

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 638/JP/2019
निर्धारण वर्ष /Assessment Year: 2008-09

The Income Tax Officer, Ward 2(1) Jaipur.	बनाम Vs.	M/s Sunstar Gems Corporation, 3978, MSB Ka Rasta, Johari Bazar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAPFS 2043 G		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl. CIT)
निर्धारिती की ओर से / Assessee by : None.

सुनवाई की तारीख / Date of Hearing : 09/06/2020.
घोषणा की तारीख / Date of Pronouncement : 09/06/2020.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the revenue is directed against the order dated 11/02/2019 of Id. CIT (A)-1, Jaipur for the assessment year 2008-09. The revenue has raised the following grounds of appeal: -

1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in estimating the GP @ 8% against 25% of the bogus purchases disallowed by the AO following Hon'ble Supreme Court's 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 Id. CIT(A) was justified in deleting the additions made on the basis of corroborate information received from 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. None has appeared on behalf of the assessee/respondent when this appeal was called for hearing through video conferencing. However, since the tax effect in the revenue's appeal is below the monetary limit as prescribed in CBDT circular No. 03/2018 dated 20/08/2018, therefore, this appeal was taken up for hearing and disposal ex parte.

3. Admittedly, the tax effect involved in this appeal filed by the revenue is only Rs. 18,191/- which is below the limit prescribed in the Circular No. 03/2018 and therefore, the question about the maintainability of this appeal arises. The Id DR has submitted that the present case falls in the exception provided in para 10(e) of the Circular No. 03/2018 dated 20/08/2018 as the A.O. has made addition on the basis of the information received from DGIT (Inv.), Mumbai regarding the bogus/unverifiable transactions of purchases made by the assessee from various parties. Thus, the Id DR has submitted that the addition was made based on the basis of information received from the Law Enforcement Agency being the DGIT (Inv.) which is an independent agency of the department and hence this case falls in the exception provided in para 10(e) of the said Circular No. 03/2018.

4. We have considered the submissions of the Id DR and carefully perused the relevant material available on record. Undisputedly, the addition made by

the A.O. on account of unverifiable/bogus purchases made by the assessee of Rs. 77,759/- was restricted by the Id. CIT(A) to Rs. 18,889/-, therefore, the Id. CIT(A) had deleted the addition to the extent of Rs. 58,870/-. Thus, the tax effect in the revenue's appeal is very less and not exceeding the limits provided in the Circular No. 03/2018 dated 20/08/2018. The Id DR has contended that the addition made by the A.O. was on the basis of information received from the DGIT (Inv.), Mumbai and therefore, the case falls in the exception as provided in para 10(e) of the Circular No. 03/2018. We do not agree with this contention of the Id DR for the simple reason that the information received by the A.O. from the DGIT(Inv.), Mumbai does not fall in the exception as provided in para 10(e) of the Circular No. 03/2018 which 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 :

(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).

Thus, the exception as carved out in Clause (e) of para 10 of the Circular is regarding the cases where the addition is made by the A.O. on the basis of information received from external sources being the Law Enforcement Agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI). When the agencies are specified in para 10(e) of the Circular No. 03/2018 are in the nature of law enforcement external agencies then the Investigation Wing of the Income Tax Department itself would not fall in the

said category of external law enforcement agencies specified in Clause (e) of para 10 of Circular No. 03/2018. Therefore, we do not find any substance or merits in the submissions of the Id DR that the case of the assessee falls in the exception as provided in Clause (e) of para 10 of Circular No. 03/2018. We further note that this Tribunal has taken a consistent view in a series of decisions that the addition made by the A.O. based on information received from the Investigating Wing of the department does not fall in the category of information received from the external source being Law Enforcement Agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI) etc. as prescribed in Clause (e) of para 10 of Circular No. 03/2018. Accordingly, the appeal of the revenue is not maintainable as the tax effect involved in this appeal of the revenue does not exceed the monetary limit provided in CBDT Circular No. 03/2018 dated 20/08/2018.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 09th June, 2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09/06/2020.

*Ranjan

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

1. अपीलार्थी / The Appellant-The ITO Ward 2(1), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Sunstar Gems Corporation, Jaipur.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 638/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar