

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

आयकर अपील सं/ I.T.A. No.391/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Jai Rama Plastics B/402, Vardhman Nagar, Dr. R. P. Road, Mulund, (W), Mumbai-400080.	बनाम/ Vs.	ITO-23(2)(3) C-10, 2 nd Floor, Room No.204, Pratyakshakar Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFJ2226R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Pradip Kapasi (AR)	
Revenue by:	Ms. Usha Gaikwad (DR)	

सुनवाई की तारीख / Date of Hearing: 22/07/2021
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 04.10.2019 passed by the Commissioner of Income Tax (Appeals)-40, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2011-12.

2. The assessee has raised the following grounds: -

- “1. Order passed without service of notice hearing*
- 2. Short Term Capital Gain of Rs.12,96,500 on Sale of Factory Premises*
- 3. Addition of WDV of Plant & Machinery of Rs.3,51,408/- and disallowance of Loss on sale of Plant and Machinery of Rs.3,28,718/-*



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4. Addition/Disallowance of business loss Rs.13,98,818/- on sale of stock

5. Disallowance of Rs.10,53,151/- on account of Wages, Salary & bonus expenses

6. Disallowance of Rs.18,05,700 on account of retrenchment expenses

7. Addition of Rs.1,08,000/- as rental income.”

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 04.10.2019 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)



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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, 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



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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**