



ITA.No.133 & 134/Mum/2013
Minerva Biogenix Private Limited
Assessment Years-2010-11 & 2011-12

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री डी.टी. गरसिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.133 & 134/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Income Tax Officer 4(2)(4) Room No.647 Aaykar Bhavan, M.K.Road Mumbai-400 020	बनाम/ Vs.	Minerva Biogenix Private Limited 34-B, 1 st Floor Mangaldas Building No.1 Mangaldas Road Marine Lines Mumbai-400 002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAECM-0249-E		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ajay R. Singh, Ld. AR
Revenue by	:	V. Janardhanan, Ld. Sr. DR

सुनवाई की तारीख / Date of Hearing	:	24/10/2017
घोषणा की तारीख / Date of Pronouncement	:	01/11/2017

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeals by revenue for Assessment Years [AY] 2010-11 & 2011-12 assails separate orders of Ld. first appellate authority. Since common issues are involved in both the appeals, we dispose-off the same by way of this common order for the sake of convenience & brevity. First we take by ITA No. 133/M/2016 for AY



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2010-11 which contest the order of Ld. Commissioner of Income-Tax (Appeals)-9 [CIT(A)], Mumbai, *Appeal No. CIT(A)-9/Cir.4/143/2014-15* dated 05/10/2015 *qua* relief provided to the assessee against certain *alleged bogus purchases*. The assessment for impugned AY was framed by Ld. Income Tax Officer 4(2)(4), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 26/03/2013.

2.1 Facts leading to the same are that the assessee being *resident corporate assessee* engaged in the business of *trading of pharmaceutical raw material and chemicals* was assessed for impugned AY u/s 143(3) on 26/03/2013 at Rs.1,31,02,600/- as against returned income of Rs.18,58,775/- *e-filed* by the assessee on 15/10/2010. The assessee has suffered sole addition of Rs.1,12,43,820/- on account of certain *bogus purchases* and same is the sole subject matter of this appeal.

2.2 During assessment proceedings, it was noted that the assessee made purchases from two entities who, as per information received from the *Sales Tax Department, Maharashtra*, indulged in providing accommodation bills without dealing in any goods. The assessee had made aggregate purchases from these two parties for Rs.1,12,43,820/- as per the following details:-

No.	Name	Amount (Rs.)
1.	<i>Raj Traders</i>	<i>95,81,520/-</i>
2.	<i>Ajanta Enterprises</i>	<i>16,62,300/-</i>
	Total	<i>1,12,43,820/-</i>

Notices issued u/s 133(6) to these parties either remained *un-served* or no response was received against the same. The assessee contended



that it was engaged in trading activities and purchased goods through broker namely *Mihir Mehta*. The attention was drawn to the fact the quantitative details were available and there could be no sales without purchases and further, the payments were through banking channels. However, Ld. AO noted that the proprietor of *Raj Traders* vide affidavit-cum-declaration dated 18/07/2011 admitted to be operating 96 firms who were engaged in issuing *bogus bills* to various concerns without actually dealing in any goods. The Ld. AO also recorded statement on oath of assessee's director as well as of broker namely *Mihir Mehta* to inquire about the purchases transactions. Finally, not convinced, the impugned purchases were treated as *bogus purchases* and added to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 09/10/2015 where the Ld. CIT(A) after considering assessee's submissions and placing reliance on several judicial pronouncements noted that the opportunity to cross examine the supplier was not granted to the assessee and the turnover was not disturbed / disputed by Ld. AO. The Ld. CIT(A) also noted the Gross Profit / Net Profit rate earned by the assessee in several years and concluded that the assessee suppressed profit to the extent of 0.10% of the turnover and therefore, restricted the same to Rs.1,41,187/-. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR] drew our attention to the fact that the assessee could not produce any of the suppliers to confirm the transactions and thus failed to discharge the onus casted on him and hence, Ld. CIT(A) erred in providing substantial relief to the



assessee. Per *Contra*, Ld. Counsel for Assessee [AR] placed reliance on the stand of Ld. CIT(A) to contend that the same was fair and reasonable and therefore, no further additions were warranted.

5. We have carefully heard the rival contentions and perused relevant material on record. We are of the considered opinion that there could be no sale without purchase of material since the assessee was engaged in *trading activities*. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The purchases were backed by invoices. At the same time, the assessee could not produce any confirmation from the impugned supplier and notices issued u/s 133(6) yielded no result. It is also noted that one of the supplier himself admitted to be operating 96 firms who were engaged in providing accommodation bills only without dealing in any goods which cast serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against such bogus purchases, which Ld. CIT(A) has rightly done. However, we find the estimation to be on the lower side keeping in view the overall facts and circumstances of the case and therefore, enhance the same to 8% of *alleged bogus purchases* of Rs.1,12,43,820/- which comes to Rs.8,99,506/-. We direct so. Resultantly, the revenue's appeal stands partly allowed.

6. Now, we take up revenue's appeal ITA No. 134/Mum/2016 for AY 2011-12. The assessee, in this year, has been saddled with similar



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additions by Ld. AO for Rs.1,09,79,866/- on account of bogus purchases which has been reduced by Ld. CIT(A) to Rs.1,84,048/-. Since the issue is identical except for figures and minor variations, taking same stand, we estimate the addition @8% of *alleged bogus purchases* for Rs.1,09,79,966/- which comes to Rs.8,78,389/-. Resultantly, the revenue's appeal stands partly allowed.

7. Finally, both the appeals filed by revenue stand partly allowed.

Order pronounced in the open court on 01st November, 2017.

Sd/-
(D.T. Garasia)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01.11.2017
Sr.PS:- *Thirumalesh*

आदेश की प्रतिलिपि □ ग्रेषित/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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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