

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP &  
SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 4902/Mum/2019  
(निर्धारणवर्ष / Assessment Year: 2013-14)

<b>Mukesh K Shah HUF</b> B-12, Chandra Niwas, Above Lijjat Papad, Mulund (west), Mumbai-400 080.	<b>बनाम/ Vs.</b>	<b>DCIT Circle-29(2),</b> R. No. 202, C-10, 2 <sup>nd</sup> floor, Pratayaksha Bhavan, Bandra Kurla Complex, Bandra (east) Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAGHS3814L		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Ms. Radha Halbe, Ld. AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri T. Shankar, Ld. DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	06.06.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	27.07.2022

आदेश / O R D E R

**Per AMIT SHUKLA, Judicial Member:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 10.05.2019, passed by Ld. CIT(A)-40, Mumbai for the quantum of assessment u/s 143(3) for AY 2013-14.

The assessee has raised the following grounds:-

*1. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 40, Mumbai has erred in upholding the action of the Learned Assessing Officer in extending the scope of enquiry beyond CASS report, disregarding the CBDT instructions in this regard.*

*2. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 40, Mumbai has erred in confirming the disallowance of Rs. 170,000/r claimed as loss of goods.*

*3. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 40, Mumbai has erred in directing the learned Assessing Officer to dispose the rectification application filed for erroneous addition of Rs. 1,35,000/- instead of adjudicating the same on merits.*

2. The brief facts of the case qua the issue raised in ground no. 2 are that, assessee is HUF engaged in the business of dealing in chemical solvent. During the year, assessee has made total purchases during the year at Rs. 11,90,63,265/-. Out of the said purchases, assessee has purchased chemicals from M/s Varun Organics Pvt. Ltd. for Rs. 17,85,000/-. According to the assessee, the materials supplied later turned out to of sub-standard quality and defective. During the storage in godown, the purity of the said material decreased from 99.98% to 61.78%, 53.89% & 58.72%, after getting lab test reports. After that, assessee has made best

effort to convince the parties that the material supplied by it has turned to be defective. However, the party did not accede to the assessee's request and insisted upon the payment which assessee had to make after 9 months. According to Assessee it had no option but to dispose of this stock at a much lower rate and it had to incur some nominal expenditure to dispose it also. Thus, this was claimed as 'Loss' and reduced the stock by the said amount from its books. Before the AO, to prove its bonafide, assessee has also produced the exchange of e-mails between the parties and the test report, which are as under:-

*".....Exchange of e-mails between Varun Organics Pvt. Ltd. and Mahavir Organics for loss of goods, copy of Test Report dated January 2013 and 12<sup>th</sup> April 2013, copy of Bill of the party and relevant bank statements marking the payments made to the Party. As can be observed from the correspondence in e-mail, even after our best efforts to convince the Party about the sub-standard material, the Party has not acceded to our request and insisted upon the payment failing which they have mentioned that we have to face legal consequences. We have even tried to ask for the compensation for the loss of goods due to negligence. On this point the Party has said that we should have checked the material before taking the delivery and their responsibility ends as soon as*

*the material is delivered and taken custody by us. They further stated that it is not their Company's policy to take back the material once it is sold.....”*

3. However, Ld. AO disagreed with the assessee's claim and rejected the same on following reasons:-

*1) The assessee has purchased the material in March 2013. The ledger submitted shows that the payments are made in December 2013. The payment has been made after a period of 9 months. The contention of the assessee, is not digestible as to when he was in the knowledge that the purchased material was defective and still he makes payment after 9 months. Thus, the assessee is claiming an amount as loss for which no payments have been made during the relevant assessment year Thus, the claim cannot be allowed.*

*2) It is seen that the assessee has submitted a test report of March 2013. This proves that the assessee was well aware of the analytical result of the material purchased and the goods received. The assessee contention that the goods are not of required quality subsequently cannot be accepted. This proves that the assessee purposefully purchased the goods to claim the losses to reduce tax liability. As such, the claim of the assessee is not allowable.*

*3) The assessee has not in any of his submission brought on record the fate of the material purchased in the form of scrap or discarded material. Thus it is very clear that subsequently the material has been sold by the assessee. It is also seen that the goods have not*

*been returned and no evidence has been produced of movement of goods to the supplier. Accordingly the claim of the loss made by the assessee is not allowable.*

*4) From the ledger submitted of Varun Organics and the submission of the assessee, it is clear that the assessee has continued his business with Varun Organics. Thus, the goods purchased from Varun Organics are found to be as per the assessee requirement and as such the assessee has continued to purchase the goods from the same supplier. Thus the claim of the assessee is not tenable.*

*5) The claim of the assessee cannot be entertained for the reason that the assessee has not taken any legal steps or otherwise with reference to the substandard goods. Similarly payments have also been made on original rates on the bills raised by Varun Organics and no debit noted has been issued. Thus, the claim of the assessee does not deserve to be considered.*

*6) Letters u/s. 133(6) has been issued to Varun Organics to verify assessee claim. Varun organics has not responded to letters u/s. 133(6) which were duly served. The same was also informed to the assessee. This shows that the claim of the assessee is not true and cannot be allowed.*

4. Accordingly, AO treated the claim amount of Rs. 17 lakhs as non-genuine. In the first appeal, Ld. CIT (A) has confirmed the action of AO.

5. Before us, Ld. Counsel for the assessee submitted that assessee had purchased chemical from Varun Chemical Pvt. Ltd. From which assessee has been regularly purchasing the goods from the said entity. During the year, assessee had purchased chemicals worth Rs. 17,85,000/- and at the time of purchase, Varun Chemical Pvt. Ltd. had give a certificate of analysis which shows the purity of chemicals was 98.98%, but later on, when assessee found these chemicals defective and sub-standard, it sought a test report from the Lab, wherein it was found that purity of the chemicals ranged from 58.38% to 68.78% of the 3 lots purchased by the said party. The assessee immediately brought this fact to the notice of the said party and various emails were exchanged between the parties pointing out the defective and substandard material which was supplied by the seller. However, the seller insisted upon that he making the full payment and assessee out of business expediency took business decision to make full payment after 9 months, once the negotiation failed. Therefore, it is the clear case business loss incurred during the course of business which is allowable.

6. On the other hand, Ld. DR relied on the order passed by AO and submitted that even when the assessee had found that material purchased was substandard quality then how it has made the full payment, which is highly impudent. Apart from that, AO want to enquire the seller by sending the notice u/s 133(6), but the same remained uncomplained, therefore the claim of loss is not substantiated.

7. We have heard the rival submissions and also perused the material placed on record and relevant findings of the impugned order. It is undisputed fact that assessee had purchased goods (chemicals) from M/s Varun Chemical Pvt. Ltd. for Rs. 17,85,000/-. At the time of supply, the supplier has given the test report dated 08.01.2013 showing purity of 99.98% of the chemicals supplied. Later on, the assessee found that the chemicals were substandard and defective and immediately, it got it tested and the Lab report certified that the purity of the 3 lots of the chemicals supplied was ranging between 53.89% to 61.78%. Thereafter, assessee brought this fact to the notice of the supplier which is evident from various emails exchanged, which is placed at page no. 22-25 including the

test report at page no. 28-29 of the paper book. However, the supplier insisted on full payment which assessee had to pay later on and this fact is also evident from the bank statement showing the payment to the said party, which are at page no. 26 & 27 of the paper book. Thus, the assessee had made the entire payment once the negotiation failed, i.e., after 9 months. The assessee then disposed of the said chemicals as it had practically no value and reduced the discarded lot of chemicals from the stock shown in the books. The only reason given by the authorities below to disallow the loss is, why assessee should make the full payment once the supply of chemicals were found to be of substandard quality and why assessee has not taken any action against the said supplier and lastly, the supplier did not responded to the notice u/s 133(6). Hence the claim and explanation of the assessee could not be substantiated.

8. There is no dispute that assessee had made the purchases of chemicals from the aforesaid party for Rs. 17,85,000/-. It also cannot be doubted that the material which was purchased turned out to be defective or substandard quality which is evident from

email exchanges as well as Lab test report, which are placed in the paper book and was also before the AO. Apart from that, assessee has shown from record that it has disposed of the defective stock for which it has produced cash voucher of expenditure evidencing removal and disposing of the said material. There is no other material or information to negate the claim of the assessee that it has sold the goods outside the books. The loss thus incurred on the goods purchases cannot be doubted simply because assessee has not taken any action on the supplier or the supplier has not responded the notice u/s 133(6). The factum of loss incurred cannot be discarded on this ground. The assessee if as a businessman may choose not take any action either in the interest of long time business relationship or for further business need. The decision of the businessman cannot be doubted on ground that why the payment was made despite knowing the fact that material supplied turned out to be defective or substandard. Suppose at the time of purchase, material supplied was of required or good quality but later on due to some reason it gets damaged while in the possession of the assessee and assessee has to discard the same, can then it be said that loss is not allowable? Once the purchases

have been debited in the accounts and there is no material that it has been sold outside the books and purchased stock has been damaged for which ample evidence has been filed then loss incurred on the damage has to be reduced from stock and consequently loss gets debited to profit and loss account. Once the factum of loss is proven by the evidences as discussed above, then the same cannot be denied and has to be allowed as business loss. Accordingly, we accept the claim of the assessee for the loss of Rs. 17 lakhs. Hence, Ground no. 2 is allowed.

9. With regard to ground no. 3, assessee had stated that there is double addition made by the AO to the extent of Rs. 1,35,000/- on the working of gain on sale of property. The assessee had given the following facts giving the erroneous working by the AO:-

<i>Particulars</i>	<i>As per Return</i>	<i>Reworked by AO</i>
<i>Full Value of Consideration (basement of Sujeer House) (Appellant is a 25% share holder in the property having registered value Rs. 72,00,000/-) [25%*72,00,000]</i>	18,00,000/-	
<i>Full Value of Consideration (godown at Sujeer House)</i>	1,35,000/-	
<i>Total Consideration</i>	19,35,000/-	20,81,250/-

<i>Cost of Acquisition</i>	(2,44,360/-)	(2,44,360/-)
<i>Short Term Capital Gain</i>	16,90,640/-	18,36,890/-
<i>Difference to be taxed [18,36,890-16,90,640]</i>	1,46,250/-	
<i>Difference actually taxed[18,36,890-15,55,640]</i>	2,81,250/-	
<i>Amount erroneously taxed doubly [2,81,250-1,46,250]</i>	1,35,000/-	

10. The AO has worked out the short term capital gain of Rs. 18,36,890/- and while working out the differential capital gain, has wrongly taken short term capital gain declared by the assessee at Rs. 15,55,640/- instead of Rs. 16,90,640/-. He has thus added an amount of Rs. 2,81,250/- being the difference between the 2 amounts instead of Rs. 1,46,250/- which is the actual difference. Though, Ld. CIT(A) has appreciated this facts, however instead of deleting the said addition, has directed the AO to rectify the same on rectification application filed by the assessee u/s 154.

11. On a bare perusal of the above working, it is seen that the difference is only Rs. 1,46,250/- whereas the AO has taken at Rs.

2,81,250/-. Thus, it is clear cut arithmetical mistake of calculation of Rs. 1,35,000/- and the same is directed to be deleted.

12. In so far as ground no. 1, this ground has not argued by the assessee, therefore this ground is dismissed as not pressed.

13. In the result, the appeal filed by the assessee stands **allowed**.

*Orders pronounced in the open court on 27<sup>th</sup> July, 2022.*

*Sd/-*  
(Pramod Kumar)  
Vice President

*Sd/-*  
(Amit Shukla)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 27.07.2022

*Sr.PS. Dhananjay*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./ Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**