

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No. 2900/Mum/2019
(Assessment Year: 2010-11)

ACIT, Circle – 6(3)(2) Mumbai	V s.	M/s. Kaizen Engineering Systems Pvt. Ltd. Shanta Prasad, Hindu Colony Lane, 01, Dadar, Mumbai-400 014
PAN/GIR No. AADCK 1418 N		
(Appellant)	:	(Respondent)

Cross Objection No. 35/Mum/2020
(Arising out of ITA No. 2900/Mum/2019)
(Assessment Year: 2010-11)

ACIT, Circle – 6(3)(2) Mumbai	V s.	M/s. Kaizen Engineering Systems Pvt. Ltd. Shanta Prasad, Hindu Colony Lane, 01, Dadar, Mumbai-400 014
PAN/GIR No. AADCK 1418 N		
(Appellant)	:	(Respondent)

Revenue by	:	Shri Gurbinder Singh
Assessee by	:	Shri Madhur Agrawal
Date of Hearing	:	09.11.2020
Date of Pronouncement	:	09.11.2020

ORDER

Per Bench:

This appeal by the Revenue and Cross Objection by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-12, Mumbai ('Id.CIT(A) for short) dated 17.01.2019 and pertains to the assessment year (A.Y.) 2010-11.

Revenue's appeal:

2. The grounds of appeal read as under:

1 "On the facts and in the circumstances of the case and in law, the Ld. CTT (A) has erred in restricting the addition to 5% instead of 100% being Rs.40,43,025/- made by the AO U/S.69C of the Act out of the bogus purchase transaction accommodation entry obtained by assessee from M/s. Sumukh Commercial Put. Ltd. (Capetown Mercantile Put. Ltd.), in the order dtd 29/03/2016 passed u/s. 143(3) rws 147 of the Act".

2. "On the facts and in the circumstances of the case and in law, the Ld. CTT (A) has erred in restricting the addition to 5% instead of 100% being Rs.40,43,025/- made by the AO u/s.69C of the Act out of the bogus purchase transaction accommodation entry obtained by assessee though Id.CIT(A) himself at para 4.6 of the appellate order held on verification of computer block affixed asset schedule that the said block does not show any addition of Rs.11,25,311/- hence even rejecting the assessee's claim of this expenditure being capital in nature".

3. "On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition u/s.69C by holding that opportunity of cross-examination is not provided to the assessee ignoring the fact that at para 4.2 of the assessment order the AO has categorically mentioned that further to the non service of notice issued u/s. 133(6) by postal authority, the assessee was also asked to produce party for verification which the assessee did not comply and therefore, Ld.CIT(A) failed to appreciate that the onus to prove genuineness is not discharged by assessee."

3.1 "On the facts and in the circumstances of the case and in law, Id.CTT(A) has erred in deleting the addition u/s. 68 of the Act in violation of Rule 46A of the I.T.Rules, by not remanding the AO to afford opportunity of cross-examination to the assessee."

3.2 "Ld. Departmental Representative (Id. DR for short) in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition u/s.68 of the Ld. Departmental Representative (Id. DR for short) disregarding the Hon'ble Delhi High Court decision in the case of CJT-H vs. Jansampark Advertising & Marketing (P) Ltd, 375 ITR 373 (Delhi) wherein Hon'ble Court while remanding the matter held that two appellate authorities viz., Commissioner (Appeals) and Tribunal, are also forums for fact-finding, in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry on facts would naturally shift to door of said appellate authorities and they having noticed want of proper inquiry, cannot close chapter simply by allowing appeal and deletion additions made."

3. At the outset, the Id. Counsel of the assessee submitted that the tax effect in this case is below the limit of Rs.50,00,000/- fixed by CBDT Circular No. 17 of 2019 dated 08.08.2019 for filing the appeal before the ITAT.

4. Hence, the Id. counsel of the assessee submitted that this appeal by the Revenue is not maintainable.

5. Per contra, the Id. Departmental Representative (Id. Departmental Representative (Id. DR for short) for short) could not dispute that the tax effect is below the said limit. He could not point out that the appeal falls in any of the exceptions carved in said circular.

6. Upon careful consideration, we find that as the tax effect is below the limit fixed by the CBDT for filing the appeals before the ITAT, this appeal by the Revenue is liable to be dismissed in limine.

7. Accordingly, the appeal stands dismissed as such.

Assessee's Cross Objection:

8. At the outset, the Id. Counsel of the assessee pleaded that he shall not be pressing the Cross objection. Hence, the C.O. stands dismissed as not pressed.

9. In the result, the Revenue's appeal as well as assessee's cross objection stands dismissed.

Order pronounced in the course of virtual hearing on 09.11.2020.

Sd/-

(Ram Lal Negi)
Judicial Member

Mumbai; Dated : 09.11.2020
Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai