

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

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

**ITA No. 3660/MUM/2019
Assessment Year: 2015-16**

M/s Translands Infrastructure
Developers Pvt. Ltd.,
Office No. A 702, 7th floor, Everest
Nivara Plot No. D/3, TTC
Industrial Area MIDC Turbhe,
Navi Mumbai-400705.
PAN No. AADCT0036B

Appellant

Vs. DCIT-15(3)(1),
Room No. 451, Aayakar
Bhavan, M.K. Marg,
Mumbai-400020.

Respondent

Assessee by : None
Revenue by : Mr. Amit Pratap Singh, DR

Date of Hearing : 01/10/2020
Date of Pronouncement: 01/10/2020

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)-24, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 01.10.2020, neither the assessee nor its authorized representative participated for virtual hearing before the Tribunal. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal by examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2015-16 on 21.09.2016 declaring total loss of Rs.9,61,70,959/-. The AO made a disallowance of Rs.2,31,06,592/- u/s 36(1)(iii) of the Act.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 19.03.2019 the Ld. CIT(A) dismissed the appeal *ex-parte* on the reason that the assessee failed to appear before him despite number of notices given by his office on the last available address as per Form 35. Also the Ld. CIT(A) held on merits that no prudent businessmen would borrow around Rs.254 crores interest bearing loan and advance of Rs.17 crores as interest-free loans, unless there is a business objective or commercial expediency. Thus the addition made by the AO of Rs.2,31,06,592/- was confirmed by the Ld. CIT(A).

4. Before us, the Ld. DR submits that as there was non-compliance by the assessee before the CIT(A), the disallowance of Rs.2,31,06,592/- made by the AO be confirmed.

5. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the assessee has given interest-free advances to the other parties and related parties amounting to Rs.17,54,25,000/- whereas, it has taken long term borrowings to the tune of Rs.235,28,04,000/- and short term borrowings of Rs.19,00,00,000/-. In the process, the assessee has debited interest of Rs.36,42,55,306/- in its profit and loss account. The AO disallowed u/s 36(1)(iii) interest @ 12% on the loans so advanced which comes to Rs.2,31,06,592/-. In appeal, there is a general remark by the Ld. CIT(A) without any specific findings which reads as under :

“At the outset, it may be mentioned that the appellant does not appear to be serious in prosecuting its appeal as despite number of notices were given on the last available address as per Form 35, no compliance has been made on behalf of the appellant. Therefore, I consider it is a fit case to be disposed of *ex-parte* on the basis of material available on record.”

A perusal of the above clearly indicates that there is no mention of the date on which the notice was sent to the assessee. There is no mention of the medium of dispatch of the notice. There is no mention when the notice was served on the assessee. In such a situation, we are of the considered view that the assessee deserves an opportunity of being heard by the first appellate authority. Therefore, we set aside the impugned order and restore the matter to the file of the Ld. CIT(A) to decide the matter afresh after giving reasonable opportunity of being heard to the assessee. We also direct the assessee to appear before the Ld. CIT(A) on the date fixed for hearing.

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

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

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

Mumbai;
Dated: 01/10/2020
Rahul Sharma Sr. PS

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./Asstt. Registrar)
ITAT, Mumbai