

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM

आयकर अपील सं/ I.T.A. No.626/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2014-15)

Krystal Colloids Pvt. Ltd. Purusharth Building, Mezannine Floor, Nowroji Hill, Road No.2, Dongri, Mumbai-400009.	बनाम/ Vs.	ACIT, Circle-15(2)(1) Room No.357, 3 rd Floor, Aayakar Bhavan, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCK5409J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Gautam Mota (AR)	
Revenue by:	Shri Gurbinder Singh (DR)	

सुनवाई की तारीख / Date of Hearing: 15/07/2021
घोषणा की तारीख /Date of Pronouncement: 03/09/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 08.11.2019 passed by the Commissioner of Income Tax (Appeals)-24, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2014-15.

2. The assessee has raised the following grounds: -

“The Appellant submits the following grounds, which are without prejudice to one another:

1. The order passed by the learned Commissioner of Income Tax (Appeals)-24, Mumbai (hereinafter) referred to as 'the learned CIT(A)' is bad in law and on facts.



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2. *Re: Ex-parte order passed by learned CIT(A) is bad in law:*

2.1 *The order of learned CIT(A) is bad in law being against the principle of natural justice as Appellant was not provided sufficient opportunity of being heard.*

2.2 *As per learned CIT(A) notice dated 19th November, 2019 was served on the Appellant stating that hearing was fixed on 28th November, 2019, However, the Appellant has neither received any physical notice nor any online notice was served on the ITBA to the Appellant before passing the order ex-parte.*

2.3 *The Learned CIT(A) grossly erred in passing the order ex-parte on 8th November, 2019 much before the date of hearing scheduled on 28th November, 2019.*

3. *Re: Disallowance of depreciation on intangible assets amounting to Rs.9,68,454 /-.*

3.1 *The learned CIT(A) grossly erred, on the facts and circumstance of the case and in law, in disallowing depreciation on intangible assets without appreciating that the said issue has already been decided in favour of the Appellant by Hon'ble Tribunal for A.Y.2006-07. AY.2007-08 & AY.2008-09 & A.Y.2009-10 respectively and no appeal has been filed by Department in Hon'ble High Court.*

3.2 *Without prejudice to the above, the learned CIT(A) grossly erred, on the facts and circumstances of the case and in law, in disallowing depreciation on intangible assets without appreciating that once the asset enters block of asset then the issue of depreciation cannot be agitated in the subsequent assessment years.*

4. *Re: Initiation of penalty proceedings n/s, 271(1) (c)*

6.1 *The learned CIT(A) grossly erred in upholding the initiation of the penalty proceedings u/s 271(1)(c) without discussing the same.*

6.2 *The Appellant craves leave to add to, alter, amend or withdraw all or any of the foregoing grounds of appeal at or before the hearing of this appeal.”*



3. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. In fact, the Ld. Representative of the assessee did not argue the case on merits but argued on this point that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A) dated 08.11.2019 passed by the CIT(A), we find that the CIT(A) has decided the matter of controversy in absence of the assessee/Representative of the assessee without giving an opportunity of being heard to the assessee in the accordance with law. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law.

4. For this proposition we placed reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

5. Accordingly in the interest of justice, we remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving after giving a proper opportunity of being heard to the assessee in accordance with law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law,



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therefore, we set aside the finding of the CIT(A) on all the issues and restore the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.

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

Order pronounced in the open court on 03/09/2021

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 03/09/2021
Vijay Pal Singh (Sr. PS)

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai