

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.2834/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Naresh Raman Gujar,  
1482, Sadashiv Peth, Shop No.1,  
Opp. Tilak Smarak Mandir,  
Pune - 411 030.

..... अपीलार्थी /  
Appellant

PAN : AAWPG1863H.

बनाम v/s

The Income Tax Officer,  
Ward - 2(2), Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Ms. Deepa Khare.

Revenue by : M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 31.01.2019	घोषणा की तारीख / Date of Pronouncement: 07.03.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) - Pune-5, Pune dated 06.09.2017 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and Proprietor of Lee Computers. Assessee electronically filed his return of income for A.Y. 2010-11 on 15.10.2010 declaring total income of Rs.4,79,520/-. The case was selected for scrutiny and thereafter, assessment was framed u/s

143(3) of the Act vide order dt.14.02.2013 and the total income was determined at Rs.7,04,350/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.06.09.2017 (in appeal No.PN/CIT(A)-5/ITO, Wd.2(2), Pune/764/2012-13) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following effective ground :

*“The learned CIT(A) erred in law and on facts in confirming addition of Rs.1,97,822/- on account of excess claim of loss of stock on account of burglary.”*

3. During the course of assessment proceedings on perusing the Profit and Loss account, AO noticed that assessee had claimed deduction of Rs.5,54,771/- on account of goods lost in burglary which had taken place in assessee's shop. He noticed that assessee had claimed compensation of Rs.14,11,245/- from National Insurance Company Ltd., who had assessed the loss at Rs.12,38,653/- and had settled the claim at Rs.8,81,704/- as against which, assessee had claimed deduction of Rs.5,54,771/-. AO considered the difference of Rs.1,97,822/- and being excess claim and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

4. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and pointed to the copy of the FIR which is placed at pages 5 to 10 and Panchanama placed at Page 11 of the Paper Book. She also pointed to the statement of assessee recorded by the Police Authorities, the copy of which is placed at pages 32 to 34 of the Paper

Book. She submitted that it is not a case of Revenue that the claim made by the assessee is bogus. Only because the Insurance Company has settled the claim at a lesser figure, the amount of deduction cannot be denied to assessee. She therefore submitted that assessee's claim of loss be allowed. Ld.D.R. on the other hand, supported the order of AO and Ld.CIT(A).

5. I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to the disallowance of Rs.1,97,822/- being the excess claim. In the present case before us, Ld.A.R. submitted that the loss occurred due to burglary which had taken place in assessee's shop. The complaint for loss due to burglary was lodged with the police authorities. The aforesaid facts have not been controverted by Revenue. The reason for disallowance by AO is that assessee had made the excess claim. In the present case, I find that no material has been placed by the AO to demonstrate that the claim of loss made by the assessee was excessive or bogus. Further, it is neither the case of Revenue that the complaint lodged with the police for burglary in the shop of assessee was false nor that the police stated in the report that the FIR lodged by the assessee was false. Further it is not the case of Revenue that the claim lodged by the assessee with the Insurance Company has been reduced on account of the claim be false. The contention of the assessee that the Insurance Company calculated the insurance claim on the basis of average clause wherein the cost of goods lost as per the books is taken "at cost" and the calculation considered by Insurance Company is only for computation for payment of claim, is

not found to be false. Further the conclusion of the AO that assessee had made excess claim of loss is also not supported by any material evidence. The lodging of FIR with the police prima facie shows that burglary had taken place. It is also not the case of Revenue that the claim made by the assessee is bogus. Considering the totality of the aforesaid facts, I am of the view that in the present case the loss by burglary has arisen during the course of business and was hence allowable u/s 37(1) of the Act. I therefore direct the AO to allow the assessee's claim of loss. **Thus, the grounds of the assessee are allowed.**

6. **In the result, the appeal of the assessee is allowed.**

Order pronounced on the 7<sup>th</sup> day of March, 2019.

**Sd/-**

**(ANIL CHATURVEDI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 7<sup>th</sup> March, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-5, Pune.
4. Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.