

आयकर अपीलिय अधिकरण, दिल्ली न्यायपीठ “एस.एम.सी”, दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘S.M.C’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER

आयकर अपील सं / ITA No.3593/Del/2018
निर्धारण वर्ष / Assessment Year: 2014-15

M/s. Navshiv Retail Pvt. Ltd.,
209, 2nd Floor, Prakash Deep Building,
Tolstoy Marg, Connaught Place,
New Delhi-110001.

PAN-AACCN5896N

.....अपीलार्थी / Appellant

vs

The ITO,
Ward-17(4), New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. S.K.Chaturvedi, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjog Kapoor, Sr.DR

सुनवाई की तारीख / Date of Hearing : 04.12.2019	घोषणा की तारीख / Date of Pronouncement: 20.12.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against the order of CIT(A)-22, New Delhi, dated 27.03.2018 relating to assessment year 2014-15 against order passed under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The first issue raised in the present appeal is against the addition of loss claimed due to fraud at Rs.26,58,534/-.

3. The assessee has raised Ground Nos.(i) to (iii) with regard to the aforesaid addition.

4. Briefly in the facts of the case the assessee was engaged in the business of trading of electronics & telecom goods and provision of various services. For the year under consideration, the assessee detected a fraud in its Mumbai store and filed complaint with the police. However, the police did not register the FIR. The assessee thereafter, filed legal case u/s 156(3) of Cr.PC for direction to police to register the case. Consequent thereto, the police case was registered on 18.02.2015. The assessee claimed the said loss on account of fraud at Rs.26,58,534/- as against the claim made in the FIR at Rs.77,45,063/-. The Assessing Officer disallowed the claim holding the said claim to be abnormal loss as the assessee did not file any documentary evidence in this regard. The CIT(A) upheld the addition made by the Assessing Officer against which the present appeal has been filed by the assessee.

5. The Ld.AR for the assessee after taking us through the factual aspect of the case pointed out that the FIR was lodged on the estimated market value of the goods i.e. Rs.77,45,063/-. However, the claim in the books of accounts was made on basis of cost of goods i.e. Rs.26,58,534/-. However, both the authorities have not accepted the claim of the assessee in this regard. He placed reliance on the CBDT Circular issued on the issue of embezzlement loss by employees and its allowability in the hands of the assessee and also placed reliance on the order of the Jaipur Bench of the

Tribunal in M/s. Pawan Specialties (P.) Ltd. vs The ACIT in ITA No.809/JP/2016 relating to Assessment Year 2011-12, order dated 15.02.2017.

6. The Ld. DR for the Revenue pointed out that the authenticity of loss claimed was in doubt and if the amount of stock embezzled was approx. Rs.77 lacs then why the claim at Rs.26,58,534/-. He placed strong reliance on the order of the CIT(A) in this regard.

7. I have heard the rival contentions and perused the record. The issue which arises in the present appeal is the claim of deduction on account of embezzlement of stock from the Mumbai premises of the assessee. The occurrence of the fraud is not in doubt in the facts of the present case. Since no FIR was registered by police initially but on a complaint filed before the Hon'ble High Court, directions were given to the police to register FIR. In other words, claim of the assessee of embezzlement of the stock stands established by the said events in the case of the assessee. The assessee did file FIR before the police, though later on the same was not pursued. Another aspect which has been noted by the authorities below for making the aforesaid addition is that in the FIR, the quantum of stock was mentioned at Rs.77,45,063/- and claim on account of embezzlement made was Rs.26,58,534/-. The explanation of the assessee in this regard was that the expenditure had been booked on cost basis of the stock embezzled and the FIR lodged with the police was on estimated market price. The question which arises is whether such an expenditure is allowable in the

hands of the assessee. The answer to the same is “yes” especially in view of the Board Circular issued by the CBDT in this regard. The said circular has been taken cognizance by different Hon’ble High Courts and merely because no further action was perused with the police cannot result in denial of the said loss on account of embezzlement of stock in the hands of the assessee. The Jaipur Bench of Tribunal in M/s. Pawan Specialties (P.) Ltd. (supra) in similar circumstances has allowed the claim of the assessee applying the CBDT Circular No.25 of 1939 and 13 of 1944 and decisions of various Hon’ble High Courts. In the present set of facts, the factum of loss by embezzlement stands established once the Hon’ble High Court directs the police to register the complaint of the assessee. But, non-pursuance of the same, would not result in the disallowance of expenditure in the hands of the assessee. Accordingly, I direct the Assessing Officer to allow the expenditure of Rs.26,58,534/-. Thus, Ground Nos. (i) and (iii) raised by the assessee are allowed.

8. It may be pointed out that the assessee has also raised another issue vide Ground No.(iv) which was not argued before us. Hence, the same does not need adjudication.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20th day of December, 2019.

Sd/-

(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / दिनांक Dated : 20th December, 2019.

* Amit Kumar *

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi