

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3834/MUM/2019
Assessment Year: 2009-10**

M/s Nelco Steel,
56/64, Office No. 2, Nanubhai
Desai Road,
Mumbai-400 004.

PAN No. AAPPS 2838 H

Appellant

Vs. Income Tax Officer-19(2)(4),
Matru Mandir, Tardeo Road,
Mumbai-400 007.

Respondent

Assessee by : None
Revenue by : Mr. Sanjay J. Sethi, DR

Date of Hearing : 02/03/2021
Date of pronouncement : 19/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-52, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 22.10.2020, 11.01.2021 and 02.03.2021, neither the assessee nor its authorized representative appeared before the Bench on the above dates. As there is non-compliance by the assessee, we are proceeding to dispose off this appeal after examining the materials available on record and hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the assessee read as under :

1. (a) On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of the A.O and approving the addition calculated by the A.O on alleged bogus purchases without appreciating the facts that the opinion of the A.O is based on merely presumptions and sub conjectures and not on any material evidences corroborating the purchases when it is an accepted fact that material evidences super cedes all presumptions.

(b) The CIT (A) erred in confirming the addition without appreciating the understated vital facts that the purchases are duly supported with necessary documentary evidences including quantitative tally of purchases and sales and there appears no sign of it being bogus and the learned officer accepted the books of accounts.

(c) The Id. CIT(A) has erred in holding the impugned purchases to be bogus, in spite of voluminous evidences on record simply on the basis that the current addresses of vendors were not provided and the vendors were not produced before the Respondent.

(d) The Appellant prays that the addition/ disallowance of entire Rs.12,95,807/- made in respect of Alleged purchases be deleted."

2. On the facts and circumstances of the case and in law, the CIT (A), erred in dismissing the ground for the appellant's plea of withdrawal of initiation of penalty proceedings u/s 271(1) (c).

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2009-10 on 07.09.2009 declaring total income of Rs.7,17,370/-. The nature of business of the assessee is trading in ferrous and non-ferrous metals. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills of Rs.1,03,66,459/- (Rs.55,17,298/- from

NB Enterprises ; Rs.9,35,725/- from Kamlesh Trading Co. and Rs.39,13,436/- from Paras Enterprises, the Assessing Officer (AO) issued notice u/s 148 for reopening the assessment. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the disputed parties in the address filed by the assessee. The purpose was to verify the genuineness of the transaction. However, those notices were returned unserved by the postal authorities with the remarks 'not known' or 'no such address', 'left' etc. Therefore, the AO asked the assessee to produce those parties before him with their books of accounts. However, the assessee failed to do so. It is recorded by the AO that the assessee filed before him (i) copy of ledger accounts along with copy of purchase invoices of the specified parties, (ii) copy of bank statements evidencing payments made through proper banking channels by issuing account payee cheques in respect of all the parties, highlighting the relevant entries, (iii) chart showing the details of purchases of the alleged parties and (iv) details in respect of purchases from the abovementioned parties and the corresponding sales.

However, the AO was not convinced with the details filed by the assessee on the ground that (i) the Sales Tax Department has conducted independent inquiries in each of the 'non-genuine' parties and conclusively proved that these parties are engaged in the business of providing accommodation entries only, (ii) the assessee was asked to produce those 'non-genuine dealers' for examination, but the assessee failed to do so, (iii) the assessee could not file vital documents such as delivery challans, transport receipts, octroi receipts for payment of octroi duty, receipt of weighbridge for weighing of goods, excise gate pass, goods inward register.

Therefore, considering the above facts, the AO held that an addition of account of a higher margin of profit would be fair and equitable. Therefore, following the judgment of the Hon'ble Gujarat High Court in the case of *CIT v. Simit P. Sheth* (2013) 356 ITR 451, the AO estimated the profit @ 12.5% on the disputed purchases of Rs.1,03,66,459/- and accordingly made an addition of Rs.12,95,807/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 30.04.2019, the Ld. CIT(A) held that :

“5.7 From the aforesaid cited decision of Gujarat High Court in the case of *Simit P Sheth* (supra), it can be observed that the appropriate GP percentage for computing the unaccounted profits from the purchases from the alleged hawala/bogus suppliers should factor the savings of taxes etc. due to the unaccounted sales and the GP already shown in the regular books. It is observed that the ratio of the decision of the Gujarat High Court in the case of *Simit P Sheth* (supra) cannot be squarely applied to the facts of the case of our assessee since the sales tax rate prevalent in Gujarat was 10% as against only 4% applicable in Maharashtra for the relevant period. However, the facts of the case of the assessee are somewhat similar to that of *Ratnagiri Steels* (supra). In the case of *Ratnagiri Steels*(supra), the Hon'ble ITAT after considering the healthy GP shown of 5.45%, directed the AO to allow set off of the book GP against the said rate of 12.5% while computing the additional profits from the purchases from the alleged hawala/bogus suppliers. In the instant case, it is observed that the assessee has shown a GP of 3.32%. Therefore, as was done by the Hon'ble ITAT, Mumbai in the case of *Ratnagiri Steel* (supra), it will be appropriate if rate of 12.5% is applied for computing the unaccounted profits related to purchases from the hawala/bogus suppliers and against this set off of the GP shown in the regular books in respect of the purchases from the hawala/bogus suppliers is allowed. Accordingly, the AO is directed to compute the additional profits in

respect of the purchases from the alleged hawala/bogus suppliers by adopting rate of 12.5%. However the AO will allow a set off of the GP already shown by the assessee in the regular books in respect of the purchases from the said alleged hawala/bogus suppliers.”

5. Before us, the Ld. DR explains that the Ld. CIT(A), considering the facts and circumstances of the case, has rightly directed the AO to compute the additional profits in respect of the purchases from the alleged hawala/bogus suppliers by adopting rate of 12.5% and to allow a set off of the GP already shown by the assessee in regular course of accounts. Thus it is submitted by him that the order passed by the Ld. CIT(A) be affirmed.

6. We have heard the Ld. DR and perused the relevant materials on record. As mentioned earlier, in the instant case the notice u/s 133(6) issued by the AO to the concerned parties in the address given by the assessee were returned un-served by the postal authorities with the remarks ‘not known’ or ‘no such address’ or ‘left’. Thereafter, the AO asked the assessee to produce those parties before him to verify the genuineness of the transactions. However, the assessee failed to do so. It is recorded by the AO, that the assessee filed before him (i) copy of ledger accounts along with copy of purchase invoices of the specified parties, (ii) copy of bank statements evidencing payments made through proper banking channels by issuing account payee cheques in respect of all the parties, highlighting the relevant entries, (iii) chart showing the details of purchases of the alleged parties and (iv) details in respect of purchases from the abovementioned parties and the corresponding sales.

However, as recorded by the AO, the assessee failed to file before him documents such as delivery challans, transport receipts, octroi receipts for

payment of octroi duty, receipt of weighbridge for weighing of goods, excise gate pass, goods inward register.

Considering the above facts and circumstances of the case and keeping in mind the nature of business of the assessee which is trading in ferrous and non-ferrous metals, we are of the considered view that estimating the profit @ 6% on the disputed purchases would be proper. Therefore, we set aside the order of the Ld. CIT(A) and direct the AO to estimate the profit @ 6% on the disputed purchases of Rs.1,03,66,459/- and bring to tax Rs.6,21,990/- only.

7. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 19/03/2021.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 19/03/2021
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai