

THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 5980/Mum/2016 (Assessment Year 2012-13)

M/s. Arch Pharmalabs Ltd. H-Wing, 4 th Floor, Tex Centre, Opp. Saki Vihar Road, Chandivali, Andheri East, Mumbai-400 072. PAN : AACCM0306Q (Appellant)	Vs.	DCIT Central Circle-5(1) Air India Building Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	Shri Rajeev Khandelwal
Department by	Shri Ravindra Mishra
Date of Hearing	10.12.2020
Date of Pronouncement	1.1.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 29.7.2016 and pertains to assessment year 2012-13.

2. The grounds of appeal read as under :-

1. The Learned CIT (A) erred in law and on facts in dismissing the appeal before him on the ground that the appellant has not paid due tax in full u/s 249(4)(a) for the year under appeal.
2. The CIT (A) ignored the fact that the Appellant has been registered as sick company under Sick Industrial Companies Act by BIFR and hence protected against the recovery.
3. On the facts and circumstances of the case and in Law, the learned Commissioner of Income Tax (Appeals) (CIT-A) has grossly erred sum of Rs.1,87,47,906/- as bogus purchases.
4. The learned CIT-A has erroneously relied upon information's received from Sales Tax Department and not proved anything concrete regarding alleged bogus purchases.

5. The learned CIT-A is not justified in ignoring the various submissions furnished by the appellant in respect of the alleged bogus purchases.
 6. The learned CIT(A) erred in failing to consider the purchase transactions of the appellant with the alleged bogus seller were at "Arms Length" and there was absolute no "related party" association with the said party.
 - 6.2 The learned CIT(A) erred in failing to consider the tangible mitigating evidences and circumstances in which the purchase transactions with the alleged bogus seller were entered into by the appellant, like all the payments towards purchases being settled through banking channels, complete quantitative tally in the books, non-rejection of the book results by the Assessing Officer etc.
 7. The learned CIT(A) has not given an opportunity to cross examination of the suppliers to the appellant.
 8. The appellant submits that the above grounds of appeals are alternate, independent and without prejudice to one another.
3. This appeal was earlier disposed of by this Tribunal vide order dated 22.5.2019. Subsequently, the said order was recalled vide MA order dated 4.12.2020. Pursuant to the recall the appeal has been heard by us.
4. Brief facts of the case are that assessee is the company engaged in pharmaceutical industry. In the course of assessment assessing officer referred to survey proceedings for the information that assessee has engaged into bogus purchases from three parties amounting to Rs. 1,87,47,906/-. The assessing officer noted that notice under section 133(6) of the I.T. Act to these parties has remained unresponded. He proceeded to hold the purchase as bogus and made the disallowance of the impugned amount.
5. Upon assessee's appeal learned CIT(A) noted that assessee has not paid the admitted tax due and hence he was of the opinion that assessee's appeal before him was not maintainable. The learned CIT(A) also noted that assessee has requested that assessee was a sick company and was under corporate restructuring and assessee was continuing to make payment of the admitted tax. Learned CIT(A) noted that assessee has sought some time. However learned CIT(A) rejected the contention and dismissed the assessee's appeal on

account of non-payment of admitted tax. He did not adjudicate upon the merits of the case.

6. Against this order assessee is in appeal before us. Learned counsel of the assessee submitted that due to very adverse financial position assessee was not in a position to complete the payment of admitted tax. He submitted that now the admitted tax has been duly paid. He submitted that in substantial interest of justice the appeal before learned CIT(A) should be treated as admitted. He further submitted that in earlier years ITAT in assessee's own case in similar situation has held that disallowance should be limited to 4% of the bogus purchases.

7. Learned departmental representative on the other hand relied upon the orders of authorities below

8. Upon careful consideration in our considered opinion since the assessee was under financial distress and being a sick company under corporate restructuring, the payment of admitted tax by the assessee was delayed. Now it is the submission of the learned counsel of the assessee that the entire admitted tax has been paid. It is further plea of the learned counsel of the assessee that disallowance on account of bogus purchases should be limited to 4% of the bogus purchases as ITAT in assessee's own case in earlier years has so held.

9. Upon careful consideration we are of the considered opinion that undoubtedly the ITAT decision for earlier years is binding and has to be followed unless reversed by honourable Bombay High Court. However we note that learned CIT(A) had dismissed the appeal upon a finding that admitted tax was not paid. Now it is the submission of the learned counsel of the assessee that the admitted tax has been fully paid. In our considered opinion this aspect needs factual verification. Hence in the substantial interest of justice we remit the issue raised in this appeal to the file of learned CIT(A). Learned

CIT(A) shall examine the position of payment of admitted tax and thereafter decide as per law, taking into account our observations hereinabove.

10. In the result this appeal by the assessee stands allowed for statistical purposes.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 1.1.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 1/1/2021

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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