

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT
DB-II), 'F' BENCH MUMBAI**

BEFORE SHRI PAWAN SINGH, JM

&

SHRI M.BALAGANESH, AM

**ITA No.4450/Mum/2018
(Assessment Year :2009-10)**

M/s. Viiking Technology and Trade Pvt. Ltd., 604-605, 6 th Floor, Gateway Plaza, Hiranandani Garden, Powai, Mumbai – 400 076	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(1), Mumbai
PAN/GIR No.AAACJ9535E		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajeev Khandelwal, CA
Revenue by	Ms. Samatha , Sr. AR
Date of Hearing	21/07/2020
Date of Pronouncement	27/07/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4450/Mum/2018 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/I.T.227/DCCC-2(1)/2015-16 dated 15/11/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2015 by the Id. Dy. Commissioner of Income Tax, Circle-2(1),Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we find that there is a delay in filing of appeal by the assessee before us by 172 days. We find that the Director of the assessee company has filed affidavit dated 21/01/2020 stating the reason that the key managerial personnel of the company resigned from the office on 03/10/2017 and the said position was vacant till 01/07/2018. It was affirmed that the erstwhile key management personnel, who left the service, was in-charge of the taxation matters of the assessee company and later on 02/07/2018 a new person was appointed in that place and accordingly, pending appeal to be filed before the Tribunal was noticed by the new person and immediately appeal was filed by the assessee company. We find that assessee had duly substantiated the delay in filing of appeal and in the interest of substantial justice, we deem it fit and appropriate to condone the delay of 172 days by placing reliance on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST Katiji reported in 167 ITR 471 and admit the appeal for adjudication.

3. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance made on account of unverifiable purchases to the tune of Rs.9,78,420/- in the facts and circumstances of the instant case.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of retail stores under the name and style of "One retail". The assessee had filed its return of income for the A.Y.2009-10 on 30/09/2009 declaring total income of Rs. Nil. The assessment was completed u/s.143(3) of the Act on 15/10/2011 assessing total loss of Rs.3,14,07,803/-. Later, this

assessment was sought to be revised by the Id. Administrative CIT vide order u/s.263 of the Act dated 30/03/2014 wherein the assessment framed on 15/10/2011 was set aside by making the observation that the issue of claim of purchases made by the assessee from M/s. United Marketing in the sum of Rs.9,78,420/- was not correct and the same requires to be disallowed. For the sake of convenience, the order passed by the Id. Administrative CIT on 30/03/2014 u/s.263 of the Act is being reproduced herein:-

“In this case the assessment u/s.143(3) was completed on 15.12.2011 determining total loss of Rs.93,14,08,803/-.

2. On verification of assessment records it is seen that sum of Rs.9,78,420/- was claimed as purchases from M/s. United Marketing. However during assessment proceedings the party had denied having any transactions during the year. Hence, such purchases booked in the assessee's books were to be disallowed. The A.O. had erroneously failed to do so. Hence show cause was issued proposing invoking of Section 263 fixing hearing on 28.03.2014. The assessee however sought adjournment for 2 weeks vide letter dated 27.03.2014.

3. The proceedings are time barring and evidence available on records in the form of letter from M/s. United Marketing dated 15/12/2011 clearly establish that such claim of purchases was not correct. As the Assessing Officer has not considered such disallowance in the order passed on 15.12.2011, the same is erroneous and prejudicial to the interest of revenue. The assessment is accordingly set aside to the A.O. for completing afresh after giving adequate opportunity of bearing heard to the assessee.”

3.2. From the aforesaid order, it could be seen that the Id. Administrative CIT had practically made up his mind by directing the Id. AO to disallow the purchases from United Marketing in the sum of Rs.9,78,420/-. In our considered opinion, the assessee should have preferred the appeal before this Tribunal against the said revision order passed by the Id. CIT u/s.263 of the Act. The Id. AR before us was not able to point out whether any appeal was preferred before this Tribunal

against the said order of the Id. CIT u/s.263 of the Act. We find that the Id. AO while giving effect to the order passed u/s.263 of the Act had also chosen to make enquiry from M/s. United Marketing to examine the genuineness of the purchases claimed to have been made by the assessee by issuing notice u/s.133(6) of the Act on 27/03/2015. Since, no response was received from M/s. United Marketing, the Id. AO proceeded to disallow the claim of purchases totally in the sum of Rs.9,78,420/-. This action of the Id. AO was upheld by the Id. CIT(A).

3.3. We find that the Id. AR made elaborate arguments before us to drive home the point that the purchases made from M/s. United Marketing is genuine and he also drew our attention to the relevant documentary evidences to support his contentions by making specific reference to the relevant pages of the paper book filed before us through e-mail. We hold that this is not the case of bogus purchases pursuant to the suppliers name being reflected as tainted dealer in the Sales Tax Department website of Government of Maharashtra. We find that the purchases from M/s. United Marketing made by the assessee is genuine based on the documentary evidences submitted in the paper book and also United Marketing responding before the Id. AO in response to the notice u/s.133(6) of the Act in the case of M/s. Goa Technology and Trade Pvt. Ltd., This squarely proves the identity of the said supplier. However, we find that the disallowance has been made by the Id. AO in the order giving effect to the order passed by the Id. CIT u/s.263 by following the directions of the Id. CIT. Hence, practically the hands of the Id. AO are tied which could be evident from the observations made by the Id. Administrative CIT in his Section 263 order as reproduced supra. As stated earlier, the assessee should have preferred an appeal before this Tribunal against the order passed u/s.263 of the Act, which was not done

in the instant case. In this scenario, the assessee cannot have any grievance over the action of the Id. AO in making the disallowance of purchases by following the directions of the Id. CIT u/s.263 of the Act. Accordingly, we feel that this appeal itself is not maintainable before us. Accordingly, the grounds raised by the assessee are dismissed.

4. In the result, appeal of the assessee is dismissed.

Order pronounced on 27/07/2020 by way of proper mentioning in the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/07/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai