

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.4007/Mum/2016
(Assessment year 2011-12)

Dy.Commissioner of Income-tax Circle-3(3)(1), Mumbai	vs	M/s Rama Phosphates Ltd 812, Raheja Chambers Free Pres Journal Marg, Nariman Point Mumbai-400 021 PAN : AAACR7191Q
APPELLANT		RESPONDENT

Appellant by	Shri Bharat Andhle, DR
Respondent by	None

Date of hearing	22-09-2021
Date of pronouncement	30-09-2021

ORDER

Per Saktijit Dey (JM)

This is an appeal by the revenue against the order dated 14-03-2016 of learned Commissioner of Income-tax (Appeals)-8, Mumbai for the assessment year 2011-12.

2. Pertinently, this appeal was earlier disposed of by the Tribunal in a consolidated order dated 16-09-2019 passed for the assessment years 2010-11 and 2011-12. After disposal of the appeal as aforesaid, the revenue filed a miscellaneous application stating that ground 3 raised in revenue's appeal, being

ITA 4007/Mum/2016 for assessment year 2011-12 remained undecided. Finding the aforesaid contention of the revenue to be correct, the Tribunal, in order dated 23-07-2021 passed in M.A. No.81/Mum/2021, recalled the order for the limited purpose of deciding ground 3.

3. When the appeal was taken up for hearing none appeared on behalf of the assessee. Looking at the nature of issue arising for consideration, we proceed to dispose of the appeal ex parte qua the assessee after hearing the learned departmental representative and based on facts and materials on record.

4. Ground 3, as raised in Memorandum of Appeal reads as under:-

"3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs 3,46,273/- as bogus purchase as the director of M/s Maa Chamunda Sales Pvt. Ltd. has confirmed by filing affidavit before the Sales Tax Department that he had not done any actual purchase/sales & only bills was issued without actual delivery of the material."

5. Briefly, the facts are, the assessee, a resident company, is engaged in manufacturing of fertilizer and edible oil. In course of assessment proceedings, the assessment officer noticed that the assessee had shown purchases of R.3,46,273/- from M/s Maa Chamunda Sales Pvt Ltd. From the information received from the Sales-tax department, the assessing officer found that the said party has been identified as a suspicious dealer and involved in providing accommodation bills without effecting actual sales. Though, in course of assessment proceedings, the assessee furnished some documentary evidences to prove the genuineness, the assessing officer treated the purchases of Rs.3,46,273/- as non genuine and added back to the income of the assessee.

While deciding assessee's appeal contesting such addition, learned Commissioner (Appeals) deleted it.

6. We have considered the submissions of learned departmental representative and perused the materials on record. Undisputedly, the assessing officer was in possession of certain information forwarded by the Sales-tax department indicating that M/s Maa Chamunda Sales Pvt Ltd has been identified as a suspicious dealer providing accommodation bills. However, in course of assessment proceedings, the assessee had furnished copies of purchase bills, delivery challan, ledger extract and payment details. Further, the assessee has also furnished details of consumption of materials. Thus, the aforesaid evidences, prima facie, demonstrate that though there may be some doubt regarding the exact source from which the goods were purchased; however, there cannot be any doubt that goods representing such purchases were available with the assessee. In the aforesaid scenario, the entire purchases cannot be disallowed; but the profit element embedded in such purchases can be considered for disallowance to take care of any revenue leakage arising out of non disclosure of true profit. In view of the aforesaid, we are inclined to modify the order of learned Commissioner (Appeals) only to the extent of disallowing the profit element embedded in the alleged non genuine purchases. Accordingly, we direct the assessing officer to restrict the disallowance to 12.5% of the alleged non genuine purchases. Our conclusion, as above, is consistent with the view expressed by the Tribunal in similar nature of cases. The ground is partly allowed.

7. In the result, appeal is partly allowed.

Order pronounced on 30/09/2021.

Sd/-

sd/-

(RAJESH KUMAR)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 30/09/2021

Pavanan

Copy to :

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

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai