

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**
**BEFORE SHRI S. RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.120/MUM/2020
(Assessment Year: 2011-12)**

DCIT 6(3)(2)
Room No. 576, Aayakar
Bhavan, M.K. Road,
Mumbai – 400 020

M/s Kilitch Healthcare India
Vs. Ltd.,, 902, B Godrej Coliseum,
Off Eastern Express Highway,
Sion East, Mumbai -22

PAN No. AAACN7796H

(Revenue)

(Assessee)

Assessee by : Shri Yogesh Thar, A.R
Revenue by : Shri Gurbinder Singh, D.R

Date of Hearing : 29/06/2021
Date of pronouncement : 30/06/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-12, Mumbai, dated 10.09.2019, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 22.11.2018 for A.Y. 2011-12. The revenue has assailed the impugned order on the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of bogus purchases of Rs.12,13,802/- as genuine purchases.
2. Though the tax effect in this is Rs3,75,064, however, this appeal is filed because it is covered by exception mentioned in para 10 of the CBDT Circular No. 3/2018 dated 11.07.2018 as subsequently clarified by Board letter dated 20.08.2018 vide No. 279/mis./142/2007-ITJ(Pt.).
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 ground or add a new ground which may be necessary.”

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of pharmaceuticals had filed its return of income for A.Y. 2011-12, declaring an income of Rs.1,71,94,660/-. Original assessment was framed by the A.O vide his order passed u/s 143(3) at an income of Rs.2,11,60,660/-. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, that the assessee as a beneficiary had obtained bogus purchase bills of Rs.17,17,258/- its case was reopened u/s 147 of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have made purchases amounting to Rs.17,17,258/- from the following 7 tainted parties:

Sr. No.	Name of the Parties	PAN	Amount of bogus purchase
1.	Akshar Distributors Pvt. Ltd.	AAHCA6544M	2,55,398
2.	Darshat Trading Pvt. Ltd.	AADCD1270D	2,98,584
3.	Ridhi Sales Corporation	AALFR3796F	1,05,560
4.	Evershine Enterprises	ARAPP3848C	1,62,240
5.	Mukta Steel	APWPD6626G	2,41,488
6.	Ramdev Trading Company	AALFR4783L	4,75,488
7.	Banjara Enterprises	AGKPM3256C	1,78,500

As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transactions, therefore, the A.O vide his order passed u/s 143(3) r.w.s 147, dated 22.11.2018 disallowed the entire amount of the impugned purchases of Rs. 17,17,258/-. Accordingly, A.O vide his order passed u/s 143(3) r.w.s 147, dated 22.11.2018 assessed the income of the assessee at Rs.2,28,77,920/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). It was observed by the CIT(A) that the A.O had not properly considered the submissions that were made by the assessee before him. It was observed by the CIT(A) that the assessee had inter alia claimed that it had not made any transaction with one of the party, viz. M/s Banjara Enterprises. On a perusal of the details filed by the assessee the CIT(A) found the aforesaid claim to be in order. As such, the CIT(A) being of the view that the assessee could not be fastened with an addition on the basis of an

unverified statement of a third party, thus, vacated the addition of Rs.1,78,500/- that was made by the A.O qua the aforesaid party. As regards the remaining purchases, it was observed by the CIT(A) that the amount reflected against one of the party, viz. M/s Ramdev Trading Company (Rs.4,75,488/-) pertained to two transactions, viz. (i) bill of Rs.1,31,040/- qua purchase of steel sheets; and (ii) balance amount of Rs.3,44,448/- that was booked by the assessee under the head, viz. 'repairs and maintenance account' (Rs.3,31,200/-) and in the VAT account (Rs.13,248/-). As regards the remaining parties it was observed by the CIT(A) that the assessee had claimed to have purchased stainless steel sheets from the steel traders for overhauling the water tank in its pharmaceutical manufacturing factory, which therein aggregated to an amount of Rs.11,48,375/- and VAT of Rs.45,935/-. It was observed by the CIT(A) that while for the purchases of Rs.11,48,375/- were debited by the assessee in the 'Fixed assets a/c', the amount of Rs.45,935/- was debited in the VAT account. It was, thus, observed by the CIT(A) that an expenditure which had not been debited by the assessee in its profit and loss account could not have been disallowed. It was observed by the CIT(A) that the assessee had claimed depreciation of Rs.1,72,256/- i.e @ 15% of the amount of purchases of Rs.11,48,375/- that were booked by the assessee under the head 'Fixed assets account'. In the backdrop of the aforesaid facts, it was observed by the CIT(A) that insofar the purchase of steel sheets of Rs.3,44,448/- (supra) claimed to have been made from M/s Ramdev Trading Company (supra) and debited under the head 'repairs & Maintenance account', were concerned, it could not be concluded that no such purchases were made by the assessee for overhauling the water tank in its pharmaceutical manufacturing factory. At the same time, it was observed by the CIT(A) that the assessee had stated that the impugned purchases of Rs.3,31,200/- made from M/s Ramdev Trading Company may be disallowed. It was further observed by the CIT(A) that considering the fact that the assessee had only claimed depreciation on the 'Fixed assets' of Rs.11,48,375/- (supra), therefore, only such claim of depreciation could be

disallowed. On the basis of his aforesaid observations the CIT(A) upheld the addition qua the impugned purchase transactions from the aforementioned 7 parties to the extent of Rs.5,03,456/-, viz. (i) disallowance of depreciation of Rs.1,72,256/-; and (ii) disallowance of purchases claimed by the assessee to have been made from M/s Ramdev Trading Company: Rs.3,31,200/-. Accordingly, the CIT(A) partly allowed the assessee's appeal.

5. Aggrieved, the revenue has carried the matter in appeal before us. At the threshold, it was submitted by the Id. Departmental Representative (for short 'D.R') that the CIT(A) had erred in deleting the addition of bogus purchase of Rs.12,13,802/-. It was submitted by the Id. D.R that though the 'tax effect' involved in the present appeal was Rs.3,75,064/-, however, considering the exception carved out in Para 10 of the CBDT Circular No. 3/2018, dated 11.07.2018 as subsequently clarified by the Board's letter dated 20.08.2018 vide No. 279/MIS/142/2007 – ITJ (Pt.) the present appeal was maintainable.

6. Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee applicant submitted that as the addition qua bogus purchases had not been made on the basis of any information received from any external agency, therefore, exception provided in Para 10 of the CBDT Circular No. 3/2018, dated 11.07.2018 would not come into play. In order to drive home his aforesaid claim the Id. A.R had taken us through the relevant observations of the lower authorities wherein it was clearly mentioned that the addition was made on the basis of the information received from the DGIT(Inv.), Mumbai.

7. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We may herein observe that the exception carved out in Para 10(e) of the CBDT Circular No.3/2018 (as amended on 20.08.2018) is qua the appeals filed by the revenue where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIP/ Directorate General of GST Intelligence (DGGI). For the

sake of clarity, we may cull out the exception carved out in Para 10(e) of the CBDT Circular No. 3/2018 (as amended on 20.8.2018), 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: -

(a) to (d).....

(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)”.

Admittedly, it is a matter of fact borne from the records that the case of the assessee was reopened u/s 147 on the basis of the information received from the DGIT(Inv.), Mumbai, that the assessee as a beneficiary had obtained bogus purchase bills. On a perusal of the assessment order, we find, that the A.O had specifically stated that he had received information from the DGIT(Inv.), Mumbai. In the backdrop of the aforesaid facts, we are of the considered view that as the very genesis for reopening the case of the assessee and the making of impugned addition/disallowance was based on the information received from the DGIT(Inv.), Mumbai, and not on the basis of any information received from an external source in the nature of law enforcement agencies, viz. CBI/ED/DRI/SFIP/ Directorate General GST Intelligence (DGGI), therefore, as stated by the Id. A.R, and rightly so, the exception carved out in Para 10(e) of the CBDT Circular No. 3/2018 (as amended on 20.08.2018) would not come into play. Accordingly, we are of the considered view that as the ‘tax effect’ involved in the present appeal filed by the revenue is lower than that contemplated in the CBDT circular No. 17/2019, therefore, the appeal of the revenue is not maintainable.

8. Resultantly, the appeal of the revenue is dismissed.

Order pronounced in the open court on 30.06.2021

Sd/-

S. Rifaur Rahman
(ACCOUNTANT MEMBER)

Mumbai, Date: 30.06.2021

Sd/-

Ravish Sood
(JUDICIAL MEMBER)

PS: Rohit

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "H" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar