

**INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'SMC' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)]**

ITA No. 1484/Mum/2020  
Assessment Year: 2011-12

**Income Tax Officer Ward - 6 (1)(4)  
Mumbai.**

..... **Appellant**

**Vs.**

**M/s. Biomed Healthcare Pvt. Ltd.,**  
207, Marthanda, Dr. Annie Besant Road, Worli Naka,  
Mumbai 400018 [PAN: AAACB1583C]

..... **Respondent**

**Appearances:**

**Milind Chavan** for the appellant

**None** for the respondent

Date of concluding the hearing : November 03, 2021  
Date of pronouncement : November 03, 2021

**ORAL ORDER**

**(Dictated in the open court)**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the Assessing Officer has called in question the relief granted by the CIT(A) vide order dated 10<sup>th</sup> December 2019, in the matter of assessment u/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 for the assessment year 2011-12.

2. Grievances raised by the Assessing Officer are as follows:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to disallow 12.5% of the bogus purchases rather than 100% of such purchases amounting to Rs. 2,43,376/-?*
2. *Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to disallow only 12.5% of the bogus purchases rather than 100% of such purchases without appreciating that such allowance of 87.5% of the expenditure imply, allowance of purchases made in the ‘*

***grey market' thereby rendering the provisions of section 40(A)(3) of the Income tax Act, 1961 totally redundant which could not have been the intention of the Statute?***

- 3. Whether on the facts and circumstances of the case in law, the Ld. CIT(A) erred in deleting the quantum addition to the extent of Rs. 2,43,376/- made by the AO on account of bogus purchases from the two parties by not appreciating the facts that the assessee had failed to produce the parties/furnish the confirmation of transaction with the purchase parties?***
- 4. Through the tax effect in this case is Rs. 65,803/- which is less than the prescribed monetary limit contained in the Board Circular 17/2019 dated 08/08/2019, appeal is filed because it is covered by exemption mentioned in para 10(e) of the CBDT Circular No. 3/2018 dated 11-7-2018***

3. When this appeal came up for hearing, my attention was invited to the petition dated 1<sup>st</sup> November 2021, filed by the counsel for the assessee seeking adjournment on ground that is currently traveling outside Mumbai. Learned Departmental Representative, however, was fair to point out that the issue raised in this appeal, even though he vehemently relies on the order of the Assessing Officer and plea of the same, is covered in favour of the assessee by number of decisions of the co-ordinate benches of this Tribunal.

4. On a perusal of material on record, however, I find that the issue in this appeal is fully covered by number of decisions of the co-ordinate benches as rightly noted by the learned CIT(A) in paragraph 6.2 of the order. As regards learned Departmental Representative contention that the decision of the Hon'ble Supreme Court in the case of ***N K Proteins Ltd 250 taxman 0022 (SC)*** also needs to be taken in to account wherein their Lordships have held, according to him that 100% of the amount of bogus purchase is required to be added to the income whereas in the present the case, the addition to income is 12.5% of the bogus purchase, I may only at considering this decision, several divisional benches have come to the conclusion of the 12.5% and the amount of bogus purchase representing income and i.e. bogus transaction. I am also party to several of these decisions and have been author of the some of the decisions. Humbly bowing to the decisions of the division benches, I approve conclusion the conclusion arrived at by learned CIT(A) and decline to interfere in the matter. In any way, is evident from paragraph 6.3 of the order learned CIT(A) has duly taken into account the said decision of Hon'ble Supreme Court and came to the conclusion that what can be added to the income of the assessee is only 12.5% of the bogus purchase.

5. In view of above discussions, fact and circumstances of the case and entirety of the matter, I deem it fit and proper to reject the adjournment and also dismiss the grievances raised by the Assessing Officer as devoid of merits and unsustainable in law. I, therefore, confirm the order of learned CIT(A) and decline to interfere in the order.

6. In the result, this appeal is dismissed. Dictated and pronounced in the open court today on the 03<sup>rd</sup> day of November 2021.

Sd/-

**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 03<sup>rd</sup> day of November 2021.**

*Copies to:*

<i>(1) The Appellant</i>	<i>(2) The respondent</i>
<i>(3) CIT</i>	<i>(4) CIT(A)</i>
<i>(5) DR</i>	<i>(6) Guard File</i>

*By order*

*Assistant Registrar/Sr.PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*