

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

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 959 & 960/MUM/2023  
(A.Ys. 2015-16 & 2016-17)**

Astarc Enterprises Pvt. Ltd., (Earlier known as Real Stone House Properties Pvt. Ltd.,) 76-79 Takpada, Makwana Lane Andheri (E), Mumbai - 400059  <b>PAN: AAACR6125L</b>	v.	National Faceless Appeal Centre, Delhi / DCIT – 13(3)(2) Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Himanshu Gandhi</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Ujjawal Kumar</b>
<b>Date of Conclusion of Hearing</b>	<b>:</b>	<b>12.06.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>21.06.2023</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 07.02.2023 for the A.Ys .2015-16 and 2016-17.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and

disposed off by this consolidated order. We are taking Appeal in ITA.No.959/MUM/2023 for Assessment Year 2015-16 as a lead appeal.

**ITA.NO. 959/MUM/2023 (A.Y. 2015-16)**

**3. Assessee has raised following grounds in its appeal: -**

*"1. On the facts and circumstances of the case and law, the CIT(A) erred in dismissing the appeal without adjudicating the ground of appeal.*

*2. On the facts and circumstances of the case and law, the Ld.CIT (A) erred in confirming disallowance of perspective expenses of Rs. 24,94,538 under section 37 of the Act, 1961.*

*3. Without prejudice to ground no. 2, On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not allowing preoperative expenses under section 35D of Income Tax Act, 1961.*

*4. The appellant craves to add, alter, classify, reclassify, delete, or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another."*

**4.** At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

**5.** Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

6. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, we find that even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear nor complied to the notices. Considering the totality of facts and submissions of the Ld. AR and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Needless to say that the Ld.CIT(A) shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

7. In the result, appeal of the assessee is allowed for statistical purpose.

**ITA.No. 960/MUM/2023 (A.Y. 2016-17)**

8. Assessee has raised following grounds in its appeal: -

"1. *On the facts and circumstances of the case and law, the CIT(A) erred in dismissing the appeal without adjudicating the ground of appeal.*

2. *On the facts and circumstances of the case and law, the Ld.CIT (A) erred confirming disallowance of Rs.27747 under section 14A r.w.r. 8D of Income Tax Act, 1961.*

3. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 27747 in book profit under section 115JB of Income Tax Act, 1961.*

4. *On the facts and circumstances of the case and law, the Ld.CIT(A) erred in confirming disallowance of business expenditure of Rs.9835357 which are incurred wholly and exclusively for the purpose of business.*

5. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming disallowance of depreciation of Rs.714051 under section 32 of Income Tax Act, 1961."*

**9.** Coming to the appeal relating to A.Y. 2016-17, since facts in these cases are mutatis mutandis, therefore the decision taken in A.Y. 2015-16 is applicable to this assessment year also. Accordingly, this appeal is allowed for statistical purpose.

**10.** To sum-up, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21<sup>st</sup> June, 2023.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 21.06.2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**