

## **ITAT deletes Disallowance made on account of Depreciation on Right to Collect Annuity on Toll Roads**

### **Fact of the Case**

1. In the present case the assessee, M/s. Gorakhpur Infrastructure Co. Ltd. is engaged in the business of executing the project for design, construction, finance and maintenance of Gorakhpur By-pass on NH-28(Project Highway) in the state of Uttar Pradesh on Build, Operate and Transfer (BOT) basis under the annuity scheme.
2. The assessee entered into concession agreement with National Highway Authority of India (NHAI) and as per concession agreement, NHAI had granted exclusive right, license and authority during the subsistence of the concession agreement to implement the project and the concession in respect of the Project Highway for a period of 20 years.
3. The assessee had incurred total cost amounting to Rs.721,28,78,487/- on construction and development of the Project Highway, pursuant to which the assessee was able to receive annuity from NHAI under the concession agreement.
4. The assessee classified such cost incurred and right to receive annuity on the toll road as an intangible asset eligible for depreciation u/s.32(1)(ii) of the Act. This depreciation was denied by the Id. AO. The Id. AO held that assessee is not entitled for depreciation at all on the cost incurred on the project. The CIT(A) however, granted depreciation

### **Decision of the Case**

1. The coram Judicial Member, Amarjit Singh and Accountant Member, M. Balaganesh held that the assessee was awarded the work of constructing a part of the National Highway no.5, under BOT basis.
2. Therefore, entire investment/finance for developing the infrastructure facility was borne by the assessee. By making such investment what the assessee received in return was a right to collect annuity over the period of concession.
3. Thus, the investment made by the assessee for acquiring such right certainly is an intangible asset coming within the purview of section 32(1)(ii) of the Act. Therefore, the assessee would be eligible to claim depreciation.