

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2240/Mum/2021
(A.Y: 2012-13)

DCIT, CC – 5(1) Room No.1928, 19 th Floor, Air India Bldg, Nariman Point, Mumbai - 400021.	Vs.	M/s Arch Pharmalabs Ltd. 3 rd Floor, Titanic Bldg, Chandivali Farm Road, Mumbai – 400072.
PAN/GIR No. AACCM0306Q		
Appellant	..	Respondent

Appellant by :	Shri.Krishna Kumar.DR
Respondent by :	Shri .Ajay R. Singh.DR

Date of Hearing	19.07.2022
Date of Pronouncement	25.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of Commissioner of Income Tax (Appeals)-53, Mumbai passed u/s 143(3) and 250 of the Act.

1.1 At the time of hearing, the Ld.DR of the revenue submitted that there is a delay of 30 days in filing the appeal before the Hon’ble Tribunal and explained that due to Covid-19 pandemic, the filling was delayed and relied on the decision of Hon’ble Supreme Court in

respect of extension of period of limitation. Contra, the Ld.AR has no specific objections. We found the facts mentioned are reasonable and accordingly we condone the delay and admit the appeal. The revenue has raised the following grounds of appeal:

Grounds of appeal:

- i. On the facts and circumstances of the case and in law, the Ld. CIT (A) is not correct in restricting the amount of addition on issue of bogus purchase, without appreciating the fact that the entire purchases of Rs 1,87,47,906/- are proved as bogus in the assessment order.*

- ii. On the facts and circumstances of the case and in law, the Ld. CIT (A) is not correct in restricting the amount of addition on issue of bogus purchase by relying on the case of CIT us Nikunj Eximp Enterprises Put Id and CIT us. Ashish International of the Hon 'ble Bombay High Court, without appreciating the fact that the facts of the present case are different from the cases on which Ld. CIT(A) was relied, because the assessee is a manufacturer while the above decisions were given in the cases of traders.*

- III. On the facts and circumstances of the case and in law, the Ld. CIT (A) is not correct, as Ld. CIT(A) has not taken into consideration the order passed by Hon'ble Apex Court in case of N K Protein Put Ltd us. Dy. CIT on issue of addition on ground of bogus purchase.*

IV. The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal, if need be.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading of pharmaceuticals and intermediates and others. The assessee has filed return of income for the A.Y 2012-13 on 29.09.2012 disclosing a total income of Rs.97,83,98,610/-. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance of the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. There was a survey u/sec133A of the Act on 15.02.2013 and the Assessing Officer(A.O) find that the assessee has made bogus purchases from parties aggregating to Rs.1,87,47,906/-.The A.O after recording the statement of the director has issued a show cause notice. In compliance, the assessee has submitted the explanations and details vide letter dated 05.03.2015 referred at page 2 of the assessment order. The A.O after verifying details and to test check the genuineness of the transactions has issued notice

u/s 133(6) of the Act on the parties, whereas only one notice was served and the details were filed. In respect of other notices sent, no reply was filed and in one case the notice returned un served. The A.O has called for additional details and was complied by the assessee. Finally the A.O. was not satisfied with the explanations and genuineness of the transactions and made addition of Rs. 1,87,47,906/- and assessed the total income of Rs.99,71,46,510/- and passed the order u/s 143(3) of the Act dated 30.03.2015.

3. Aggrieved by the A.O. order, the assessee has filed an appeal before the CIT(A). In appellate proceedings, the CIT(A) has considered the grounds of appeal, findings of the Assessing Officer in scrutiny assessment on the disputed issue. Finally, the CIT(A) relied on the catena of judicial decisions and the assessee own case for A.Y.2011-12 and restricted the addition @4% of the total purchases and partly allowed the appeal. Aggrieved by the CIT(A) order, the Revenue has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in restricting the addition @ 4%

irrespective of facts that no proper information was filed in the Assessment proceedings. Contra, the Ld.AR supported the order of the CIT(A) and substantiated the submissions relying on the judicial decisions and factual paper book.

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in restricting the addition to the extent @ 4% of the bogus purchases considering profit element embedded. Whereas, the CIT(A) has dealt on the facts and considered the Hon'ble High Court/Honble Tribunal decisions. Further, We find that the Ld.CIT(A) took a reasonable view that the only profit percentage has to be added and estimated @ 4% of bogus purchases and relied on the Honble Tribunal decision in the Assesses own case for A.Y.2011-12. The Ld.DR could not controvert the observations of the Ld. CIT(A) with any new cogent evidence and material to take a different view and relied only on the A.O order. We are of the opinion that the CIT(A) dealt on the facts and considered the profit element in the bogus purchases and also the A.O has not disputed the sales. The

Ld.CIT(A) has relied on the decisions of Hon'ble High Court and Tribunal and passed a reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal raised by the revenue.

6. In the result, the appeal filed by the revenue is dismissed

Order pronounced in the open court on 25.07.2022.

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.07.2022

KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai