

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI SHAMIM YAHYA, AM AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 3421/Mum/2019
(Assessment Year: 2013-14)

Crystal Sound and Music Private Limited (Now merged with ‘Jagran Prakashan Limited’) Jagran Building, 2, Sarvodaya Nagar, Kanpur	Vs.	Income Tax Office 12(1)-4, Mumbai
PAN/GIR No. AADCC 1155 A		
(Appellant)	:	(Respondent)

Appellant by	:	None
Respondent by	:	Shri Mallikarjun Utture

Date of Hearing	:	30.09.2020
Date of Pronouncement	:	05.10.2020

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-20, Mumbai (‘Id.CIT(A) for short) dated 22.03.2019 and pertains to the assessment year (A.Y.) 2013-14.

2. The assessee has raised various grounds in this appeal. The first ground reads as under:

1. Ground 1: Dismissing the appeal on technical grounds

- a) On the facts and the circumstances of the case and in law. the order of the learned CIT (A) is defective both in law and in facts of the case.*
- b) On the facts and the circumstances of the case and in law, the learned CIT (A) has erred in dismissing the appeal filed by the Appellant solely on the technical ground that the Appeal in Form 35 is not verified and digitally signed as required under Rule 45 of the Income tax Rules, 1962 (‘Rules’), even though the appeal has been duly signed as required under the Act/ Rules.*

- c) On the facts and the circumstances of the case and in law, the learned CIT (A) ought to have given an opportunity to the Appellant before dismissing the appeal filed by it.*
- d) On the facts and circumstances of the case and in law, the Appeal filed by the Appellant with the learned CIT (A) ought to be restored.*

3. Thereafter the assessee has challenged that the Id. CIT(A) has erred in not adjudicating upon the merits of the issue raised.

4. None appeared for and on behalf of the assessee despite notice sent. Hence, we proceeded to adjudicate the issue by hearing the Id. Departmental Representative (Id. DR for short) and perusing the records. We find that the Id. CIT(A) has dismissed the assessee's appeal on technical ground for the Form No. 35 not being digitally signed by competent person. He observed that as per section 140 of the Act, in case of a company, the return of income is to be verified by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return, or where there is no managing director, by any director thereof. He noted that in the present case, form no. 35 was digitally signed/verified by Crystal Sound & Music Pvt. Ltd., the assessee.

5. Upon careful consideration, we note that before us there are two Form 35 filed before the Id. CIT(A) and both are of the same date and same acknowledgement number one is signed/verified by the company as noted by the Id. CIT(A) and another is signed/verified by Shri Rahul Gupta.

Prima facie, it appears that the second acknowledgement of verification has escaped the Id. CIT(A)'s attention. We note the above calls for a removal of the issue to the Id. CIT(A). The assessee has also challenged that proper opportunity has not been given. Hence, in the interest of justice, we direct the Id. CIT(A) to examine the above said

two acknowledgement and give the assessee proper opportunity of being heard.

Thereafter, he shall decide as per law.

6. In the result, the assessee's appeal is allowed for statistical purpose.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-

(Pavan Kumar Gadale)
Judicial Member

Mumbai; Dated : 05.10.2020

Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai