

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 226/Mum/2023  
(A.Y.2009-10)**

Neelam Appliances Ltd. G-75, Sarvodaya Nagar, 1 <sup>st</sup> Panjrapole Lane, CP Tank, Mumbai 400 004	Vs.	ITO-5(2)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCN9540N		
Appellant	..	Respondent

Appellant by :	Ms. Mona Makwana
Respondent by :	C.T. Mathews

Date of Hearing	23.03.2023
Date of Pronouncement	12.04.2023

**आदेश / ORDER**

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 16.12.2022 for A.Y. 2009-10. The assessee has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law. The CIT (A), hereinafter referred to as the Ld AO has erred in law in assessing Total Income of the Appellant at Rs 26,22,520/- instead of Rs. 17,37,470/- as returned by the Appellant. The returned Income of the Appellant may please be accepted*
- 2. On the facts and in the circumstances of the case and in law. The CIT (A), hereinafter referred to as the Ld. AO has erred in law in assessing in making addition of G.P 12.5% of Hawala Parties, which results in addition of Rs 8,85,050/- The said addition may please be deleted*
- 3. On the facts and in the circumstances of the case, the said addition made by the Appellant for Rs. 8,85,050/- is without application of mind as the Id. AO has relied on the Sales Tax List rather than applying his mind, considering the various submissions made by the Appellant such as*

*Bank statements, stock details and conducting any independent investigation. The said addition may please be deleted*

4. *On the facts and in the circumstances of the case and in law, the assessment order passed by the Id. AO is in violation of the principles of natural justice as no opportunity to cross examine the said parties was given inspite of specific request made by the Appellant. The said order may please be treated as Null and Void.”*

2. Fact in brief is that return of income declaring total income of Rs.17,37,470/- was filed on 30.09.2009. The case of the assessee company was reopened by issuing notice u/s 148 of the Act dated 03.03.2015 on the basis of enquiries carried out by the Sales Tax Department, Mumbai that assessee had obtained accommodation entries without delivery of goods from the following concerns:-

Sr. No.	Name of the Hawala entity as per list	PAN	Amount (in Rs.)
1.	Raj Traders	AUPD9848G	19,10,064
2.	Shakti Trading Cop	AIOPG8087B	23,09,374
3.	Khushi Impex	AKWPB9613N	28,60,967
		Total (Rs.)	70,80,405

During the course of assessment the A.O issued notices u/s 133(6) to all the aforesaid parties but the notices were return unserved. The assessee was also asked to furnish the documentary evidences in support of delivery challan of material like delivery challan, lorry receipt etc. The A.O stated that assessee has not produced these evidences in support of the purchases made from these bogus parties. Therefore, the A.O concluded that aforesaid parties were only indulged in issuing bogus bills and no actual material/goods were supplied by them. Therefore, the A.O held that assessee was indulged in purchasing goods from the grey market and obtained the bogus bills from such parties. Accordingly, the AO has taxed the gross profit embedded in these transactions @ 12.5% of the total purchases of Rs.70,80,405/- worked out to be Rs.8,85,050/- and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. During the course of assessment on the basis of information from Sale Tax Department that the aforesaid parties were indulged in issuing bogus bills without supplying of any material, the assessing officer treated 12.5% of the purchases of Rs.8,85,050/- made by the assessee from such parties as bogus and added to the total income of the assessee. During the course of assessment assessee has furnished copies of purchase invoices, ledger copies of the parties and copies of bank statement highlighting the payment made etc. The assessee had also submitted names, address, PAN details of the aforesaid parties. The A.O has mentioned in his finding at para 6.3 of the assessment order that assessee had purchased goods from other supplier without bills in the grey market and has been benefitted by the extra margin of purchasing goods from the grey market. The assessing officer has not doubted the corresponding sales against the said purchases, therefore, only the profit margin embedded in such transaction could be taxed. In such type of transaction, the assessee purchases the goods from the grey market by making gross payment in cash without bills. The bills are obtained from the third parties and after receipt of cheques such parties adjust the same by providing cash after deducting their commission. Taking all these facts the material purchased in the grey market are always cheaper than the material sourced from the genuine dealer. After taking into consideration that assessee has brought the material from the grey market at cheaper rate I consider that it is fair and reasonable to restrict the disallowance at 5% of the impugned purchases. Therefore, the A.O is directed to restrict the disallowance to the extent of 5% of the impugned purchases. Accordingly, all the ground of appeal are allowed.

5. In the result, the appeal of the assessee are allowed.

Order pronounced in the open court on 12.04.2023

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 12.04.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.