

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.180/M/2017
Assessment Year: 2012-13**

M/s. Excel Pharmaceuticals Pvt. Ltd., Plot No.11, Dewan & Shah Udyog Nagar, Aliyalai, Dist. Palghar - 401404 PAN: AACFE3907G	Vs.	ACIT, Palghar Circle Aayakar Bhavan, BIDCO Road, Palghar (West), Palghar - 401 404
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V.D. Parmar, A.R.
Revenue by : Shri Amit Pratap Singh, D.R.

Date of Hearing : 15.01.2020
Date of Pronouncement : 18.02.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 24.10.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The assessee has raised various grounds of appeal as under:

"(1) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming all additions aggregating to Rs 1,31,36,5987- made by AO on the ground that appellant failed to appear before him (CIT(A)) and thereby assuming that the appellant has nothing to offer any explanation in support of various grounds of appeal in spite of the fact that several opportunity of being heard was given to appellant.

(2) (i) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming addition of Rs. 33,29,2827- on account of loans u7s 68 of the I T Act 1961.

(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming loans of Rs. 33,29,2827-without appreciating the fact that no sufficient time was given to the appellant and appellant never shown its inability to file confirmation letters.

(3)(i) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming disallowance of Rs 7,23,690/- us 40(a)(ia) of the I T Act 1961

(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming disallowance of Rs 7,23,6907- us 40(a)(ia) without appreciating the facts that both directors of company have filed their individual returns of income and included their salary of Rs 3 lacs each and paid taxes as per their returns and in case of balance amount of Rs 1,23,6907- paid to two parties for repair works the component of labour work contract in the bills were less then Rs 50,0007- each so payments were not liable for TDS.

(4) (i) On facts and circumstances of the case and in law Ld CIT(A) in confirming addition on account of current liabilities and trade payables of (Rs.85,47,692/--+ 1,19,334=)Rs.86,67,026/- us 41(1) of the I T Act.

(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming addition of Rs 86,67,026/- us 41(1) without appreciating fact that no sufficient opportunity to file confirmations and for filing other details were provided to the appellant and appellant has never shown its inabilities in producing confirmations or other details.

(5)(i) On facts and circumstances of the case and in law Ld. CIT(A) erred in disallowing ad-hoc amount of Rs 3,42,500/- out of labour charges which is 50% of total expenses of Rs 6,85,000/-.

(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming ad-hoc disallowance of Rs 3,42,5007- out of labour charges without appreciating the fact that these payment s were made to contractors duly supported by bills and TDS were also made.

(6) On facts and circumstances of the case and in law Ld. CIT(A) erred in disallowing Rs 15,000/- out of repairs expenses by considering the same as capital in nature.

(7) On facts and circumstances of the case and in law Ld. CIT(A) erred in disallowing expenses of Rs 59,100/- out of repairs expenses.

(8) On facts and circumstances of the case and in law Ld. CIT(A) erred in initiating penalty proceedings us 271(l)(c)of the IT Act 1961.

The appellant craves to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

3. At the time of hearing the Ld. D.R., pointed out that the assessee has filed some additional evidences vide letter dated 05.09.2019 which could not be filed before the authorities below i.e. neither before the Ld. CIT(A) nor before the AO and therefore it would be in the interest of justice and fairplay to restore the matter to the file of the authorities below.

4. The Ld. A.R. submitted that the issue may kindly be decided at the level of ITAT after appreciating these evidences as the tribunal is final fact finding forum.

5. After hearing both the parties and perusing the material on record, we observe that assessee has filed additional evidences which were not available before the authorities below. We observe that the said additional evidences would have a substantial bearing on the issues raised by the assessee. Accordingly, in the interest of justice and fairplay, we restore the matter to the file of the AO with the direction to decide the same as per facts and law after considering these additional evidences and after affording a reasonable hearing to the assessee.

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

Order pronounced in the open court on 18.02.2020.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 18.02.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.