

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No.3311/Mum/2023
(Assessment Year: 2014-15)

Roadstar Investment
Managers Ltd.
Plot No.C-22, G Block,
BKC, Bandra (East),
Mumbai - 400 051

(Appellant)

The Assistant
Commissioner of Income
Tax, Circle 14(1)(1)
Room No.432,
Aaykar Bhawan,
M.K. Road,
Mumbai - 400020

(Respondent)

PAN No. AABCN3062F

Assessee by : Mr. Bhupal Rapelli &
Ms. Deepika Dingreja
Revenue by : Smt. Mahita Nair, Sr. DR

Date of hearing:	30-01-2024
Date of pronouncement :	31-01-2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Assessee M/s. Roadstar Investment Managers Ltd earlier known as North Karnataka Expressway Ltd., [Assessee/Appellant] against appellate order passed by The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi[Ld.

CIT(A)], dated 31.7.2023, for the assessment year 2014-15, which decided the appeal filed by the Assessee against Assessment order passed under section 143(3) of the Income Tax Act, 1961 (the Act) on 28.12.2016 by Assistant Commissioner of Income Tax, Circle 14(1)(1), Mumbai (Ld. AO).

2. During the course of appeal assessee raised the additional ground before Id CIT (A) pertaining to the claim of allowance of depreciation at the rate of 25% treating to right to collect the toll on the road under the category as intangible asset under section 32(1)(ii) of the Act. Vide Para No.5.3, the Ld. CIT (A) did not admit the same holding that this was not raised by the Ld. AO during the assessment proceedings or at the time of filing of the appeal hence, it was dismissed.
3. Assessee is aggrieved by the same and claims that right to collect toll on the roads is an intangible assets on which depreciation at the rate of 25% should be allowed. In the grounds of appeal, itself the Assessee has stated that the Assessee has been allowed such claim from assessment year 2005-06 till 2010-11 by the co-ordinate bench in Assessee's own case.
4. The Assessee has raised the following grounds of appeal:-
 - 1) The appellant prays that depreciation may be granted treating the said "road" under the category allowed as "Intangible Assets" @ 25%.
 - 2) The Appellant prays that the right to set up an 'infrastructure facility' and collect annuity thereon being in the nature of a 'license' or 'business' or 'commercial right' be regarded as an "intangible asset" in terms of the

provision of Section 32(1)(ii) of the Income-tax Act, 1961 (the Act). The Appellant prays that they had constructed the road and have the right to earn revenue in the form of annuity from the use of such "intangible asset" being a 'license' or 'business' or 'commercial right' as contemplated in section 32(1)(ii) of the Act.

3) The Appellant prays that depreciation on such 'license' or 'business' or 'commercial right' be granted at the rate 25% treating the same as "intangible asset" as has been held by the decision of Hon'ble Mumbai ITAT in the Appellant's own case bearing ITA No. 4372 & 4373 /MUM/2012 for the AY 2005-06 and AY 2006-07, ITA No. 4160 & 4161/MUM/2013 for the AY 2008-09 and AY 2009-10, 1230/MUM/2015 for the AY 2010-11.

5. The brief facts of the case shows that the Assessee is a Public Limited company engaged in the business of infrastructure development project. It filed its return of income on 30.11.2014 as total income of Rs.13,04,73,586/-. The return of income was picked up for scrutiny. The claim of the Assessee for deduction under section 80IA (4) amounting of Rs.19,26,32,423/- was examined. The same was allowed to the extent of Rs.19,24,97,698/-. During the assessment proceedings as well as in the return of income, the Assessee has claimed amount of deduction on expenditure on road constructed for which right to collect toll was allotted to the Assessee on amortized value there was no claim before the Ld. AO to consider the depreciation on such intangible asset.
6. The assessment order dated 28.12.2016 passed under section 143(3) of the Act was challenged before the Ld. CIT(A) wherein the Assessee raised an additional ground of appeal that the Assessee should be granted

depreciation on right to collect toll on such road as intangible asset under section 32(1)(ii) of the Act. This ground was not admitted by the Ld. CIT (A). Therefore, the Assessee is in appeal before us.

7. We have heard the rival contentions and perused the orders of the lower authorities. Whether the Assessee is eligible for depreciation on right to collect toll tax on road developed by the Assessee or not is already decided by the co-ordinate bench in Assessee's own case bearing ITA No.4372 and 4373/MUM/2012 for assessment year 2005-06 and 2006-07. These orders of ITAT were followed by the co-ordinate benches in Assessee's case for assessment year 2008-09, 2009-10 and 2010-11. Thus, it is clear that the right to set up infrastructure facility and collect toll on that is a commercial right, which is an intangible asset in terms of provisions under section 32(1) (ii) of the Act. Therefore, the Assessee is entitled to claim depreciation. Before the Ld. CIT (A), the Assessee has made the claim by raising an additional ground, which was incorrectly not admitted. As the issue is squarely covered in favour of the Assessee and the ground should have been admitted by the Ld. CIT (A), therefore this non-admission is not sustainable. On the merits, respectfully following the decision of the co-ordinate benches in Assessee's own case we direct the Ld. AO to grant depreciation on the right to collect toll tax on infrastructure facilities considering same as



intangible asset entitled to depreciation at the rate of 25%. We also direct the Ld. AO to re-compute the deduction allowable to the Assessee u/s 80IA (4) by replacing the amount of amortised value of deduction with allowable depreciation.

8. In the result, ground No.1 of the appeal of the Assessee is allowed.
9. In the result, appeal of the Assessee is allowed. .

Order pronounced in the open court on 31.01.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.01.2024

Mini Pawar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai