

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6115/Del/2019
(Assessment Year: 2015-16)

Nikon Systems Pvt. Ltd, C/o. RRA Taxindia, D-28, South Extn. Part-1, New Delhi	Vs.	ACIT, Circle-18(2), Delhi
(Appellant)		(Respondent)

Assessee by :	Dr. Rakesh Gupta, Adv
Revenue by:	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	11/02/2020
Date of pronouncement	15/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-37, New Delhi dated 28.06.2019 for the Assessment Year 2015-16.
2. The assessee has raised the following grounds of appeal:-
 - “1. That having regard to the facts and circumstances of the case, the Id CIT(A) has erred in law and on facts in confirming the action of the Id AO in making disallowance of Rs. 5,24,06,053/- on account of loss due to fire and that too by invoking section 29 of the Income Tax Act, 1961 whereas the same deserves to be allowed.
 2. That in any case and in any view of the matter, action of the Id CIT(A) in confirming the action of the Id AO in making disallowance of Rs. 5,24,06,053/- and too by invoking section 29, is bad in law and against the facts and circumstances of the case and without appreciating/ considering the submissions of the assessee.
 3. That having regard to the facts and circumstances of the case, the Id CIT(A) has erred in law and on facts in confirming the action of the Id AO in charging interest u/s 234A, 234B, 234C and 234D of the Income Tax Act, 1961.”
3. Briefly stated the facts are that Assessee Company is engaged in trading of goods in manufacturing and exports of home furnishing articles along with trading business of mobile phones, electronic and electronic goods. Assessee filed its return of income on 31/10/2015 declaring income of Rs. nil carrying forward the current year loss of Rs 29007689/-. The assessment

under section 143 (3) of the act was passed on 28/12/2017 at ₹ 3 0621748/-. The major addition made by the learned assessing officer is of ₹ 5 240653/- being disallowance of loss due to fire. The assessee challenged the same before the learned CIT - A. He confirmed the above addition/disallowance and therefore assessee is in appeal before us.

4. As the only issue involved in this appeal is with respect to whether assessee is entitled to the claim of deduction of ₹ 5 2406053/- of disallowance of goods lost due to fire. The assessee has debited the above sum in the profit and loss account. In the financial year under consideration fire broke out in the assessee company and entire stock of the assessee amounting to ₹ 5 2406053/- was destroyed in fire. The assessee company has filed its claim before the insurance company which has not been settled till date of assessment. The assessee has claimed that the impugned loss of stock is revenue loss which occurred during the year and was thus ascertained and confirmed loss and therefore same should be allowed as a deduction to the assessee. The learned assessing officer held that assessee stocks were insured against damages including damage by fire by the National insurance Co Ltd and therefore the loss incurred by the assessee on account of fire is recoverable under a contract of indemnity i.e. insurance, against the damage from insurance Co and the claim of the assessee has not been decided till date by the insurance Co. Therefore the loss claimed by the assessee is a contingent loss and is not allowable as a deduction in the profit and loss account. The assessing officer issued notices under section 133 (6) of the act to the insurance Co to know the exact status of the claim of the assessee which was replied by the insurance company on 1/11/2017 that the decision-making process has not been completed yet and the claim was under process. Therefore the learned assessing officer held that the assessee company is not eligible to claim the loss under the express provisions for deduction in the process of calculation of profits and gains of business or profession in accordance with the provisions of section 29 of the income tax act. He further held that the above losses a contingent loss till date and therefore it is not allowable.
5. On appeal before the learned CIT - A, he further strengthening the case of the assessing officer has held that there is no evidence produced by the

appellant in the form of any correspondence with the insurance company about the seriousness of its claim. No first information report was filed by the appellant in this matter. There is no evidence submitted that the goods claim to have been purchased by the appellant were destroyed in the said fire. The claim before the insurance company is also still to be converted into a formalised claim. He further held that the learned assessing officer correctly treated the loss being a contingent loss and not allowable.

6. Aggrieved with the order of the learned assessing officer the assessee is in appeal before us.
7. Ld AR submitted that date of fire is 5/12/2014 wherein fire broke out at 58, A block near Telco, Rangpuri extension, New Delhi – 37 the assessee submitted that approximately the loss of ₹ 5.25 crore has occurred due to the above fire. Accordingly on 6 December 2014 the assessee submitted requests to the insurance Co for survey of the assessee's loss. Assessee has also filed the first information report on 15/12/2014. He further referred to the details of the stock which was lying in the warehouse. The stock claimed to have been lost was also supported by the detailed inventory chart. Thus, the learned authorised representative submitted that assessee has incurred the loss during the year of the stock lying in the above warehouse, therefore such loss should be allowed to the assessee as a deduction while computing the profits and gains of the business of the assessee. The assessee relied upon the several judicial precedents. He further submitted that merely because the goods are insured with an insurance Co, it does not show that assessee has not incurred the loss. The goods were owned by the assessee, those goods have been destroyed in the fire. The goods were traded stock of the assessee. Therefore the loss of the traded stock during the year due to fire is the loss incurred by the assessee during the year. The insurance claim made by the assessee with the insurer will compensate the assessee, if found in accordance with the terms of the agreement with the insurance Co after survey. Moment insurance claim is received by the assessee it would be chargeable to tax as income of the assessee. However, the loss incurred by the assessee is to be allowed as deduction in this year as the fire broke out during this year and the loss has been incurred by loss of the

goods have also occurred during the year. He therefore submitted that the claim of the assessee is not contingent but definite and crystallised.

8. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that when the loss is required to be compensated by the insurance Co, till the insurance Co assesses the loss, the loss of the assessee is contingent in nature. He submitted that the loss is required to be recovered by the assessee from the insurance company and the year in which such insurance Co settles the loss of the assessee by paying the claim to the assessee it becomes final.
9. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, fire occurred during the year, the traded goods of the assessee are lost during the year due to fire. Such traded goods were the stock in trade of the assessee. Undoubtedly, the traded goods were insured with the insurance Co for any loss due to fire. But merely because the assessee has an insurance, it does not mean that assessee has not incurred the loss during the year. Moment the insurance Co determines the loss in terms of the insurance policy obtained by the assessee from the insurance company, naturally the assessee would be reimbursed or compensated for the same. However, it does not mean that assessee has not incurred the losses. The accident of fire at the premises of the assessee in which it has lost goods due to the fire is one incident. The action of the assessee of obtaining the insurance is altogether a different act to mitigate the loss incurred by the assessee. The claim of the insurance of the assessee from insurance Co would also be subject to many conditions. However merely because the goods of the assessee are insured against the accident of fire, it cannot be said that assessee has not lost goods due to fire. Naturally, the loss of the assessee would be compensated in subsequent year later on, at that particular time such insurance claim received would be chargeable to tax under section 41 (1) of the act as it is against the traded goods. Even otherwise, the trading loss incurred by the assessee is allowable to the assessee in the year in which it is incurred. The case of the assessee is also supported by the decision of the honourable patna High Court in 15 ITR 155, wherein it has been held that loss of/in trade or to fire is allowable as a trading loss irrespective of fact whether any sum is received from insurance

Co or not. In view of the above facts, we do not find any reason to uphold the orders of the lower authorities. They are reversed. Accordingly, the learned assessing officer is directed to grant the deduction of the loss due to fire of ₹ 5 2406053 to the assessee. In the result appeal of the assessee with respect to ground number one and two is allowed.

10. Ground number three is consequential in nature, no arguments advanced, therefore, does not require any adjudication.
11. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on 15/05/2020.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15/05 /2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi