

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2036/Mum/2019
(Assessment Year :2015-16)**

M/s. Privilege Power & Infrastructure Pvt. Ltd., 3 rd Floor, HDIL Tower AnantKanekar Marg Bandra (E), Mumbai – 400 051	Vs.	Dy. Commissioner of Income Tax Central Circle-5(4) Room No.1927, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021
PAN/GIR No.AAACD2140D		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Ravinder Sindhu
Date of Hearing	22/09/2022
Date of Pronouncement	28/09/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.2036/Mum/2019 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/DCCC-5(4)/IT-417/2017-18 dated 28/01/2019 (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 12/12/2017 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 before us.

“1) The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of disallowing interest expenses u/s 43B of the IT Act, 1961 to the tune of Rs.4,49,41,230/- capitalized/added to closing Work-in-progress as on 31-03-2015.

2) a) The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of making addition of Rs.47,85,500/- (gross) u/s 43CA of the IT Act, 1961 based on 26AS/AIR.

b) The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of disallowing cost of sales while making addition of Rs.47,85,500/- (gross) u/s 43CA of the IT Act, 1961 based on 26AS/AIR.

3)The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of imposing interest under Section 234B & 234C of the Income Tax Act, 1961.

4) 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.

5) 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. At the outset, we find that assessee is engaged in the business of real estate development. The return of income for the A.Y.2015-16 was filed by the assessee company on 30/09/2015 declaring total income of Rs.55,59,050/-. The assessment was completed by the Id. AO u/s.143(3) of the Act after making various disallowances. The subject matter of dispute before us is disallowance of interest of Rs.4,49,41,230/- which according to the Id. AO need to be capitalised and added to the work in progress. According to the Id. AO, the said interest though debited to profit and loss account represents

interest payable to banks but the same was not remitted on or before the due date of filing of return. Accordingly, the same was to be disallowed u/s.43B of the Act. Having said so, the Id. AO had also stated that the said interest requires to be capitalised to work in progress. We find that the Id. AO seems to have taken dual stand with regard to the issue and since there was no assistance from the side of the assessee to explain the facts of the case, we deem it fit and appropriate to remand this issue to the file of the Id. AO for denovo adjudication in accordance with law. The assessee is at liberty to furnish all evidences in support of its contentions. Accordingly, this ground No.1 is allowed for statistical purposes.

3.1. The Id. AO had also made further addition in the sum of Rs.47,85,500/- u/s.43CA of the Act towards the sale of land / FSI based on the difference in figures reflected in Form 26AS and the figure reflected by the assessee. In the interest of natural justice, we deem it fit and appropriate that one more opportunity is required to be given to the assessee to explain the discrepancy between AIR / 26AS statement and with the books of accounts in this regard. Accordingly, the ground No.2 is allowed for statistical purposes.

4. The ground No.3 raised by the assessee is regarding charging of interest u/s.234B and 234C of the Act which is consequential in nature.

5. The ground No. 4 & 5 are general in nature and does not require any specific adjudication.

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

Order pronounced on 28/09/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 28/09/2022
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,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai