

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"A" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.4645/Mum./2023**  
(Assessment Year : 2014-15)

**ITA no.4646/Mum./2023**  
(Assessment Year : 2013-14)

**Asmi Buildcon Pvt. Ltd**

Shop No. 5 Asmi Dreamz SV  
Road, Goregaon West  
Maharashtra-400062  
PAN – AAJCA3684N

..... Appellant

v/s

**Income Tax Officer-12(1)(2)**

Ayakar Bhavan, Marine Lines,  
Maharashtra-400020

..... Respondent

Assessee by : Shri Mandar Vaidya  
Revenue by : Shri Manoj Kumar Sinha

Date of Hearing – 15/05/2024

Date of Order – 15/05/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 25/10/2023, passed u/s 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-51, Mumbai, [*learned CIT(A)*], for the assessment years 2013-14 and 2014-15.

2. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the original appeal filed by the assessee against the

assessment order passed u/s 143(3) of the Act was dismissed by the learned CIT(A) on the basis that Form No. 35 is not properly verified and therefore the appeal is not valid. The learned AR further submitted that in appeal against the aforesaid order, the Tribunal remanded the matter to the file of the learned CIT(A) for fresh adjudication in accordance with law after furnishing reasonable opportunity of hearing to the assessee. The learned AR submitted that apart from filing the appeal against the order passed by the learned CIT(A) before the Tribunal, the assessee also filed revised Form No. 35 before the learned CIT(A) after due verification and the impugned orders in the present appeal have been passed only taking into consideration the revised Form No. 35 filed by the assessee and no decision has been rendered in the appeals restored by the Tribunal.

3. From the perusal of the separate orders of even date 01/12/2020 passed by the Co-ordinate Bench of the Tribunal in assessee's appeal being ITA No. 3760/Mum./2019 and ITA No.3761/Mum./2019 for the assessment years 2013-14 and 2014-15 respectively, we find that the assessee challenged the correctness of the separate orders dated 13/03/2019 passed by the learned CIT(A) for the assessment years 2013-14 and 2014-15. The Co-ordinate Bench after noting that the learned CIT(A) has dismissed the appeal filed by the assessee ex-parte without providing any opportunity of hearing to the assessee on a hyper-technical ground, set aside the learned CIT(A)'s orders and restored the matter to the file of the learned CIT(A) for *de novo* adjudication. From the perusal of the impugned orders in the present appeals, it is evident that the same have not been passed in appeals restored by the

Co-ordinate Bench vide aforesaid separate orders dated 01/12/2020 and instead the learned CIT(A) has taken cognizance of the revised Form No. 35 filed by the assessee on 30/05/2019 and 28/05/2019 for the assessment years 2013-14 and 2014-15 respectively. Since the impugned orders have been passed by the learned CIT(A) on duplicate appeal of the assessee, therefore, the same are set aside. However, we direct the learned CIT(A) to decide the appeals restored by the Tribunal vide aforesaid orders dated 01/12/2020 for the assessment years 2013-14 and 2014-15 in an expeditious manner, after providing reasonable opportunity of being heard to the parties.

4. In the result, the appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 15/05/2024

**Sd/-**

**NARENDRA KUMAR BILLAIYA  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 15/05/2024**

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

By Order

Assistant Registrar  
ITAT, Mumbai