

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4499/M/2018
Assessment Year: 2009-10**

M/s. Nelco Steel India, Shri Suresh Amarlal Mehta Prop. M/s. Nelco Steel India, 29, 2 nd Floor, Habib Bldg, 2 nd Parjrapole Lane, C.P. Tank, Mumbai- 400004 PAN: ADBPM7463M	Vs.	Income Tax Officer 19(3)(4), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Ms. Kavita P. Kaushik, D.R.

Date of Hearing : 16.10.2019
Date of Pronouncement : 17.12.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 16.04.2010 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. At the time of hearing, neither the assessee nor his authorised representative was present to attend the hearing. We are therefore deciding the appeal of the assessee after hearing the Ld. D.R. and considering the merits of the case.

3. The only issue raised by the assessee is against the confirmation of order of AO by Ld. CIT(A) upholding the addition made of Rs.11,13,225/- on account of bogus purchases.

4. The facts in brief are that the assessee filed return of income on 29.07.2009 declaring income of Rs.7,61,270/- which was processed under section 143(1) of the Act. Thereafter, the assessment was framed vide order dated 26.12.2011 determining the income of Rs.8,22,030/-. Thereafter, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 after the AO received information from DGIT that assessee has made bogus purchases from three parties aggregating to Rs.89,05,804/-. During the course of assessment proceedings, the assessee was required by the AO to file various evidences to prove the genuineness of the purchases. The assessee filed copies of ledger accounts, bills, vouchers, payment details, however failed to file the documents such as delivery challan, lorry receipt, transportation details etc. Finally, the AO treated the purchases as bogus and applied a rate of 12.5% to tax the profits on the said bogus purchases by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 and thus made an addition of Rs.11,13,225/-. It is pertinent to state that assessee is dealing in ferrous and non ferrous metal.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by holding that where the sales were not disputed then course available before AO is to apply GP rate in order to tax the savings made by the assessee by purchasing the goods from the grey market and accordingly justified the order of

AO in the light of Hon'ble Gujarat High Court decision in the case of CIT vs. Simit P. Sheth (supra).

6. After hearing the Ld. D.R. and perusing the material on record, we observe that the assessee is undoubtedly a dealer in ferrous and non ferrous metals. There is no dispute that the income of the assessee is to be assessed on percentage basis so far as the bogus purchases are concerned. Now the only dispute before us is whether the 12.5% as upheld by Ld. CIT(A) is correct or not. In the case of ferrous and non ferrous items, the GP rate ranges from 2% to 4% and VAT rate is 4%. Therefore, estimating the income on the bogus purchases by applying 12.5% on the bogus purchases is excessive and unreasonable. In our opinion, the GP rate has to be applied having regard to the GP rate in the trade of the assessee and the likely savings which the assessee may have made by purchasing the goods from the grey market. Accordingly, in the present facts and circumstances it would be reasonable if a rate of 4% is applied to estimate the profit on bogus purchases. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to apply a rate of 4% of bogus purchases.

7. In result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17.12.2019.

Sd/-
(C.N. Prasad)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 17.12.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.