

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.209/RPR/2019
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Mamraj & Sons
Bhatapara Road, Tah.-Tilda,
Raipur-493 225
PAN : AADFM8888K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(2),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.226/RPR/2019
निर्धारण वर्ष / Assessment Year : 2014-15

The Income Tax Officer-1(2),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Mamraj & Sons
Bhatapara Road, Tah.-Tilda,
Raipur-493 225
PAN : AADFM8888K

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal &
Smt. Laxmi Sharma, AR

Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.01.2023

घोषणा की तारीख / Date of Pronouncement : 06.02.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned cross-appeals filed by the assessee and the revenue are directed against the order passed by the CIT(Appeals)-I, Raipur dated 06.08.2019, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 24.12.2016 for assessment year 2014-15.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. On the facts and circumstances of the case, the ld. CIT(A) has erred in sustaining the addition of Rs.23,09,619 by estimating profit of 2.9% on alleged bogus purchase of Rs. 7,96,42,000, without any basis and without considering the past history of 7.4% GP for the preceding year i.e., A.Y.13-14.

2. On the facts and circumstances of the case, the ld. CIT(A) has erred in sustaining the addition of Rs.1,00,000 is disallowing out of total expenses of freight and hamali expenses.

3. On the facts and circumstances of the case, the ld. CIT(A) has erred in sustaining the addition of Rs.1,00,000 is disallowing out of total expenses of custom milling charges.

4. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

On the other hand the revenue is aggrieved with the impugned order on the following grounds of appeal:

“1. Whether on the facts and in circumstances of the case the CIT(A) was justified in allowing substantial relief of Rs. 1,79,00,893/- by estimating the profit element enjoyed by the assessee on account of bogus purchases of Rs.7,96,42,050/- @ 2.90% as against 25% despite upholding the findings of bogus purchases

2. Whether on the facts of the case and in law, the CIT(A) was justified in allowing substantial relief of Rs.1,79,00,893/- to the assessee by merely relying on some judicial pronouncements which have been rendered on entirely different set of facts and are not at all applicable in the facts of the present case.

3. The order of Ld. CIT (A) is erroneous both in law and on facts.

4. Any other ground that may be adduced at the time of hearing.”

3. At the very outset of hearing of the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee submitted that as per instruction, he intends to not press the grounds of appeal No.(s) 2 to 4. Accordingly, as per concession of the Ld. AR, we dismiss the **Grounds of Appeal No.(s) 2 to 4** as not pressed.

4. Succinctly stated, the assessee firm which is engaged in the business of running of rice mill had e-filed its return of income on 14.11.2014 for the A.Y.2014-15, declaring an income of Rs.2,79,840/-. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s.143(2) of the Act.

5. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed to have purchased paddy/broken rice aggregating to an amount of Rs.7,96,42,050/- from the following six parties, as under:

S. No.	Name of the party	Total purchase
1.	M/s. Maa Sharda Process, Raipur	2,41,05,500/-
2.	M/s. Shri Krishna Processors, Raipur	2,29,21,500/-
3.	M/s. Shri Samleshwari Foods, Abhanpur	73,28,750/-
4.	M/s. Sanjeevni Agro Products, Raipur	1,24,60,000/-
5.	M/s. Shubh Laxmi Traders, Raipur	10,55,000/-
6.	M/s. Shri Tulsi Agro, Raipur	1,17,71,250/-
		7,96,42,050/-

As the assessee had failed to substantiate the authenticity of the aforesaid purchase transactions on the basis of clinching documentary evidence to the satisfaction of the A.O, therefore, the latter had in the totality of the facts of the case dubbed the same as bogus purchases. After rejecting the books of account of the assessee u/s.145(3) of the Act the A.O disallowed 25% of the value of the impugned purchases and after, inter alia, making an addition of Rs.1,99,10,512/- assessed the income of the assessee firm at Rs.2,03,90,550/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). After deliberating at length on the issue in hand in the backdrop of the contentions advanced by the assessee, the CIT(Appeals) scaled down the disallowance made by the A.O to 2.90% of the value of the impugned purchases i.e. [10% (base figure taken on an ad-hoc basis) (-) 7.10% (i.e. disclosed GP rate of the assessee firm)]. Accordingly, the CIT(Appeals) sustained an addition of Rs.23,09,619/- (out of total addition of Rs.1,99,10,512/- made by the A.O.).

7. Both the assessee and the revenue being aggrieved with the order of the CIT(Appeals) have carried the matter in appeal before us.

8. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

9. Controversy involved in the present appeal hinges around the solitary issue, i.e., quantification of the profit/income which the assessee would have made by purchasing the goods in question at a discounted value from the open/grey market.

10. Admittedly, it is a matter of fact borne from records that the assessee had failed to substantiate the authenticity of its claim of having

purchased the goods in question, viz. rice/broken rice/bran from the aforementioned six parties. In fact, the assessee had not assailed the dubbing of the impugned purchases in question as bogus/unsubstantiated purchases by the lower authorities. The only grievance of the assessee before us is that the CIT(Appeals) had exorbitantly sustained the addition @2.90% of the value of the impugned purchases. On the other hand, the revenue is aggrieved with the scaling down of the disallowance of 25% of the value of the impugned purchases made by the A.O to 2.09% by the CIT(Appeals).

11. On a careful perusal of the order of the A.O, we find that he had not given any cogent reason for working out the disallowance @25% of the value of the impugned bogus/unsubstantiated purchases. In fact, the only reason which can be gathered from a perusal of the assessment order is the reliance placed by the A.O on the order of the ITAT, Ahmedabad in the case of Vijay Proteins Ltd. (1996) 58 ITD 428 (Ahd.). Apart from that, we are also not impressed with the manner in which the CIT(Appeals) had scaled down the disallowance to 2.90%. We, say so, for the reason that the CIT(Appeals) had not given any basis or logic for adopting 10% as a base figure out of which the assessee's disclosed GP rate of 7.1% was reduced for arriving at the aforesaid figure of 2.90%. As the very basis adopted by CIT(Appeals) for scaling down the disallowance in the hands of the

assessee firm is not supported by any material, therefore, we are unable to persuade ourselves to concur with the same.

12. Ostensibly, the assessee had purchased the goods in question not from the aforementioned six parties but at a discounted value from the parties operating in open/grey market. Our indulgence in the present appeal has been sought by both assessee and the revenue to adjudicate the quantification of the profit which the assessee would have made by procuring the goods in question at a discounted value from open/grey market.

13. Considering the aforesaid facts, we are of the view that the addition in the hands of the assessee is liable to be restricted only to the extent of the profit which the assessee would have made by procuring the goods at a discounted value from the open/grey market, as against the inflated value at which the same had been booked on the basis of the bogus bills in its books of account. In so far the issue of quantification of profit which the assessee would have made by procuring the goods in question from the open/grey market, we find that the Hon'ble High Court of Bombay in the case of Pr. Commissioner of Income Tax-17 Vs. M/s. Mohhomad Haji Adam & Company, ITA No1004 of 2016, dated 11.02.2019, while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be

made to the extent of bringing the G.P rate of such purchases at the same rate of other genuine purchases. The Hon'ble High Court while concluding as hereinabove had observed as under:

"8. In the present case, as noted above, the assessee was a trader of brics. The A.O found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,62 1.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs."

It was, thus, observed by the Hon'ble High Court that the addition in respect of the purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing

the G.P. rate of such bogus purchases at the same rate as that of other genuine purchases. On the basis of the aforesaid observations of the Hon'ble High Court, we are of the considered view that on the same lines the profit made by the assessee in the case before us by procuring the goods at a discounted value from the open/grey market can safely be determined by bringing the G.P rate of such bogus purchases at the same rate as that of the other genuine purchases.

14. We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O, with a direction to him to restrict the addition in the hands of the assessee qua the impugned bogus/unverified purchases by bringing the GP rate of such bogus purchases at the same rate as that of the other genuine purchases. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

15. In the result, appeals of the assessee and revenue are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
DR. DIPAK P. RIPOTE
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 06th February, 2023

*****SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.