

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.5603/Del/2018
Assessment Year: 2010-11

M/s. Simplex Engineering & Foundry Works Pvt. Ltd., 1503, Hemkunt Towers, 98, Nehru Place, New Delhi	Vs.	DCIT, Circle-1, LTU, New Delhi
PAN :AABCS4930P		
(Appellant)		(Respondent)

Assessee by	Sh. M.P. Rastogi, Adv. Sh. Shivam Malik, Adv.
Department by	Sh. Sahil Kumar Bansal, Sr. DR

Date of hearing	16.12.2024
Date of pronouncement	27.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2010-11, arises against the Commissioner of Income Tax (Appeals)-22 [in short, the "CIT(A)", New Delhi] order dated 31.05.2018 passed in case No. 195/17-18/CIT(A)-22 involving proceedings under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal:

- 1) *That the penalty as imposed by the Assessing Officer u/s 271(1)(c) of the Income-tax Act, 1961 at Rs.44,45,900/- is arbitrary, unjust and illegal on various factual and legal grounds.*
- 2) *That the Assessing Officer and CIT (Appeals) both have erred on facts and under the law in holding that the appellant has furnished inaccurate particulars in respect of educational expenses and loss of goods on account of fire and consequently the penalty as levied by the Assessing Officer and sustained by the CIT (Appeals) in relation to disallowance of these two expenses is arbitrary, unjust and bad in law.*
- 3) *The above grounds of appeal are independent and without prejudice to one another.*

3. Learned counsel next submits that the assessee has also filed its application under Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963 seeking to admit its additional evidence in the following terms:

“1. In the above matter, the assessee had claimed a loss of imported goods lying in the warehouse of Punjab State Container & Warehousing Corporation Ltd. at Nevashiva Port, Navi Mumbai on account of fire which took place on 31st January 2010. The related note was also given in item No. 6 of Notes of Accounts in Schedule XVII forming part of the balance sheet. It was stated in the notes that as and when any amount would be recovered, the same would be offered to tax in the year of its receipt.

2. The AO disallowed the claim of loss on the ground that the assessee could not substantiate the loss and no insurance correspondence was produced.

2.1 The Commissioner of Income Tax (Appeals) vide order dated 30th July 2014 also confirmed the disallowance as made by the AO. While disallowing the claim, the CIT (Appeals) observed that no evidence was there that the assessee is one of the affected parties. There is no evidence that the assessee had any insurance cover. No copy of FIR was filed.

2.2 Against the disallowance so made by the AO, the penalty proceedings were initiated on account of furnishing of inaccurate particulars.

3. The AO vide order dated 4th March 2016 levied the penalty u/s 271(1)(c) of IT Act.

3.1 The CIT (Appeals) vide order dated 31st May 2018 also affirmed the penalty vide order dated 31 May 2018 without any reasoning to contradict the assessee's submissions though the assessee had produced not only the details of the plant and machinery as well as their bills but also substantiated that there was actually a fire in the warehouse. The assessee also explained that as far as insurance is concerned, because all the goods were imported from foreign countries and there was only marine insurance which remained in force till the goods are landed at port and because after landing it has to be custom cleared after payment of duty which takes some time. So the goods were stored with Punjab State Container & Warehousing Corporation Ltd., known as Conware, but before customs clearance the goods were burnt in. Hence there was no occasion to make further insurance for land transit. The fire took place in the Conware of Punjab State Container & Warehousing Corporation, so the FIR has to be lodged not by the assessee but by the Punjab State Container & Warehousing Corporation the warehouse owner. The CIT (Appeals), without considering the same, affirmed the penalty.

4. In order to prove the genuineness of the claim and justify the goods which were actually lying in the warehouse and burnt in fire, the assessee seeks the permission to produce the following papers which are all the more necessary to contradict the adverse inference of the AO and CIT (Appeals) both about the genuineness of claim:

(i) Copy of FIR dated 1 February 2010 as lodged by the Punjab State Container & Warehousing Corporation Ltd. intimating about fire in the warehouse on 31 January 2010 along with tentative list of items burnt along with the name of owner parties. At serial Nos. 501 and 937 of the list of parties, the name of the assessee was there.

(ii) Certificate dated 12th April 2014 issued by Punjab State Container & Warehousing Corporation to the assessee confirming that five items of Full Hydraulic Power Sling Transmission machine having Bill of Lading No. NVA 3622980 dated 23rd December 2009 was burnt in fire on 31st January 2010. This item was purchased from Heavy Vehicle Technologies and System Europe (DANA) was purchased for 33,372 Euro. The related cost in terms of money was worked out at Rs.21,58,828/- and shown at item No. 2 of the details of purchases (See Page 2 of paper book).

(iii) Certificate dated 26th April 2010 issued by Conware confirming that 14 cases of gear box having IGM No. 23941 enclosed. These items were purchased from Bosch Roseroth (India) Ltd, on high seas sales vide bill dated 8th January 2010 for Rs.61,83,200/- (See pages 9 to 15 of paper book).

(iv) Certificate dated 12th April 2014 issued by Punjab State Container & Warehousing Corporation to the assessee confirming that two W/cases of Hydraulic Motor and Seal Kit Bill of Lading No. 010912691 dated 3rd January 2010 was burnt in fire on 31 January 2010. This item was purchased from Intermot SRL Italy purchased for 14,646 Euro. The related cost in terms of money was worked out at Rs.9,29,435/- and shown at item No. 3 of the details of purchases

5. The above evidences are all the more necessary to prove the genuineness of claim about the loss of goods in fire and are necessary for adjudication of the issue about the claim of loss in fire.

Therefore, it is prayed that the aforesaid documents may kindly be admitted as they are necessary to prove that the goods of the assessee were actually lying in the warehouse and actually burnt.

Submitted”

4. Mr. Bansal vehemently argues that the assessee's above additional evidence does not deserve to be admitted since filed at this belated stage. He could hardly rebut the clinching fact that the same indeed goes to the root of the matter wherein the assessee

has explained the relevancy thereof as well as the corresponding delay on account of circumstances beyond its control.

5. Faced with this situation and without commenting upon the merits of the learned lower authorities' action levying the impugned penalty herein, we deem it appropriate at this stage to admit the above additional evidence and restore the matter back to the Assessing Officer for his afresh factual verification as per law subject to a rider that it shall be assessee's risk and responsibility only to plead and prove all the relevant facts within three effective opportunities in consequential proceedings.

6. All other assessee's pleadings on merits stand rendered academic at this stage.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 27th December, 2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 27th December, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi