

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad "B" Bench, Hyderabad**

श्री मंजूनाथ जी, माननीय लेखा सदस्य एवं श्री रवीश सूद, माननीय न्यायिक सदस्य  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**  
**AND**  
**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.612/Hyd/2024  
(निर्धारण वर्ष/ Assessment Year: 2018-19)

BSCPL Aurang Tollway Limited, Hyderabad.  PAN : AAECB8221D	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(1), Hyderabad.
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Percy Perdiwala, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Narendra Kumar Naik, CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	13.11.2025
घोषणा की तारीख/ Date of Pronouncement	:	28.01.2026

**ORDER**

**PER MANJUNATHA G., A.M :**

This appeal filed by the assessee is directed against the order of the learned Principal Commissioner of Income Tax (Appeals), Hyderabad – 4, dated 14.03.2024, passed under Section 263 of

Income Tax Act, 1961 (for short “the Act”) and pertains to the assessment year 2018-19.

2. The grounds raised by the assessee read as under :

*“1. Ld. Pr. CIT-1 has wrongly assumed jurisdiction u/s 263 as the AO after scrutinizing all the details, making enquiries, proper verification and consideration of the entire material on record had accepted the claim of depreciation treating the right to collect toll as an intangible asset and accepted the loss returned after due application of mind. Thus, invoking provisions of Section 263 amounts to change of opinion which is not permissible under the act.*

*2 The order of Ld. AO is not erroneous or prejudicial to the interests of the revenue as the appellant company is having exclusive right, license and authority to construct, operate and maintain the project till 15.02.2041 during which period revenue is generated in the form of toll collections and the same partakes nature of the intangible asset and eligible for depreciation @ 25% as held by Jurisdictional Bench of Hon'ble ITAT in M/s Mokama Munger Highway Ltd in ITA No.'s 1729,2145 & 2146/Hyd/2018 dated 03/07/2019 and [2018] 161 DTR 289 M/s Progressive Constructions Ltd Vs ACIT and by Pune Bench of Hon'ble ITAT [2018] 163 DTR 321 M/s Ashoka Infrastructure Ltd Vs Asst. CIT.”*

3. At the outset, there is a delay of 30 days in filing the present appeal before the Tribunal. The assessee has filed an affidavit explaining the reasons for the delay, wherein it was submitted that the appeal for the relevant assessment year was required to be filed within 60 days from the date of receipt of the order passed under Section 263 of the Income-tax Act, 1961. However, the appeal could not be filed within the prescribed time as the

Director of the assessee company, who was handling the taxation matters, was hospitalized due to medical issues. It was submitted that immediately upon resuming duties after recovery, prompt steps were taken to gather the relevant documents and to file the appeal before this Hon'ble Tribunal. It was further submitted that, the delay was neither intentional nor deliberate, but occurred due to circumstances beyond the control of the assessee, and therefore, the delay may kindly be condoned in the interest of justice.

4. The learned CIT-DR for the Revenue, Dr. Narendra Kumar Naik, on the other hand, did not oppose the request for condonation of delay, in view of the reasonable cause explained by the assessee.

5. We have heard both parties and perused the petition and affidavit filed by the assessee, seeking condonation of delay in filing the appeal. We find that, the reasons explained by the assessee constitute reasonable cause. The Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST. Katiji [1987] 167 ITR 471 (SC) has laid down that a liberal and pragmatic approach should be adopted while considering applications for

condonation of delay, so that substantial justice is not defeated on technical grounds. Similar view has been taken by the Hon'ble Karnataka High Court in CIT & Anr. Vs. ISRO Satellite Centre [2013] 263 CTR (Kar) 549 and by the Hon'ble Jurisdictional ITAT in Srimaan Industries Private Limited Vs. ITO [2022] 217 TTJ (Hyd) 120. Respectfully following the aforesaid judicial precedents, and considering the bona fide reasons explained by the assessee, we condone the delay in filing the appeal and admit the appeal for adjudication.

6. The brief facts of the case are that, the assessee company filed its return of income for F.Y. 2018-19 on 27.10.2018, declaring a loss of Rs. 277,7468,523/- and the said return has been revised by filing a revised return on 21.01.2019, admitting the same loss at Rs. 277,7468,523/-. The case has been selected for scrutiny and the assessment has been completed under Section 143(3) r.w.s. 143(3A) and 143(3B) on 15.04.2021 and accepted the returned loss. The case has been subsequently taken up for revision proceedings and a show-cause notice under Section 263 of the Income Tax Act, 1961 has been issued and called upon the assessee to file its objections, if any, for proposed revision of

assessment order. The Ld. PCIT, Hyderabad-1, observed that, the assessee company was incorporated under Companies Act, 1956, as a Special Purpose Vehicle (SPV) and is engaged in the business of development, operation and maintenance of four-lane road in Chhattisgarh State on design, build, finance, operate and transfer (DBFOT) for a concession period of 28 years, starting from appointed date i.e., from 15.02.2013. The assessee company has entered into a Concessionaire Agreement with National Highways Authority of India (NHAI) for development and operation of road in Chhattisgarh State and started commercial operations on 08.05.2016. The Ld. PCIT further noted that, the allowable amortization of capitalization cost of toll road for the year under consideration is at Rs. 5,619.88 lakhs. However, the assessee claimed depreciation of Rs. 23,724.15 lakhs as per Income-tax Rules, 1962, which is incorrect, as the same is not applicable in assessee's case. The excess claim of amortization was worked out to Rs. 18,104.27 lakhs, which needs to be disallowed. The actual allowable loss works out to Rs. 9,670.41 lakhs, whereas the A.O. accepted the returned loss, i.e. Rs. 27,774.68 lakhs, which resulted in excess allowable of loss to an

extent of Rs. 18,104.27 lakhs, which was allowed to be carried forward to the following assessment years. The action of the A.O. in allowing excessive loss of Rs. 18,104.27 lakhs is erroneous and the assessment order has resulted in being prejudicial to the interest of the Revenue. Therefore, the Ld. PCIT called upon the assessee to explain as to why the assessment order passed by the A.O. shall not be revised under Section 263 of the Income Tax Act, 1961.

7. In response to show-cause notice, the assessee submitted that, the assessment order passed by the A.O. is neither erroneous nor prejudicial to the interest of Revenue, because all the facts relating to formation of a Special Purpose Vehicle, details of agreement entered into with NHAI and works carried out, etc., has been submitted to the A.O. in response to a specific question, along with notice issued under Section 142(1) of the Act, dated 12.01.2021 and also explained the reasons for claiming depreciation on cost of road as intangible asset as per Section 32(1)(ii) of the Income Tax Act, 1961. The assessee further submitted that, it has developed a four-lane highway in the State of Chhattisgarh as per Concessionaire Agreement with NHAI for a

period of 28 years on DBFOT basis from 15.02.2013 and the project was completed and commercial operations were started on 08.05.2016 and upon completion of the highway project, the cost of development of road built on the land handed over by NHAI, which is incurred towards toll collection rights are capitalized as “intangible assets” and as per Indian Accounting Standards, the cumulative construction costs plus the present value of obligation towards negative grants and additional concession fee payable to NHAI was capitalized and claimed depreciation thereon for the purpose of Companies Act, 1956. It was further submitted that, for the purpose of Income Tax Act, 1961, being the assessee entered into commercial operations on 08.05.2016, the capitalization cost of toll road has been treated as ‘intangible asset’ and depreciation has been claimed thereon. The assessee further submitted that, right to receive toll revenue is in the nature of intangible asset falls within the purview of Section 32(1)(ii) of the Income Tax Act, 1961 and therefore, the assessee is eligible for depreciation on the said right to receive toll revenue being intangible asset falling within the purview of Section 32(1)(ii) of the Income Tax Act and accordingly, the

entire cost incurred towards construction of infrastructure facility giving right to receive toll revenue till the date of COD was capitalized and shown as 'intangible asset' and consequently, the assessee company claimed depreciation on such intangible asset as provided under Section 32(1)(ii) of the Income Tax Act, 1961.

8. The Ld. PCIT, after considering relevant submissions of the assessee and also taking note of the agreement between the assessee company and NHAI for development and operation of toll road in the State of Chhattisgarh on DBFOT basis, observed that, the A.O. has failed to verify the issue of capitalization of cost incurred for developing the toll road and depreciation claimed thereon as per the provisions of Section 32(1)(ii) of the Income Tax Act, 1961 in light of Circular No. 9 of 2014 dated 23.04.2014, issued by the CBDT, which renders the assessment order passed by the A.O. as erroneous insofar as it is prejudicial to the interest of the Revenue. The Ld. PCIT further observed that, although the assessee has amortized the cost of toll road in the books of account as per Indian Accounting Standards for a period of concessionaire agreement, but for the purpose of Income Tax Act,

the assessee has treated the expenditure incurred towards construction of toll road as an intangible asset falling within the nature of intangible asset, as defined under Section 32(1)(ii) of the Income Tax Act, 1961 because, by incurring expenditure for construction of toll road, the assessee has got right to receive toll revenue being an intangible asset and on which the assessee has claimed depreciation. Although the CBDT Circular clearly explains the manner in which the cost incurred for development of toll road has to be treated in the books of account and for the tax purpose, but the A.O., contrary to the CBDT Circular No. 9 of 2014, has allowed depreciation on toll road as intangible asset, even though as per the said Circular, the assessee is entitled to recover the cost incurred for development of toll road over a period of concessionaire agreement. Therefore, the Ld. PCIT held that, the assessment order passed by the A.O. under Section 143(3) r.w.s. 143(3A) and Section 143(3B) on 15.04.2021 in allowing the excessive depreciation on cost incurred for development of toll road as intangible asset is prejudicial to the interest of the Revenue, and thus, opined that, the assessment order passed by the A.O. is erroneous insofar as it is prejudicial to the interest of

the Revenue, and thus, set aside the assessment order passed by the A.O. and directed the A.O. to pass suitable order disallowing the excess claim of depreciation, which resulted on account of allowing depreciation instead of amortisation amounting to Rs. 18,104.27 lakhs and reduce the resultant loss to be carried forward to the subsequent assessment years. The relevant findings of the Ld. PCIT are as under:

*“7. I have perused the submissions of the assessee and the case laws referred to therein. As per the discussions and arguments held during the course of hearing, the company is a special purpose vehicle incorporated on 27.09.2011 for execution of the project four lanes of Chhattisgarh-Orissa Border'. The concession agreement is for a period of 28 years from the appointed date that is 15.02.2013 declared by NHAI. The project is under execution. However, provisional Commercial Operations Date (COD) was achieved by the concessionaire on 06.05.2016.*

***7.1** Therefore first year of COD was Fin Year 2016-17, and revenue reported from operations to the tune of Rs.22,296.95 lakhs vide Schedule-23 - Revenue from operations forming part of profit and loss account for the year ended on 31.03.2017. Similarly for the year ended on 31.03.2018 revenue reported from operations to the tune of Rs.11,805.59 lakhs was reported.*

***7.2** As seen from Notes to financial statements for the year ended on 31.03.2018 vide Note 2.08 (page no 9) - Intangible Assets — Toll Collection rights obtained in consideration for rendering construction services, represent the right to collect toll revenue from the users of the public service (road) during the concession period in respect of Build-Operate-Transfer (BOT) project under taken by the Company. Toll collection rights are capitalized as 'Intangible Assets' upon completion of the project at the cumulative construction costs plus the present value of obligation towards negative grants and additional concession fee payable to NHAI/State Authorities, if any. Till the completion of the project, the same is recognized under “Intangible Assets under development”, including pre-operative expenditures directly attributable to the development of the project.*

**7.3** As per Circular No.9/2014, Dt.23.4.2014 of CBDT, it was clarified that the expenditure incurred for development of roads/highways in BOT agreements needs to be amortized and claimed as allowable business expenditure under the Act. It was further clarified that the amortization allowable needs to be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructure facility of road/highway is amortized evenly over the period of concessionaire agreement. For the sake of convenience, the relevant portion is reproduced hereunder:

“5. In view of above, Central Board of Direct Taxes, in exercise of the powers conferred under section 119 of the Act hereby clarified that the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortized and claimed as allowable expenditure under the Act.

6. The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortized evenly over the period of concessionaire agreement after excluding the same taken for creation of such facility.
7. In the case where an assessee has claimed any deduction out of initial cost of development of infrastructure facility of roads/highways under BOT projects in earlier years, the total deduction so claimed for the Assessment Years prior to the Asst Year under consideration may be deducted from the initial cost of infrastructure facility of roads/highways and the cost ‘so reduced’ shall be amortised equally over the remaining period of toll concessionaire agreement.”
8. It is hereby clarified that this Circular is applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement.

7.4 From Computation of Total Income Statement it is seen that the assessee claimed depreciation to the tune of Rs.237,24,15,626/-which included depreciation of Rs.237,13,62,792/- (25% of Rs.948,54,51,167) on Intangible Asset Details of the same are in Form 3CD-Col. No.18.

7.5 As per the Notes to financial statements for the year ended on 31.03.2018 vide Note 5 (Page No. 18) Intangible Assets under Service Concession Agreement (SCA), the Gross Block capitalized to the end of 31.03.2017 was Rs.1,47,868.27 lakhs and during the year 2017-18 Rs 9,488.39 lakhs were capitalized, and to the end of 31.03.2018 the total of intangible asset capitalized was at Rs. 157,356,66 lakhs.

7.6 Further as per Note 6 (Page No.18) - Intangible asset under development that the closing balance to the end of 31.03.2017 was Rs 14,616.02 lakhs after capitalization to the tune of Rs. 1,13,855.57 lakhs. For the year ended 31.03.2018, the closing balance was at Rs.7,077.13 lakhs after capitalization to the tune of Rs.9,488.39 lakhs.

7.7 In view of the above and as per CBDT Circular, referred supra, the allowable amortization on 'Intangible Asset capitalized to the end of 31.03.2018 shall be allocated over the period of 28 years of concessionaire period rather at depreciation rates prescribed as per Income-tax Rules. Thus, allowable amortization on Intangible Asset worked out to Rs.5,619.88 lakhs (Closing Balance of intangible Asset to the end of 31.03.2018 Rs. 1,57,356.66 lakhs/28years of concessionaire period).

7.8 However, the assessee claimed at Rs 23,724.15 lakhs as per IT Rules, 1962 which is incorrect, as the same is not applicable in the case of the assessee. The excess claim of amortization worked out to Rs.18,104.27 lakhs (Allowable Rs.5,619.88 lakhs - Claimed: Rs.23,724.15 lakhs), which needs to be disallowed.

7.9 Whereas in the Return filed the assessee claimed the loss at Rs.27,774.68 lakhs and the same was accepted by the Assessing Officer while completing the assessment u/s 143(3) rws 143(3A) & 143(38) on 15.04.2021. On disallowance of excess claim of amortization of Rs. 18,104.27 lakhs shall result in loss of Rs.9,670.41 lakhs. Therefore, excess loss carried forward to that extent needs to be disallowed.

8. When the above facts are put before the assessee, the assessee's AR claimed that the CBDT's Circular Dt.23-04-2014 is not applicable to its case, since, it is a license rights in toll road/carriageway and accordingly depreciation has been claimed @25% on WDV basis. Hence, it is duly qualifying for deduction u/s 32(1)(ii) of the Income-tax Act. He also referred to the different case laws.

8.1 On a plain reading of the Board's Circular Dt.23-04-2014, it is squarely applicable to the assessee's case as there is no deviation in respect of all the conditions, which were fulfilled by the assessee. This Circular is clearly applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement. It is also found that the facts of the case laws quoted are either different from the facts of the assessee's case in view of the Board's Circular.

*9. In view of the above facts and circumstances of the case, the order passed by the Assessing Officer u/s 143(3) rws 143(3A) & 143(3B) on 15.04.2021, wherein loss returned has been accepted, is erroneous, and it is prejudicial to the interests of the Revenue. Hence, I hereby direct the Assessing Officer to pass suitable order disallowing the excess claim of depreciation, which was resulted on account of excess claim of amortisation, amounting to Rs.18,104.27 lakhs and reduce the resultant loss to be carried forward to the subsequent Asst Years accordingly.”*

9. Aggrieved by the order of Ld. PCIT, the assessee is now in appeal before the Tribunal.

10. The learned counsel for the assessee, Shri Percy Perdiwala, Senior Advocate, submitted that, the Ld. PCIT erred in setting aside the assessment order passed by the A.O. under Section 143(3) r.w.s. 143(3A) and 143(3B) dated 15.04.2021, by exercising powers conferred under Section 263 of the Act, even though the assessment order passed by the A.O. is neither erroneous nor prejudicial to the interest of the Revenue. The learned counsel for the assessee, further referring to the assessment order passed by the A.O. and consequent notices issued under Section 142(1) of the Act, on various dates, submitted that, the case has been selected for scrutiny to verify various issues, including investment in intangible assets, and during assessment proceedings, the A.O. has issued a specific notice under Section 142(1) of the

Act on 12.01.2021, where a specific question has been asked with reference to addition/introduction of intangible assets, and consequent details for which, the assessee has furnished detailed replies, and explained that, the assessee is a Special Purpose Vehicle formed for the purpose of development, operation and maintenance of a four-lane national highway in the State of Chhattisgarh / Orissa border on a design, build, finance, operate and transfer basis for the concession period of 28 years, starting from the appointed date and as per the conditions of the concessionaire agreement entered into with NHAI, the NHAI granted concession, including exclusive right, license and authority to control, operate and maintain the project for a period of 28 years, and as per the said agreement, the assessee got right to receive toll revenue, which is in the nature of intangible asset, as per Section 32(1)(ii) of the Act. Accordingly, the assessee has claimed depreciation on the said intangible asset. The A.O., after considering the relevant facts, has rightly accepted the explanation of the assessee and completed the assessment, and therefore, the assessment order passed by the A.O. cannot be

considered as erroneous insofar as it is prejudicial to the interest of the Revenue.

11. The learned counsel for the assessee, further referring to the reply filed by the assessee dated 29.03.2021, submitted that, the assessee has explained the treatment of cost incurred for construction of toll road in the books of accounts and argued that, as per Ind AS 38, intangible assets in the books of accounts are recognized when it is probable that the future economic benefits attributable to the assessee will flow to the company and the cost can be measured reliably. The assessee has also explained how depreciation was claimed by referring to the concessionaire agreement entered into with NHAI, as per which, Clause 47.4.1 provides for depreciation on capital cost incurred for construction of toll road. The right received by the assessee is emerging as a result of the cost incurred by the company on development, operation and maintenance of the infrastructure facility, and such a right is in the nature of intangible asset falling within the purview of Section 32(1)(a)(iv) of the Income-tax Act, 1961. The learned counsel for the assessee, further referring to various judicial precedents on this issue, including the decision of

ITAT Special Bench in the case of ACIT Vs. Progressive Construction Ltd. (2018) 92 taxmann.com 104 (ITAT Hyderabad Bench), submitted that, at the time, the when the A.O. passed the assessment order, there were two views on the issue (i) whether expenditure incurred for construction of toll road is a deferred expenditure which can be amortized or not, or (ii) whether it is a capital expenditure in the nature of intangible asset falling within the purview of Section 32(1)(ii) of the Income-tax Act, 1961, and on the basis of Special Bench decision, the assessee has treated expenditure incurred for construction of toll road built under DBFOT contract as an intangible asset, as defined under Explanation 3(b) of Section 32(1)(ii) of the Income-tax Act, 1961, and the A.O. has taken one possible view and therefore, it cannot be said that the A.O. has not verified the issue in light of the Circular No.9/2014 dated 23.04.20214 issued by the CBDT. In this regard, the learned counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Limited (2007) 295 ITR 282 (SC) and submitted that, when there are two views possible on the issue, if the A.O. had taken one possible view, then if the view taken by the A.O. is

unsustainable in law, there is no scope for the Ld. PCIT to revise the assessment order passed by the A.O. on the ground that the order passed by the A.O. is erroneous and prejudicial to the interest of the Revenue.

12. The learned counsel for the assessee, further referring to the decision of the Hon'ble Andhra Pradesh High Court in the case of Spectra Shares and Scrips Private Limited Vs. CIT (2013) 36 taxmann.com 348 (AP), submitted that, once the assessee has submitted all the details in response to the specific notice issued by the A.O., then it is presumed that, there was application of mind by way of inquiry. However, merely because, there is no detailed discussion in the assessment order, the Commissioner cannot come to a conclusion that, the A.O. has not examined the issue and has not taken a view. The learned counsel for the assessee, further referring to the decision of the Hon'ble Supreme Court in the case of PCIT Vs. V-Con Integrated Solutions Private Limited (2025) 476 ITR 526 (SC), submitted that, once the A.O. carries out the investigation, but does not make any addition, it can be taken that he accepted the plea of the assessee, and in such case, it would be wrong to say that the Revenue is

remediless. The assessee does not have control over the pen of the A.O. The assessee at best can do is by filing relevant details when the details were called for by the A.O. However, the assessee cannot control the pen of the A.O. so as to argue that, the A.O. has to discuss the issue in the assessment order. Once the assessee has discharged its onus by filing relevant details, then it is for the A.O. to decide how an assessment order should be passed. Therefore, merely for the reason that, the A.O. has not discussed the issue in the assessment order, it cannot be said that the A.O. has not examined the issue or undertaken a view on the issue. In this regard, he relied upon the decision of ITAT, Cochin Bench in the case of Kerala Transport Development Finance Corporation Vs. CIT in ITA No.443/Coch/2023 dated 15.07.2025.

13. The learned counsel for the assessee, further referring to various judicial precedents, including the decisions of ITAT Mumbai Bench in the case of DCIT Vs. Mumbai Nasik Expressway Limited in ITA No. 3910/Mum/2017 dated 15.04.2019 and the decision in the case of ITO Vs. Andhra Pradesh Expressway Limited in ITA No. 1522/Mum/2023 dated 25.08.2023 submitted

that, the Tribunal has consistently taken a view and held that, the expenditure incurred for development of toll road on a BOT basis gives rise to an intangible asset in the form of right to collect toll revenue and the same falls within the purview of intangible asset, as per Section 32(1)(ii) of the Income Tax Act, 1961. The assessee, on the basis of one possible view, has treated the cost incurred for development of toll road as capital expenditure and the same has been treated as intangible asset in the books of accounts and depreciation has been claimed under Section 32(1)(ii) of the Act. The A.O., after considering relevant documents, has rightly considered the submissions of the assessee and passed the assessment order. Therefore, he submitted that, the assessment order passed by the A.O. is neither erroneous nor prejudicial to the interest of the Revenue. Thus, the Ld. PCIT has erred in setting aside the assessment order in terms of Section 263 of the Income Tax Act, 1961.

14. The Ld. CIT-DR for the Revenue, Dr. Narendra Kumar Naik, on the other hand, supporting the order of Ld. CIT(A), submitted that, the assessment order passed by the A.O. without considering the CBDT Circular No. 9/2014 dated 23.04.2014 is certainly

erroneous and prejudicial to the interest of the Revenue, because as per the provisions of Section 119 of the Income Tax Act, 1961, Circulars issued by the CBDT are binding on the A.O., and further, if the A.O. passed an assessment order without taking into consideration the binding nature of Circulars issued by the CBDT, then passing the order amounted to making the assessment without conducting proper inquiry and investigation, and thus, the Ld. PCIT has rightly set aside the assessment order passed by the A.O. under Section 143(3) r.w.s. 143(3A) and 143(3B) on 15.04.2021, as prejudicial to the interest of the Revenue. The Ld. CIT-DR, referring to the decision of the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Limited Vs. CIT in ITA 504 of 2008 dated 18.11.2011 and also the decision in the case of PCIT Vs. Selebi Delhi Cargo Management India Pvt. Ltd., (2025) 172 taxmann.com 3 (Del) submitted that, there is no evidence available in the assessment record to suggest that, any of these aspects of the issue have been examined or verified by the A.O. in the course of the assessment proceedings. Although various High Courts, including the Hon'ble Bombay High Court and the Hon'ble Madras High Court, have taken a view that,

the expenditure incurred for construction of toll road is not an intangible asset and the assessee cannot claim depreciation on the said asset, but the A.O., without considering the relevant case laws and also the mandatory Circular issued by the CBDT on this issue, wherein it has been clearly explained the method and manner in which the expenditure should be allowed as deduction, has passed the assessment order without even verifying the issue which ought to have been verified in light of Explanation 2 to Section 263 of the Income Tax Act, 1961, which renders the order passed by the A.O. as erroneous and prejudicial to the interest of the Revenue. In this regard, he relied upon the decision of ITAT Visakhapatnam Bench in the case of Agilisys IT Services India (P.) Ltd. Vs. CIT.

15. The Ld. CIT-DR, further referring to the decision of the Hon'ble Madras High Court in the case of M/s. Narmada Infrastructure Construction Enterprises Ltd. Vs. ACIT in TCA No.868 to 870 of 2009 dated 29.12.2022, submitted that, the Hon'ble Madras High Court has examined the issue of depreciation claimed on the cost of development of toll road in light of the provisions of Section 32(1)(ii) of the Act and, after

referring to various judicial precedents, including the decision of the Hon'ble Bombay High Court in the case of North Karnataka Expressway Limited Vs. CIT reported in 372 ITR 145, has clearly held that, the right to collect toll revenue as per the concession agreement does not give rise to any intangible asset or any other business or commercial rights of similar nature as defined under Section 32(1)(ii) of the Act, and thus the assessee cannot claim depreciation. The Ld. CIT-DR, further referring to the decision of ITAT Hyderabad Bench in the case of Patna Bakhtiyarpur Tollway Limited vs. ACIT in ITA No. 182/Hyd/2024 dated 31.12.2024, submitted that, in order to claim depreciation on any asset, firstly, the assessee should be the owner of the asset and secondly, the asset should be used for the business of the assessee. And in the present case, the assessee is not the owner of the asset because the assessee has constructed the toll road on the land given by NHAI and therefore, as per Section 52 of the Indian Easements Act, 1882, if the construction is in the nature of permanent and is erected with the permission of the licensor, then the assessee would not become the owner of the structure. Since the assessee is not the owner of the asset, it

cannot claim depreciation as per Section 32(1)(ii) of the Act. Although the assessee has claimed depreciation under Section 32(1)(ii) of the Act on the cost of toll road as intangible asset, but the A.O., without any application of mind to the relevant provisions of the Act and also the Circulars issued by the CBDT, has allowed the depreciation claimed by the assessee, which renders the assessment order passed by the A.O. as erroneous insofar as it is prejudicial to the interest of the Revenue. The Ld. PCIT, after considering the relevant facts, has rightly set aside the assessment order passed by the A.O. in terms of Section 263 of the Income Tax Act, 1961. He therefore submitted that, the order of the Ld. PCIT should be upheld.

16. We have heard both the parties, perused the material available on record and had gone through the orders of the authorities below. We have also considered the relevant case laws referred to by the learned counsel for the assessee in support of his arguments and also the Ld. CIT-DR present for the Revenue in support of his contentions. The provisions of Section 263 deal with the revisionary powers of the Ld. PCIT and as per Section 263 of the Act, the Ld. PCIT may call for and examine the record of

any proceedings under the Act, and if, he considers that, the assessment order passed by the A.O. is erroneous and insofar as it is prejudicial to the interest of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon cancelling the assessment and directing a fresh assessment. In other words, if the Ld. PCIT is satisfied that, the twin conditions embedded therein are fulfilled, i.e. firstly, the order of the A.O. is erroneous and secondly, it is prejudicial to the interest of the Revenue, then he may set aside the order passed by the A.O. and direct the A.O. to re-examine the issue and pass an appropriate order. This legal principle is supported by various judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83, wherein it has been clearly held that, an order passed without application of mind or without proper inquiry is erroneous and prejudicial to the interest of the Revenue for the purpose of Section 263 of the Act. A similar view has been taken by the Hon'ble Supreme Court in the case of CIT vs. Amitabh Bachchan (2016) 384 ITR 200, wherein it has been clearly held

that, the failure of the A.O. to conduct inquiries which are necessary in the facts of the case justifies the revision order under Section 263 of the Act.

17. In the present case, the Ld. PCIT invoked jurisdiction under Section 263 of the Act, and set aside the assessment order passed by the A.O. under Section 143(3) r.w.s. 143(3A) and 143(3B) dated 15.04.2021 on the ground that, the assessment order passed by the A.O. is erroneous insofar as it is prejudicial to the interest of the Revenue on the issue of excessive allowance of loss to an extent of Rs. 18,104.27 lakhs, which has resulted into allowing excessive depreciation on cost incurred by the assessee for development of toll road as intangible asset. Admittedly, the assessee is a Special Purpose Vehicle formed for the purpose of development and maintenance of toll road in the State of Chhattisgarh and Orissa border in terms of concession agreement entered into with NHAI and as per the agreement, the assessee shall develop a toll road on design, build, finance, operate and transfer basis with effect from the appointed date, i.e. 15.02.2013. Further, as claimed by the assessee, the project was completed and commercial operations were started on 08.05.2016.

The assessee has treated the cost incurred for construction of toll road as capital expenditure, which gave rise to right to collect toll in the nature of intangible asset as defined under Section 32(1)(ii) of the Income Tax Act, 1961 and accordingly claimed depreciation as applicable for intangible asset. The assessment was subject to scrutiny proceedings under Section 143(3) of the Income Tax Act, 1961, and the A.O. has passed the order under Section 143(3) r.w.s. 143(3A) and 143(3B) on 15.04.2021, wherein the A.O. has accepted the explanation furnished by the assessee in response to the specific question issued by the A.O. with regard to investment made in intangible asset, where the assessee has explained the amount incurred for development of intangible asset in light of the relevant evidence, including the concessionaire agreement between the assessee and NHAI, and also as to how the assessee has claimed depreciation on intangible asset. Therefore, it is necessary for us to examine whether the order passed by the A.O. under Section 143(3) r.w.s. 143(3A) and Section 143(3B) of the Act dated 15.04.2021 is erroneous insofar as it is prejudicial to the interest of the Revenue in light of the relevant

facts and also the reasons given by the Ld. PCIT in the order passed under Section 263 of the Income Tax Act, 1961.

18. There is no dispute with regard to the fact that during the assessment proceedings, the A.O. has issued a notice under Section 142(1) on 12.01.2021, for which the assessee has submitted a detailed reply, which is available in the paper book filed by the assessee, wherein the A.O. has asked details about addition / introduction of intangible asset and the specific nature of intangible asset created by the assessee in the books of account, for which the assessee has furnished complete information in light of the concession agreement entered into with NHAI. However, fact remains that although the A.O. has examined the issue on creation / introduction of intangible asset, but there is no specific question on the allowability of depreciation as per Section 32(1)(ii) of the Income Tax Act, 1961 on intangible asset, in light of CBDT Circular No. 9 of 2014, wherein it has been clarified that, the expenditure incurred for development of roads / highways under BOT agreement needs to be amortized and claimed as business expenditure under the Act over the period of concession agreement. Although the CBDT has issued

the Circular for the benefit of the A.O. as to how to deal with cases where cost is incurred for development of toll road as per the agreement between the assessee and NHAI, the A.O., without considering the mandatory Circular issued by the CBDT and its applicability to the facts of the assessee's case, has simply accepted the explanation furnished by the assessee without any application of mind to the relevant provisions of the Act and CBDT Circular No. 9 of 2014. Therefore, in our considered view, it cannot be said that the A.O. has carried out the required inquiries which he ought to have carried out on the issue of allowance of depreciation / amortization of cost incurred for development of toll road. In light of CBDT Circular No. 9 of 2014 dated 23.04.2014. Further, in our considered view, the CBDT Circulars are mandatory in nature and binding on the A.O. Therefore, once the the A.O. has passed the assessment order without considering the mandatory nature of the Circulars issued by the CBDT, then in our considered view, it is as good as the assessment order passed by the A.O. amounted to making the assessment without conducting proper enquiry and investigation as envisaged by law, which was also warranted in the facts of the present case.

Therefore, the Ld. PCIT was right in holding that such assessment order was erroneous and prejudicial to the interest of the Revenue. This legal principle is supported by the decision of the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Limited vs. CIT (supra) and also the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Celebi Delhi Cargo India Private Limited (supra). A similar view has been taken by the ITAT, Visakhapatnam Bench in the case of Agilisys IT Services India (P.) Ltd. Vs. CIT, wherein it has been clearly held that, when a Circular is issued under Section 119 and the same is binding on the A.O., not taking recourse thereto and passing the assessment order amounts to making the assessment without conducting proper enquiry and investigation. In the present case, there is no dispute with regard to the fact that the A.O. has passed the assessment order without taking into consideration the mandatory Circular issued by the CBDT on the issue of allowance of cost incurred for development of BOT roads and therefore, in our considered view, it is a case of lack of inquiry by the A.O. on the issue, in light of the relevant provisions of the Act and thus, the arguments of the learned counsel for the assessee in light of

certain judicial pronouncements, including the decision of the Hon'ble Supreme Court in the case of PCIT Vs. V-Con Integrated Solutions Pvt. Ltd. (supra) and the decision of the Hon'ble Andhra Pradesh High Court in the case of Spectra Shares and Scrips Pvt. Ltd. Vs. CIT (supra) and the decision of the ITAT Cochin Bench in the case of Kerala Transport Development Finance Corporation Ltd. vs. PCIT in ITA No.443/Coch/2023 dated 15.07.2025 is devoid of merit and cannot be accepted.

19. Coming back to another argument of the learned counsel for the assessee. The learned counsel for the assessee, in light of the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Pvt. Ltd. (2008) 166 Taxman 188 (SC) has argued that, at the time when the A.O. passed the assessment order on the issue of cost incurred for development of BOT roads, whether it is an intangible asset giving rise to collection of toll revenue in the nature of a license or franchise or any other commercial or business right of similar nature, in our considered view, although there are divergent views on these issues from various Benches of the Tribunal, including the decision of the ITAT Mumbai Bench in

the cases referred to by the learned counsel for the assessee, including the decision of the ITAT Special Bench in the case of ACIT vs. Progressive Constructions Ltd. (2018) taxmann.com 104, wherein it has been held that, the expenditure incurred by the assessee for construction of road under BOT contract had given rise to an intangible asset as defined under Explanation 3(b) read with Section 32(1)(ii) of the Income Tax Act, 1961 and the assessee would be eligible to claim deduction, but the fact remains that although the Tribunal has taken a view in favour of the assessee and held that, the cost incurred for development of toll road is in the nature of franchise, license or any other business or commercial rights of similar nature falling within the purview of Section 32(1)(ii) of the Act, but the Hon'ble Bombay High Court in the case of North Karnataka Expressway Limited vs. CIT (supra) and CIT vs. West Gujarat Expressway Limited 82 taxmann.com 224 has clearly held that, the expenditure incurred for development of toll road on BOT basis is not an intangible asset and the assessee cannot claim depreciation as per Section 32(1)(ii) of the Act. Further, the Hon'ble Madras High Court in the case of M/s. Narmada Infrastructure Construction Enterprises

Ltd. Vs. ACIT (supra) has also taken a similar view and held that, it is not an intangible asset so as to allow depreciation under Section 32 of the Income Tax Act, 1961. Therefore, in our considered view, the arguments advanced by the learned counsel for the assessee that the A.O. has taken one possible view and therefore the Ld. PCIT erred in invoking jurisdiction under Section 263 of the Act are incorrect and are also devoid of merit going by the facts available on record. First of all, the arguments of the learned counsel for the assessee fail for the simple reason that, when two High Courts have taken a consistent view and held that, the expenditure incurred for development of toll road on BOT basis is not an intangible asset, reliance placed by the assessee and accepted by the A.O. on the basis of the decision of the ITAT Special Bench cannot be considered as one possible view, and further, it is also not a case that there are two views possible on the issue at the time when the A.O. has passed the order, because from the decisions of the Hon'ble Bombay High Court and the Hon'ble Madras High Court, the issue is crystallized, and as per the decisions of the above High Courts, there is no provision for treating the cost incurred for development

of BOT roads as capital expenditure which gives rise to an intangible asset in the nature of a franchise or license or any other business or commercial right of similar nature so as to treat it as an intangible asset as defined under Section 32(1)(ii) of the Act. Further, the CBDT has also clarified the issue by issuing Circular No. 9 of 2014 dated 23.04.2014 and explained the method and manner of allowing amortization towards the cost of development of road for the period of concession agreement. Therefore, in our considered view, the arguments of the learned counsel for the assessee in light of the above decisions fail and cannot be accepted.

20. In this view of the matter and considering the facts and circumstances of the case and also by following the ratios of various case laws referred to above, we are of the considered view that the assessment order passed by the A.O. under Section 143(3) r.w.s. 143(3A) r.w.s. 143(3B) of the Act, dated 15.04.2021 is erroneous insofar as it is prejudicial to the interest of the Revenue, because the A.O. has passed the assessment order without carrying out the required enquiries which he ought to have carried out in light of Explanation 2 to Section 263 of the

Act, wherein the A.O. has allowed excessive depreciation of Rs. 18,104.27 lakhs on the cost incurred for development of BOT road, which resulted in excessive allowance of loss to an extent of Rs. 18,104.27 lakhs, and the same has been allowed to be carried forward to the subsequent assessment years. Therefore, in our considered view, the Ld. PCIT has rightly invoked jurisdiction under Section 263 of the Act and set aside the assessment order passed by the A.O. u/s 143(3) r.w.s. 143(3A) and 143(3B) on dated 15.04.2021. Thus, we are inclined to uphold the order passed by the Ld. PCIT under Section 263 of the Act and dismiss the appeal filed by the assessee.

21. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 28<sup>th</sup> January, 2026.

<p>Sd/- (श्री रवीश सूद) <b>(RAVISH SOOD)</b> न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>Sd/- (मंजूनाथ जी) <b>(MANJUNATHA G.)</b> लेखा सदस्य/ACCOUNTANT MEMBER</p>
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Hyderabad, dated 28.01.2026.

**TYNN/sps**

**आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	BSCPL Aurang Tollway Limited, 8-2-502/1/A, Jivi Towers, Road No.7, Banjara Hills, Hyderabad – 500034.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलिय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad