



**Noida
Toll Bridge Co. Ltd.**

August 28, 2024

The General Manager

Corporate Relations Department
Bombay Stock Exchange Limited
1st Floor, New Trading Ring Rotunda
Building, P J Towers Dalal Street, Fort
Mumbai – 400 001

The Manager

Listing Department
National Stock Exchange of India Ltd.
Exchange Plaza, 5th Floor
Plot No. C/1, G Block
Bandra-Kurla Complex, Bandra (E)
Mumbai – 400 051

BSE Scrip Code: 532481

NSE Scrip Code: NOIDATOLL

Sub: Update on Income Tax Matter

Dear Madam/ Sir,

In continuation to our letter dated May 21, 2024 on the captioned subject, this is to inform you that the matter was listed at Income Tax Appellate Tribunal Authority (ITAT) for AYs from 2012-13 to 2014-15 and the Copy of the Order dated was received today i.e. August 28, 2024.

The Copy of the Order is attached for your reference.

There would be no impact on the business operation of the Company due to this Order.

The details as required under SEBI Listing Regulations read with Circular no. SEBI/HO/CFD/CFDPoD1/P-CIR//2023/123 dated July 13, 2023, are enclosed as Annexure A.

This is for your information and records.

Thanking You
For **Noida Toll Bridge Company Limited**

Gagan Singhal
Company Secretary & Compliance Officer

Annexure-A

Sr. No.	Particulars	Remarks
1.	Details of any change in status/ development in relation to such proceedings.	Refer Attachment
2.	Details of change in status in case of litigation against KMP or its promoter or ultimate person in control	Not Applicable
3.	Details of settlement, compensation / penalty paid (if any)	Not Applicable
4.	Impact of such settlement on the financial position of the Company	No Impact

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member,

Ms. Madhumita Roy, Judicial Member

ITA No. 4418/Del/2018 : Asstt. Year: 2012-13

ITA No. 4419/Del/2018 : Asstt. Year: 2013-14

ITA No. 4420/Del/2018 : Asstt. Year: 2014-15

&

SA No. 570/Del/2018 : Asstt. Year: 2012-13

SA No. 571/Del/2018 : Asstt. Year: 2013-14

SA No. 572/Del/2018 : Asstt. Year: 2014-15

Noida Toll Bridge Co. Ltd., Toll Plaza, Opp. Sector-15A, Noida-201301	Vs	DCIT/ACIT, Circle-2, Noida-201301
(APPELLANT)		(RESPONDENT)
PAN No. AAACN3498A		

Assessee by : Ms. Pallavi, CA

**Revenue by : Sh. G. C. Srivastava, Adv.(Special Counsel
for Revenue) & Sh. Karnav Mahrotra, Adv.**

Date of Hearing: 22.05.2024

Date of Pronouncement: 21.08.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals and Stay Applications have been filed by the assessee against the orders of Id. CIT(A)-I, Noida dated 31.03.2018.

2. In ITA No. 4418/Del/2018, the following concise grounds have been raised by the assessee:

"1. That the invocation of provisions of section 251(I)(a) of the Act and enhancement of Appellant's income by the Hon'ble

CIT(A) is invalid and contrary to the provisions of law. (G. No. 1 of the AM).

2. That the Hon'ble CIT(A) has erred in upholding the action of the Ld. AO in bringing to tax the notional income on account of designated returns amounting to Rs. 435,11,79,406. (G. No. 3, 4 and 5 of the AM)

2.1. That without prejudice to the above, the Hon'ble CIT(A)/Ld. AO have erred in not allowing the benefit of deduction u/s 80-IA of the Act on the designated returns charged to tax under the head 'Income from Business or Profession'. (G. No. 6 of the AM)

3. That the Hon'ble CIT(A) has erred in holding that Appellant has earned income by way of revenue subsidy and making addition to the total income. (Ground Nos. 7, 8 & 9 of the AM)

3.1 .That without prejudice to the above, the Hon'ble CIT(A) has erred in not allowing the benefit of deduction u/s 80-IA of the Act on the revenue subsidy charged to tax under the head 'income from business or profession'. (G. No. 10 of the AM)

4. That Hon'ble CIT(A) erred in treating the rental income as income from business and profession as against income from income from house property returned by the appellant. (Ground No. 12 of the AM)

5. That the Hon'ble CIT(A) has erred in upholding the disallowance on account of unpaid interest of Rs. 1,30,14,412 made by the Ld. AO u/s 43B without appreciating that the provisions of section 43B were not applicable to the payment of interest. (Ground No. 13 of the AM)

6. That the Hon'ble CIT(A) has erred upholding the finding of the Ld. AO that Appellant is not entitled to claim benefit of unabsorbed depreciation pertaining to earlier years. (Ground No. 14 of the AM)

7. That the Hon'ble CIT(A) has erred in holding that the Appellant has received a capital subsidy of Rs. 10,02,09,78,602 being the value of land utilized and directing the same to be set-off against the value of block of assets to re-compute the amount of depreciation claim u/s 32 of the Act. (Ground Nos. 11,15 and 16 of the AM)

8. That the levy of interest u/s 234B of the Act is erroneous and deserves to be deleted. (Ground Nos. 17 and 18 of the AM)

9. That the levy of interest u/s 234C of the Act is erroneous and deserves to be deleted. (Ground Nos. 19 and 20 of the AM)

10. *The above grounds of appeal are independent and without prejudice to one another. (Ground No. 21 of the AM)*"

3. In ITA No. 4419/Del/2018, the following concise grounds have been raised by the assessee:

"1. *That the Hon'ble CIT(A) has erred in not dealing with the grounds of appeal for the impugned year while passing the combined order for AY 2013-14, and has further erred in enhancing the income of the Appellant without adjudicating the grounds of appeal raised before him (G. Nos. 1, 2 & 6 of the AM).*

2. *That the impugned assessment order passed by the Ld. AO is in violation of principles of natural justice as substantial additions have been made without giving any show- cause notice to the Appellant (G. Nos. 4, 5 & 7 of the AM).*

3. *That the Ld. AO has erred in treating the rental income as income from business and profession as against income from income from house property returned by the appellant. (Ground No. 8 of the AM)*

3.1. *That without prejudice to the above, Ld. AO has erred in not allowing the benefit of deduction u/s 80-IA of the Act on the rental income charged to tax under the head 'Income from Business or Profession' (G. No. 9 of the AM).*

4. *That the Ld. AO has erred in disallowing unpaid interest of Rs. 1,40,47,136 made u/s 43B without appreciating that the provisions of section 43B were not applicable to the payment of interest. (Ground No. 10 of the AM)*

5. *That the Ld. AO has erred in bringing to tax the notional income on account of designated returns amounting to Rs. 427,88,52,969. (G. No. 11 and 12 of the AM)*

5.1. *That without prejudice to the above, the Ld. AO has erred in not allowing the benefit of deduction u/s 80-IA of the Act on the designated returns charged to tax under the head 'Income from Business or Profession'. (G. No. 13 of the AM)*

6. *That the Ld. AO has erred in disallowing Appellant's claim of depreciation u/s 32 of the Act alleging that Appellant is not the owner of the underlying land on which toll bridge is developed, and not following the judgement of the Hon'ble High court in Appellant's own case for AY 2005-06. (G. Nos. 14 and 15 of the AM)*

7. That the Ld. AO has erred in holding that the Appellant has earned income by way of revenue subsidy and making addition to the total income. (G. Nos. 16, 17 and 19 of the AM)

7.1. That without prejudice to the above, the Hon'ble AO has erred in not allowing the benefit of deduction u/s 80-IA of the Act on the revenue subsidy charged to tax under the head 'income from business or profession'. (G. No. 18 of the AM)

8. That the Ld. AO has erred in not allowing the correct set off of unabsorbed depreciation from earlier years. (G. No. 20 of the AM)

9. That the levy of interest u/s 234B of the Act is erroneous and deserves to be deleted. (Ground No. 21 of the AM)

10. That the levy of interest u/s 234C of the Act is erroneous and deserves to be deleted. (Ground No. 22 of the AM)

11. That the Ld. AO has erred in initiating the penalty proceedings u/s 271(1)(c) of the Act. (Ground No. 23 of the AM)"

4. In ITA No. 4420/Del/2018, the following concise grounds have been raised by the assessee:

"1. That the invocation of provisions of section 251(1)(a) of the Act and enhancement of Appellant's income by the Hon'ble CIT(A) is invalid and contrary to the provisions of law. (G. No. 1 of the AM).

2. That the Hon'ble CIT(A) has erred in upholding the action of the Ld. AO in bringing to tax the notional income on account of designated returns amounting to Rs.502,78,96,600 where in fact, no income as arisen or accrued to the Appellant. (G. No. 3, 4 and 5 of the AM)

2.1. That without prejudice to the above, the Hon'ble CIT(A)/Ld. AO have erred in not allowing the benefit of deduction u/s 80-IA of the Act on the designated returns charged to tax under the head 'Income from Business or Profession'. (G. No. 6 of the AM)

3. That the Hon'ble CIT(A) has erred in holding that Appellant has earned income by way of revenue subsidy and making addition to total income. (Ground Nos. 7, 8 & 9 of the AM)

3.1. *That without prejudice to the above, the Hon'ble CIT(A) has erred in not allowing the benefit of deduction u/s 80-IA of the Act on the revenue subsidy charged to tax under the head 'income from business or profession'. (G. No. 10 of the AM)*

4. *That the Hon'ble CIT(A) has erred in holding that the Appellant has received a capital subsidy of Rs. 10,02,09,78,602 being the value of land utilized and directing the same to be set off against the value of block of assets to re-compute the amount of depreciation claim u/s 32 of the Act. (Ground Nos. 11, 12 and 13 of the AM)*

5. *That Hon'ble CIT(A) erred in treating the rental income as income from business and profession as against income from income from house property returned by the appellant. (Ground No. 14 of the AM)*

6. *That the Hon'ble CIT(A) has erred in not adjudicating the ground pertaining to disallowance of deduction u/s 80-IA by the Ld. AO alleging that Appellant has failed to file the required audit report u/s 80-IA of the Act. (Ground No. 15 and 16 of the AM)*

7. *That the Appellant be allowed to carry forward the unabsorbed depreciation of the earlier years (Ground No. 17 of the AM)*

8. *That the levy of interest u/s 234B of the Act is erroneous and deserves to be deleted. (Ground Nos. 18 and 19 of the AM)*

9. *That the levy of interest u/s 234C of the Act is erroneous and deserves to be deleted. (Ground Nos. 20 and 21 of the AM)*

10. *The above grounds of appeal are independent and without prejudice to one another. (Ground No. 22 of the AM)"*

ITA No. 4418/Del/2018

ITA No. 4419/Del/2018

ITA No. 4420/Del/2018

Designated returns:

5. At the outset, both the parties fairly submitted that the issue stands covered by the order of the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 4410/Del/2018 to

4417/Del/2018 from A.Y. 2006-07 to A.Y. 2011-12 vide order dated 08.08.2023. The relevant part of adjudication is as under:

The issue:

"DDTION ON ARREAR OF DESIGNATED RETURN Rs. 179.87 CRORES

31. The bone of contention is the following certificate by a Chartered Accountant:

*Mr. Harish Mathur
Chief Executive Officer
Noida Toll Bridge Company Limited,
Toll Plaza, DND Flyway,
Opposite Sector-15A,
Noida-201301
Uttar Pradesh*

Certification (revised) of the Statement of Computation of 'Return in Arrears as on 31 March 2013 in pursuance of the Concession Agreement

Dear Sir,

1. As required by you vide letter dated 28 August 2013 we have verified the Statement of Computation of 'Return in Arrears' as on 31 March 2013 (Statement") prepared by the management based on the revised project cost. We understand that this certificate will over-ride the certificate as on 31 March 2013 issued by us dated 27 June 2013 as that was on the basis of provisional cost (i.e. without including any cost incurred from the commission date to 31 March 2013). The Statement (refer to Annexure-1) has

been prepared in accordance with Article 14.2 read with Appendix F of the "Concession Agreement dated 12 November 1997 entered into between New Okhla Industrial Development Authority (NOIDA"), Infrastructure Leasing Financial Services Limited ('Sponsor") and Noida Toll Bridge Company Limited (the Company)", for the purpose of computation of recovery of total project cost and return of 20% thereon for the year ended 31 March 2013.

2. On the basis of our verification of the aforementioned Statement, by carrying out such checks as we considered appropriate and on the basis of information and explanations given to us by the management, we certify that there is a shortfall in the recovery of total project cost and return of 20% thereon of INR 29,551,405,164 (INR 2,955 crores) as at 31 March 2013.

3. The Statement is to be read in conjunction with Notes 3, 4 and 5, which form part of the Statement These notes provide the break-up of various heads comprised in the Statement and explain the management rationale for 26 including or excluding certain items, which we have been informed, is consistent with the past practices.....

Adjudication by the Tribunal:

"46. In light of the ratio laid down by the Hon'ble Supreme Court [supra] we have no hesitation to hold that no right was accrued to the assessee to receive alleged designated return and, therefore, the entire addition is on notional basis in contrast with the concept of real income.

47. It is pertinent to mention here that the Hon'ble High Court of Allahabad vide its order in PIL No 60214 of 2012 dated 26.10.2016 held that Article 13 and Article 14 of the Agreement are not valid and to be severed from the agreement. The Hon'ble Court had struck down the levy of fee for the reason that the assessee had already recovered the entire cost of the project on actual basis from collection of tolls, advertisement and rental income and, therefore, the assessee cannot collect the toll.

48. In this light, it can be safely concluded that the assessee did not earn 20% designated return on the cost of the project. Thus, addition on account of designated return amounting to Rs. 179.87 crores does not have any legs to stand and deserves to be deleted. We order accordingly."

6. In the absence of any change in the factual matrix and legal proposition, the appeal of the assessee on this ground is allowed.

Revenue subsidy:

7. At the outset, both the parties fairly submitted that the issue stands covered by the order of the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 4410/Del/2018 to 4417/Del/2018 from A.Y. 2006-07 to A.Y. 2011-12 vide order dated 08.08.2023. The relevant part of adjudication is as under:

"49. The sole basis for this enhancement is that according to the Id. CIT(A), lands were transferred to the assessee by Noida without any consideration and that the assessee

is the owner of the land and as the lands were transferred to commercially exploit for the purpose of development and that he assessee being the owner of the land, had not disclosed the same in the books of account. Therefore, the Id. CIT(A) ascertained the market value of the land by engaging a valuer for this purpose.

50. After arriving at the market value of the land, the Id. CIT(A) attributed a part of the same towards capital subsidy received to the extent the lands were utilized for the purpose of construction of the toll bridge. Balance amount, according to the Id. CIT(A), represented a compensation for possible or projected short fall in the revenue and treated the same as revenue subsidy and made enhancement of Rs. 1730.08 crores.

51. We have extracted the relevant articles of lease of land by Noida elsewhere. The very basis of the enhancement by the Id. CIT(A) that the lands were transferred to the assessee by Noida is fallacious and completely in disregard to the relevant articles mentioned elsewhere. The lands were given on lease and, therefore, there is no question of ownership being transferred to the assessee and, therefore, there is no question of any addition on this account. The same is directed to be deleted.”

8. In the absence of any change in the factual matrix and legal proposition, the appeal of the assessee on this ground is allowed.

Disallowance u/s 80IA:

9. On going through the record, we find that this issue has not been adjudicated by the Id. CIT(A). Since, the primary adjudication has not been done by the first appellate authorities, hence we deem it fit to remand the issue to the Id. CIT(A) for adjudication.

Lease Rent:

10. On going through the record, we find that this issue has not been adjudicated by the Id. CIT(A). Since, the primary adjudication has not been done by the first appellate authorities, hence we deem it fit to remand the issue to the Id. CIT(A) for adjudication.

ITA No. 4418/Del/2018
ITA No. 4419/Del/2018

Interest u/s 43B:

11. At the outset, both the parties fairly submitted that the issue stands covered by the order of the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 4410/Del/2018 to 4417/Del/2018 from A.Y. 2006-07 to A.Y. 2011-12 vide order dated 08.08.2023. The relevant part of adjudication is as under:

"54. In addition to the issues considered in A.Y 2006-07 ITA No. 4411/DEL/2018, in this year the assessee has challenged the disallowance of unpaid interest of Rs. 1,71,04,300/-.

55. The underlying facts in the issue are that the assessee issued deep discount bonds to the public on which interest was payable on maturity. The assessee had recognized the interest year on year as the liability accrues every year but however, is payable on maturity. During the year, the assessee debited such interest to the tune of Rs. 14.41 crores to the Profit and Loss account whereas it had paid Rs. 12.70 crores.

56. The Assessing Officer disallowed the difference of Rs. 1.71 crores for the reason that the same is unpaid.

57. In our understanding of the afore-mentioned facts, provisions of section 43B(e) of the Act apply only to loans/borrowings from any financial institutions. It does not apply to the deep discount bonds issued to the public. In our considered opinion, the amount over and above the face value which is payable on maturity is nothing but the interest amount which accrues to the assessee every year and recognized by the assessee in its books of account. Therefore, the interest payable on deep discount bonds is to be allowed on accrual basis and not on payment basis. The Assessing Officer is directed to delete the same.

58. In the result, the appeals of the assessee are allowed."

12. In the absence of any change in the factual matrix and legal proposition, the appeal of the assessee on this ground is allowed.

ITA No. 4418/Del/2018
ITA No. 4420/Del/2018

Set off of unabsorbed depreciation:

13. On going through the record, we find that this issue has not been adjudicated by the Id. CIT(A). Since, the primary adjudication has not been done by the first appellate authorities, hence we deem it fit to remand the issue to the Id. CIT(A) for adjudication.

Capital Subsidy/Set off of Capital Subsidy:

14. At the outset, both the parties fairly submitted that the issue stands covered by the order of the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 4410/Del/2018 to 4417/Del/2018 from A.Y. 2006-07 to A.Y. 2011-12 vide order dated 08.08.2023. The relevant part of adjudication is as under:

"DISALLOWANCE OF DEPRECIATION CLAIMED ON TOLL BRIDGE Rs. 15.97 CRORES

52. Though the claim of depreciation was allowed to the assessee, as discussed in the aforementioned paras, the Id. CIT(A) treated the part market value of alleged transfer of land as capital receipt, he went on to reduce the written down value with the amount of capital subsidy and recomputed the depreciation and made the addition of Rs. 15.97 crores.

53. Since in the para above we have discarded the findings of the Id. CIT(A), for our detailed reasons therein, there is

no capital subsidy to 49 be reduced and there is no basis for re-computing the depreciation. The same is deleted."

15. In the absence of any change in the factual matrix and legal proposition, the appeal of the assessee on this ground is allowed.

ITA No. 4419/Del/2018

Claim of depreciation u/s 32/Brought forward depreciation:

16. On going through the record, we find that this issue has not been adjudicated by the Id. CIT(A). Since, the primary adjudication has not been done by the first appellate authorities, hence we deem it fit to remand the issue to the Id. CIT(A) for adjudication.

17. The appeals of the assessee are decided, the Stay Applications of the assessee are dismissed as infructuous.

18. In the result, the appeals of the assessee are allowed for statistical purpose and the Stay Applications of the assessee are dismissed.

Order Pronounced in the Open Court on 21/08/2024.

Sd/-

**(Madhumita Roy)
Judicial Member**

Dated: 21/08/2024

Subodh Kumar, Sr. PS

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**