

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.5468Mum/2018  
(Assessment Year :2015-16)**

Vagad Builders and Developers Pvt. Ltd. 230, Big Splash, Sector-17 Vashi Navi Mumbai-400 703	Vs.	ITO-15(3)(2) Aaykar Bhawan M.K.Road Mumbai-400 020
<b>PAN/GIR No.AADCV0768J</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Akhtar H. Ansari
Assessee by	Roshan Ochani
<b>Date of Hearing</b>	<b>15/10/2019</b>
<b>Date of Pronouncement</b>	<b>15/10/2019</b>

**आदेश / ORDER**

**PER BENCH:**

This appeal filed by the assessee is directed against, the order of the Commissioner of Income Tax (Appeals)-24, Mumbai, dated 02/07/2018 and it pertains to Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

1. *BECAUSE, on the facts and circumstances of case, impugned order is void-ab-initio since same has been passed without providing plausible opportunity of being heard and thereby mocking audi afterm partem and principle of natural justice.*
2. *BECAUSE, on the facts and circumstances of case, assessment order dated 29/12/2017 based on which impugned order has been passed, itself has no legs to stand in eyes of law*

3. *BECAUSE, on the facts and circumstances of case, entire assessment proceedings and consequent first appeal proceedings are based on erroneous and misinterpretation of judicial pronouncement leading to unwarranted outcome.*

4. *BECAUSE, assessment order and consequent first appellate order are against the propositions laid by the Hon'ble Apex court delivered in LACHMANDAS MATHURADAS VS. CIT bearing citation [2002] 254 ITR 799 (SC)*

5. *BECAUSE, disallowance of the below tabulated disallowance is erroneous and against the binding precedence of law laid by their lordship in LACHMANDAS MATHURADAS VS. CIT (Supra).*

<b>SR. NO</b>	<b>NATURE OF DISALLOWANCE</b>	<b>AMOUNT</b>
1	Interest on late payment of TDS	Rs.98,854/-
2	Interest and Penalty paid on Service Tax	Rs.14,113/-

6. *BECAUSE, lower authorities failed to understand that there was neither concealment of particular of income nor appellant has furnished inaccurate particular of income, consequent initiation of penal provision was inexcusable. Hence the appeal.*

*The Appellant Company craves to leave, add alter, modify or / and delete any of the above ground*

3. The brief facts of the case are that the assessee company which is engaged in the business of builders and developers, filed its return of income for AY 2015-16 on 31/10/2015, declaring total income of Rs. 5,12,550/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 29/12/2017 and determined total income at Rs. 6,25,517/-, by making additions towards disallowance of interest paid on TDS amounting to Rs. 98,854/- and disallowance of interest and penalty paid on service tax amounting to Rs. 14,113/-, on the ground that interest paid on late deposit of TDS is not allowable as deduction u/s 37(1) of the I.T.Act, 1961.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A), Before the Ld.CIT(A), the assessee has filed returns submission on 29/05/2018 in support of its arguments. The Ld.CIT(A), for detailed reasons recorded in his order, dated 02/07/2018 confirmed additions made by the AO towards disallowances of interest paid on TDS, on the ground that said expenditure is not deductible as business expenditure u/s 37 of the I.T.Act, 1961. Similarly, the Ld. AO has confirmed disallowances of interest and penalty paid on service tax amounting to Rs. 14,113/- by holding that interest and penalty paid for violation of provisions of any law is not allowable as deduction u/s 37 of the I.T.Act, 1961.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. At the time of hearing, the Ld. AR for the assessee submitted that the order passed by the first appellate authority is void ab initio, because the same has been passed without providing plausible opportunity of being heard and thereby, mocking *audi alteram partem* and principles of natural justice. The Ld. AR, further submitted that the Ld.CIT(A) had disposed of appeal filed by the assessee, without considering certain judicial precedents referred by the assessee, during the course of hearing, which violated the principles of natural justice and hence, the appeal may be set aside to the file of the AO. We find that assessee has cited the decision of Hon'ble Supreme Court, in the case of Bharat commerce and industries (1998) (SC) and also the decision of Hon'ble Kerala High Court, in the Oriental insurance company Ltd. 183 taxmann 136 and Ors two judgment of Gujarath High Court, in support of its arguments. We further noted that the Ld.CIT (A) has confirmed additions made by the AO towards disallowance of interest paid on TDS and penalty on service tax

without considering case laws cited by the assessee and also, how those case laws are not applicable to the facts of present case. Therefore, we are of the considered view that there is a violation of principles of natural justice as claimed by the assessee, insofar as, not considering the case laws cited by the assessee. Hence, we set aside, the appeal to the file of the Ld.CIT(A) for fresh adjudication in accordance with law.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on this 15 /10/2019

**Sd/-**  
**(MAHAVIR SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15/10/2019  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai