

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA No. 1267/Mum/2023
Assessment Year: 2017-18

Patel Engineering Co. Ltd. Employees Gratuity Fund Patel Estate, S V Road, Jogeshwari (W), Mumbai-400 102 PAN : AABTP 3885 F	Vs.	DCIT CPC Bangaluru
(Appellant)		Respondent)

Appellant By : Shri Anuj Kisnadwala
Respondent By : Ms. Indira Adakil

Date of Hearing : 06.07.2023	Date of Pronouncement : 31.07.2023
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ORDER

Per Kavitha Rajagopal, J.M.

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeal) ('ld. CIT(A)' for short) passed u/s. 250 of the Income Tax Act, 1961 ('the Act' for short) relevant to Assessment Year (A.Y. for short) 2017-18.

2. The assessee has challenged the order of the ld. CIT(A) on the ground that the assessee was not granted sufficient opportunity of hearing and had also challenged the disallowance of ₹31,72,212/- u/s. 10(25)(iv) of the Act towards interest income on

deposits and bank interest earned from Gratuity Fund Trust along with the other consequential grounds.

3. The brief facts are that the assessee filed its return of income dated 18.09.2017, declaring total income at ₹31,72,210/- arising out of interest on deposit and bank interest. The A.O./CPC vide intimation u/s. 143(1) of the Act dated 27.09.2018 made an addition of ₹31,72,210/- by disallowing exemption u/s. 10(25)(iv) of the Act towards interest income on deposit and bank interest.

4. Aggrieved the assessee was in appeal before the Id. CIT(A) who had confirmed the said addition made by A.O./CPC on the ground that the assessee has failed to substantiate its claim by furnishing documentary evidences vide an *ex parte* order dated 17.02.2023.

5. The assessee is in appeal before us, challenging the impugned order.

6. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee had received notice u/s. 139(9) of the Act dated 16.02.2018 and in response to which the assessee filed its return of income on 21.02.2018 inadvertently in ITR-5 instead of ITR – 7. It is also observed that the assessee while uploading the return of income have failed to claim the eligible exemption u/s. 10(25)(iv) of the Act and the A.O./CPC made the impugned addition /disallowance. During the first appellate proceeding, the assessee has been non-compliant and has not filed any

documentary evidence in support of its claim and the ld. CIT(A) vide an *ex parte* order upheld the disallowance made by the A.O./CPC.

7. The ld. Authorised Representative (ld. AR for short) for the assessee brought our attention to the adjournment letter dated 28.02.2023 for the purpose of collecting materials to substantiate the assessee's claim. The ld. AR stated that the ld. CIT(A) in his order has specified that the assessee has failed to submit relevant documents during the hearing date fixed on or before 13.02.2022 implying that the ld. CIT(A) has not considered the adjournment request made upto 28.02.2023. The ld. AR prayed that the same may be remanded to the file of the ld. CIT(A) to give one more opportunity to the assessee to present its case before the first appellate authority.

8. The ld. Departmental Representative ('ld. DR' for short), on the other hand, had stated that the assessee was given several opportunities before the first appellate authority which was not availed by the assessee and further the ld. DR contended that even if the matter was remanded back to the file of the ld. CIT(A), the assessee should co-operate with the proceedings without any further delay. We deem it fit to remand this issue back to the file of the ld. CIT(A) for *de novo* adjudication after considering the arguments made by the rival parties. We direct the assessee to co-operate in the proceeding before the ld. CIT(A) without any undue delay on the part of the assessee. The ld. CIT(A) is also directed to decide this issue afresh on merits of the case based on the submissions proposed to be made by the assessee.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this day of 31st July, 2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai, Dated : 31st July, 2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai