

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER
AND
SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.883(Bang) 2013
(Assessment year : 2009-10)**

The Income Tax Officer,
Ward-5(3), VI Floor,
Bangalore-560 027

Appellant

Vs

Sri Kamlesh Shantilal Oswal Jain,
Prop: MK Trading,
No.10 ES Lane, Chickpet Cross,
Bangalore-560 053
PAN No.ADUPJ5588R

Respondent

**Revenue by : Smt. Praveena, Addl.CIT
Assessee by : Shri L.Bharath, CA**

**Date of hearing : 11-03-2016
Date of pronouncement : 18-03-2016**

ORDER

PER SHRI NARENDRA KUMAR CHOUDHRY, JM:

This appeal by the revenue is directed against the order dated 05-03-2013 of CIT(A)-II, Bangalore for the assessment year : 2009-10.

2. Briefly the facts of the case are as under;

2.1 The assessee is a dealer in textiles and is the Proprietor of M/s M K Trading had filed his return of income for the assessment year : 2009-10 on 30-09-2009 declaring total income as 'NIL'. The total income declared by the assessee

includes loss from business, house property and income from other sources. The said return of income was processed u/s 143(1) of the IT Act, 1961. Subsequently, the case was selected for scrutiny. Notices u/s 143(2) and 142(1) were issued and the assessee through its representative filed copies of the 3CD report along with accounts, expenditure schedules, confirmation in respect of creditors and some evidences for the occurrence of fire accident in the form of photographs, Police Mahajar, fire report, application to the Insurance authorities etc. The assessee claimed disallowances of expenditure qua loss of stock due to fire accident. The learned AO perused the P&L account which showed an amount of Rs.44.00 lakhs credited to the trading account (reduced from purchases account) on account of loss of stock due to fire. The same amount of Rs.44.00 lakhs has been balanced with a debit entry in the P&L account as indirect expenditure on account of loss due to fire accident. The learned AO after examining the documents filed by the assessee such as Police Mahajar and the fire report, found the place of fire accident at No.25/79, shop 4,5 & 6 ES lane, Renukha Building Chickpet Cross, Bangalore-53, but the original address of the Assessee's business premises is No.10,1st cross, ES lane,

Shankar market, Chickpet cross, Bangalore-560 053. The AO also confronted the explanation given by the learned AR of the assessee and the reply of the Assessee is as under;

“In order to carry out certain repair and renovation work at his original place of business, the assessee had to temporarily shift the goods to another godown situated at No.4,5& 6, building no.25/7, Renukha Building, AM Lane, Chickpet Cross, Bangalore-560 053. However, the assessee has not intimated the Insurance authorities regarding such a temporary change in the location of the stock. In the interim period, there was fire at the godown pursuant to which the assessee had to incur huge stock loss. Copies of photographs evidencing stock loss further action taken to inform the fire authorities immediately on the happening of the incident. Copy of the insurance premium receipt paid to M/s United India Insurance Co.Ltd has also been attached for kind reference....”.

2.2 The Ld AO observed that as the evidence furnished by the assessee satisfactorily proves the occurrence of fire took place on 06-04-2008, but till the date of passing the assessment order, Assessee’s claim of insurance had not been cleared which gave room for the element of doubt to the AO whether the goods gutted in fire belongs to M/s M.K.Trading and also about the

valuation of stock arrived. The AO in order to verify the genuineness of the valuation asked the assessee to furnish monthly purchases and sales as per his accounts and also monthly VAT-100 returns filed before the Sales Tax authorities. Pursuant to the above, the assessee filed month wise sales and purchases, but failed to furnish copies of VAT returns. The explanation offered by the assessee that the VAT returns remained with the sales tax consultant who is presently absconding was not acceptable to the AO. The AO addressed a letter to the Asst. Commissioner, Commercial Taxes and copies of VAT-100 returns were obtained for the months of April 2008 to March 2009 thereafter, the comparative study of the purchases as per the books of accounts and the purchases as per the VAT returns have been prepared and came to the conclusion that the assessee had made jugglery in the accounts in order to adjust the loss already claimed to manipulate the situation and to adjust the purchases to the actual closing stock purchases to the extent of Rs.45,56,822/- has been introduced from the month of March. Further, by decreasing the sales the assessee has tried to suppress sales to the extent of Rs.9,75,951/- .

2.3 The Learned AO also found from the records that there was adjustment of accounts at all stages and the purchases have been inflated to the extent of Rs.13,87,216/- as the same reflects from Table-I drawn by the AO in the Assessment order and the closing stock has also been shown lesser to the extent of Rs.14,98,122/-. Further, the learned AO found that total of all these adjustments were around Rs.40.00 lakhs and balance of Rs.4.00 lakhs loss claimed is also some manipulation of accounts.

2.4 Finally, the learned AO vide analyzing and considering the facts and circumstances of the case, came to the conclusion that the assessee has manipulated the accounts in order to claim expenditure on account of loss of stock due to fire. There is no evidence about the condition of the goods and it is evident from the accounts that the goods gutted in fire was out of opening stock or the purchase made in the first five days of the April month. The AO also held that the goods gutted appears to be some condemned goods and furniture or else unaccounted stock but not out of the accounted goods. In the said

circumstances, the claim of expenditure on loss of stock due to fire was disallowed by the learned AO.

2.4 Aggrieved by the order of the learned AO the assessee preferred appeal before the learned CIT(A).

2.5 Before the learned CIT(A) the assessee contended the same, as contended before the learned AO. However, some new facts were introduced such as that the assessee had intimated the Commercial tax department about the change of business premises however the assessee remained silent on whether compensation was received from the Insurance Company or not.

2.6 The Learned CIT(A) also called for remand report dated 08-01-2013 by which the AO had stated that the assessee has not informed the Insurance Company about the change of address and the assessee has only super imposed the name board on the fire stricken premises to misled the authorities. Even otherwise, failed to establish link between the fire and the stock and the fire accident had only be made a pretext to present a negative picture to the department. As no correct valuation was made on the alleged loss of stock and that there is no reason for allowing loss as an expenditure.

2.7 The learned CIT(A) considered the learned AR's submissions and also perused the assessment order, remand report etc. The Assessee's contention that the VAT Act permits rectification of mistakes if any, therein with the annual VAT returns filed inform no.115 were valid in law. As the assessee has filed VAT 115 and the auditors relied upon the same, hence there was no manipulation of accounts for the period April 2008 to March 2009, as the fire took place on 05-04-2008. Learned CIT(A) also considered that the assessee had intimated the change of address of the godown to the Commercial Tax Department, a copy of which has been furnished at the time of appeal before CIT(A) only.

Finally, learned CIT(A) on perusal of all the details and evidences of the assessee came to the conclusion that the assessee has furnished closing stock of each and every items burnt in the fire, the balance available goods retrieved etc. and the assessee has actually suffered loss due to fire and the claim of Rs.44.00 lakhs due to loss in the value of stock lost is genuine and had filed a case for the claim of Rs.44.00 lakhs against the insurance company before the consumer court at

Bangalore. On the aforesaid observation, the learned CIT(A) allowed the appeal of the assessee.

- 3.** Aggrieved by the order of the learned CIT(A) the revenue is in appeal before us, raising the following grounds;

“1. The order of the ld.CIT (A) is clearly opposed to law as far as the findings are perverse, contrary to he facts and circumstances of the case, and hence not sustainable.

2. The ld.CIT(A) has erred in deleting an addition of Rs.44.00 lakhs.

3. The ld.CIT(A) has erred in relying on the evidence submitted by the assessee in deleting the addition of Rs.44.00 lakhs made by the AO on account of loss in terms of the value of stock lost in fire which was held by AO to be not genuine.

4. The ld.CIT(A) has not appreciated the fact of investigation done by the AO to prove the non-genuineness of stock of Rs.44.00 lakhs due to fire as claimed by the assessee”.

- 4.** The learned DR forcefully argued before us that the order of the learned CIT(A) is clearly opposed to law and the findings are perverse, contrary to the facts and circumstances of the

case, as the learned CIT(A) has erred in deleting the addition of Rs.44.00 lakhs. Learned DR also drawn our attention to the orders passed by the authorities below and submitted that the learned CIT(A) has totally ignored the conclusion drawn by the learned AO, the AO held that the claim of assessee to be not genuine and further the learned CIT(A) has not appreciative of the facts of investigation done by the AO to prove non-genuineness of loss of stock of Rs.44.00 lakhs due to fire accident as claimed by the assessee.

5. On the contrary, learned AR of the assessee also drawn our attention to the judgment of the following case laws;

1. CIT Vs Relaxo Footwears Ltd., 2009 TIOL 660-HC-DEL-IT
2. Motamal Jethumal Vs CIT s 15 ITR 155

By referring the aforesaid judgment and also the orders passed by the authorities below, tried to establish that its case is genuine, because the fire actually taken place in the premises which belonged to the assessee. The assessee has also filed the

revised return of VAT under VAT no.115 therefore; the appeal of the revenue is liable to be dismissed.

We have considered the facts and circumstances of the case and also analyzed the arguments advanced by the rival parties and specifically the orders passed by the authorities below. In crux, learned AO while disallowing the claim of the assessee concluded that the fire has taken place in a different premises and the assessee has failed to co-relate with the opening stock or purchases made and also found that some condemned goods and furniture unaccounted stock, but not out of the accounted goods. Further held that the claim of expenditure on account of fire accident is only manipulation and does not belongs to accounted stock and finally held that the claim of the assessee is not genuine, but a manipulated one.

Learned CIT(A) set aside the order of the AO basically on two points which according to our minds were the basis of passing of the order. First the letter addressed to the Asst. Commissioner of Commercial Taxes, the contents of which is reproduced below and the second one with regard to filing of

claim under Consumer Protection Act, by the assessee for claiming Rs.44.00 lakhs against United India Insurance Co.Ltd.

M.K.TRADING
Wholesale cloth merchants & Commission Agents
Specialists in Dress materials Fabrics
No.10, 1st Floor, E.S.Lane Chickpet Cross, Bangalore-560 053

26-12-2007

To
The ACCTO
LVO OO Gandhinagar,
Bangalore

Dear Sir,

Sub: Change of address (Tin:29560091851)

With reference to the above, we would like to bring kind notice, the above said firm M.K.Trading business premises shifted to New address Shop NO.4,5 & 6 building, No.25/79, Renukha Building, A.M.Lane, Chickpet, Bangalore. Kindly update to your records in future official correspondence. Kindly acknowledge the same.

Place: Bangalore
faithfully,

Yours

(M.K.Trading)
Sd/-
Proprietor

In our opinion, the communication received from the Insurance company addressed to the ITO, Ward-5(3), is also important and the same is reproduced below;

**UNITED INDIA INSURANCE COMPANY LIMITED
REGIONAL OFFICE, BANGALORE**

To 19-12-2012

The ITO, Ward-5(3),
O/o ITO, Unity Bldgs.
Mission Road,
Bangalore-560 027

Madam,

Reg. Information in the case of Sri Kamlesh Shanthilal Oswal
Jain, Prop: M/s M.K.Trading Policy
No.071804/48/07/34/01871.

With reference to your letter no.F.No.ADUPJ5588R /ITO/W5(3)2011-12 dated 04-12-2012 we furnish below the information called for therein.

1. Claim form has been received by D.O.13, the policy issuing office, the then Branch office, KG Road,
2. The claim was not admitted.
3. **The claim was rejected as the location where the accident occurred was not covered under the policy.**

Hope information furnished above would suffice the requirements.

Thanking you,

Yours faithfully,
Sd/-
Deputy General Manager

6. In our thoughtful consideration, it is evident from the record and also from the statement of the parties before the AO, nothing was brought on record by the assessee with regard to filing of the case under Consumer Protection Act against the insurance company and even otherwise, letter dated 26-12-2007 addressed to the Asst. Commissioner of Commercial Taxes was also was not brought to the knowledge of the AO.

It is very much important to mention herein that from the order of the learned CIT(A) it reflects that the assessee informed the shifting of the business premises from no.10, 1st Cross, Chickpet Cross, Bangalore to new address i.e shop no.4,5 & 6,Bldg. no.25/79, Renukha Bldg. AM lane, Chickpet Cross, Bangalore, whereas from the order of the AO it reflects that the assessee in order to carry out certain repairs and renovation work at his original place of business had to temporarily shift the goods to another godown situated at no.4,5& 6 Bldg. no. 25/79, renukha bldg. AM lane,Chickpet, Bangalore.

It is very strange that the assessee although claimed that he had shifted to new place in order to carry out certain repair works, renovation at his original place of business, but he failed to produce any documents before the learned AO as well as from

the letter itself reflects that no reason has been mentioned in the said letter for shifting at new place.

Even otherwise the learned CIT(A) relied upon the submission of the assessee that the assessee has filed a claim of Rs.44.00 lakhs against the insurance company with regard to change of address and the matter is in consumer court also at Bangalore but from the letter of United India Insurance Co.Ltd. it reflects that the claim of the assessee was rejected on the ground that “ **as the location where the accident occurred was not covered under the policy**’. Meaning thereby, assessee never intimated about the change of business premises to the insurance company ,Income-tax, Police, Fire or any other concerned department, except making a claim to inform the Commercial department, otherwise prima facie it appears to be not genuine, because the said letter was never been brought before the AO and the conditions of the same are also contrary to the submissions of the assessee.

In reply to the judgments referred by the assessee it is clarified that the facts of the cases are dissimilar to the instant case, because there is no change of business premises hence, are not applicable. ‘

- 7.** Conclusion: Finally, on a careful consideration of the submission advanced by the parties and materials on record and analyzing the orders passed by the authorities below, we are of the opinion that the assessee has failed to establish his case as genuine and from the records it reflects that he had tried to manipulate the things in order to claim Rs.44.00 lakhs towards loss of stock due to fire accident. Hence, it is ordered that the appeal filed by the revenue is allowed.
- 8.** In the result, the appeal filed by the revenue is allowed .

Order pronounced in the open court on the 18-03-2016

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Place: Bangalore

D a t e d : 18-03-2016

Copy to :

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

Sd/-
(NARENDRA KUMAR CHOUDHURY)
JUDICIAL MEMBER

By order, AR,ITAT, Bangalore