

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND

SMT BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.1191 and 1192/Bang/2018

Assessment years : 2013-14 and 2014-15

M/s. Sami Direct Marketing Pvt. Ltd., No.30 and 31, 5 th Cross, 5 th Block, Koramangala, Bengaluru – 560 034. PAN : AAOCS 4393 P	Vs.	The ACIT, Circle – 6(1)(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri K. P. Srinivas, CA
Revenue by	:	Shri. K. N. Dhandapani, Addl. CIT(DR)(ITAT), Bengaluru
Date of hearing	:	11.12.2019
Date of Pronouncement	:	07.02.2020

ORDER

Per A. K. Garodia, AM

Both these appeals are filed by the assessee and the same are directed against two separate orders of learned CIT(A)-6, Bengaluru dated 22.11.2017 for Assessment Year 2013-14 and dated 18.12.2017 for Assessment Year 2014-15. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. In both the years, there is only one grievance of the assessee i.e., regarding disallowance of depreciation to the extent of Rs.30.62.500/- in Assessment Year 2013-14 and Rs.22,96,875/- in Assessment Year 204-15 claimed by the assessee on trade marks.

3. In the course of hearing, it was submitted by learned AR of the assessee that on pages 131 to 133 of the Paper Book is the valuation report for trademarks prepared by M/s. RSCA & Co, Chartered Accountants dated 05.09.2017. At this juncture, the Bench pointed out that this valuation report is of a date much after and secondly, in this valuation report, future cash flow for Financial Years 2014-15 to 2020-21 has been considered but there is no separate cash flow for activities with trademarks and without trademarks and therefore, these valuation report does not indicate the value of trade mark. In reply, this was the second argument of the learned AR of the assessee that the copy of the assessment order in assessee's own case under section 143(3) of

IT Act, 1961 for Assessment Year 2012-13 is available on pages 121 to 123 of the Paper Book and as per the same, there is no disallowance of depreciation in that year. He also submitted that in Assessment Year 2013-14 in para 2 of the assessment order, it is noted by the AO that the trade mark in question is purchased by the assessee at Rs. 1.40 Crores in Assessment Year 2012-13. He submitted that since, there is no disallowance of depreciation in the year of purchase of trade mark i.e. Assessment Year 2012-13, no disallowance of such depreciation can be made in the succeeding years in Assessment Years 2013-14 and 2014-15 and therefore, such disallowance should be deleted in both these years. At this juncture also, it was pointed out by the Bench that in the Assessment Order, there is no discussion on this issue regarding allowability of depreciation. The Bench wanted to see as to whether on this aspect of depreciation on trademarks, any query was made by the AO during assessment proceedings for Assessment Year 2012-13. In reply, no document could be made available before us. He placed reliance on the Tribunal order rendered in the case of ACIT Vs. Krystal Colloids Pvt. Ltd., in ITA No.3170/MUM/2016 dated 31.07.2018, copy available on pages 144 to 153 of the Paper Book and he submitted that the relevant page is 153 of the Paper Book. Learned DR supported the order of the CIT(A) in both the years.

4. We have considered the rival submissions. We find that in Assessment Year 2013-14 in para 2 of the Assessment Order, it is noted by the AO that

the transaction regarding purchase of trade mark was between sister concerns of the assessee and the same was purchased at Rs.1.4 Crores by the assessee but it was submitted by the learned AR of the assessee before the AO that the valuation of the same could not be substantiated with any evidence. Because of this, the AO disallowed the claim of the assessee regarding depreciation on the said trade mark. Now before us, the assessee has furnished a copy of valuation report regarding trade mark which is dated 05.09.2017 whereas the order of CIT(A) is dated 22.12.2017 for Assessment Year 2013-14 and dated 18.12.2017 for Assessment Year 2014-15. In the Paper Book this is not made clear as to whether the valuation report was made available before CIT(A) or not and obviously it could not be made available before the AO since the Assessment Orders are much prior to the date of the valuation report but there is no finding of the learned CIT(A) on this aspect as to whether any valuation report was made available before him or not. For ready reference, we reproduce para 8 from the order of CIT(A) for Assessment Year 2013-14 which is as under:

8. The Appellant has stated that it is a related party transaction and that Trade mark has been valued internally based on estimated future earnings. Out of the 5 trade marks assigned @ Rs.28,00,000/- each, it is noticed that only one of them is a Registered Trade Mark while Registration is applied for the other four. The fact that all of them are valued equally also is suggestive of the fact that the valuation is not correct but is arbitrary. The Appellant further contends that the Sami Labs Ltd the company which has assigned the Trade Mark has offered the entire amount to tax, with Rs.28,00,000/- offered as Long Term Capital Gain & Rs.1,12,00,000/- offered to tax as Short Term Capital Gains. The Tax

Computation Sheet of the said company is also produced. It is seen from the said computation that these amounts have been set off against brought forward losses which would have expired in a couple of years perhaps. The contention that the assignment is Revenue Neutral is not correct. The AO has rightly made the disallowance. The Appellant states that the disallowance is done due to a change in opinion as depreciation has been allowed in the original year of claim ie. AY 2012-13 and the Appellant has also enclosed a copy of the order u/s 143(3) of the said A.Y 2012-13. It is observed from the said order that there is no discussion on this issue at all. It is not a case where the AO has considered the issue, applied his mind & taken a conscious decision to allow the claim. Therefore, the disallowance made in this AY 2013-14 is not a change in opinion, but an opinion is formed for the very first time. A claim wrongfully made cannot be allowed to perpetuate.

5. From the above para reproduced from the order of CIT(A), it comes out that there is no discussion about the valuation report in the said para. Learned CIT(A) has also given finding that in the Assessment Year 2012-13, there is no discussion on this issue at all. We have also seen this and before us, no evidence was brought on record to show that any query was made by the AO in this regard in A. Y. 2012 - 13. There was one more argument raised before CIT(A) that this transaction is revenue neutral because short term capital gain on sale of trade mark was offered to tax by Sami Labs Pvt. Ltd., the seller but this finding is also given by the CIT(A) in the above para that such short term capital gain was set off by that assessee against brought forward loss which was to expire within the couple of years and hence, this transaction cannot be said to be revenue neutral. The valuation report has been filed before us without complying with the Tribunal Rules in respect of

filing of Paper Book which requires that assessee has to certify as to whether the document has been filed before the lower authorities and before which authority the same was filed and if the assessee wants to bring any new evidence on record, the assessee has to seek permission of the Bench and comply with the relevant rule. In the facts of the present case, this valuation report appears to be a new evidence which appears in the Paper Book without complying with the Tribunal Rules in respect of filing of Paper Book and hence, we do not admit the valuation report. Now we examine the applicability of the Tribunal order cited by learned AR of the assessee having been rendered in the case of ACIT Vs. Krystal Colloids Pvt. Ltd. (supra). We find that in that case, it is noted by the Tribunal in para 3 of that order that in that case, the AO has found that the assessee is not eligible for depreciation on assets as per 5th proviso to section 32(1) which provides that the aggregate deduction in respect of depreciation allowable to the predecessor and successor in the case of succession referred to in clause (xiii) of section 47 shall not exceed in any previous year if the deduction is calculated at the prescribed rate as if succession had not taken place. Under these facts, the Tribunal noted that depreciation was allowed by the AO in the year of purchase of the asset i.e., Assessment Year 2005-06 and therefore, it was held on page 8 of the Tribunal order that once an asset is part of the block of assets and depreciation is granted on that block, it cannot be denied in the subsequent year on the ground that one of the assets is not used by the assessee in some

of the years. In the present case, the facts are totally different and therefore, this Tribunal order is not rendering any help to the assessee in the present case.

6. In view of the above discussion, we hold that no interference is called for in the order of the learned CIT(A).

7. In the result, both the appeals of the assessee are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

Sd/-

(BEENA PILLAI)

(A. K. GARODIA)

Judicial Member

Accountant Member

Bangalore.

Dated: 07th February, 2020.

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Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.