

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

**BEFORE SHRI OM PRAKASH KANT, AM &  
SHRI N. K. CHOUDHRY, JM**

1. I.T.A. No. 2358/Mum/2022  
(Assessment Year: 2016-17)  
&  
2. I.T.A. No. 2359/Mum/2022  
(Assessment Year: 2015-16)

**Capacite Engineering Pvt. Ltd.**  
B-5 & B-7, Wadala Shri Ram  
Industrial Estate, Sewri Wadala  
Estate, G. D. Ambedkar Marg,  
Wadala West, Mumbai-400 031.  
PAN No. AAEC7224P

Vs.

**CIT(A) – 47,**  
7<sup>th</sup> floor, Prathistha Bhavan, New  
Marine Lines,  
Mumbai-400 020

**Appellant)** : **Respondent)**

**Appellant by** : Shri Vijay Mehta, Ld. AR  
**Respondent by** : Shri Ram Prakash Rastogi,  
Ld. DR

**Date of Hearing** : 18.05.2023  
**Date of Pronouncement** : 30.05.2023

O R D E R

**Per N. K. Choudhry, Judicial Member:**

The assessee/appellant herein has preferred these appeals against the orders even dated 22.12.2022 impugned passed by Ld. Commissioner of Income Tax (Appeals)-47, Mumbai {in short 'Ld. Commissioner '} u/s 250 of the Income Tax Act 1961 (in short 'the Act') for AY 2015-16 and 2016-17.

**2.** In the instant appeal i.e. I.T.A. No. 2358/Mum/2022 for AY 2015-16, the appellant declared its total income of Rs. 1,40,67,880/- by filing its return of income dated 29.09.15 for the year under consideration, which was subsequently selected for scrutiny u/s CASS and resulted into passing of the Assessment order

dated 09.05.2017 u/s 143(3) of the Act, by which the income of the assessee was computed at Rs. 1,45,55,550/-.

Later on dated 20.08.2019, search and seizure operation was conducted in the case of the assessee and consequently, notice u/s 153A was issued on 13.08.2020, in response to which, the assessee by filing its return of income declared the same income as declared in the original return of income. By considering the same, assessment order dated 26.07.2021 was passed u/s 143(3) r.w.s. 153A of the Act by which certain additions have been made in the income of the assessee by making disallowances of Rs. 4,87,674/- and Rs. 12,22,198/- respectively on account of deposit of employee's contribution to PF funds after the due date as prescribed under the relevant statute and on account of professional fees paid to Mr. Vishyamitra Katiyal as per the provisions of section 40A(2)(a) of the Act.

**3.** The assessee being aggrieved challenged the said additions before the Ld. Commissioner in the first appeal. The Ld. Commissioner though deleted the disallowance of Rs. 4,87,674/- qua late deposit of employee's contribution to PF account, however, affirmed the disallowance of Rs. 1,22,198/- made as per the provisions of section 40A(2)(a) on account of professional fees paid to Mr. Vishyamitra Katiyal. Against the affirmation of addition, the assessee is in appeal before us.

**4.** Having heard both the parties and perused the material placed on record. Admittedly the addition in hand which has been made by the AO and affirmed by the Ld. Commissioner, dehors the incriminating material found during the course of search u/s 132 or section 132A of the Act and the assessment of the assessee is unabated assessment, therefore as per the dictum laid down by the Hon'ble Apex Court in the case of PCIT vs. Abhisar Writer Pvt. Ltd. (supra), the addition in hand is un-sustainable, consequently, the same is deleted.

5. In the result the appeal I.T.A. No. 2358/Mum/2022 for AY 2015-16 filed by the assessee is allowed.

**6. I.T.A. No. 2359/Mum/2022 (AY 2016-17)**

In this appeal, the facts and issue involved in the instant case are exactly similar, as involved in above appeal for AY 2015-16, therefore in view of our Judgment in ITA no. 2358/Mum.2022 , this appeal is also allowed.

7. In the result, both the appeals filed by the assessee are allowed.

*Orders pronounced in the open court on 30 May, 2023.*

Sd/-  
(Om Prakash Kant)  
Accountant Member

Sd/-  
(N. K. Choudhry)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 30/05/2023  
Sr.PS. Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
4. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**