

THE INCOME TAX APPELLATE TRIBUNAL  
“C” Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 785/Mum/2019 (A.Y. 2013-14)

M/s. Privilege Power & Infrastructure Pvt. Ltd. 3 <sup>rd</sup> Floor, HDIL Tower Anant Kanekar Marg Bandra East Mumbai-400 051.  PAN : AAACD2140D (Appellant)	Vs.	DCIT, CC-5(4) Room No. 1927 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021.  (Respondent)
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Assessee by	Shri Nimesh R. Thar
Department by	Shri Abi Ram Karthikeyan
Date of Hearing	01.09.2022
Date of Pronouncement	01.09.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 26-11-2018 passed by Ld CIT(A)-53, Mumbai and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision rendered by Ld CIT(A) in respect of the following issues:-

- (a) Addition made u/s 43-B of the Act – Rs.6,853/-
- (b) Addition made u/s 40(a)(ia) of the Act – Rs.73,24,616/-
- (c) Addition made u/s 40(a)(ia) of the Act by reducing the amount of Work in Progress – Rs.43,19,585/-.

2. None appeared on behalf of the assessee. The authorised representative of the assessee M/s Nimesh Thar & Co., Chartered Accountants have moved an application seeking adjournment, wherein it is stated that the promoter Director Shri Sarang R Wadhawan is in judicial custody and hence they are not able to take any decision. We also observe from the record that the

notices sent to the assessee by the registry on earlier occasions have been returned back unserved. Since neither the assessee nor its representative is appearing before the bench in order to assist the bench, we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. We heard Ld D.R and perused the record. The assessee is a real estate developer. During the course of assessment proceedings, the AO asked the assessee to furnish the details of payments covered by the provisions of sec.43B and sec.40(a)(ia) of the Act. On perusal of the same, the AO noticed that the assessee has not paid WCT covered by sec.43B before the due date for filing return of income u/s 139(1) of the Act. Accordingly, the AO disallowed a sum of Rs.6,835/- u/s 43B of the Act. The AO noticed that the assessee has not deducted tax at source from certain payments. A portion of the payment amounting to Rs.73,24,616/- was claimed as deduction by debiting profit and loss account. The AO disallowed the same u/s 40(a)(ia) of the Act and added the same to the total income. Another portion of the payment amounting to Rs.43,19,585/- was included in the Work in Progress. The AO reduced that amount from the value of WIP.

4. In the appellate proceedings, the Ld CIT(A) confirmed the action of the AO in respect of all the above said three items. Aggrieved, the assessee has filed this appeal before the Tribunal.

5. We have gone through the order passed by Ld CIT(A). We notice that the assessee has furnished written submissions before him. We also notice that the Ld CIT(A) has not discussed about the submissions made by the assessee in respect of the above said additions, i.e., the Ld CIT(A) has confirmed the additions observing that the assessee did not make any specific submissions. Hence, the order of the Ld CIT(A) is not clear as to the nature of written submissions made by the representative of the assessee

before him. Further, it is not clear as to whether the said written submissions were, in fact, considered by Ld CIT(A) before taking the decision.

6. Under these set of facts, we are of the view that all the issues require fresh adjudication at the end of Ld CIT(A) by passing a reasoned order. Accordingly, we set aside the impugned order passed by Ld CIT(A) and restore all the issues to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 01.09.2022.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/09/2022

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai