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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 05.12.2023

+ **ITA 686/2023**

PR COMMISSIONER OF INCOME
TAX - DELHI 04

..... Appellant

Through: Mr Sanjeev Menon, Standing Counsel
for Mr Zoheb Hossain, Sr Standing
Counsel.

versus

NIKON SYSTEMS PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY)2015-16.
2. Via the instant appeal, the appellant/revenue seeks to assail the order dated 15.05.2020 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The only issue which arose before the statutory authorities, even according to Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the appellant/revenue, concerns the addition made by the Assessing Officer (AO) with regard to loss claimed by the



respondent/assessee due to goods being damaged/destroyed by fire.

4. The record shows that the respondent/assessee, during the relevant period, was engaged in manufacturing and trading of goods, as also export of home furnishing articles, mobile phones, electronics and electric goods.

5. It appears that the fire occurred on 05.12.2014; which, according to the respondent/assessee, entailed loss of trading goods. On account of the said loss, the respondent/assessee had claimed a deduction of Rs.5,24,06,053/-.

6. Against this backdrop, the respondent/assessee had filed a return for the AY in issue on 31.10.2015. In the return, the respondent/assessee declared its income as 'NIL' and carried forward losses amounting to Rs.2,90,07,689/-, while the income in consonance with Section 115JB of the Income Tax Act, 1961 [in short, "Act"] was pegged at Rs.1,90,35,023/-.

6. The record discloses that the AO issued notice dated 12.04.2016 to the respondent/assessee under Section 143(2) of the Act.

6.1. The said notice was followed by a questionnaire along with a notice dated 16.08.2017 issued under Section 142(1) of the Act.

6.2. Concededly, the authorized representative of the respondent/assessee attended the hearings and furnished the requisite details and information, pursuant to which, the AO framed an assessment order on 28.12.2017 under Section 143(3) of the Act.

7. As indicated above, Rs.5,24,06,053/- was added to the income of the respondent/assessee on the ground that it was a contingent loss, since the claim was being processed by the concerned insurance company [i.e., National Insurance Co. Limited].



8. In an appeal preferred by the respondent/assessee, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] confirmed the addition made by the AO.

8.1. Significantly, the CIT(A) observed that no evidence had been submitted by the respondent/assessee as regards destruction of goods on account of fire.

8.2. In this context, the CIT(A) also alluded to the fact that no FIR had been filed. The CIT(A) also buttressed its conclusion by noting that the concerned insurance company had not finalised the claim preferred by the respondent/assessee.

9. Given this backdrop, the respondent/assessee preferred an appeal with the Tribunal. The Tribunal, as noted above, reversed the view taken by the CIT(A) and AO.

10. It is relevant to note that the Tribunal adverted to the assertions made on behalf of the respondent/assessee that the incident of fire took place on 05.12.2014 and an FIR was lodged on 15.12.2014.

11. Furthermore, the Tribunal also had regard to the judgement relied of the respondent/assessee that the destruction of stock-in-trade resulted a revenue loss. [See *Motamal Jethamal v. Commissioner of Income-Tax*, (1947) 15 ITR 155.]

12. Mr Menon, in support of the appeal, has relied upon the order passed by the CIT(A) that this was a case where no evidence was produced concerning the fire incident; a fact which would have been demonstrable had correspondence, if any, exchanged with the concerned insurance company been placed on record.



13. Furthermore, according to Mr Menon, the loss, if any, that had occurred, was a contingent loss.

14. We have carefully perused the record. According to us, the stand taken by Mr Menon is not in consonance with the record.

15. As indicated hereinabove, notices were issued to the respondent/assessee under Section 143(2) and 142(1) of the Act. The notice issued under Section 142(1) of the Act was accompanied by a questionnaire.

16. The appellant/revenue, for some strange reason, has not placed on record either the notice or the questionnaire to indicate whether a question was raised with regard to the fire incident.

17. Furthermore, the record also shows, something which is a part of the assessment order, that at the hearing held by the AO on 06.11.2017, the respondent/assessee was called upon to show cause the statutory provision under which it had claimed loss due to fire and why a loss claimed should not be disallowed.

18. The said hearing was followed by a final show cause notice, which was issued on 21.11.2017, whereby hearing was fixed by the AO on 27.11.2017.

19. Admittedly, the assessee filed a reply dated 27.11.2017 wherein the following was asserted:

“The assessee company stocks have been insured against Fire from national Insurance Co. Ltd.

The entire loss of stock worth Rs. 5.25 Cr. Was shown as extra ordinary item/ Exceptional item in Statement of Profit and Loss.

The assessee company is vigorously following the insurance company for recouping the losses. We enclosed the following correspondence made with the insurance company : -

Letter dated 26.06.2017 written by the assessee to the Chairman and Managing Director of National Insurance Co. Ltd complaining the Divisional Office not settling the claim.



Letter dated 27.07.2017 written by the assessee company to the IRDS complaining the National Insurance Co. Ltd. Insurance claim as and when received from insurance company will be offered for tax when received in due course.

The loss is in course of business thought exceptional in nature.

Otherwise also the Closing Stock is taken as per physical stock taking as at the year end, which is a general and regular practice for trade as a whole and for the company assessee in particular.

The company assessee is required to follow General Accounting principles.”

20. Besides, the record also discloses, something which is not disputed by Mr Menon, that a notice under Section 133(6) of the Act was issued to the concerned insurance company, which had responded via reply dated 01.11.2017 indicating that the claim was “under process”.

21. As would be evident from the record, the AO did not, at any point in time, raise a doubt as to the occurrence of the fire incident. The doubt which the AO entertained was whether the loss constituted an ascertained liability or a contingent loss.

22. The insurance company also, in its reply to the notice issued under Section 133(6) of the Act (which was given nearly three years after the fire incident), did not raise the concern that the CIT(A) raised in his order i.e., that no evidence was produced with regard to the occurrence of fire.

22.1. Mr Menon has picked this part of the order to propound a submission, which, according to us, on a correct appreciation of the record, is clearly not seem tenable.

23. It appears that the CIT(A) entertained a doubt only because the claim for ascertaining the loss was being processed by the concerned insurance company. The CIT(A)’s assertion that the respondent/assessee had not seriously pursued the insurance claim is belied by the correspondence



adverted to in the assessment order; a reference to which has been made hereinabove.

24. The record also shows that the respondent/assessee, in our view, quite correctly, submitted that if and when he receives any sum from the concerned insurance company, it would be offered to tax under Section 41(1) of the Act.

25. The plea raised by Mr Menon before us is also not sustainable for another reason, which is that in the questions proposed in the appeal, nothing of this kind has been indicated.

25.1. The proposed questions veer around the following two aspects:

(i) First, whether the loss incurred by the respondent/assessee due to fire was an ascertained liability; and

(ii) Second, whether the respondent/assessee was entitled to claim the entire amount although the claim was not settled by the concerned insurance company and therefore, the amount received would be taxable under Section 41(1) of the Act.

25.2. None of the proposed questions were directed towards the fire incident or to that issue had not been decided.

25.3. Furthermore, a perusal of the impugned order passed by the Tribunal discloses that the departmental representative did not make any submission in that regard.

26. Given this position, we are of the view that since the findings of fact have been returned by the Tribunal that what was destroyed in the fire were goods in which the respondent/assessee was trading, the loss suffered was a revenue loss and hence deductible.



27. The Tribunal, therefore, came to a correct conclusion that the addition made by the AO was not sustainable.

28. In our view, no substantial question of law arises for our consideration. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 5, 2023/pmc