

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,  
MUMBAI**  
**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER**  
**&**  
**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2257/MUM/2013  
(A.Y. 2007-08)**

Mr. Mohd. Hasan Mohd. Gafoor Momin 430/2, Kotwal Shah, Dargah Road, Bhiwandi, Dist. Thane, Maharashtra-421302	v/s. बनाम	ITO Ward 1(2) at Kalyan
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEKPM0354F</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Appellant by :	None
Respondent by :	Shri Laxmi Kant

Date of Hearing	29.10.2024
Date of Pronouncement	22.11.2024

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Thane-I [hereinafter referred to as “CIT(A)”] dated 11.12.2012 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2007-08.

2. The assessee has raised following grounds of appeal:

*“1. The Ld. CIT (Appeal) erred in holding that the appellant has not conclusively proved the event of fire without appreciating the material evidence filed on record.*

2. The Ld. CIT (Appeal) also erred in disbelieving the event of fire just because the appellant failed to renew his fire insurance.

3. The Ld. CIT (Appeal) erred in not considering the accounting mistake of crediting Rs. 12,00,000/- to his capital account merely because the same was not corrected before completion of assessment more particularly when such correction was not allowed by the AO in spite of oral requests by the appellant.

4. The Appellant therefore most respectfully prays that :-

- a) Your Honours may be pleased to delete the impugned additions totally amount to Rs. 12,00,000/-
- b) Yours Honours may be pleased to pass any such other order or orders in favour of the Appellant as may be deemed fit in the interest of justice”

3. Brief facts of the case are that the assessee filed return declaring income of Rs. 3,52,015/- on 31.10.2007. The assessee had shown business income from manufacturing of cotton & art silk cloth and income from other sources. A survey action u/s 133A of the Act was carried out at the business premises of the assessee on 25.10.2007. Due to discrepancies found at the time of the survey, an additional income of total Rs. 60,00,000/- was declared in the name of the assessee and his family members for AY 2007-08. Out of this, income of Rs. 12,00,000/- was declared in the hands of the assessee on account of the excess stock. The case was selected for scrutiny and it was noticed by the AO that the additional income of Rs. 12,00,000/- as per declaration made at the time of the survey had not been offered for tax. On scrutiny, it was found that entries were made in P&L account claiming loss of stock of Rs. 12,50,000/- on account of fire at godown. This loss was booked by the assessee on the ground that no insurance claim was made with the insurance company. As a result, the disclosure of Rs. 12,00,000/- as additional income was nullified by claiming the



loss on account of fire. The AO came to the conclusion that there was no authentic proof regarding the loss on account of fire claimed at Rs. 12,50,000/- and, accordingly, proceeded to add Rs. 12,00,000/- on account of additional income declared during the survey.

4. Aggrieved with the order, the assessee filed an appeal before Ld. CIT(A). However, the order of the Ld. AO was upheld by the Ld. CIT(A) after hearing as he found no merits in the arguments of the assessee. Accordingly, addition of income of Rs. 12,00,000/- made u/s 143(3) by the AO was upheld.

5. Aggrieved with the decision of Ld. CIT(A), the assessee has filed an appeal before the Tribunal on 23.05.2014. Thereafter, the case has been fixed several times. It is noticed that no compliance has been made by the assessee in the last few hearings specifically on 24.09.2024 and on 29.10.2024. Considering that the appeal is pending since long and no compliance to the notices is being made, we proceed to decide the issue on merits on the basis of material available before us.

6. Admittedly, the assessee had declared additional income over and above the regular income during the survey conducted on 25.01.2007. Accordingly, in the return for AY 2007-08, the assessee was required to separately include Rs. 12,00,000/- as additional income. However, the assessee on one hand credited this amount in the P&L account and simultaneously claimed loss on account of



fire to the extent of Rs. 12,50,000/-, thereby nullifying effect of declaration made regarding additional income at the time of survey.

7. Before Ld. AO, the assessee produced only a certificate from the fire brigade of Bhiwandi Nizampura Shahar Mahanagarपालिका, Bhiwandi dated 28.03.2007 wherein it was mentioned that there was a fire in the factory and godown of the assessee on 25.03.2007 and loss due to fire was Rs. 12,50,000/- as per '**say of owner**'. No other evidence such as insurance claim or police panchnama could not be produced in support of the claim made on account of loss due to fire. The Ld. AO, therefore, did not accept the assessee's claim regarding loss of stocks worth of Rs. 12,50,000/- on account of fire and proceeded to assess the total income after making an addition of Rs. 12,00,000/- on account of additional income.

8. Ld. CIT(A) after hearing the assessee's counsel, upheld the decision of the Ld. AO with the following remarks:

*"4.4 Admittedly, the appellant had agreed for an additional income of Rs. 12,00,000/- for the period under consideration during the survey at his premises on account of stock discrepancy noted by the survey party. Subsequently, in the return of income filed on 31/10/2007, the above additional income was not offered for taxation. At the same time, the trading account has been credited with an amount of Rs. 12,50,000/- as stock destroyed by the fire and also debited the same amount of Rs. 12,50,000/- as expenses due to the loss of fire, thereby nullifying the effect of the additional income offered for taxation during the survey operation. The appellant has not conclusively proved the happening of the event of the fire at his godown. No list of the stock destroyed in fire has been placed on record. The appellant has also not explained as to how much total goods were lying the godown at the time of fire and out of which how many goods were destroyed and how many goods were left out. Looking at the trading account, it is also to be seen that the amount of goods destroyed in fire amounting to Rs. 12,50,000/- is very near to the excess stock found and declared amounting to Rs. 12,00,000/- by the appellant during the course of survey. Therefore, it can be observed that the story of fire at the godown cannot be given much weightage.*



4.5. Further making of no insurance claim on such major loss is also intriguing. The business items of the appellant i.e. textiles, is highly fire prone items and how the firms having a turnover of Rs. 4,24,79,812/- forgot to take the insurance cover, beyond understanding.

4.6. In addition to the above entries in the trading account, the appellant further credited his capital account with an amount of Rs. 12,00,000/- on account of I.T. Survey, thereby taking the benefit of the declaration of additional income without paying any tax on the same. The argument of the AR that the same happened due to the clerical mistake of the accountant cannot be accepted as the appellant has not tried to rectify the above mistake even before the completion of the assessment proceedings. The intention of the appellant is, not to pay the tax on the additional income declared on the one hand and also to take the benefit of the same by making addition of the same amount to the capital account on the other hand.”

9. We have carefully considered the submissions made by the Ld. DR and perused the material available before us. From the detailed discussion in the assessment order as well as in the order of the Ld. CIT(A), it is clear that the assessee has failed to establish the genuineness as well as the quantum of loss incurred due to fire in his godown and business premises. Before us, the assessee has not made any submissions despite being given several opportunities. We, therefore, find no reason to interfere with the order of Ld. CIT(A).

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 22.11.2024.

**Sd/-**

**Sd/-**

**NARENDER KUMAR CHOUDHRY**

**RENU JAUHRI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 22.11.2024

अनिकेत सिंह राजपूत/ स्टेनो



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

