

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 5003/MUM/2019
(Assessment Year: 2013-14)**

Dy. Commissioner of Income
Tax-10(3)(2),
2nd Floor, Room No. 212,
Aayakar Bhawan, M.K. Road,
Churchgate, Mumbai – 400 020

M/s Pik Pen Pvt. Ltd.
Vs. 7, Parsian Bldg. Opp. Nadco,
V.P. Road, Andheri West,
Mumbai – 400058

PAN No. AABCP0512A

Appellant

Respondent

Revenue by : Ms. Shreekala Pardeshi, D.R
Assessee by : None

Date of Hearing : 08/03/2021
Date of pronouncement : 23/03/2021

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-17, Mumbai, dated 31.05.2019, which in turn arises from the assessment order passed by the A.O under section 143(3) of the Income Tax Act 1961, (for short 'Act'), dated 29.03.2016 for A.Y. 2013-14. The revenue has assailed the impugned order by raising the following grounds of appeal before us:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition to 12.5% of bogus purchase of Rs.73,50,059/- despite upholding that the assessee company is unable to discharge its onus to prove its purchase from the claimed suppliers completely.
2. On the facts and circumstances of the case and in law, whether the Ld. CTT(A) is correct in not following the ratio of the decision of the Apex Court on the issue of bogus purchases in the case of N.K. Proteins Ltd Vs. DCIT [2017] 84 taxmann.com 195 (SC), dated 16.01.2017 wherein it has been held that the addition on the basis of undisclosed income restricted to certain percentage when entire transaction was found bogus.
3. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.
4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated, the assessee company which engaged in the business of manufacturing of writing instruments and parts thereof had e-filed its return of income for A.Y. 2013-14, declaring a total loss of Rs.(8,72,79,369/-). The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. Central Board of Direct Taxes (CBDT) vide Circular No.17/2019 dated 08.08.2019 has amended Circular No. 3/2018 dated 11.07.2018 for further enhancement of monetary limit for filing of appeals by the Department before the ITAT, High Courts and SLPs/Appeals before Supreme Court as measures for reducing litigation.

4. CBDT vide Circular No. 3/2018 dated 11.07.2018 has specified that appeals shall not be filed before the Income Tax Appellate Tribunal (ITAT) in cases where the tax effect does not exceed the monetary limit of Rs.20,00,000/-. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. Further, 'tax effect' shall be taxes including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the 'tax effect'. In cases where returned loss is reduced or assessed as income, the 'tax effect' would include notional tax on disputed additions. In case of penalty order, the 'tax effect' will mean quantum of penalty deleted or reduced in the order to be appealed against.

At para 13 of the above Circular, it has been mentioned that:

"13. This Circular will apply to SLPs/appeals/cross objection/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed."

5. As a step towards further management of litigation, CBDT vide Circular No. 17/2019 has fixed the monetary limit for filing of appeals before ITAT at Rs.50,00,000/-.

6. As is discernible from the memorandum of appeal, the 'tax effect' therein involved is below the monetary limit of Rs.50,00,000/-.

7. On being confronted with the aforesaid fact, the Id. D.R did not controvert the aforesaid factual position. It was, however, submitted by the Ld. D.R that liberty may kindly be given to raise after necessary further verification and to seek recall of the dismissal of appeal and its restoration, in case it can be shown that the appeal is covered by the exceptions.

8. We agree with the above contentions of the Ld. DR and make it clear that the appellant shall be at liberty to point out the exceptions and we will take appropriate remedial measures in this regard.

9. With the above observations the appeal involving a 'tax effect' of less than Rs.50,00,000/- is dismissed.

Order pronounced in the open Court on 23/03/2021.

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 23/03/2021

Rohit, P.S.

Copy of the Order forwarded to :

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

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai