

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

**BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI RAVISH SOOD, JM**

**ITA No.2164/Mum/2019  
(Assessment Year :2013-14)**

M/s. Patan Solar Pvt. Ltd., 602, Western Edge-I, Western Express Highway Borivali (E), Mumbai – 400 066	Vs.	DCIT-10(3)(2) Room No.509, 5 <sup>th</sup> Floor, Aayakar Bhavan M.K. Road, Mumbai- 400020
<b>PAN/GIR No.AAFCP6744A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri K Gopal / Shri Tanmay Phadke
Revenue by	Shri Kumar Padmapani Bora
<b>Date of Hearing</b>	<b>30/01/2020</b>
<b>Date of Pronouncement</b>	<b>19/02/2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.2164/Mum/2018 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal No.CIT(A)-17/IT-19/E-file/17-18 dated 12/02/2018 (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 10/03/2016 by the Id. Dy. Commissioner of Income Tax – 10(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the interest income of Rs.2,30,04,499/- received by the assessee on loans

granted by it should be assessed as income under the head 'income from other sources' or income under the head 'profits and gains of business or profession'. The interconnected issue involved therein is that whether the assessee is entitled for deduction of interest expenditure of Rs.2,26,07,021/- against the said interest income irrespective of the head of income in which it is taxed.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee company was incorporated with the objective of business related to renewable energy sources. The return of income was filed on 15/09/2013 for the A.Y.2013-14 declaring loss of Rs.40,45,449/-. In the course of scrutiny assessment proceedings, the Id. AO noted that though the company's main business was dealing in renewable energy source, for setting up of solar plant, however, suitable land could not be acquired by the assessee for the same. Hence, the Id. AO concluded that the assessee had not commenced its business activity for which it was incorporated. The assessee company had already raised certain funds by way of borrowings. Those borrowings were utilised for advancing to certain parties on which interest income was earned by the assessee. The assessee also paid interest on the borrowings made by it. The assessee offered the interest income on loans given by it as income from other business and set off the interest expenditure on borrowings with the same. The Id. AO by placing reliance on the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Ltd. vs. CIT reported in 227 ITR 172, treated the interest income under the head 'income from other sources' and correspondingly declined to give deduction and the interest expenditure paid on borrowings. This action of the Id. AO was upheld by the Id. CIT(A).

3.1. From the perusal of the balance sheet of the assessee as on 31/03/2013, we find that the assessee has short term borrowings of Rs.28,36,42,157/-. The assessee also had advanced loans and intercorporate deposits to certain parties and also had placed deposits with certain parties to the tune of Rs.25,34,16,575/-. Hence, nexus of borrowed funds being used for making short term loans and intercorporate deposits is proved from the bare perusal of the balance sheet. It is not in dispute that the borrowed funds on which interest was paid by the assessee had been utilised for deposits made to certain parties and with the banks on which interest income was earned by the assessee. Hence, one to one nexus of interest bearing funds being utilised for the purpose of making investment in deposits with banks is proved by the assessee in the instant case. At the same time, we find that the assessee had not commenced its business of setting up of solar plant. Hence, the interest income, if any, derived on deposits should be brought to tax only under the head 'income from other sources'. Since, the nexus of borrowed funds being utilised for making investment in deposits had been proved by the assessee beyond doubt, the assessee is indeed entitled for deduction of interest payment u/s.57(iii) of the Act against the interest income. The Id. AO is directed accordingly. Accordingly, the ground Nos. 1-3 raised by the assessee are disposed off in the aforesaid manner.

4. The ground No.4 raised by the assessee is with challenging the action of the Id. CIT(A) in confirming the disallowance of salary and wages of Rs.10,23,417/- and depreciation on factory premises and motor car of Rs.10,36,015/-.

4.1. We have heard rival submissions. We have already held that assessee had not commenced its business activity of setting up of solar

plant and hence, it is not entitled for deduction of expenses towards salary and wages of Rs.10,23,417/- under the head business. The same would not be allowable as deduction under the head 'income from other sources' as incurrence of its expenditure could not be termed as expenditure incurred for the purpose of earning interest income by the assessee which is taxed under the head income from other sources. Hence, we hold that the Id. CIT(A) had rightly disallowed the salaries and wages.

4.2. With regard to disallowance and depreciation is concerned in the sum of Rs.10,36,015/-, we find that the depreciation in any case is allowable as deduction u/s.57(ii) of the Act. We have already held that the interest income is taxed under the head 'income from other sources' u/s.56 of the Act, the assessee is entitled for depreciation u/s.57(ii) of the Act. The Id. AO is directed accordingly.

**5. In the result, appeal of the assessee is partly allowed.**

Order pronounced in the open court on this 19/02/2020

**Sd/-**  
**(RAVISH SOOD)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/02/2020  
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,

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