

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'E', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 1592/Del/2015  
Assessment Year: 2006-07**

Narain Jewels International Ltd., M-10, Greater Kailash, Part-I, New Delhi. PAN: AAACN 0445R <b>(Appellant)</b>	<b>vs.</b>	DCIT, Circle 13(1), New Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	Ms. Lalita Krishnamurti, CA
<b>Respondent by</b>	Sh. G. Johnson, Sr. DR

<b>Date of Hearing</b>	03.12.2018
<b>Date of Pronouncement</b>	22.01.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the assessee against the order of ld. CIT(A)-6, Delhi dated 22.12.2014 for the assessment year 2006-07 on the following grounds:

1. *That the sustaining of disallowance of trading loss of Rs. 77,10,789/- claimed on sale of stock on the ground of genuineness and as being unsubstantiated is unjust, unwarranted and not tenable on facts and law.*
  
2. *That the sustaining of disallowance of short term capital loss of Rs.26,35,659/- on sale of fixed asset on the ground of it being uncorroborated is unjust, unwarranted and not tenable on facts and law.*

3. *That without prejudice to ground no. 2 above since such fixed asset had been discarded and written off in the books of the assessee company lower authorities ought to have accepted the alternative contention of the assessee for granting deduction in terms of section 32(1)(iii) and directed Id. Assessing Officer to grant depreciation on such fixed asset.*

4. *The above grounds are independent and without prejudice to one another.*

2. The brief facts of the case are that the assessee filed return of income on 29.11.2006 vide acknowledgement No. 90227344. Later on, return was revised on 15.12.2006. In the original return, the assessee declared nil income and claimed carry forward business loss of Rs.9,26,794/- and short term capital loss of Rs.26,35,659/-. The return was selected for scrutiny and statutory notices were issued to the assessee. In the assessment proceedings, the assessee had shown business loss of Rs.9,26,794/- and short term capital loss of Rs.26,35,659/- and same was stated to be carried forward. The Assessing Officer noticed that the assessee had not filed return of income as prescribed u/s. 139(1). Therefore, in view of section 139(3) of the IT Act, the business loss and short term capital loss cannot be allowed to be carried forward. He further noticed from the trading account that the opening stock as on 01.04.2005 was at Rs.2,63,72,865/-, the purchases were nil and sales were Rs.36,83,562/- and the closing stock was at Rs.1,49,78,514/-. Therefore, the book value of the stock, which was sold by the assessee in the year under consideration was at Rs.1,13,94,351/- (2,63,72,865 – 1,49,78,514). Thus, the fact remained that the stock of Rs.1,13,94,351/- was sold for Rs.36,63,562/-, resulting into loss of Rs.77,10,789/-. The assessee was engaged in the business of gold jewellery. Therefore, the Assessing Officer was not satisfied

that the sale of gold jewellery would have been made at loss keeping in view the rising trend of gold. Accordingly, the Assessing Officer issued show cause notice to explain and justify the losses incurred by the assessee. The assessee submitted his reply on 07.03.2008 as under :

*“The sale of stock was only of the ready manufactured pieces lying with the company since last 10-12 years.*

*The loss on sale of stock is basically due to the fact of getting very little realization of the amount spent on labour wastage and the stones set in manufactured pieces. The sale amount basically covered the market value of silver and gold along with a little value addition as on one hand the designs are totally out of fashion and the trends have undergone a sea change. Secondly, the sale being a distress sale makes an impact on the price that one can get. Also the finish on the pieces had got oxidized and was not saleable in its present state so any buyer would have to work further on the pieces to be able to sell it further at a better price or he would have to melt it and sell it only at the market value of the metal. Time being a constraint this was the fastest and the best possible value that could be realized keeping all circumstances in mind.*

The Assessing Officer was not convinced with this reply as he did not submit the details required by the Assessing Officer. Again show cause notice was issued. The assessee submitted reply on 22.04.2008 as under :

*“In continuation of our letter dated 07.03.2008 we further mention that the assessee company used to manufacture studded gold jewellery using various types of previous semi precious and other stone. The jewellery was lying with the company for last 10-12 years due to reasons described in our letter dated 7<sup>th</sup> March, 2008. In the cost of the jewellery a major part was of stone set, labour and wastage. When big sized stones are cut in small size to fit them in jewellery the intrinsic value or resalable value of these stones is lost to a great extent. However, in normal sale this value is recovered by the manufacture due to demand of the design. In present*

*case, the items were manufactured 10-12 years ago and most of them were for export. At the time of sale in 2005 there was no market for this jewellery and the company would recover only the metal value as this was a distress sale. The position will be clear from the enclosed chart which give the details of metal part in the items sold and realization towards metal value.*

*The increase in the value of Gold over the period of purchase and sale is approx 40% which has been fully recovered as evidenced from the chart enclosed. You can see that Assessee has not incurred any loss on metal value and the loss is on the components of cost.”*

3. The assessee could not substantiate the loss incurred on the sale of stock. The assessee was given opportunity for production of account books and supporting bills. The assessee submitted cash memos/bills and cash book, but he did not furnish the stock register. The Assessing Officer observed many discrepancies in the bills produced for verification. Accordingly, the Assessing Officer concluded that in absence of any supporting evidence, the genuineness of cash sales claimed to have been made by the assessee out of old stock resulting a loss of Rs.77,10,789 could not be justified. Therefore, he added the same to the total income of the assessee.

4. He further noticed that the assessee had debited into the profit and loss account, the loss on sale of fixed assets amounting to Rs.13,80,740/- which was duly added in the computation of income and short term capital loss of Rs.26,35,659/- was claimed therein and was carried forward. This carry forward of short term capital loss was denied by the Assessing Officer as per section 139(3) and adjudicated the case on merits. In view of this, the

Assessing Officer required certain details from the assessee, viz., name and address & PAN of the parties to whom plants and machinery was sold. In response, the assessee filed written submissions on 22.04.2008 as under :

*The fixed assets lying with the assessee were in scrap like condition because they were not being used for last many years and were dumped. These assets were sold to junk dealers for a sum of Rs.53,00,000/- during the financial year 2005-06. WDV of these assets as per income tax Act was Rs.26,88,660/-. The names, addresses and PAN of the purchasers are not available with the assessee.*

The Assessing Officer noticed that the information submitted by the assessee is vague and he failed to give identity of the parties to whom the sales were made. Again opportunity was given to the assessee and the assessee filed reply on 15.12.2008 which reads as under :

*“As already submitted vide our letter dated 22.04.2008, the fixed assets lying with the Assessee were in scrap like condition because they were not being used for last many years and were dumped. These assets had also outlived their useful life of 10 years. These assets were sold to individual small time junk dealers for a sum of Rs.53,000/- during the financial year 2005-06. WDV of these assets as per Income Tax Act was Rs.26,88,660/- as on 01.04.2005. Therefore, there is a short term capital loss of Rs.26,35,660/- . As this sale was made in cash, the Assessee does not have names and addresses of the purchasers. However, non availability of the names and address of purchasers is no basis to disallow the Capital Loss.*

*Further section 32(1)(iii) also provides for deduction of any deficiency in the realizable value of any depreciable assets sold, discarded demolished or destroyed during the year. If for a while, your contention that no assets were sold is considered to be true, there is no denial from the fact that these asses have been discarded and written off by the Assessee and thus the deficiency of Rs.26,35,660/- is fully allowable to the Assessee u/s. 32(1)(iii) as well. We would now like to claim the deficiency of*

*Rs.26,35,660/- u/s. 32(1)(iii) and to this extent the return may be deemed to have been revised.”*

On 16.12.2008, books of account and supporting bills and vouchers were produced. However, no supporting evidence with regard to the sale of plant and machinery could be brought on record by the assessee. On 15.12.2008, the assessee filed revised computation and claimed discarded assets as loss u/s. 32(1)(iii). The Assessing Officer noticed that the assessee has not filed revised return u/s. 139(5) of the Act. Therefore, he followed the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. vs. CIT, 284 ITR 323. Ultimately, the Assessing Officer observed that the assessee could not file PAN, names and addresses of the junk dealers to whom the machineries were sold and since the assessee could not get the sale of plant and machinery verified, therefore, on merits also, the Assessing Officer disallowed carry forward short term capital loss of Rs.26,35,659/-. Aggrieved from the order of the Assessing Officer, the assessee appealed before the Id. CIT(A), who after considering the submissions of the assessee upheld the action of the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

5. The Id. AR submitted a written synopsis which is as under :

1. Brief History: Assessee Company was incorporated to manufacture and export studded gold jewellery. It started production in the year 1992. The Company continued production till about 1998 and thereafter due to financial troubles it restricted its activities to bare minimum.

2. Point 4(j) of audit report(at page 104 of PB): The Company was carrying out the manufacturing and trading of studded gold jewelry. However, due to financial troubles the Company could not pay off the loans taken from Bank and financial

Institutions. The financial institutions HSIDC and HFC took over the factory premises and most of the Plant and Machinery. Subsequently these assets were sold by HSIDC and HFC and the sale proceeds were appropriated towards their dues (explained at page 33 to 34 of PB).

3. Point 4(i) of audit report (at page 104 of PB):The stock lying in the factory of the assessee was taken over by Bank of Baroda before the sale of factory by financial institutions. This stock is being reflected at cost in the books of the assessee since then. The Company has not provided any interest on the loan of Bank of Baroda during the year as the matter is pending with Debt Recovery Tribunal, (explained at page 33 to 34 of PB).

4. Details and Nature of Sale of Stock and Fixed Assets (explained at page 33 to 34 of PB):. The above mentioned financial difficulties clubbed with some personal problems of directors of the Assessee Company did not allow the directors to carry on the work of the Company smoothly. The Factory stock was taken over by Bank of Baroda. The stock lying at showroom could also not be sold by the directors because they were busy in legal hassles and also due to some family problems. However, in the year 2005 to clear the statutory liabilities of the Company the funds had to be raised. The proceedings for recovery and prosecution had reached to the final compelling point where the deposits to the provident fund department had to be made in the specific time allotted to the Company.

4.1 Also with regards to the pending loans case of the company with Bank of Baroda, a certain amount had to be deposited with the Bank to show their honest and good intentions, efforts and desire to clear the case in a convenient manner for the company and to prove to the concerned authorities of their case being that of a genuinely aggrieved party of loss and problems in business that led to the current situation and not that of any wrong intentions or manipulated malafide conduct.

4.2 This was a distress sale of the ready stock i.e. ready pieces of jewellery lying with the Company manufactured 10-12 years ago. The whole stock lying at the showroom of the Company was sold in the month of July, 2005 at the best possible prices.

5. Justification of loss on sale of stock: The Sale of stock was only of the ready manufactured pieces lying with the Company since last 10-12 years.

5.1 The loss on sale of stock was basically due to the fact of getting very little realization of the amount spent on labour, wastage and the stones set in the manufactured pieces. The sale amount basically covered the market value of silver and gold along with a little value addition as firstly on one hand the designs had become totally out of fashion and the trends had undergone a sea change. Secondly, the sale being a distress sale also makes an impact on the price that one can get.

Thirdly the finish on the pieces had got oxidized and was not saleable in its present state, so any buyer would have to work further on the pieces to be able to sell it further at a better price or he would have to melt it and sell it only at the market value of the metal. Time and money being a constraint, this was the fastest and the best possible value that could be realized keeping all circumstances in mind.

5.2 The Assessee Company used to manufacture studded gold jewellery using various types of precious, semi-precious and other stones. The jewellery was lying with the Company for last 10-12 years due to reasons described earlier. In the cost of the jewellery a major part was of stones set, labour and wastage. When big sized stones are cut in small size to fit them in jewellery the intrinsic value or re-saleable value of these stones is lost to a great extent. However, in normal sale this value is recovered by the manufacturer due to demand of the design. In present case, the items were manufactured 10-12 years ago and most of them were for export. At the time of sale in 2005 there was no market for this jewellery and the Company could recover only the metal value as this was a distress sale. The position will be clear from the chart at pages 38 to 41 of PB which gives details of metal part in the items sold and realization towards metal value.

5.3 The increase in the value of Gold over the period of purchase and sale is about 40% which has been fully recovered as evidenced from the chart above mentioned. Assessee had not incurred any loss on the metal value and the loss was on other components of Cost.

5.4 HSIDC was the prime lender and all recovery formalities were done by them. HSIDC then handed over the stock to Bank of Baroda, who was having charge over the Stock. No correspondence in this regard had taken place between Assessee and Bank of Baroda at that time. However, copy of letter dated 16.10.2000 (at page 89 of PB).written by HSIDC to Bank of Baroda is enclosed at page 87 of PB.

5.5 The Factory stock was taken over by Bank of Baroda and it was not returned back to the Assessee. The sales made during the Financial Year 2005-06 were all cash sale and names and addresses of the customers were not available with the Assessee.

5.6 The Act does not specify or require for the assessee to keep any record of the name of the Parties or their addresses in case of Cash Sales. All sales are duly recorded in the books as has been verified by AO from the cash book and the ledgers produced by assessee company.

5.7 The loss on sale of Stock is justified because (explained at page 90 to 92 of PB):

a) Cost of sale comprised of following components: -

- i) Low karat of gold - 8k, 14k & 18k.
  - ii) Diamonds.
  - iii) Colored gemstones.
  - iv) Wastage on manufacturing.
  - v) Labour charge for manufacturing//
- b) Gold had been sold at market rate.
- c) Diamonds and colored gemstones were: -
- i) Very small size — not suitable for Indian market.
  - ii) Very old cut — not in demand
  - iii) Low quality — the factory was for bulk production and used to buy low quality for large quantity exports only. This quality is not demanded in India. So had fetched very low value on sale.
  - iv) Especially colored stones have near zero resale value.
- d) The wastage and labour cost of manufacturing is totally lost as the pieces need to be either broken or remade as:
- i) The designs were out dated.
  - ii) The metal had oxidized.
  - iii) Surface finish had no shine and full of scratches and dirt.
  - iv) Stones were scratched and dull due to dirt collection.
- v) Low karat gold jewellery does not sell in India and most other countries and was also made by assessee company for sale to some specific countries.
- vi) Additional labour would have been required to convert the existing stones into saleable jewellery.
- e) Main loss is attributed to the sale of stock of masters i.e. dyes of all their designs made in 92.5% silver which was approx. 30 kg of book value of approximately Rs.32 lakhs which was sold for Rs.4,60,000/- (approximately Rs. 15,333/- per kg) vide bill no. 1465 (at pg 132 of PB) dated 11.07.2005 — when silver rate of 92.5% was only Rs.9,763/- kg. even though the sale was at a rate 50% more than market rate of metal, still the loss was there, as the designs were outdated and not for the Indian market and very little could be realized towards the labour cost of it.
- f) Distress sale as prices of stones were further falling. Market for colored gemstones was shrinking.
- g) The goods were sold to mainly various small time brokers in cash as is a normal practice in Assessee's trade.

5.8. In view of above, trading loss of Rs.77,10,789/- is fully allowable to Assessee.

6. The assessee had given in detail, the various reasons in support of the trading loss of Rs.77,10,789/-. The AO has merely rejected the reasons given by saying that the reply of the assessee was very general and that all sales were made in cash between 02.07.2005 to 11.07.2005 and nowhere the name of the purchase party was appearing;

6.1 The AO has failed to appreciate the fact that this was a distress sale of old stocks lying for the last 10 to 12 years. The sale was made only to raise funds to clear the statutory liabilities of the company.

6.2 Justification of Loss on Sale of Fixed Assets of Rs.26,35,600/-: The Fixed Assets lying with the Assessee were in scrap like condition because they were not being used for last many years and were dumped. These assets were sold to junk dealers for a sum of Rs.53,000/- during the Financial Year 2005-06. WDV of these assets as per Income Tax Act was Rs.26,88,660/- as on 01.04.2005. Therefore, there is a short term capital loss of Rs.26,35,660/- (fixed asset Schedule at page 3 of PB). The name and addresses of the junk dealers were not available with the assessee. Books of account along with vouchers were also produced in assessment proceedings.

6.3 The fixed assets lying with the Assessee were in scrap like condition because they were not being used for last many years and were dumped. These assets had also outlived their useful life of 10 years. These assets were sold to individual small time junk dealers for a sum of Rs.53,000/- during the financial year 2005-06. W.D.V. of these assets as per Income Tax Act was Rs.26,88,660/- as on 01.04.2005. Therefore, there was a short term Capital Loss of Rs.26,35,660/-. As this sale was made in cash, the Assessee does not have the name and address of the purchasers. However, non-availability of the name and address of purchasers is no basis to disallow the Capital Loss.

6.4 Even assuming, as held by the AO that the sale of Plant & Machinery was not genuine, the AO is bound to give the assessee the whole of loss u/s 32(1)(iii) as the asset has been totally written off by the assessee in the books of accounts.

She reiterated the submissions made before the lower authorities and also submitted a paper book containing 143 pages.

6. On the other hand, the ld. DR relied on the orders of the authorities below and he submitted that the assessee was unable to substantiate the sales made at a loss. The Assessing Officer granted sufficient opportunity to the assessee for filing the requisite documents. He could file only cash book which was written without page numbers and cash memos/bills and there were many discrepancies noted by the Assessing Officer on the documents submitted by the assessee. Till completion of assessment, the assessee could not file stock register of goods. Further, in respect of short term capital loss claimed on sale of fixed assets, the assessee also could not substantiate his sales made in cash, name of the persons to whom the sales were made. Alternative claim of the assessee made u/s. 32(1)(iii) is also not acceptable.

7. After hearing both the sides and perusing the entire materials available on record, we noted that the assessee had stopped his business since long back and during the impugned year, the assessee sold some goods which were lying with him. There is no dispute on the opening stock as on 01.04.2005. The dispute is only for the assessee had sold old items only on losses of Rs.77,10,789/-. On perusal of the assessment order, we noted that the Assessing Officer has pointed out many discrepancies in the documents submitted by the assessee, but he accepted the cash book submitted by the assessee and closing balance shown in the cash book are in agreement with the financial statement of the assessee. The financial statements have been accepted by the Assessing Officer. It is clear from the submissions of the assessee that the goods which have been sold were very old. When the stock sold was very old, it is not strange to sell them at reduced rate. The Assessing

Officer has no authority to compel the assessee as to at which rate, an assessee has to make sale of his goods. Considering the facts and circumstances of the case of the assessee, ground No. 1 of the assessee is allowed.

8. Further, in respect of ground No. 2 & 3 regarding carry forward of short term capital loss of Rs.26,35,659/- on sale of fixed asset, the lower authorities have examined this issue in detail. In this regard the finding reached by the Id. CIT(A) reads as under :

*4.3.1. Ground no. 4 of appeal is directed against disallowing the Capital Loss of Rs.26,35,660/- on Sales of Assets made by the Assessee. The assessee has shown loss on sale of fixed assets amounting to Rs.13,80,740/- which was added back in the computation of income. However, short term capital loss of Rs.26,35,659/- was claimed therein and was carried forward. In view of the sec 139(3) of the IT Act the claim of cam' forward of short term capital loss of Rs. 26,35,659/- is denied by the AO. On merits of the case assessee was asked by the AO to give the computation of loss on sale of assets giving the name, address and PAN of the parties to whom the plant & machinery was sold. In response the assessee submitted that the fixed assets lying in scrap like condition, were sold to junk dealers for a sum of Rs. 53,000/-. WDV of these assets as per IT Act was Rs. 26,88,660/- as on 01.04.2005. Therefore, there is a short term capital loss of Rs. 26,35,660/-. The names, addresses and PAN of the purchasers are not available with the assessee. AO observed that the reply of the assessee was vague, therefore, the assessee was asked to show cause as to why in absence of the name, address and PAN of the parties, loss be not disallowed as not verifiable. In response assessee submitted that it does not have the names and addresses of the purchasers. However, non-availability of the names and address is no basis to disallow the capital loss. Section 32(1)(iii) also provided for deduction of any deficiency in the realizable value of any depreciable assets sold, discarded, demolished or destroyed during the year. Assessee submitted that even if it is presumed that no assets were sold, as these assets have been discarded and written off, therefore, the deficiency of Rs. 26,35,660/- is fully allowable to the assessee u/s 32(l)(iii) as well. Therefore, it was submitted that to this extent the*

*return may be deemed to have been revised. AO observed that a valid revised return for the AY 2006-07 could have been filed only upto 31.03.2008. Therefore, the revised claim made by the assessee on 15.12.2008 after expiry of limitation period is not allowable in view of the decision of Hon'ble Supreme Court in the case of Goetz India Ltd. v. CIT 284 ITR 323. Hence, the assessee's claim of loss on sale of assets being discarded and written off u/s 32(1)(iii) of IT Act by filing a revised claim through its letter dt. 15.12.2008 is rejected by the AO. Further, in absence of any corroborative evidences AO held that the genuineness of sales of plant & machinery resulting a short term capital loss of Rs. 26,35,659/- could not be justified. Accordingly, the same is disallowed by the AO.*

*4.3.2 Since, the above short term capital loss was claimed by the appellant on account of sales of plant & machinery, therefore, the onus was clearly on the appellant to prove with corroborative evidence the transaction of sale to substantiate the claim of loss. In the absence of corroborative evidence, the disallowance made by the AO is fully justified. Further, the submission that deficiency of Rs. 26,35,660/- is fully allowable to the assessee u/s 32(l)(iii) and to this extent the return may be deemed to have been revised, is not sustainable. Because neither the claim was made filing a valid revised return within 31.03.2008 nor it a legal claim on the facts of the case. In view of the above, the disallowance made by the A.O. is fully justified. Therefore, appeal failed on this ground.*

9. No contrary material is placed on record on behalf of the assessee to discard the above findings reached by the ld. CIT(A). We, accordingly, find no infirmity in the above decision of ld. CIT(A) on this count. Accordingly, these grounds deserve to be dismissed.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 22.01.2019.

Sd/-  
**(Amit Shukla)**  
Judicial member

Sd/-  
**(L.P. Sahu)**  
Accountant Member

Dated: 22.01.2019

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