

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B" KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ) and
Shri Sanjay Garg, Judicial Member**

आयकर अपील सं.य/ ITA No. 488/Kol/2020 Assessment Year:2013-14

M/s.Five Stein India Projects Pvt. Ltd Plot-15, Block-CP, 1 st Floor, Infinium Digispace, Sector-V, Salat Lake, Kolkata-700 01. PAN:AADCS7768M	<u>बनाम /</u> V/s.	DCIT, Cir-8(1), Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Smt. Ranu Biswas, Addl. CIT, . DR
सुनवाई की तारीख/Date of Hearing	09-08-2021
घोषणा की तारीख/Date of Pronouncement	09-08-2021

आदेश /O R D E R

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30-04-2019 the Commissioner of Income Tax (Appeals), 8, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-8, Kolkata (hereinafter referred to as "Ld. CIT(A)") grossly erred in confirming the disallowance made by the AO in the assessment order under section 143(3) of the Income-tax Act, 1961*

(hereinafter referred to as "Act") dated 31-03-2016 for the relevant assessment year towards commission paid by appellant to M/s. Sunshine Commotrade Pvt. Ltd. (hereinafter referred to as "SCPL") amounting to Rs.8,35,135/-.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the disallowance of commission paid by appellant to SCPL amounting to Rs.8,35,135/- on the contention that neither the appellant appeared on the date of hearing fixed on 20-03-2018, 23-04-2019 and 29-04-2019 nor filed any written submissions in support of the grounds of appeal without appreciating that, the appellant had not received any notice from the Ld. CIT(A) fixing the hearing on the aforesaid dates and as such, it had no knowledge of any such hearing before the Ld. CIT(A) on the above dates.

3. That on the facts and in the circumstances of the case and in law and without prejudice to Ground No. 1 & 2 above, the Ld. CIT(A) erred in confirming the disallowance of commission paid by appellant to SCPL amounting to Rs.8,35,135/- on the contention that appellant failed to offer any explanation in support of its grounds of appeal without appreciating that, in the statement of facts filed before CIT(A) the appellant had explained its contention in support of the above claim, including interalia, that the said issue has already been decided in favour of the appellant by the Hon'ble ITAT in its own case for earlier years and as such the same was allowable.

4. That the appellant craves leave to add to and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal.

3. This appeal of the assessee is time barred by 115 days. A separate application for condonation of delay has been filed, wherein it has been pleaded that the assessee did not receive any notice of hearing from the of Id. CIT(A) and was not in knowledge of the passing of the impugned order. We find that the impugned order is an ex parte. Considering the submissions given by the assessee, the delay in filing the present appeal is hereby condoned.

4. None has put in appearance on behalf of the assessee. We find that the order of the Ld. CIT(A) is an ex parte order. The plea of the assessee as given in his affidavit is that no notice of hearing was received by the assessee. Even the assessee did not ever receive the copy of the impugned order also. That the assessee came to know about the order only when it was uploaded on the website of the department. Even the Id. CIT(A) has not given his findings on merits of the case rather he has passed a non-speaking order without discussing each of the issues on merits. In view of this, the impugned order of the Id. CIT(A) is set aside and the matter is restored to the file of the Id. CIT(A) with a direction that notice will be sent to the assessee's correct address

and thereafter to decide the issues involved on merits after giving proper and adequate opportunity of hearing to the assessee.

In view of our findings above, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in open court at the time of hearing on 09 -08-2021

Sd/-
(P.M. Jagtap)
Vice-President (KZ)

Sd/-
(Sanjay Garg)
Judicial Member

Dated 09 -08-2021

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant/Assessee: M/s. Fives Stein India Projects Private Limited, Plot-15, Block-CP, 1st Floor, Infinium Digispace, Sector-V, Salt Lake, Kolkata-700 091.
2. प्रत्यर्थी/Respondent-Deputy Commissioner of Income Tax, Circle 8(1), Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Senior Private Secretary/D.D.O