

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.4537/Mum/2018
(Assessment Year :2015-16)**

M/s. Awas Developers & Construction Pvt. Ltd. Thar & Co., 203, Capri Building Opposite HDIL Towers Anant Kanekar Marg Bandra (E), Mumbai – 400 021	Vs.	Dy. Commissioner of Income Tax, Central Circle 5(4), Mumbai
PAN/GIR No.AADCA0702D		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Michael Jerald
Date of Hearing	06/01/2020
Date of Pronouncement	15/01/2020

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.4537/Mum/2018 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A)-53/IT-418/DCC-5(4)/2017-18 dated 16/05/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 07/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle 5(4), Mumbai (hereinafter referred to as Id. AO).

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

- 1. The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of disallowing interest expenses to the tune of Rs.8,86,16,625/- u/s 43B of the IT Act, 1961 & reducing the same from Work in progress as on 31/03/2015 , which is bad in law.*
- 2. The Appellant craves leave to add to and/ or amend and/ or delete and/ or modify and/ or alter the aforesaid grounds of appeal as and when the occasion demands.*
- 3. All the aforesaid grounds of appeal are independent, in the alternative and without prejudice to one another.*

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that assessee is a real estate developer and had filed its return for the A.Y.2015-16 on 29/09/2015 declaring total loss of Rs.93,240/-. The Id. AO during the course of assessment proceedings observed that assessee has not paid the outstanding interest payment of Rs.8,86,16,625/- to Punjab and Maharashtra Co-operative Bank on or before the due date of filing of return of income. Accordingly, the interest expenses of Rs.8,86,16,625/- debited to profit and loss account and its capitalisation to work in progress(WIP) was disallowed by the Id. AO u/s.43B of the Act in the assessment. We find that the assessee before the Id. CIT(A) had contended that provisions of Section 43B of the Act would apply only if interest was claimed as deduction while computing the income referred to Section 28 of the Act. It was further contended before the Id. CIT(A) that no expenditure was claimed in the profit and loss account but rather the same was capitalised to work in progress as on 31/03/2015. Accordingly, it was argued that provisions of Section 43B of the Act would not come into operation at all. We find that the Id. CIT(A) ignoring the aforesaid contentions of the assessee had observed in part 4.3 of the order that assessee had debited the sum of Rs.8,86,16,625/- in its profit and loss

account towards finance cost and had also observed that the said interest expenditure had been capitalised and debited to work in progress. We find this matter requires factual verification by the Id. AO as there are contradictory findings on facts. Hence, we deem it fit and appropriate to remand this issue to the file of the Id. AO for de novo adjudication in accordance with law. Assessee is at liberty to furnish further evidences in support of its contentions. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 15/01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020
KARUNA, *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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai