

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 627/JP/2019  
निर्धारण वर्ष / Assessment Year : 2010-11

The ITO Ward- 1(1) Jaipur	बनाम Vs.	M/s. A.P. Gems 2337, Ramlala Street Johri Bazar, Jaipur
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: AAGFA 5042 G	
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri K.C. Gupta, JCIT-DR  
निर्धारिती की ओर से / Assessee by : Shri Manish Mehta, Advocate

सुनवाई की तारीख / Date of Hearing : 12/03/2020  
घोषणा की तारीख / Date of Pronouncement : 13 /03/2020

आदेश / ORDER

PER VIJAY PAL RAO, JM

This appeal by the Revenue is directed against the order of ld.  
CIT(A)-1, Jaipur dated 28-02-2019 for the Assessment Year 2010-11.

The Revenue has raised the following grounds.

“1. Whether on the facts and circumstances of the case and in law the ld. CIT(A) was justified in estimating the GP @ 17.5% against 25% of the bogus purchases disallowed by the AO following Hon'ble Supreme Court decision on bogus purchases in the case of Vijay Proteins Pvt. Ltd.?”

2. Whether on the facts and circumstances of the case and in law the ld. CIT(A) was justified in deleting the additions made on the basis of corroboration information received from

The ITO , Ward- 1(1), Jaipur vs M/s. A.P. Gems, Jaipur the Investigating Wing, Mumbai which is a law enforcement agency under the Ministry of Finance and accordingly the case falls under exception clause 10(e) of Circular 03 of 2018 dated 20-08-2018?’’

2.1 Undisputedly, the tax effect in this appeal of the Revenue is only Rs. 90,713/-. Therefore, it is not exceeding the monetary limits prescribed by CBDT Circular No. 03 of 2018 dated 20-03-2018.

2.2 We have heard the ld. DR as well as ld.AR and also considered the relevant materials available on record. The ld. DR has submitted that this case of Revenue is covered under exception provided in clause 10 (e) of the CBDT Circular No. 3 of 2018 dated 20-08-2018 as the AO has made addition on the basis of information received from Investigation Wing, Mumbai.

2.3 On the other hand, the ld.AR of the assessee has submitted that appeal of the Revenue does not fall in the exception provided in the Circular as the report of the Investigation Wing, Mumbai is not an information of external law enforcement agency.

2.4 Having considered the rival submissions and carefully perusal of the record, at the outset, we note that identical issue has been considered by this Tribunal vide order dated 29-11-2019 in the case of DCIT vs Gehlot Motors Pvt. Ltd in ITA Nos.1165 and 1166/JP/2019 in para 4 as under:-

“4. We have considered the rival submissions and carefully perused the relevant record. There is no dispute about the fact that the tax effect in these two appeals of the revenue is not exceeding the limits provided in the Circular No. 3 of 2018 dated 11.07.2018. The question as raised by the Id. D/R is whether these cases fall in the exception as provided in para 10(e) of the Circular No. 3 of 2018. At the outset, we note that as per the original Circular No. 3 of 2018 these matters do not fall in the exception, however, the said circular was amended by the CBDT vide Notification dated 20.08.2018 and the amended para 10 of Circular No. 3 of 2018 reads as under :-

- “ 10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect :
- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
  - (b) Where Board’s order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
  - (c) Where Revenue Audit objection in the case has been accepted by the Department, or
  - (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.
  - (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).
  - (f) Cases where prosecution has been filed by the Department and is pending in the Court.”

The relevant clause of para 10 is clause (e) which carves out the exception where the addition is based on the information received from external source as specified in the said clause. There is no dispute that the case of the assessee does not fall in the category of addition based on such information received from external source as provided under clause (e) of the amended para 10 of the Circular No. 3 of 2018.

Further, the Id. D/R has relied upon the Circular No. 23 of 2019 which further provides some exception to the monetary limits as per para 2 and 3 as under :-

“ 2. Several references have been received by the board that in large number of cases where organized tax-evasion scam is noticed through bogus Long-Term Capital Gain (LCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial for a on account of enhanced monetary limits. It has been reported that in large number of cases, ITATs and High Court have recognized the unique modus operandi involved in such scam and have passed judgements in favour of the revenue. However, in cases where some appellate for a have not given due consideration to position of law or facts investigated by the department, there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.

3. In this context, Board has decided that notwithstanding anything contained in any circular issued u/s 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organized tax evasion activity.”

Therefore, even as per Circular No. 23 of 2019 dated 6<sup>th</sup> September, 2019 the exception is provided only in the cases where organized tax evasion is noticed through bogus long term capital/short term capital gain on penny stocks. Therefore, the said Circular cannot be applied in the cases when the addition is not in respect of capital gain on penny stocks. Accordingly, the said circular will not help the cases of the department. Thus we hold that the appeals filed by the revenue do not fall in the exception as provided in the amended para 10(e) of the Circular No. 3 of 2018. Accordingly, the appeal of the department is not maintainable being monetary limit is less than/not exceeding Rs. 50,00,000/-.”

In the case in hand, the addition was made by the AO based on the information received from DIT (Investigation) of the Department which is not an external source in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Director General of GST Intelligence (DGGI) etc. Therefore, this case of the Revenue does not fall in the exception provided in clause (e) of para 10 of the Circular No. 3 of 2018. Accordingly, when the tax effect of Revenue's appeal is not exceeding the monetary limit as prescribed in the Circular then the same is not maintainable. Hence, the appeal of the Revenue is dismissed.

3.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 13/03/2020.

Sd/-

( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13/03/ 2020

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1.अपीलार्थी / The Appellant- ITO, Ward- 1(1), Jaipur

2.प्रत्यर्थी / The Respondent- M/s. A.P. Gems, Jaipur

3.आयकर आयुक्त(अपील ) / CIT(A),

4.आयकर आयुक्त / CIT,

5.विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6.गार्ड फाईल / Guard File (ITA No.627/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar