during the construction period is Rs.38.40 crores which was required to be utilized/applied by the concessionaire for meeting the capital cost of the project provided in article 23.1 of the agreement. Thus, the learned DR has submitted that when the utilization of the grant given by NHAI is specified in the agreement, then the treatment of the said grant in the books of account of the assessee as shareholders fund was intended only to facilitate the assessee to avail the fund. Such grants can be up to 40% of the project cost to make the project commercially viable and therefore, the quantum of the grant is decided on a case to case basis and constitute the bid parameter in BOT Project which are not viable based on the total revenue. The learned DR has thus, contended that a co-joint reading of articles 23.1, 23.2 and 23.3 makes it clear that the grants given by NHAI can be utilized to meet the capital shortfall and the same shall be treated as shareholders fund in the books of account. He has relied upon the order of the Assessing Officer.

4. On the other hand, the learned AR of the assessee has submitted that as per the agreement between the assessee and

NHAI, a grant of Rs.96 crores was paid to the company out of which an amount of Rs.57.06 crores is related to operation & maintenance expenses and balance amount of Rs.38.40 crores relates to the shareholders fund of the assessee which has nothing to do with the depreciation/amortization arising from the fixed asset. It is clear from the terms & conditions of the agreement that the grant of Rs.38.40 crores are in the nature of promoters contribution as provided under article/clause 23.3 of the concessional agreement. He has also referred to the clause/article 23.4 of the said agreement and submitted that the equity support shall be in the nature of quasi equity and both paid in cash by the shareholders for meeting the total project cost as set forth in the financial package. Hence the cash support by way of an outright grant of Rs.38.40 crores provided by NHAI is that of capital reserve only and it is only for meeting the promoter's contribution by way of equity support. It cannot be reduced from the capital asset for the purpose of computation of depreciation and the assessee has rightly computed the eligible depreciation in accordance with the CBDT Circular No.09/2014 dated 23/04/2014. The grant given by the NHAI is not for meeting of the cost of a portion of plant and machinery but it is for smooth functioning of the contract with NHAI. He has further submitted that when this grant was not given for any specific purpose and not for acquisition of any asset, then it has no nexus with the cost of asset or acquisition of any particular asset and therefore, it cannot be reduced from the cost of fixed

asset for the purpose of depreciation. The learned AR has further submitted that this grant in the form of equity support was received over a period of time from financial year 2006-07 to 2009-10 and therefore, the same cannot be reduced from the WDV of the fixed asset for the year under consideration. He has relied upon the following decisions as well as the impugned order of the learned CIT (A):

- i) *Hon'ble Supreme Court in the case of CIT vs. P.J. Chemicals Ltd (210 ITR 830)*
- ii) *Hon'ble AP High Court in the case of CIT vs. Godavari Plywoods (168 ITR 632)*
- iii) *Hon'ble Karnataka High Court in the case of CIT vs. Diamond Dies Mfg. Corp (40 Taxman 34)*
- iv) *ITAT Kolkata in the case of Gloster Ltd v CIT in ITA No.828/Kol/2020*

5. We have considered the rival submission as well as relevant material available on record. The Assessing Officer has made an addition by disallowing the part of depreciation as a result of reduction of WDV to the extent of NHAI grant of Rs.38.40 crores from the cost of the project. The relevant findings of the Assessing Officer on this issue in para 3.2 to 3.3 as under:

3.2 From the above operating part of the Concessionaire Agreement it is clear that the NHAI grant shall be utilized to meet the capital cost of the project. Therefore the cost of the Capital Asset, in the present case, shall be reduced to the extent of Rs. 38.40 Crores, and the remaining amount only shall be capitalized. During the F.Y.2009-10 relevant to the A.Y. 2010-11, the assessee company has capitalized the expenditure incurred on the project amounting to Rs. 326,70,55,057/-. But on the verification of the break-up of WDV of BoT Project, it is noted that the assessee has not deducted the NHAI grant received from WDV of the project cost.

3.3 In view of the facts discussed as above, the cost of BoT Project is reduced to the extent of NHAI grant received and actual Cost is arrived as under:

Cost of BoT Project Capitalized by the Assessee	Rs. 326,70,55,057/-
Less: NHAI Grant Received	Rs.38,40,00,000/-
Effective Cost of Capital Asset	Rs.2,88,30,55,057/-

The depreciation on the BoT project is to be computed based on the effective Cost of Capital Asset, as determined above.

6. Thus, the Assessing Officer has treated the grant given by NHAI to be utilized to meet the capital cost of the project and accordingly reduced the same from the WDV of the project for the purpose of allowing the depreciation. It is clear from clause 23.1 to 23.3 that this grant was given by the NHAI as a cash support by way of outright grant as a shareholders fund. Naturally the assessee cannot use the said grant given by the NHAI other than meeting the cost of the project but that does not lead to the conclusion that the grant was given by NHAI as a portion of cost of asset acquired by the assessee met directly or indirectly as provided in Explanation (10) to section 43 of the I.T. Act, 1961. It is the cash support in the nature of shareholders fund to make the project viable and to provide financial strength to the assessee to avail further financial support from the financial institutions in the shape of loan. The learned CIT (A) has considered this issue in para 5.3 to 5.3.2 as under:

5.3 I have carefully considered the assessment order and submissions of the appellant. With regard to disallowance of depreciation of Rs. 42,43,34,676/-, the Assessing Officer has made a detailed discussion at para 3 to 4.4 of the assessment order which is verified. In this regard, the submissions of the appellant were also verified. With regard to NHAI grant of Rs. 38,40,00,000/- which was reduced from the cost of BoT Project of Rs. 326,70,55,057/- by the Assessing Officer was not accepted after considering the submissions of the appellant. As per para 3.1 of the assessment order also it is clear that the point No. 23.2 of Chapter-V, the Assessing Officer himself has mentioned the clause of 23.1, which describes about the NHAI grant as under:

*"23.3 Subject to provisions of the clause 23.4, **the grant shall be applied by the Concessionaire for meeting the capital cost of the project and shall be treated as part of the Shareholders funds**".*

5.3.1 Further, the Assessing Officer himself has observed the grant as Shareholders funds and therefore the appellant has rightly taken this fund into "Reserves and Surplus" and hence not to be reduced from the expenditure incurred. Therefore, treating the effective cost of capital expenditure of Rs. 2,88,30,55,057/- was not correct and hence, the expenditure will be Rs. 326,70,55,057/- as claimed by the appellant.

5.3.2 Further, it is noticed that for the earlier years also, the appellant has claimed 25% of the depreciation but the Assessing Officer has not allowed the same. Therefore, in this regard, the Assessing Officer is directed to amortize the total amount and calculate the depreciation for all the years and allow accordingly.

7. Thus, it is clear that the learned CIT (A) has given the finding based on the analysis of facts and law which is also

supported by various decisions as relied upon by the assessee. Therefore, we do not find any error or illegality in the order of the learned CIT (A), qua this issue.

8. Ground No.2 is regarding the disallowance of provisions for periodic maintenance which was allowed by the learned CIT (A).

9. The assessee has claimed an amount of Rs.21,57,00,000/- for periodic maintenance and debited to the P&L Account. The Assessing Officer observed that this is not an allowable expenditure as per the provisions of the Act. The Assessing Officer issued a show cause notice to the assessee. In reply, the assessee submitted that as per the concessionaire agreement with NHAI, the assessee has to do periodic maintenance of carriageway once in every 5 year. The company has to recover the expenditure from toll revenue only but there will be no additional income in the 5th year. It is claimed that the expenditure towards the repair or damaged occurred to the road due to the traffic during the period of 5 years and not because of the traffic of the 5th year in which the assessee has to carry out the repair work. Thus, the assessee contended that it has apportioned the expenditure for the 5 years and made a provision for periodic maintenance of Rs.21,57,00,000/-. The Assessing Officer did not accept the contention of the assessee and disallowed this claim.

10. On appeal, the learned CIT (A) has allowed the claim of the assessee to the extent of Rs.14.42 crores on the ground that the Assessing Officer has already allowed the said claim of the assessee for the A.Y 2011-12 and consequently, sustained the addition to the extent of Rs.7.15 crores.

11. Before us, the learned DR has submitted that the depreciation u/s 32(1)(ii) of the Act is not allowable as the assessee is not the owner of the project. Further, the expenditure cannot be amortized prior to it is incurred. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd vs. CIT (314 ITR 12) as well as in the case of Bharat Earthmovers Ltd vs. CIT (245 ITR 428) and submitted that the provisions must be based on some scientific methodology. As per the details of the provisions, it is clear that the estimation is not based on a scientific and systematic studies/ methodologies. The learned CIT (A) has allowed the claim without any basis and without examining the scientific methodology for quantifying the provisions made by the assessee. He has supported the order of the Assessing Officer.

12. On the other hand, the learned AR of the assessee has submitted that this issue is now covered by the decision of the Tribunal in case of assessee's own group concern for the A.Y 2011-12. As it is obligatory on the part of the assessee company to execute regular periodic maintenance as detailed in the

agreement, the assessee company will carry out the said maintenance work by itself and through outside Contractor, for which huge expenditure is required to be incurred. Though this expenditure will be incurred subsequently, the wear and tear is there throughout the year. Further, it is submitted that this expenditure has to be incurred as part and parcel of the business of the assessee and the amount to be incurred can easily be ascertained. Therefore, this is an ascertained liability. As the expenditure in question is certain, the assessee has allocated them to meet periodic maintenance. Therefore, the assessee company has created provision to meet this expenditure on proportionate basis as per the accrual system of accounting. Under the matching principle concept, though the assessee may be actually incurring expenditure at a later date it has created the above provision as a need for incurring such expenditure which arises over a period of time. Further, claiming such periodic expenditure in the year in which it is actually paid is against the method of mercantile system of accounting as it would give incorrect picture of the financial results of a particular financial year. The expenditure in question was not a contingent liability but it has to be considered while determining the total income of the assessee company for the period under consideration. As such, the provision made towards of periodic maintenance is an ascertained liability, though estimated on the basis of available information. In support of his contentions, he has relied upon the following decisions:

- i) *ACIT vs. Ashoka Buildcom Ltd (61 Taxmann.com 330)*
- ii) *CIT vs. Om Metals & Minerals (P) Ltd (60 Taxmann.com 448)*
- iii) *Rotork Controls India (P) Ltd vs. CIT(180 Taxman 422)*
- iv) *Bharat Earth Movers vs. CIT (112 Taxman 61).*

13. We have considered the rival contentions as well as the relevant material available on record. There is no dispute that the assessee is under a contractual obligation to carry out the periodic maintenance of the road constructed under the concessionaire agreement with NHAI. The assessee has to meet the expenses from the toll collection. However, the repair work is carried out only on the 5th year and therefore, it is an accumulated repair & maintenance expenditure for a span of 5 years for which the assessee has made the provision of 1/5th of the estimated cost of the repair work each year. The learned CIT (A) has considered this issue in para 6 to 6.3 as under:

6. The Ground NOs. 5 to 9 and additional grounds 24 to 28 are with regard to disallowance of expenditure towards provision for periodic maintenance of Rs. 21,57,00,000/-.

6.1 With regard to above grounds, the Assessing Officer observed as under:

On verification of P & L account, it is noted that the assessee debited an amount of Rs. 21,57,00,000/- towards provision for periodic maintenance, which is not a allowable expenditure as per provisions of I.T.Act. When this observation was put-forth before the assessee's AR, the assessee company submitted that the assessee company, as per concessionaire agreement with NHAI has to do periodic maintenance of carriageway once in every five year. The assessee company has to recover the expenditure from toll revenue only but there will be no additional income in 5th year. The expenditure is towards repairs of damages occurred to road due to traffic during period of 5 years but not because of traffic of 5th year. Hence, the assessee company apportioned the expenditure for 5 years and made provision for periodic maintenance of Rs. 21,57,00,000/-.

The assessee's submission is carefully considered. The assessee's contention is not acceptable. The assessee company has to do periodic maintenance of carriageway as per agreement with NHAI.

6.2 With regard to above grounds during the course of appeal proceedings, the appellant company submitted as under:

5.1 In this regard we would like to submit that the assessee company has made the provision of periodic maintenance in the five years as per the Clause no. 3.3.7 of Volume II in Schedule L of the 'Concession Agreement' with NHAI, the Company is required to overlay the entire project expenditure at a stretch once in every 5th year from the date of Commercial Operation. Hence the provision made for periodic maintenance cannot be treated as "Not an ascertained Liability". Relevant clause of agreement has been reproduced hereunder for your kind reference :-

As per Concession Agreement Clause 3.3.7(i) "

(a) This activity shall be carried out as required and at least once 5th year (from COD) and in the last year of concession period. Road making as specified and other road side features shall be restored to meet the relevant standards to the satisfaction of the independent consultant"

(b) The periodic maintenance activities shall also include profile corrective course of overlaid with the periodic renewal of the wearing course of the road pavement. The same shall be undertaken on all roads and pavements in the Project facilities including on the truck lay-bays bus-bays and way side amenities -service area. The concessionaire may adopt cost effective treatment like Asphalt concrete, recycling, stone mastic, micro seal etc.

Relevant page no 7 of Schedule L of Volume II of agreement has been enclosed in the paper book. As can be seen from the above clause of Concession Agreement with NHAI, M/s MAJEL have to overlay the road once in every 5 years from COD. The amount of such expense is very high and such expenses was related to 5 years. So, by using the matching concept of accounting this provision is debited in P&L account, on the bases of above mentioned clause provision was made every year accordingly.

Therefore, whenever company has incurred actual expense related to periodic maintenance it was adjusted such amount from provision for periodic maintenance and balance has been debited in to the P & L account in year of incurred.

5.2 Provision of Major Maintenance made Correctly at Rs. 5.98 Crores :-

5.2.1 The company has achieved COD (Commercial Operation Date) in the month of May'2009. Accordingly, the first cycle of Major Maintenance / Periodic Maintenance is due to be completed by May'2014. Since the entire expenditure will be spent in the 5th year, the company has made yearly provision and debited P&L account using the matching concept of accounting.

5.2.2 Details of the provision made for the five years and actual expenses incurred has been incurred by the assessee company on the maintenance work has been given as under :-

Detail of Periodic Maintenance from F.Y. 2009-10 to F.Y. 2016-17

F.Y.	Provision for Periodic Maintenance	Actual Expenses for Periodic Maintenance
F.Y 09-10	-	-
F.Y 10-11	2,85,00,000	-
F.Y 11-12	5,98,00,000	-
F.Y 12-13	21,57,00,000	-
F.Y 13-14	29,44,64,342	-
F.Y 14-15	12,23,96,871	-
F.Y 15-16	-	49,10,27,146
F.Y 16-17	-	41,91,83,829
Total	72,08,61,213	91,02,10,975

Note:- The differential amounting to Rs. 18,93,49,762/- (91,02,10,975 – 72,08,61,213) treated as expenditure in F.Y. 2016-17.

5.2.3 It is submitted that the company has made provision of Rs. 72,08,61,213/- in the above five years whereas the actual expenditure has been incurred by the assessee company at Rs. 91,02,10,975/-. In this regard we would like to submit that assessee company has made above provisions in the five years on the following basis :-

- **FY 2009-10 :-** It is very difficult to ascertain the actual cost to be incurred by end of 5th year due to escalation and other reasons. The company has not made any provision in the FY 2009-10 due to the reason that the Periodic maintenance shall be completed ~~after 5 years~~ from COD.

- **FY 2010-11 :-** The first provision was made in the year 2010-11 based on the projections as per Financial Model (Project Information Memorandum) dated February'2011 for Rs.2.85 crores. A Copy of the PIM Report Dated Feb 2011 has been enclosed in paper book for your kind reference.
- **FY 2011-12 :-** The estimated cost as per the Financial Model by end of FY 2014 was Rs.20.79 crores. Since there was a short provision in the FY 2010-11, the company has increased the provision in the FY 2011-12 and made a provision of Rs.5.98 crores. A Copy of the PIM Report Dated Feb 2011 has been enclosed in paper book for your kind reference.
- **FY 2012-13 :-** While closing the books for the FY 2012-13 the company has realised that the estimated cost of Rs.20.79 crores would be very less and recalculated the estimated cost with the rates prevailing at that particular time. As per the revised estimates, the cost for periodic maintenance in the year 2014 is estimated to be Rs.39.65 crores. A Copy of the Statement showing cost estimation of Rs. 39.65 crores has been enclosed in paper book for your kind reference. Accordingly, the cumulative provision by end of FY 2012-13 should be Rs.30.40 crores. Since the opening provision was Rs.8.83 crores, the balance amount of Rs.21.57 crores was created as provision in the year 2012-13. A Copy of the Statement showing calculation of provision of Rs. 21.57 crores for the FY 2012-13 has been enclosed in paper book for your kind reference.
- **FY 2013-14 :-** Again, while closing the books for the FY 2013-14 the company has realised that the estimated cost of Rs.39.65 crores would be very less and recalculated the estimated cost with the rates prevailing at that particular time. As per the revised estimates, the cost for periodic maintenance in the year 2014 is estimated to be Rs.61.91 crores. A Copy of the Statement showing revised cost estimation of Rs. 61.91 crores has been enclosed in paper book for your kind reference. Accordingly, the cumulative provision by end of FY 2013-14 should be Rs.59.85 crores. Since the opening provision was Rs.30.40 crores, the balance amount of Rs.29.45 crores was created as provision in the year 2013-14. A Copy of the Statement showing calculation of provision of Rs. 29.45 crores for the FY 2013-14 has been enclosed in paper book for your kind reference.

- **FY 2014-15 :-** On 20th June' 2014, the company has entered into agreement M/s. Madhucon Projects Limited for execution of Periodic maintenance work for an amount of Rs.72.09 crores. A Copy of the Major Agreement dated 20.06.2014 has been enclosed in paper book for your kind reference. Accordingly, the company has made the provision for the year 2014-15 for an amount of Rs.12.24 crores.

As can be seen from the above that Assessee Company has made provision in the above five years on the basis of the projected financial and estimated cost and same should be allowed provision.

5.2.4 As explained above, the company was supposed to complete the periodic maintenance by end of FY 2014. Since the work was not started by the company due to non availability of funds, the Independent Consultant M/s. URS Scott Wilson India Private Limited vide their letter dated 12.11.2014 has indicated to charge penalty on non completion of periodic maintenance. A Copy of the Report from Independent Consultant M/s. URS Scott Wilson India Private Limited vide their letter dated 12.11.2014 has been enclosed in paper book for your kind reference.

5.2.5 The company has actually started the work in the year 2015-16 and completed in the year 2016-17. The Independent consultant vide their letter dated 09.08.2016 has recommended a penalty of Rs.57.40 crores (Rs. 52.94 Crores + Rs. 4.46 Crores) to be imposed. A copy of Independent consultant vide their letter dated 09.08.2016 enclosed in paper book for kind reference. Accordingly, NHAI has also levied penalty for delay in periodic maintenance work. However the company has disputed this. A Copy of the penalty letters from NHAI and reply by the assessee has been enclosed in paper book for your reference.

5.2.6 Apart from that it is submitted that the difference amount of between the total expenditure incurred at Rs. 91,02,10,975/- and provision made for the five years of Rs. 72,08,61,213/-, has been work out at Rs. 18,93,49,762/-and same has been treated as expenditure in F.Y. 2016-17. The assessee company has debited only the difference amount of actual and provision in the FY 2016-17 that means it is very clear that the assessee company is eligible for the provision made in the five years as assessee has not claimed the total actual expenditure in the year in which it has been incurred.

5.2.7 Further, it is submitted that Assessee Company has not made any excess provision in respect of the major maintenance work and rightly claimed the provision in

financial statement. This fact can be appreciated from the actual value of expenditure which is higher than the provision made by the assessee. Therefore provision made by the company is correct and same should be allowed.

5.2.8 Under the Matching Principle Concept, though the assessee may be incurring expenditure at a later date, has created the provision as the need for incurring such expenditure since such expenditure arise over a period of time and claiming such periodic expenditure in the year in which it is actually incurred would give incorrect picture of the financial results in the year under the claim.

The foreseeable expenditure was liable to be considered while determining the income of the assessee for the period under consideration. The expenditure was ascertained expenditure on the maintenance portion of the contract though it was an estimation made in the light of the available information. The assessee is following the mercantile system of accounting and it is entitled to deduct expenditure which is incidental to the business and such expenditure was deductible on accrual basis though it may not have been actually incurred during the relevant assessment year. Hence, the addition made is to be deleted.

5.3 Periodic Maintenance claimed in the previous year has been allowed :- In this regard we would like to submit in year under consideration the assessee has made provision for the maintenance being the second year of provision. In the earlier assessment year 2011-12 the assessee company has also made the provision for the maintenance which has been allowed by the AO while completing the assessment u/s 143(3) of the Act vide Order dated 26.12.2013.

It is also submitted that assessee has followed the same accounting in the subsequent years also therefore when the provision has been allowed in earlier years the same cannot be deny in subsequent years. It is also mentioned that assessee has followed the same accounting principal as followed in previous year Accordingly, as the principal of consistency has been followed as the provision is required to be made for the five years of cycle the assessee has made provision in year under consideration. In this regard, we would like to place reliance in the case of AP High Court in *pact Securities & Financial Services Ltd* dated Feb 5 2015.



5.4 Major Maintenance work given to Contractor, M/s Madhucon Project Limited :- In the case of Assessee Company the major maintenance work completed

through outside contractor i.e. M/s Madhucon Project limited . We would like to submit that the company has entered into the agreement on 20th June 2014, with the M/s. Madhucon Projects Limited for execution of Periodic maintenance work for an amount of Rs.72.09 crores. Accordingly the Supplementary Major Maintenance Agreement dated 14.02.2015 executed with the M/s Madhucon Project Limited for maintenance and repair work of the 4-Lane divided highway from Km. 62.295 to Km. 119.600 (57.305 Kms) being the Bharatpur – Mahua Section of National Highway 11 in the state of Rajasthan. Accordingly this agreement was entered by the assessee company with the Contractor Company for total BOQ of Rs. 72 crores. Later, the additional work shall be carried out by the contractor company and accordingly the assessee company has entered into the Second Amended and Supplementary Major Maintenance Agreement dated 29.09.2016 for the total BOQ of Rs. 91.07 crores. Copies of the above three Agreements have been enclosed in the paper book for your kind reference.

5.5 Without prejudice to the above submission, assessee is eligible for 1/5th of total provision of Rs. 72.09 Crores :- In this regard we would like to submit that assessee company has made total provision of Rs. 72.09 crores over the period of five years based on the estimation and projected financial. Accordingly the assessee company is eligible for the 1/5th of the total provision of Rs. 72.09 Crores which is worked out at Rs. 14.42 crores in each five years. Therefore, we are making the claim of Rs. 14.42 crores in respect of the provision for the maintenance and same should be allowed alternatively.

Request :- It is submitted that the assessee company has made provision for the periodic maintenance correctly on the basis of the projected financial and accordingly created the provision of Rs. 21,57,00,000/- in the year under consideration. The Provision for this periodic maintenance was made duly on the basis of mercantile accounting system and same should be allowed in the year under consideration. Therefore, from the above it is very clear that the assessee company has incurred the major maintenance of expenditure in every fifth year as per the agreement with NHAI and accordingly made the provision in this regard which is as per the accounting and same should be allowed in the year under consideration. Hence, it is requested before you that kindly delete the addition of ~~Rs. 21,57 crores~~ in respect of the periodic maintenance.

6.3 I have carefully considered the assessment order and submissions of the appellant. During the course of appeal proceedings, the appellant filed additional ground of appeal in which it was submitted that the appellant company has incurred Rs. 91,02,10,795/- for 5 years against the provision made of Rs. 72,08,68,213/-. The difference of Rs. 18,93,49,762/- claimed as expenditure in the F.Y. 2016-17 i.e., A.Y. 2017-18. The reasons in the assessment order along with explanation of the appellant were verified. As per the appellant, the Assessing Officer has allowed this provision for the maintenance claimed by the appellant for the first time in the A.Y. 2011-12. Therefore, this 1/5th of total provisions was started from A.Y. 2011-12 onwards. Therefore, the Assessing Officer is directed to allow Rs. 14.42 crores for all the five years. Since the Assessing Officer has already allowed fully as per the claim of the appellant, the Assessing Officer is directed to verify and if any excess is there, the same to be taxed in those assessment years accordingly. Since this assessment year i.e., 2013-14 is being third assessment year, out of total addition of Rs. 21.57 cores, an amount of Rs. 14.42 crores is deleted and the balance amount of Rs. 7,15,00,000/- is confirmed. The Assessing Officer is directed accordingly.

14. We further note that in the case TN(DK) Express Ways Ltd vs. ACIT in ITA No.557/Hyd/2017 which is a group concern of the assessee, the Tribunal vide order dated 16/10/2018 has considered an identical issue as under:

“7. Considered the rival submissions and perused the material on record. The provision created by the assessee was disallowed by the AO on the ground that no expenditure was incurred during the year under consideration, therefore, such provision cannot be allowed. In the case of Ashok Buildcon Ltd. (supra), the Pune Bench of ITAT held that "it is not in dispute that the assessee is executing fixed price

contract which means that the contractor has agreed to a fixed contract price or rate in some cases subject to cost escalation prices. As per AS-7, the assessee is entitled to make provision for foreseeable losses." In the case of Om Metals & Minerals (P) Ltd. (supra), the Hon'ble High Court of Rajasthan upheld the findings of the Tribunal that assessee made pro vision of supplies for possible loss due to deduction made by Govt for not keeping supplies to satisfaction of department and further entire amount was included by the assessee in total receipts and once entire receipts had been shown, expenditure ought to have been allowed.

7.1 In view of the ratios laid down as above, we are in agreement with the assessee that in the mercantile accounting system the expenditure to be absorbed on periodic basis. In the given case, the expenditure to be incurred after 5 years and assessee cannot charge to P&L account whole 5 years expenditure on year 5. Rather, it has to charge to P&L A/c every year proportionate to the year of liability. Therefore, we set aside the order of CIT(A) and allow the provision made by the Assessee towards periodic maintenance."

15. Accordingly, in the facts and circumstances as discussed above, we do not find any reason to interfere with the impugned order of the learned CIT (A), qua this issue.

16. For the A.Y 2014-15, the Revenue has raised the following grounds:

"1. The CIT (A) erred in allowing an amount of Rs.14,42,00,000/- being 1/5th of provisions made for maintenance, ignoring the fact that it is not an ascertained liability.

2. Any other ground that may be urged at the time of hearing".

17. The solitary issue raised by the Revenue for the A.Y 2014-15 is regarding disallowance of provisions made for periodic maintenance was allowed by the learned CIT (A). This issue is common and identical to the issue raised by the Revenue in Ground No.2 for the A.Y 2013-14. Accordingly, in view of our findings on this issue for the A.Y 2013-14, we do not find any error or illegality in the order of the learned CIT (A) qua this issue.

18. For the A.Y 2013-14, the assessee has also filed a cross appeal. There is a delay of 1271 days in filing the appeal by the assessee. The assessee has filed a petition for condonation of delay which is supported by an affidavit of the Director of the assessee company.

19. We have heard the learned AR as well as the learned DR and carefully perused the contents of the petition for condonation of delay as well as the affidavit filed by the assessee. The impugned order was passed by the learned CIT (A) on 27/11/2017 and the assessee filed the present appeal on 28th July, 2021. The assessee has explained the cause of delay in the petition for condonation of delay as well as the affidavit which read as under:

IN THE INCOME TAX APPELLATE TRIBUNAL, HYDERABAD - BENCH " " "
ITA No. /Hyd/
(ASST. YEAR 2013-14)

BETWEEN
M/S. MAHUA BHARATPUR EXPRESSWAYS LIMITED
(Formerly known as Madhucon Agra - Jaipur Expressways Limited)
HYDERABAD.

APPELLANT

AND
ACIT,CIRCLE-16(2)
HYDERABAD.

RESPONDANT

PETITION FOR CONDONATION OF DELAY

I,Ravindranath Karati, Director of M/s. Mahua Bharatpur Expressways Limited hereby state that, I am acquaint with the facts of the case in respect of appeal which has been filed with the ITAT in respect of the Assessment Year 2013-14, and I state that:

The order u/s. 250 of the Act in respect of the Assessment Year 2013-14 has been passed on 27.11.2017 and same was served on 05.12.2017. And the time for filing of the appeal before the Tribunal was to expire on 03.02.2018. However, the order was served on staff member who received the above order and misplaced the same and has not brought it to the notice of the person concerned. Incidentally the Director was also out of station during that time. Therefore no appeal could be filed at that time against the above order u/s 250 of the act.

On finding of the above order on 10.07.2021, the appeal could be filed on 28/07/2021 with the delay of 1271 days as the appeal was due for filing on 03/02/2018 and instead of that the same has been filed on 28/07/2021

In view of the above reasons, the delay may please be condoned and the appeal may please be considered due to circumstances which were beyond the control of the Assessee. What is stated above is true to the best of my knowledge and belief.

Thanking You

Place: Hyderabad,

Date: 28/07/2021





Affidavit for Condonation of Delay

I, Ravindranath Karati, Director of M/s. Mahua Bharatpur Expressways Limited (Formerly known as Madhucon Agra - Jaipur Expressways Limited) hereby state that, I am acquainted with the facts of the case in respect of appeal which has been filed with the ITAT in respect of the Assessment Year 2013-14, and I state that:

The order u/s. 250 of the Act in respect of the Assessment Year 2013-14 has been passed on 27.11.2017 and the same was served on 05.12.2017. And the time for filing of the appeal before the Tribunal was to expire on 03.02.2018. However, the order was served on staff member who received the above order and misplaced the same and has not brought it to the notice of the person concerned. Incidentally the Director was also out of station during that time. Therefore no appeal could be filed at that time against the above order u/s 250 of the act.

On finding of the above order on 10.07.2021, the appeal could be filed on 28/07/2021 with the delay of 127 days as the appeal was due for filing on 03/02/2018 and instead of that the same has been filed on 28/07/2021

In view of the above reasons, the delay may please be condoned and the appeal may please be considered due to circumstances which were beyond the control of the Assessee.

What is stated above is true to the best of my knowledge and belief.



DEPONENT



ATTESTED
S. BHASKAR B.A. LL.B
ADVOCATE & NOTARY
H. No: 6-3-392, Panjajutta,
Behind Police Station
Hyderabad - 82, Telangana, India
Phone : 9392535629

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20. Thus, the assessee has stated that the impugned order was served on the assessee on 5/12/2017, however, it was served on the staff member who received the above order and misplaced the same and has not brought to the notice of the person concerned. These reasons explained by the assessee for an inordinate delay of 1271 days are not only vague to the extent of not giving any particulars of the person to whom the notice was served rather the same are patently contrary to the record. It is pertinent to note that in the appeal filed by the Revenue in ITA Nos.285 & 286/Hyd/2018 for the A.Y 2013-14 & 2014-15 respectively, the assessee has been regularly appearing right from 27/04/2018. Therefore, the assessee was very much aware about the impugned order well before 27/04/2018 when the assessee made the first appearance before the Tribunal in the cross appeal filed by the Revenue against the impugned order of the learned CIT(A). Even thereafter, the assessee has been regularly appearing during the year 2018 to 2020 but the appeal was finally filed only on 28/07/2021. Therefore, the reasons explained by the assessee are not only vague but contrary to the facts emerging from the record. Accordingly, we find that when the assessee has failed to explain some reasonable cause to justify such an inordinate delay, the concept of liberal interpretation of expression of the term “sufficient cause” cannot be applied in the case of the assessee. The reasons are apparently unacceptable and unsatisfactory as the assessee has failed to explain the justification for such an inordinate delay in filing the appeal. On

the one hand the assessee has been appearing in the cross appeal filed by the Revenue but chosen not to file the appeal against the impugned order. Therefore, the assessee has failed to make out a case that it has acted bonafidely and had taken all possible steps within its power and control to file the appeal without unnecessary delay. Except giving some vague excuse of no knowledge of the impugned order which is absolutely contrary to the record and unacceptable, the assessee has not brought any material to show that the assessee was prevented by some circumstances or events which were beyond the control of the assessee to file the appeal within the period of limitation. Accordingly, in the facts and circumstances as discussed above, we decline to condone the delay of 1271 days in filing the appeal and hence, the appeal of the assessee is not maintainable being barred by limitation.

21. In the result, Revenue appeals for the A.Ys 2013-14 and 2014-15 as well as the assessee's cross appeal for the A.Y 2013-14 are dismissed.

Order pronounced in the Open Court on 2nd June, 2025.

Sd/-

Sd/-

(MANJUNATHA, G.) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 2nd June, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	Dy.CIT, Circle 16(2) 2 nd Floor, B Block, IT Towers, AC Guards, Masab Tank, Hyderabad
2	M/s. Madhucon Agra Jaipur Expressways Ltd, Plot No.1129/A Madhucon House, Road No.36, Jubilee Hills, Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order