

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 6385/Mum/2017
(Assessment Year: 2012-13)**

Deputy Commissioner of Income
Tax, Central Circle-4(1),
R. No. 1916, 19th Floor,
Air India Building,
Nariman Point,
Mumbai – 400 021

M/s Melstar Information
Technologies Ltd,
Mestar House, G-4,
Vs. MIDC, Cross Road,
'A' Andheri (E),
Mumbai – 400 093

PAN – AABCM6270G

(Appellant)

(Respondent)

Appellant by: Shri D.G. Pansari, Sr. D.R

Respondent by: None

Date of Hearing: 26.06.2019

Date of Pronouncement: 28.06.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-52, Mumbai, dated 03.07.2017, which in turn arises from the order passed by the A.O under Sec. 153C r.w.s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 28.03.2016. The revenue has assailed the order of the CIT(A) by raising before us the following grounds of appeal:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition of Rs.26,66,42,549/- on account of bogus purchases to Rs.53,32,850/-, booked by the assessee in the year under consideration specifically when the assessee could not prove the genuineness of purchases made.

2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in restricting the disallowance of bogus purchases without appreciating/that the decision of Hon'ble Supreme Court in the case of M/s N.K. Proteins Ltd. vs. DCIT (2017- TIOL-23 SC-IT) is squarely applicable in this case.

The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.”

2. Briefly stated, the assessee company belongs to Yashovardhan Birla group and is engaged in the business of providing software development services. Search and seizure proceedings under Sec. 132 of the Act were conducted on Yashovardhan Birla group and its associate entities on 07.01.2014. As certain incriminating material in the nature of bogus purchase pertaining to the assessee were found in the course of the search proceedings, therefore, a notice under Sec. 153C was issued and served on the assessee. In compliance, the assessee filed its return of income under Sec 153C, declaring a loss of Rs.1,61,25,764/-.

4. During the course of the assessment proceedings, it was observed by the A.O that as per the information gathered in the course of the search proceedings, it stood revealed, that the assessee had claimed to have made purchases from two concerns viz. (i) M/s Avance Technologies Limited; and (ii) M/s Tejora Technologies Limited., both of which concerns were floated by one Mr. Devang D. Master. It was observed by the A.O that the aforesaid companies were involved in providing merely accommodation entries without any supply of any actual material or services, whatsoever. The A.O observed that the assessee during the year under consideration had debited an amount of Rs.25,55,42,549/- towards purchase of 'stock in trade' in its books of accounts. However, as a similar type of expense was not booked by the assessee in any other accounting year, therefore, the AO in order to verify the authenticity of the said expense called for an explanation as regards the same from Mr. Anil Korpe, Head Finance & Accounts of

the assessee company, in the course of recording of his statement under Sec. 132(4) on 08.01.2014. On being queried as regards the nature of the aforesaid expenses incurred towards purchase of stock in trade, it was initially submitted by Mr. Anil Korpe that the same pertained to purchase of software licenses from two concerns viz. (i) M/s Avance Technologies Ltd.; and (ii) M/s Tejora Technologies Ltd. as per the instructions of the Mr. Richard Joseph D' Souza, Ex-managing director of the assessee company. Apart there from, it was submitted by him that the said software license was subsequently sold to M/s Empower India Ltd. However, on being appraised with the fact that Mr. Devang Master, the owner of the aforesaid three companies viz. (i). M/s Avance Technologies Ltd.; (ii) M/s Tejora Technologies Ltd; and (iii) M/s Empower India Ltd. had accepted the fact that the said companies were bogus and had only provided accommodation entries, it was admitted by Mr Anil Korpe that the trading transactions of the assessee with the said concerns were bogus. It was stated by Mr. Anil Korpe in his statement recorded under Sec.132(4), that the aforementioned concerns were bogus entities and no software product was delivered to or by the assessee in case of these three companies. In the backdrop of the aforesaid facts, the A.O taking cognizance of the fact that the entire purchase of software of Rs.26,66,42,549/- claimed by the assessee to have been made from aforementioned parties was found to be bogus, therefore, disallowed the entire amount of the said purchases under Sec.69C of the Act.

5. Aggrieved, the assessee carried the mater in appeal before the CIT(A). It was submitted by the assessee that the A.O despite admitting that the aforesaid purchase and sale transactions were circular in nature, had however, erred in not restricting the addition only to the extent of the profit element involved in such transactions. The CIT(A) after deliberating on the contentions advanced by the

assessee was persuaded to subscribe to the same. It was noticed by him that the A.O himself had accepted that the purchase of software of Rs. 26.67 crores made by the assessee from M/s Avance Technologies Ltd. & M/s Tejora Technologies Ltd., and the subsequent sale of the same to M/s Empower India Ltd. for Rs.27.21 crore, was a part of the circular transaction of the assessee. It was observed by the CIT(A) that the assessee had claimed to have made a profit of Rs.55,09,583/- on the aforesaid transaction of purchase/sale of software. Apart there from, it was noticed by the CIT(A) that the companies from whom purchase of software was claimed to have been made by the assessee, and also the company to whom the sales were stated to have been made belonged to the same group and were controlled by the same person viz. Shri Devang Master. It was observed by the CIT(A), that the fact the software was never purchased or delivered to the assessee was accepted by both the parties. Further, it was observed by the CIT(A) that the fact that the aforesaid purchase transaction was a fictitious trading activity of the assessee company was accepted by the aforementioned persons, and also by the director of the assessee company. On the basis of the aforesaid facts, it was observed by the CIT(A) that it stood concluded beyond any doubt that both the purchases and sales of software were fictitious. Accordingly, it was observed by the CIT(A) that now when the purchases and sales of the software were fictitious, therefore, there was no justification on the part of the A.O to have added the entire purchase value in the hands of the assessee. In the backdrop of the aforesaid facts, the CIT(A) was of the view that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit involved in making of such transactions or the brokerage expenditure incurred for receiving such entries. As the assessee had already disclosed a profit of Rs.55,09,583/- on the aforesaid purchase and sale transactions,

which worked out to 2.3% of the turnover, therefore, the CIT(A) was of the view that the same could not be said to be on the lower side. At the same time, the CIT(A) was of the view that the assessee for facilitating the aforesaid transactions might have incurred some expenses in obtaining the aforesaid fictitious entries. Accordingly, the CIT(A) adopting the brokerage rate of 0.2% to the value of the entire purchase transaction of Rs.26,66,42,549/-, therein worked out the commission expenditure at Rs.53,32,850/-. Observing, that the aforesaid commission expenditure would have been incurred by the assessee outside its books of accounts, therefore, the CIT(A) sustained the addition of Rs,53,32,850/- as against the total addition of Rs.26,66,42,549/- made by the A.O.

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the respondent assessee despite having been put to notice as regards the date of hearing of the appeal has however failed to put up an appearance before us. Accordingly, being left with no other alternative, we proceed with as per Rule 25 of the Appellate Tribunal Rules, 1963 and dispose off the appeal after hearing the appellant revenue and perusing the orders of the lower authorities. The ld. Departmental Representative (for short 'D.R') relied on the assessment order. It was submitted by the ld. D.R that as admittedly the assessee had not made any genuine purchases and sales of software, therefore, the A.O had rightly disallowed the aggregate value of purchases of Rs. 26,66,42,549/-. It was submitted by the ld. D.R that the CIT(A) was in error in restricting the addition only to the extent of Rs.53,32,850/-.

7. We have heard the ld. D.R and perused the orders of the lower authorities before us. Admittedly, the assessee had not made any genuine purchase of software from the aforementioned two concerns,

viz. (i) M/s Avance Technologies Ltd.: and (ii) M/s Tejora Technologies ltd. At the same time, the sale of the aforesaid software by the assessee to M/s Empower India Ld. had also been found to be bogus. As is discernible from the order of the A.O, the assessee had indulged in a circular transaction of purchase and sale of software license with the aforementioned concerns which were controlled by Shri Devang D. Master, an accommodation entry provider, as under:

Date	Name of the party	Purchase software	Name of the party	Sales Software Trading
January 12	Avance Technologies Limited	66,918,787	Empower India Limited	60819366
March 12	Avance Technologies Limited	52,486,428	Empower India Limited	66473023
October 11	Tejora Technologies Limited	59,556,723	Empower India Limited	23066388
November 11	Tejora Technologies Limited	65,093,077	Empower India Limited	68257184
December 11	Tejora Technologies	22,587,534	Empower India Limited	53536171
		266,642,549		272152132

As is discernible from the order of the CIT(A), the A.O had himself admitted that the assessee had indulged in circular transactions of bogus purchase and sale of software license with the aforementioned three concerns, which were owned by the same person viz. Shri Devang D. Master. In our considered view, now when it is an admitted fact that software was never purchased or delivered to the assessee, therefore, we are in agreement with the view taken by the CIT(A) that the addition of the entire purchase value of Rs.26,66,42,549/- in the hands of the assessee was not justified. Accordingly, we are persuaded to subscribe to the view taken by the CIT(A), that only the profit element involved in the aforementioned transactions of purchase/sale of software could have been brought to tax in the hands of the assessee. However, as the assessee had already disclosed a profit of Rs.55,09,583/- which works out to 2.3% of the turnover, therefore, in our considered view the CIT(A) had rightly concluded that no further addition on the said count could have been made in the hands of the

assessee. We find that the CIT(A) had in all fairness observed, that the assessee in order to facilitate the aforesaid accommodation transactions would have incurred certain brokerage expenses outside its books of accounts. As observed by us hereinabove, the CIT(A) taking cognizance of rate of brokerage applicable in the market during the relevant period i.e 0.2% to 0.25%, had worked out the said commission expenditure at an amount of Rs.53,32,850/-. Accordingly, the CIT(A) being of the view that the assessee would have incurred the aforesaid commission expenditure for securing the bogus purchase bills, had thus restricted the addition in the hands of the assessee to the extent of Rs.53,32,850/-. We have deliberated at length on the issue under consideration, and finding no infirmity in the view taken by the CIT(A), uphold the same. The **Ground of appeal No. 1 and 2** are dismissed in terms of our aforesaid observations.

8. The appeal filed by the revenue is dismissed.

Order pronounced in the open court on 28.06.2019

Sd/-

(Shamim Yahya)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 28.06.2019

Ps. Rohit

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

Sआदेश 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**