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Direct Tax Alert

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License granted for collection of toll on a road constructed on Build, Operate and Transfer (BOT) basis is an intangible asset eligible for depreciation

Facts

The State Government of Maharashtra awarded a road project to Ashoka Info (P) Ltd ('the assessee') on Build, Operate and Transfer (BOT) basis with toll collection rights. The assessee was required to transfer the infrastructure to the State Government after the prescribed period of 16 years and 9 months. The assessee had borne the total cost of construction of the road. Land was provided by the Government on lease basis at a nominal rent. The assessee was not entitled to any other revenue except toll charges on the road.

The ownership of the project vested with the State Government while the ownership of road superstructure and road furniture (toll plaza, etc.) vested with the assessee till the period it had the right to collect the toll. However, the assessee was not able to exercise any rights such as display hoardings, planting trees, etc.

The assessee contended that as per the agreement with the State Government, it had been granted a license to collect toll. On this basis, it claimed depreciation of Rs.45 million at 25% of the construction cost by treating such license as an 'intangible asset'.

The assessing officer (AO) rejected the said claim. On appeal, the Commissioner of Income-tax (Appeals) [CIT(Appeals)] accepted the stand taken by the AO. Aggrieved by the same, the assessee filed an appeal to the Pune Bench of the Income Tax Appellate Tribunal (ITAT).

Issue before the ITAT

Whether the collection right of toll represents an 'intangible asset' and depreciation is allowable under the Income tax Act (ITA) in respect of the cost of construction of the road project.

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Observations/Ruling of the ITAT

- Applying the principle of “*ejusdem generis*” for the purpose of interpretation of the statute, the word “license” could be read along with the other words connected therein such as “commercial rights of similar nature” and could be treated as an ‘intangible asset’ for the purpose of section 32(1)(ii) of the ITA. Accordingly, the commercial rights may be in the nature of license and are therefore to be held as ‘intangible asset’.
- The assessee undisputedly had a right to collect toll and the same was connected with the investment made by the assessee towards the construction of the road.
- The period of license (whether for specified time or forever) did not determine the nature of the assets; however if the nature of the assets was intangible the same would be considered as a depreciable asset under the ITA.
- Reliance was placed on the decision of the Mumbai Bench of the ITAT in the case of Reliance Ports and Terminals Ltd. wherein it was held that where the assessee had a right to use a jetty and a concession was availed, such a commercial right was to be considered as an intangible asset on which depreciation was admissible. The ITAT in this decision observed that substantial expenditure incurred by the assessee was for certain commercial considerations and had resulted in a business advantage to the assessee in the form of priority user of the infrastructure facility.

On the basis of the above, license to collect toll was held to be an ‘intangible asset’ and the cost of construction of the road project was eligible for depreciation under the ITA.

Conclusion

This decision is of special significance as it allows for benefit to be derived by an infrastructure development company under a certain set of circumstances. This may act as an incentive to these aforementioned companies and encourage them to take up more infrastructure development projects.

Source: Ashoka Info (P) Limited vs. ACIT – 123 TTJ 77(Pune)

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