

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5072/MUM/2019
Assessment Year: 2015-16**

Patel Hydro Power Pvt. Ltd.,
Patel Estate, Off SV Road,
Jogeshwari West,
Mumbai-400102.
PAN No. AAFCP 8046 F
Appellant

Vs. DCIT 10(3)(2),
217, 2nd floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.
Respondent

Assessee by : Ms. Radhakant Sarat, AR
Revenue by : Mr. Sanjay J. Sethi, DR

Date of Hearing : 25/02/2021
Date of pronouncement : 19/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2015-16. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-I, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) is bad in law.

2. On the facts and circumstances of the case and in law, the grounds of appeal filed before the Ld. CIT(A) has not been adjudicated.
3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in adjudicating the order and the grounds which were not taken by the appellant and which were not before him.
4. On the facts and circumstances of the case and in law, the allegation of the Ld. CIT(A) that the appellant has not paid the appeal filing fees, not uploaded the penalty order and the demand notice, are factually incorrect and not relevant.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2015-16 on 30.09.2015 declaring loss of Rs.6,74,47,480/-. The nature of business of the assessee is financing/consulting services for hydro electric power projects. In the order passed u/s 143(3) dated 16.11.2017, the Assessing Officer (AO) observed that the only activity of the assessee is to obtain loan on interest and advance it to other companies (claimed to be subsidiaries) without interest. During the year under consideration, the assessee had paid interest of Rs.14,42,33,218/- to its lenders, but interest of only Rs.7,62,12,711/- was recovered by it from the borrowing subsidiaries by transferring the same to them. Remaining interest of Rs.6,80,20,507/- was debited by the assessee-company to its profit and loss account and claimed as expenditure. However, the AO noted that in item No. 43 of Part A-P&L of the ITR, the assessee has claimed total interest at Rs.6,86,58,949/- on this account and this fact was brought to the notice of the assessee for explanation. The AO further noticed that the assessee could file explanation only for the amount of Rs.6,80,20,507/-. Therefore, the AO arrived at a finding that the assessee has wrongly claimed such interest of Rs.6,86,58,949/-. Further observing that the assessee had not charged any

interest on the loans given by it to its various subsidiaries to the extent of Rs.6,80,20,507/- and since the loan taken is not for the business of the assessee but for some other concern, the AO held that the interest attributable to that loan cannot be taken to have been incurred only and exclusively for the business carried out by the assessee. Accordingly, the AO made a disallowance of the interest expenditure of Rs.6,86,58,949/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 31.08.2018, the Ld. CIT(A) observed *inter alia* that “the signature of the appellant (Parwinder Kaur) on the letter dated 24.08.2018 and the signature of the same appellant on the letter dated 28.08.2018 are clearly by two different persons. It is obvious that some person has been claimed mischief to take undue and undeserved advantage.”

On merits, the Ld. CIT(A) held that :

“17. Even on the merits, the appellant has brought nothing on record to discharge the onus upon it that its claim that the impugned penalty order was bad in law was correct and maintainable in the eyes of the law. No evidence has been brought on record to show that the turnover of the appellant of its business was below the minimum limit prescribed in law.

18. The first ground taken by the appellant is that the Ld. AO was not justified in not allowing the deduction of land cost of Rs.47,72,896/- out of the sale proceeds of the plot for calculating the long term capital gains is merely the claim of the appellant. No material has been brought on record or enclosed with the Form 35 to corroborate the claim of the appellant and in the absence of the same it remains exactly that i.e. merely a claim. The same has no force and is rejected.

19. The second ground taken by the appellant is that the Ld. AO was not justified in not allowing the cost of improvement of Rs.15,13,127/- out of the sale proceeds of the plot of land for calculating long term capital gains is also not maintainable that being merely a claim and only an issue of fact the same needs to be corroborated by the person making the claim and since the appellant is making such claim it is for the appellant to prove the same and as that has not been done this ground also cannot be admitted. The same is rejected.

20. The third ground taken by the appellant is that the Ld. AO was not justified in making addition of Rs.3,30,492/- as rental income is also required to be proved by the appellant only and as it has not been proved the same cannot be admitted. The same is rejected.

21. The fourth ground taken by the appellant is that the Ld. AO was not justified in passing the order without giving proper opportunity of hearing which was necessary in the interest of natural justice has no force as the impugned assessment order was passed u/s 143(3) of IT. Act, 1961 and nothing has been brought on record that the appellant did not receive the adequate opportunity to defend its case. In any case, the appellant has been provided reasonable opportunity of being heard by this office but the appellant has avoided appearing before this office by making false and frivolous excuses. Therefore, there is no merit in this ground also. The same is rejected.

22. The fifth ground taken by the appellant does not require adjudication at this stage. The sixth ground is pre-mature at this stage.”

5. Before us, the counsel for the assessee submits that the Ld. CIT(A) has passed an order and decided the case on the grounds of appeal which are not at all related to the present assessee. It is stated by him that the grounds of appeal decided by the Ld. CIT(A) probably relate to some other assessee.

On the other hand, the Ld. DR submits that there was no compliance by the assessee before the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. As per Form No. 35 dated 15.12.2017 filed by the assessee before the Ld. CIT(A), the grounds of appeal are as under :

1. On the facts and circumstances of the case and in law, the AO erred in disallowing sum of Rs.6,86,58,949/- on account of interest paid.
2. On the facts and circumstances of the case and in law, the AO erred in disallowing a sum of Rs.6,38,442/- on account of interest paid on delayed deposit of TDS.
3. The appellant craves leave to add, alter, amend, delete or modify any or all of the above referred ground of appeal.

6.1 We have mentioned at para 4 hereinabove that grounds of appeal adjudicated by the Ld. CIT(A). There is an apparent mistake in the order of the Ld. CIT(A) as he has adjudicated the grounds of appeal not at all related to the grounds raised by the assessee in Form No. 35. Another aspect is that in the "Form of Verification", the appellant's name is Rupen Patel whereas the Ld. CIT(A) has mentioned Parwinder Kaur as the appellant as per signature.

This is a clear case where the 1st para of the impugned order relates to the present assessee. The subsequent paras relate to some other assessee. The issues decided on merit by the Ld. CIT(A) relate to some other assessee.

Because of this unfortunate situation, we set aside the order of the Ld. CIT(A) and restore the matter to him to pass a *de novo* order, after giving reasonable opportunity of being heard to the assessee. We direct the assessee

to file the relevant documents/evidence before the Ld. CIT(A) on the date of hearing.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 19/03/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 19/03/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai