

**आयकर अपीलिय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**  
**BEFORE SHRI JOGINDER SINGH, JM AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./I.T.A. No.33/Mum/2013  
(निर्धारण वर्ष / Assessment Year: 2009-10)

Bharat Insulation Company (I) Ltd. B-32 , Wagle Industrial Estate, Road no.18, Thane (W):400 604	<b>बनाम/</b> vs.	Asst. Commissionner of Income Tax, Central Circle 31, Room no. 409 Aayakar Bhavan, Maharshi Karve Road, Mumbai:400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACJ1709J		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri M.Subrasmini Yam
प्रत्यर्थी की ओर से/Respondent by	:	Shri Randhiv Gupta (DR)
सुनवाई की तारीख / Date of Hearing	:	19/10/2015
घोषणा की तारीख / Date of Pronouncement	:	20 /11/2015

**आदेश / ORDER**

Per Rajesh Kumar, A. M.:

This appeal by the assessee is directed against the order dated 16.10.2012 of Commissioner of Income Tax (Appeals) 40, Mumbai (Hereinafter called as the CIT(A) ) for assessment year 2009-10. The assessee has raised following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in partly dismissing the appeal.
2. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in partly dismissing the appeal without appreciating fully and properly the facts of the case.
3. On the facts and in the circumstances of the case and in law, the learned C.I.T. erred in upholding partly disallowance of expenses pertaining to prior periods amounting to Rs.6,18,324/-

2. The assessee was engaged in the business of production of Winding Wire and Enameled Wire. During the year the assessee filed its return of income at Rs.23,165/- through e-filing.

3. The case of the assessee was selected for scrutiny and the Id. Assessing Officer (A.O.) assessed income at Rs.12,38,870/- by disallowing, *inter alia*, service tax of Rs.2,05,177/- and insurance claim of Rs.4,13,147 to the income of the assessee as prior expenses on the basis of tax audit report clause 22(b)(i) filed by the assessee by rejecting the plea of the assessee that the write offs relates to the instant year. The brief facts of the case are that the assessee wrote off service tax of Rs.2,05,177/-- and insurance claim not paid by the insurance companies of Rs.4,13,147/- against income during the year on the ground that these relates to the current year as the same were crystallized during the year though these pertain into earlier years.

4. The Id. CIT(A) confirmed the disallowance on account of service tax and insurance claim by holding that the assessee could not offer any valid explanation for such writing off during the year. The Id AR vehemently submitted that the service tax of Rs.2,05,177/- was written off, as credit of service tax was not available against such payment to the appellant. The Id. Counsel, however, submitted that the various

expenditure were incurred by the assessee which were liable for service tax. He, however, submitted that the assessee was eligible for setting off such service tax against the amount payable by the assessee on account of central excise duty. It was also stated that the amount of service tax available for set off against the central excise duty were shown as service tax credit receivable account in the books of accounts of the assessee.

5. The Id. Counsel also pointed out that the assessee is required to incur many expenses which were liable for service tax and which are not directly connected to the manufacturer activity and therefore not allowed to be set off against the central excise duty and, thus, the same was written off during the previous year under consideration. In other words the as per the CENVAT input credit rules lays down as to when the credit of service tax can be availed and also the where the set off is not available. The Id counsel further submitted that service tax credit is only allowed when the expenses were incurred which are directly connected to manufacturing and not otherwise. As against the short insurance claim of Rs.4,13,147/-, the learned officer submitted that out of total claim of Rs.40,97,649/- made on 31<sup>st</sup> May, 2006, only Rs.36,84,503 was either received from Insurance Company or written off in the earlier years which means that Rs.4,13,147/- was also claimed from the insurance company but not admitted and therefore was ultimately written off in the instant year. It was also argued that the service tax of Rs.2,05,177/- and insurance claim of Rs.4,13,147/- were rightly claimed by the assessee as written off against the profit. The Id. counsel placed reliance on the decisions of Delhi High Court in the case of Commissioner of Income Tax Vs M/s. Excel Fashion Pvt Ltd (2007) 201 Taxman 216(Del) and finally prayed the additions sustained by CIT (A) may pleased to be deleted.

6. The Id. DR heavily relied on the order of the authorities below.

7. We have considered the rival submissions and perused the material on record. The facts of the case are that assessee had written off Rs.2,05,177/- as service tax which is not available for set off against the CENVAT payable by the assessee and Rs. 4,13,147/- on account of short insurance claim i.e claim not admitted and paid by the insurance company. In the case of service tax, we note that Rs.2,05,177/- were written off by the assessee because the set off of such service tax was not available against the central excise duty. In our opinion, the amount of service tax which is paid by the assessee on the expenditure incurred and for which no set off was available was rightly written off and the order of the Id. CIT (A) cannot be sustained on this point. So far as the disallowance of Rs.4,13,147/- is concerned, again we are of the view that the assessee has rightly written off the un-receivable insurance claim during the year which were either rejected or short accepted by the insurance company. More so when these expenses are not related to the prior period as the circumstances and facts under which these amounts were written off came to be finalized during the year. The Id. Counsel of the assessee further pointed out that the similar expenditure were allowed by the Department in the earlier years. All these write offs are necessitated when their adjustments or recovery is not possible to be made in the in the normal course of business . In the case of CIT Vs Excel Fashion Pvt Ltd (Supra), the Hon''ble High Court of Delhi has upheld the order of Tribunal in which the tribunal allowed the irrecoverable Export Incentives as bad debt. Under these facts and circumstances and in view of the decision In the case of CIT Vs Excel Fashion Pvt Ltd (Supra), the order passed by CIT(A) can not be sustained on these points and, therefore, the disallowance of service tax of Rs.2,05,177/- and the insurance claim of Rs. 4,13,147/-are ordered to be deleted.

In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on November 20<sup>th</sup>, 2015*

Sd/-

**(JOGINDER SINGH)**

न्यायिक सदस्य / **Judicial Member**

**Member**

मुंबई **Mumbai**; दिनांक **Dated :20.11.2015**

**Ashwini Gajakosh**

Sd/-

**(RAJESH KUMAR)**

लेखा सदस्य / **Accountant**

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

1. अपीलार्थी / **The Appellant**
2. प्रत्यर्थी / **The Respondent**
3. आयकर आयुक्त(अपील) / **The CIT(A)**
4. आयकर आयुक्त / **CIT - concerned**
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / **DR, ITAT, Mumbai**
6. गार्ड फाईल / **Guard File**

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**