

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),  
"B" BENCH, MUMBAI**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
ITA No. 58/Mum/2019  
(Assessment Year :2009-10)**

Nimbark Gems 6, Unity House, 8 Mama Parmanand Marg, Opera House Mumbai-400 004	Vs.	ACIT-16(3) Matru Mandir, Tardeo Mumbai-400 007
<b>PAN/GIR No.AAGFN2924G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Smt. Kavita P. Kaushik, Sr.DR
<b>Date of Hearing</b>	<b>14/10/2020</b>
<b>Date of Pronouncement</b>	<b>14/10/2020</b>

**आदेश / ORDER**

**PER S.S.GODARA (J.M):**

This Assessee's appeal for A.Y.2009-10 arises from Mumbai's order of Commissioner of Income Tax (Appeals)-30, in case No.CIT(A)-30/ACIT 19(3)/277/2011-12 dated 30/11/2018, in proceedings u/s.143(3) of the Income Tax Act, 1961 [hereinafter referred to as Act].

2. None appears at the assessee's behest. We have proceeded with the learned departmental representative's arguments that both the lower authorities have rightly involved section 40A(3) disallowance after holding this tax payer to have made cash payments of factory premises expenses, representative charges and foreign travel expenses involving sums of Rs.1,81,600/-,

Rs.30,000/-and Rs.33,650/-, respectively, totaling to Rs.2,45,250/-. The assessee's first and foremost plea before the lower authorities was that impugned statutory provision does not apply in facts of the instant case since all these sums form part of the capital than revenue account. This aspect appears to have missed the learned lower appellate authority's consideration as per its order under challenge. We therefore deem it appropriate to restore the issue back to CIT(A) for his appropriate adjudication as per law within three effective opportunities of hearing.

3. The assessee's appeal is allowed for statistical purpose in above facts.

Order pronounced in the open court on this 14/10 /2020

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 14/10/2020  
Thirumalesh, *sr.ps*

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**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