



4IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA no.3100/Mum./2019
(Assessment Year : 2012-13)

ITA no.3101/Mum./2019
(Assessment Year : 2010-11)

ITA no.3102/Mum./2019
(Assessment Year : 2009-10)

Income Tax Officer
Ward-19(2)(4), Mumbai

..... Appellant

v/s

M/s. Neelam Metal Industries
G-75, Sarvodaya Nagar
1st Panjrapole Nagar
Mumbai 400 004
PAN - AACFN9172G

..... Respondent

Assessee by : None
Revenue by : Shri Akhtar H. Ansari

Date of Hearing - 15.09.2020

Date of Order - 16.09.2020

ORDER

Captioned appeals have been filed by the Revenue challenging the orders dated 25th January 2019, passed by the learned Commissioner (Appeals)-3, Mumbai, for the assessment year 2009-10, 2010-11 and 2012-13.

2. In these appeals, the Revenue is aggrieved that the learned Commissioner (Appeals) has by respective years' order reduced the addition for bogus purchase.

<i>Assessment Year</i>	<i>Purchases by A.O. @ 25%</i>
<i>2009-10</i>	<i>₹ 68,232</i>
<i>2010-11</i>	<i>₹ 5,00,011</i>
<i>2012-13</i>	<i>₹ 50,548</i>

3. The assessee in this case is engaged in the business of manufacturer of stainless steel utensils. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The Assessing Officer made 25% addition of the bogus purchase.

4. Upon assessee's appeal, the learned CIT(A) has noted that the sales has not been doubted. Accordingly, placing reliance upon several case laws and upon the facts of the case, he sustained 12.5% disallowance out of the bogus purchases. Against the above order, Revenue is in appeal before the Tribunal.

5. I have heard the learned Departmental Representative and perused the record. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble Jurisdictional High Court's decision in the case of Nikunj Eximp Enterprises (in Writ Petition no.2860, order dated 18th June 2014). In this case, the Hon'ble Jurisdictional High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However the facts of the present case indicate that assessee has made purchase from the grey market.

Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation, in our considered opinion, on the facts and circumstances of the case, 12.5% disallowance out of the bogus purchases done by the learned CIT(A) meets the ends of justice. Accordingly, I uphold the order of the learned CIT(A).

6. Before parting, I may add that if the assessee has filed a cross appeal or cross objection and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

7. In the result, this appeal filed by the revenue stands dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 16.09.2020

**Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 16.09.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai