

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PRAKASH CHAND YADAV, JM**

**ITA No. 568/Coch/2023
Assessment Year: 2011-12**

Roads and Bridges Development Appellant
Corporation of Kerala Ltd.
Preethi Building, M.V. Road, Palarivattom
Ernakulam 682025
[PAN: AABCR7841Q]

vs.

ACIT, Corporte Circles-2(1), Kochi Respondent

Appellant by: Smt. Remya S. Menon, CA
Respondent by: Shri Sundarasan S., CIT.DR

Date of Hearing: 29.05.2025
Date of Pronouncement: 24.06.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 17.03.2023 for Assessment Year (AY) 2011-12.

2. Brief facts of the case are that the appellant is a company which is a wholly owned by Government of Kerala undertaking. It is engaged in the business of construction, development, operation, and maintenance of railway over bridges, highway projects, etc. The

original return of income for AY 2011-12 was filed on 28.09.2011 declaring loss of Rs. 9,65,43,016/-. The same was revised on 07.01.2013 at a loss of Rs. 5,11,71,331/-. Against the said return of income, the assessment was completed by the ACIT, Corporate Circle 2(1), Kochi vide order dated 30.03.2014 at total income of Rs.2,10,68,827/- before set off of brought forward loss. Ultimately the income was assessed at Nil income. Subsequently, the AO issued a notice u/s. 148 of the Income Tax Act, 1961 (the Act) on 10.04.2015 for the reason that income escaped assessment to tax for following reasons: -

- i) The depreciation allowed at the time of completing the assessment on 30.03.2014 was not correct as the assessee is eligible for amortization of the cost of the assets constructed on BOT basis @6.67% over a period of 15 years.
- ii) The loss for AY 2006-07 which was set off against the income of AY 2011-12 was not correctly taken.
- iii) The returned loss was wrongly adopted from the original return instead of loss as per revised return.

3. Subsequently, the assessment was completed by the AO at total income of Rs. 7,30,30,534/- vide order dated 31.12.2016 u/s. 143 r.w.s. 147 of the Act. While doing so, the AO denied set off of loss allowed in the original assessment of Rs. 3,80,22,354/-, disallowed depreciation on intangible assets of Rs. 1,60,79,904/- and made addition on interest of Rs. 36,51,373/-.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order partly allowed the appeal by deleting the addition on account of interest of Rs. 36,51,373/- based on the judgement of the Hon'ble Kerala High Court in assessee's own case. However, confirmed the addition on account of disallowance of depreciation on intangible assets following the decision of the Hon'ble Rajasthan High Court in the case of Golcha Properties Pvt. Ltd. v. CIT 166 ITR 259 and the decision of the Tribunal in assessee's own case for AY 2005-06. However, refused to take cognizance of the loss declared in the revised return of Rs. 5,11,71,331/- by holding that the revised return was filed after the due date. The learned CIT(A) also confirmed the addition on account of disallowance of interest paid to HUDDCO.

5. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

6. The learned counsel for the assessee contended that the lower authorities had grossly erred in not taking cognizance of the revised return filed, even though filed beyond the due date prescribed u/s. 139(4) of the Act. It is further contended that the CIT(A) ought not have confirmed the disallowance of depreciation on intangible assets. He further submitted that the CIT(A) ought not have disallowed set off of loss against current income.

7. On the other hand, the learned Sr. DR submitted that there is no illegality in the order passed by the CIT(A) warranting interference by this Tribunal.

8. We have heard the rival contentions and perused the material available on record. Admittedly, the revised return of income was filed beyond the due date specified u/s. 139(4) of the Act. However, the information contained in the revised return of income is a valuable information for framing the assessment order pursuant to notice u/s. 148 of the Act. Therefore, we are of the considered opinion that the AO ought to have utilised the information contained in the revised return of income for the purpose of framing the assessment order pursuant to notice u/s. 148 of the Act. Therefore, the matter is restored to the file of the AO to redo the assessment afresh. All the contentions raised by the assessee are kept open before the AO.

9. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 24th June, 2025.

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 24th June, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin