

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.225/Pat/2022  
Assessment Year: 2010-11**

Nishant Krishna Johnson Paints, Karmali Chak, Begampur, Patna, Bihar-800009 (PAN: ABFPK3918D)	Vs.	Joint Commissioner of Income Tax Range-5, Patna
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : None  
Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 08.05.2023  
Date of Pronouncement : 17.05.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1042560654(1) dated 06.04.2022 against the order of Addl. CIT, Range-5, Patna u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 10.12.2012 for AY 2010-11.

2. None appeared on behalf of the assessee and no adjournment application is found on record. After hearing the Ld. Sr. DR and with his able assistance, we dispose of this appeal ex parte qua the assessee on merits.

3. Grounds of appeal raised by the assessee are reproduced as under:

*“1. On the facts and circumstances of the case, the order passed by the Learned Lower Authority is bad in law and facts.*

*2. On the facts and circumstances of the case the Learned Lower Authority erred in disallowing Rs.4,86,699/- on account of loss by fire (being amount disallowed by the insurance company).*

*3. The Learned Lower Authority erred in charging interest u/s. 234B of Rs.1,04,328/- and u/s. 234C of Rs.13,092/-.”*

4. Assessee is in the business of manufacturing and trading of paints and primer through its two proprietorship business. Return was filed on 14.10.2010 reporting total income at Rs.32,58,140/-. In the course of assessment proceedings, Ld. AO noted that assessee has debited an amount of Rs.5,37,892/- in the P&L Account of Johnson Paints Industries on account of loss due to fire. Assessee made his submission and explained that a fire had broke out against which a claim on account of loss from fire was lodged with Oriental Insurance Co. Ltd. for an amount of Rs.6,08,450/-. Against the claim of loss by assessee from the insurance company, an amount of Rs.70,558/- was paid to the assessee.

4.1. Ld. AO enquired about the claim of loss by issuing notice u/s. 133(6) of the Act from the insurance company. In reply from the insurance company, it was stated that surveyor of the insurance company had assessed the loss of Rs.1,21,781/- against the claim of the assessee of Rs.6,08,450/- and finally an amount of Rs.70,558/- was paid by applying the provisions contained in the insurance policy in respect of excess clause and conditions of average, keeping in view the terms and conditions and exclusion clauses in the insurance policy. Thus, the Ld. AO disallowed an amount of Rs.4,86,699/- and added it to the total income. The disallowance was calculated as [Rs.5,37,892/- - (Rs.1,21,781/- less Rs.70,588/-)].

4.2. Aggrieved, assessee went in appeal before the Ld. CIT(A), who confirmed the disallowance though assessee had made a detailed

submission in respect of the deficiency and discrepancy in the survey report as well as the manner in which the survey was conducted by the surveyor of the insurance company. This explanation is reproduced in the order of Ld. CIT(A).

5. We have taken up this matter to adjudicate with the assistance of Ld. Sr. DR by considering the material placed on record. Admittedly, there is no dispute on the occurrence of event of fire which broke at the business premises of the assessee. Also, there is no dispute in respect of the claim made by the assessee before the insurance company, part of which was allowed and paid to the assessee. The issue before us to consider is whether the difference between what was claimed by the assessee and that which has been paid by the insurance company is allowable or not.

5.1. From the perusal of the impugned assessment order, the approach of the Ld. AO to disallow the claim is solely on the basis of claim which has been paid by the insurance company. Ld. AO has taken the amount of Rs.70,558/- as the actual loss which has been suffered by the assessee pursuant to the fire and, therefore, for the balance amount of loss which the assessee has claimed as its business expenditure has been disallowed. Ld. AO has taken the quantum of claim paid by the insurance company as sacrosanct to determine and conclude that the actual loss of the assessee is this much only. In our considered view, the claim entertained by the insurance company is pursuant to the terms and conditions of the insurance policy though the actual loss suffered by the assessee is much higher and need not always fit in and meet the terms of the policy to get the recoupment of the entire loss which the assessee has actually suffered.

5.2. There is no denial on the fact that assessee has lodged a claim of Rs.6,08,450/- with the insurance company. Also, the surveyor from the

insurance company had estimated the loss by fire at Rs.1,21,781/- which again is subjected to various deficiency and discrepancy noted in the order of the Ld. CIT(A), as submitted by the assessee. For the sake of understanding, if we, for a moment, assume that insurance company had paid 'nil' against the claim of the assessee by computing the claim in terms of the insurance policy, would it mean that there was no loss suffered by the assessee on account of fire which broke out in his business premises. Such is not the case as what has been paid by the insurer is as per the terms of the insurance policy which need not cover the entire actual loss involved/suffered by the assessee. Accordingly, we find that the claim of the assessee of Rs.5,37,892/- i.e. Rs.6,08,450/- - Rs.70,558/- by debiting this in the P&L Account is a bona fide claim on the above noted undisputed facts. Accordingly, the claim of the assessee is allowed. Ground taken by the assessee in this respect is allowed.

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

Order pronounced in the open Court on 17th May, 2023.

**Sd/-**  
**(Rajpal Yadav)**  
**Vice President**

**Sd/-**  
**(Girish Agrawal)**  
**Accountant Member**

***Dated: 17th May, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent
  3. CIT(A), National Faceless Appeal Centre (NFAC), Delhi
  4. CIT ,
  5. DR, ITAT, Patna Bench, Patna
  - 6.
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata