

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.7544/Mum/2019
(Assessment Year :2010-11)**

M/s. Max Realities LLP (formerly M/s. Max Realities Pvt. Ltd.,) Plot No.3 & 5, Balaji Business Park Opp. Mittal Industrial Estate M.V. Road, A.K. Road Andheri East Mumbai – 400 059	Vs.	DCIT, Central Circle-2 Thane 6 th Floor, Asharji Park Wagle Industrial Estate Mumbai – 400 604
PAN/GIR No. AAECM4100G		
(Appellant)	..	(Respondent)

**ITA No.161/Mum/2020
(Assessment Year :2010-11)**

DCIT, Central Circle-2 Thane 6 th Floor, Asharji Park Wagle Industrial Estate M`umbai – 400 604	Vs.	M/s. Max Realities LLP (formerly M/s. Max Realities Pvt. Ltd.,) Plot No.3 & 5, Balaji Business Park Opp. Mittal Industrial Estate M.V. Road, A.K. Road Andheri East Mumbai – 400 059
PAN/GIR No. AAECM4100G		
(Appellant)	..	(Respondent)

Assessee by	Shri Rushabh Mehta
Revenue by	Shri Tharian Oommen
Date of Hearing	11/08/2021
Date of Pronouncement	16/08/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

These cross appeals in ITA No.7544/Mum/2019 & 161/Mum/2020 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-11, Pune in appeal No.CIT(A)-11/ACIT Cen. Cir-2/Thane/542 & 753/2014-15 dated 31/10/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 25/03/2013 by the Id. Asstt. Commissioner of Income Tax, Central Circle-2, Thane (hereinafter referred to as Id. AO).

2. The only issue to be decided in these cross appeals is with regard to disallowance made on account of bogus purchases.

3. We have heard rival submissions and perused the materials available on record. We find that the assessee is a private limited company engaged in the business of building and development of project by the name of Bhoomi Mall at Plot No.9, Sector-15, Belapur, Navi Mumbai and had electronically filed its return of income for the A.Y.2010-11 on 08/09/2010 declaring total income of Rs.Nil and showing carry forward loss of Rs.32,30,652/-. The commencement certificate for the said project i.e. Bhoomi Mall was granted on 28/04/2006 by the Local Authority, Navi Mumbai Municipal Corporation, Navi Mumbai. The assessee is one of the entities of Gajara group. A search and seizure action u/s.132(1) of the Act was conducted in the case of Gajara Group on 19/02/2009. During the course of regular assessment proceedings for A.Y.2010-11, the assessee was asked to produce the entire books of accounts by the Id. AO which were duly produced and verified by the Id.

AO. The Id. AO observed that assessee had made certain purchases from certain dealers whose names appear to be tainted dealers in the website of sales tax department, Government of Maharashtra and accordingly, the said information was passed on by the Sales Tax department to DGIT (Investigation), Mumbai and Pune , which eventually was passed on to the Assessing Officer assessing the assessee. The Id. AO observed that assessee had made purchases from the tainted dealers as under:-

Sr. No.	Name of the parties	Amount
1	M/s. R.K.Enterprises	Rs.73,27,463/-
2	M/s. Bajarangi Steel and Metal Pvt. Ltd.,	Rs.84,21,794/-
3	M/s. Balaji Trading	Rs.38,88,708/-
	Total	Rs.1,98,37,965/-

3.1. The Id. AO issued notice u/s.133(6) of the Act on the address produced by the assessee to verify genuineness of the purchases made by the assessee. These notices were returned unserved. The Id. AO accordingly, concluded that these parties are non-existent and also based on the information received from the Sales Tax department that these parties are tainted dealers and are engaged in providing only accommodation bills to various authorities, he proceeded to disallow the entire purchases of Rs.1,98,37,965/- made from the aforesaid three parties, as non-genuine. However, the assessee claimed before the appellate proceedings that it had filed the copies of ledger accounts of the suppliers for the relevant period, copies of tax invoice which bear TIN of the dealers / suppliers, copies of delivery challans, copies of confirmation received from the dealers / suppliers and copies of bank statement evidencing the payments made to those suppliers by account payee

cheques before the Id. AO. It was also claimed that due to lack of sufficient opportunities to prove the genuineness of purchases, the quantitative details could not be furnished before the Id. AO. Accordingly, the quantitative details were furnished before the Id. CIT(A) by the assessee proving the fact that the materials purchased from the aforesaid suppliers were actually consumed by the assessee in various projects. Accordingly, it was claimed that the purchases made by the assessee were genuine. The assessee also pleaded that the suppliers are VAT defaulters and it is beyond the control of the assessee to produce them before the Id. AO. The assessee also submitted by furnishing the statement / affidavit received from Sales Tax department of Mr. Hanuman H Bishnoi, Director of Bajarangi Steel and Metal Pvt. Ltd., and affidavit of Mr. Mehul Darjee Proprietor of Balaji Trading to claim that they had obtained Sales Tax registration and carrying out business of trading of construction material. It was also claimed that affidavit / statement on oath of M/s. R.K. Enterprises was not provided to it. It was submitted that assessee had also offered total gross profit of 31.59% and net profit of 15.07% in the project and if the entire purchases amounting to Rs.1,98,37,965/- is disallowed, then the gross profit would raise to 71.1% and net profit would raise to 54.62% which is practically not possible to earn in the line of business operated by the assessee. The assessee requested the Id. CIT(A) that the profit element embedded in the value of such purchases may be brought to tax on reasonable basis. Accordingly, the Id. CIT(A) observed that if the value of bogus purchases of Rs.1,98,37,965/- is reduced from the cost of construction, then the gross profit rate of the assessee of the business becomes 94.69% which when compared with the GP percentage for F.Y.2011-12 to 2014-15 would be 55.13% thereby resulting in difference in GP rate of 39.56%. Accordingly, the Id. CIT(A) proceeded to make addition @39.56% of value of disputed

purchases of Rs.1,98,37,965/- and restricted the addition amount to 78,47,900/-. Against this order of the Id CIT(A), both revenue as well as assessee are in appeal before us.

3.2. We find that there is no dispute that the assessee had made purchases from tainted suppliers. We find that though these parties had filed an affidavit before the Sales Tax department that they are genuinely engaged in the business, the assessee herein could not prove the genuineness of purchases made from those parties with conclusive evidences. Hence, it could be safely concluded that assessee could have made purchases only from grey market in order to have savings from VAT and incidental profit element thereon. It would be just and fair to bring to tax only the profit element embedded in the value of such disputed purchases in as much as the Id. CIT(A) accepted the fact that the goods made by the assessee from the aforesaid suppliers had been actually consumed by it in the projects. For the purpose of determination of profit element embedded in the value of such disputed purchases, since the assessee had made purchases from the grey market, we hold that it could have saved in VAT portion and incidental profit element thereon making cash purchases. Hence, we direct the Id. AO to determine the profit element as under:-

Sr. No.	Name of the supplier	Amount of Purchase	VAT Rate as stated by the Id AR	Incidental Profit Element	Total Profit Percentage	Amount to be added
1	M/s. R.K.Enterprises	Rs.73,27,463/-	12.5%	1%	13.5%	9,89,207/-
2	M/s. Bajarangi Steel	Rs.84,21,794/-	4%	1%	5%	4,21,089/-

	and Metal Pvt. Ltd.,					
3	M/s. Balaji Trading	Rs.38,88,708/-	4%	1%	5%	1,94,435/-

3.3. The Id. AO is directed to determine the profit element embedded in the value of disputed purchases in the aforesaid manner in the total sum of Rs 16,04,733/-. Accordingly, the grounds raised by the assessee as well as by the Revenue are partly allowed.

4. In the result, appeal of assessee is allowed and appeal of revenue is dismissed.

Order pronounced on 16/08/2021 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 16/08/2021

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