

Urmila Ingale

Digitally signed
by URMILA
PRAMOD
INGALE
Date:
2026.08.18
11:00:42
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 251 OF 2024

Pr Commissioner of Income Tax 1 Thane

... Appellant

Versus

ECA Infrastructure India Pvt Ltd

...Respondent

Mr.Akhileshwar Sharma, for the Appellant.

Mr.M. Subramanian a/w Mr. V.S. Hadade, for the Respondent.

CORAM: G. S. KULKARNI &
AARTI A. SATHE, JJ.
DATED: 31st JULY, 2026

ORAL JUDGMENT (PER G. S. KULKARNI, J.)

1. This Appeal under Section 260A of the Income Tax Act, 1961 (“the Act”, for short) challenges an order dated 8th February 2023 passed by the Income Tax Appellate Tribunal Bench at Mumbai (“Tribunal”, for short) thereby dismissing the Revenue’s Appeal which was filed against an order dated 23rd March 2022 passed by the learned Commissioner of Income-tax (Appeals), Pune. The assessment year in question is Assessment Year 2015-16. The Appellant/Revenue in assailing the order passed by the Tribunal has raised the following substantial question of law.

“Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal of the Revenue, without any finding on the subject matter, relying on the decision in the case of M/s Mokama Munger Highway Ltd. (ITA No. 1729, 2145 and 2146 Of 2018 dated 03.07.2019) wherein the issue was remitted back to the A.O., therefore vitiating the finding as perverse?”

2. Briefly the facts are that the Respondent-Assessee is a special purpose vehicle formed to engage in the business of road construction on Build Operate Transfer (BOT) basis and collection of toll. For the assessment year in question, the Assessee filed its return of income on 29th September 2015 declaring loss of Rs.4,48,91,467/- in the books as maintained under the Companies Act, whereas the loss for the purpose of Income Tax Act is calculated at Rs. 8,46,64,672/-. During the assessment proceedings, the Assessing Officer passed an assessment order under Section 143(3) of the Act by making additions of Rs. 7,47,00,000/- on account of disallowance of provisions for major repairs. Aggrieved by the order passed by the Assessing Officer, the Assessee approached the CIT(Appeals) *inter alia* contending that the Assessing Officer was not justified in disallowing the provisions made by the Assessee of major repairs expenses of the said amount debited to the profit and loss account of the relevant year and thereby adding the same to the total income. The Assessee contended that the disallowance of “provisions for major repairs” amounting to Rs. 7,47,00,000/- on the ground that the said expenditure was not actually incurred during the year, was not the correct approach on the part of the Assessing Officer. The Assessee sought to justify the allowability of the said expenditure *inter alia* on the basis of the BOT agreement entered into with the Government of Maharashtra to build a road on BOT basis and a period of concession of 30 years was available with the Assessee under the said contract. The Assessee contended that the expenditure in building the road was amortized over the period of the concession by following the CBDT Circular No.9 of 2014. It was also the Assessee’s case that as per the agreement, the Assessee was required to carry out major repairs four times during the entire period of concession and the first such repair was to be carried out after expiry of seven years i.e. during the 8th year. As the said expenditure was to be a major expenditure and the liability of incurring such expenditure accrues over a period of seven years,

therefore it was contended that the Assessee had made provisions in the assessment year under consideration as well as for subsequent assessment years.

3. According to the Assessee, the liability to incur such expenditure had accrued and therefore, the deduction ought to have been allowed on the basis of provisions which were made in the books. It is also contended by the Assessee that in the case the Government of Maharashtra was to take over the project in between, in that case, the Assessee was required to compensate the Government of Maharashtra corresponding to the expenses to be incurred on major repairs to be undertaken on periodic basis. Also that the last major repair was required to be carried on in the 30th year of concession and if it does not book the said expenditure on provision basis in earlier years, in that case, the expenditure incurred in 30th year of concession will remain unclaimed for lifetime as there will be no business left after that year which would not be a desirable situation as submitted by the Assessee.

4. In such circumstances, it was contended that the Assessing Officer was not correct in disallowing the provisions so made on the ground that Sections 36 & 37 of the Act did not allow provisions to be made for the expenses which have not accrued to the Assessee during the relevant year and that liability to take the major repairs has not accrued to the Assessee and/or on the ground that there was no provision under the Income Tax Act to claim the expenses of future years in the current year considering the same as a contingent liability.

5. On perusal of the record it appears that there was substantial material which was placed before the Assessing Officer, as also before the CIT(Appeals), more importantly, on the test which needs to be recognized in law with regard to the present obligation to incur future expenditure on

reliable estimates. Such materials formed part of the record before the authorities below. The Assessee relied on the decision of the Tribunal Bench (Hyderabad Bench) in the case of **M/s.Mokama Munger Highway Limited Vs. DCIT (ITA No. 1729, 2145 and 2146 of 2018)** and also referred to the decision of the Supreme Court in the case of **Bharat Earth Movers Vs. CIT, 245 ITR 428 (SC)** and the decision in the case of **Rotork Controls India Pvt. Ltd. Vs. CIT, Civil Appeal Nos. 3506-3510 of 2009 (SC)**.

6. Considering the aforesaid principles of law and having due regard to the nature of the agreement as entered into by the Assessee with the Government of Maharashtra, the CIT(Appeals) held that the Assessee had a present obligation to incur an expenditure and if a reliable estimate can be made of the amount required to discharge the said obligation and in that situation, provisions can be made and such provision shall be allowed as a deduction, while computing the taxable income. In making such observations, the CIT (Appeals) referred to Article-17 of the Concession Agreement entered between the Assessee and Government of Maharashtra which clearly suggested that the Assessee was under an obligation to undertake major maintenance of the road. Also a copy of the maintenance manual for the said project was examined and it suggested that the Assessee was required to put in place and maintain adequate systems and procedures for the trouble free running of the said project and for this, it was required to undertake regular preventive maintenance, routine maintenance as well as major maintenance to be undertaken as per the guidelines issued by Indian Roads Congress. By examining such agreement, the CIT (Appeals) also observed that the road, the subject matter of the contract was required to be majorly overhauled every 8th year. Further referring to Article-37 of the Concession Agreement which provided that in the event of breach of the maintenance and safety requirements, the agreement shall be terminated, the CIT (Appeals)

reflected on such liability being fastened up on the Assessee to make provisions for the maintenance of the road. Also referring to Article-38 of the agreement, it was observed that in case of termination, the Assessee was required to cure all project assets including the road and other structures, of all defects and deficiencies, so that, the project highway is compliant with the maintenance requirements. Such maintenance requirements were required to be cured by the Assessee at its own cost. More particularly, the Article-39 of the Concession Agreement was referred to which provided that an independent engineer shall evaluate such maintenance requirements and in case, the Assessee fails to cure the defects, the corresponding amount shall be retained by the Government. Thus considering the aforesaid clear position in law and by recording the following findings, the CIT(Appeals) allowed the Assessee's appeal.

“ 8. The second issue to be decided is as to whether the estimate made by the assessee is reasonable and on a scientific basis. The appellant has submitted that a copy of said working was submitted to the Assessing Officer and the Assessing Officer has not pointed out any error in the working of the appellant. A copy of this working has also been filed before me. As per this working, the appellant has worked out the quantity of bitumen, concrete, thermoplastic compound, etc., on the basis of length, breadth and depth of the road. After working out the quantity, the estimate has been arrived at by the appellant. The appellant has estimated the cost of major repairs at Rs. 22,26,47, 178/-. The appellant has also filed a chart containing the year wise details of provisions made and utilized. The appellant also explained that as per the provisions of IndAS accounting principles, reworking of provisions was done in A.Y. 2018-19. The appellant has also submitted that the major repair was carried in F.Y. 2019-20 and FY 2020-21 and the whole of provisions made were utilized on major repairs. The opening balance of provisions as on 01/04/2019 was Rs. 16,19,64,943/- and against this opening balance of provisions for major repairs, a total amount of Rs. 17,89,48,545/- was incurred in F.Y. 2019-20 (A.Y. 2020-21). The corresponding chart has been reproduced earlier in this order. These facts suggests that the estimate made by the appellant is reliable. The appellant has also submitted that similar provisions were made in the subsequent assessment years as well and after carrying out the scrutiny u/s 143(3) r.w.s. 153A for A.Y. 2016-17, 2017-18 and u/s 143(3) for AY 2018-19, no disallowance of provisions for 'major repairs' was made by the Assessing Officer. Considering the totality of facts, working of estimate

submitted by the appellant and the quantum of actual expenditure incurred by the appellant on major repairs in subsequent financial years, I am of the opinion that the estimates made by the appellant are reasonable and on a scientific basis.”

7. The Tribunal has held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. However, in permitting such course of action, it was observed that what is required to be ascertained is as to whether, incurring of such liability was certain and whether the liability was capable of being estimated with reasonable certainty, although the actual quantification may not be possible, and if such requirements were satisfied, such liability need not be treated to be any contingent liability and that the liability will be a liability in praesenti however to be discharged at a future date. Also by referring to the decision in the **Deputy Commissioner Vs. Suzer India Limited Pune ITA No. 722/PUN/2016**, it was observed to be a settled principle that in any case where estimation is done based on scientific method and calculated properly, the provision made for warranty in respect of goods should be allowed under Section 37(1) of the Act.

8. The Tribunal has accepted the findings of the CIT (Appeals). We have perused the impugned order passed by the Tribunal. The Tribunal has duly taken into consideration the decision of the Tribunal, Hyderabad Bench in the case of **M/s.Mokama Munger Highway Limited** (supra), the decision referred therein in case of **Bharat Earth Movers** (supra) and in case of **Rotork Controls India Limited** (supra) and other decisions and accepting such clear position in law, has recorded a finding that in the case of the Assessee being a special purpose vehicle for road construction on Build, Operate and Transfer basis and collection of tolls, the Assessee was under an obligation to incur the expenditure for re-laying the whole road at the end of the specific period, more particularly, after 8 years. It was hence observed that there was a direct

link with the toll collection and the expenditure to be incurred as per the agreement by the Assessee for which the provision had been made. Considering the observations as made in the M/s. Mokama Munger Highway Ltd.,(supra) and accepting the case of the Assessee as accepted by the CIT(Appeals), the Tribunal did not find any reason to interfere with the order passed by the CIT(Appeals).

9. Mr. Sharma, learned counsel for the Revenue has reiterated the contentions which in fact are contentions borne out of the order passed by the Assessing Officer. He would submit that the approach of the Assessing Officer is correct inasmuch as under the provisions in question namely Section 37 so far as the expenditure in question is concerned, it was required to be actually incurred before it could be allowed as a deduction and not otherwise.

10. On the other hand, learned counsel for the Assessee submits that the findings recorded by the CIT(Appeals) and as also accepted by the Tribunal, were in accord with the correct interpretation of terms and conditions of the agreement which certainly permitted the Assessee to claim the expenditure, which was on the basis of such estimations as completely supported not only by the terms and conditions of the contract but also by the detailed exercise of estimation which was put forth before the Assessing Officer as also the CIT (Appeals).

11. Having heard learned counsel for the parties and having perused the record, we are in complete agreement with the findings recorded by the CIT(Appeals) and as confirmed by the Tribunal. We find that considering the nature of the contract i.e. the Concession Agreement entered into by the Assessee, which was a Special Purpose Vehicle, with the Government of

Maharashtra, as noted hereinabove, it was on the basis of valid terms and conditions of the contract, that the Assessee would discharge its contractual liability in such deferred manner and for which make appropriate estimations of maintenance expenses that would be incurred. Therefore such provision which was made on realistic estimations and which were submitted to the department on the basis of scientific assessment could not have been disallowed and more particularly, considering the well settled position in law as laid down in the several decisions which are noted by the CIT (Appeals) and also accepted in the impugned order passed by the Tribunal.

12. Thus, we do not find the approach of the Assessee in making such adjustments and claiming deduction of the amounts in question on such estimation was a permissible exercise. We accordingly find that no substantial question of law that arises for consideration in this Appeal.

13. The Appeal is accordingly rejected. No costs.

(AARTI A. SATHE, J.)

(G. S. KULKARNI, J.)