



आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

श्री राजेंद्र, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER  
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. : 1217/Mum/2014**

(Assessment year: 2006-07)

किशोर एम नगरेचा Kishore M Nagrecha, C/o Rajs Bros, Fern House, Colaba Bausway, Sahaid Bhagat Singh Road, Opp Electric House, Mumbai -400 039 स्थयी लेखा सं. PAN: <b>AAAPN 7273 L</b>	<b>Vs</b>	DCIT-12(2), Aayakar Bhavan, M K Road, Mumbai 400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री सुबाश एस शेट्टी और श्री आर एन वासानी Shri Subhash S Shetty & Shri R N Vasani
Respondent by	:	श्री एम मुरली Shri M Murli

सुनवाई की तारीख /Date of Hearing : 02-03-2016

घोषणा की तारीख /Date of Pronouncement : 31-05-2016

आदेश

**ORDER**

श्री अमित शुक्ला, न्या सः

**PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the assessee against impugned order dated 06.12.2013, passed by CIT(A)-23, Mumbai in relation to the penalty proceedings under section 271(1)(c).

2. The assessee is mainly aggrieved by levy of penalty of Rs.33,57,791/- on account of disallowance claim of loss by the assessee on goods lost in transit.

3. Briefly stated, the relevant facts as culled out from the order of the CIT(A) are that, the assessee in its proprietary concern, M/s Sandheere Exports had claimed expenses of Rs.99,75,614/- which was debited to the profit & loss account towards 'Goods Lost in Transit'. The assessee in his Balance sheet had classified this amount under the head "sundry creditors" in the name of ICICI Lombard General Insurance Co. Ltd. During the course of the assessment proceedings, in response to the show cause notice, the assessee submitted that he has effected an exports sales of cement from Kakinada port in which assessee's consignment to the 3 customers abroad to Morani, the details of which are as under:-

Sr. N	Dt/Invoice No.	Party's Name	Quantity	Shipping Bills No.	Amount (Euro)
1	21/01/2006 SE/006/2005-06	M V Abasse SIC Hachim Freres	1500 MT/ 30000 bags	6100069/ 25.01.2006	121050
2	21/01/2006 SE/004/2005-06	ETS Amit Minihadji Mbechezi	1500 MT/ 30000 bags	6100067/ 25.01.2006	121050
3	21/01/2006 SE/009/2005-06	Magasin Charjj Houssen	2500 MT/ 50000 bags	6100100/ 31.01.2006	201750

As per the assessee, such consignments which were dispatched, reached the port of destination either partly in damaged condition or in short-shipment. The value of the goods lost in transit amounting to Rs.99,75,614/- was debited to the P & L A/c. which was mainly on account of short shipment of cement. The assessee further stated that the loss in shipment was assessed abroad by insurance agent and on receiving the said information; he lodged his claim for insurance money with ICICI Lombard General Insurance Co. Ltd. The original claim made by the assessee with ICICI Lombard vide claim bill dt. 10.05.2006 was for

Rs.1,61,49,525/- which was subsequently reduced to Rs.1,03,80,245/- in his claim dt.12.06.2006. The assessee further reduced the claim for insurance to Rs.99,75,614/- which is the figure appearing in the P & L A/c.

4. From the perusal of the documents, AO noted various facts which has been discussed in para 3.3 of his order and observed that though amount was debited to the trading and profit and loss account, however, this was only the book loss recorded by the assessee and there was no actual monetary loss which has caused to the assessee due to the short shipping of exports up till now. The assessee could not produce any evidence in support of the claim of the customers that there was short shipment of goods. It has only lodged his claim for insurance money for goods lost with the ICICI Lombard based on the loss assessment report of an insurance agent aboard. The ICICI Lombard however appears to have rejected the assessee's claim on technical ground and even before the Consumer forum also the matter was decided against the assessee on technical reasons only. After reproducing the assessee's submission of para 3.4 of the assessment order, he finally held that genuineness of the assessee's claim has not been proved and accordingly he disallowed the claim of Rs.99,25,614/- after detailed discussion. This disallowance as stated by the assessee stands confirmed from the stage of the Tribunal.

5. During the course of the penalty proceedings, assessee again furnished detail explanation stating that, he has not submitted any inaccurate particulars because the loss claimed was based on actual events which were supported by Surveyor Certificate and other documents filed with the AO. The assessee's explanation in this regard is reproduced hereunder:

*“During the year under review the appellant exported goods worth Rs.13,54,07,441/-. Out of these certain goods were lost in transit and partly reached the destination in damaged condition. Due to short supply and damaged condition, the concerned customers did not accept the consignment, consequently the appellant suffered a loss, which was assessed by the approved Valuer at the port of destination and accordingly the appellant written off the loss of Rs.99,75,614/- in his books of account. These facts and supporting documents were filed on the records of assessing officer in the course of assessment proceedings. The aforesaid loss has been disallowed by the AO, the said disallowance has been confirmed by CIT(A) and Hon. ITAT. Appellant’s appeal is pending before the Hon. Bombay High Court”.*

6. The AO relying upon the finding given on the quantum side levied the penalty of Rs.33,57,791/-. Again before the CIT(A), detailed submissions have been made which has been incorporated by the CIT(A) from pages 5 to 9 of the appellate order, but ld CIT(A) too has confirmed the penalty on the ground that claim made by the assessee has not been substantiated and also has failed to prove that such an explanation is *bona fide*.

7. After hearing both the parties and on perusal of the relevant facts and material before us, we find that, the

assessee had claimed the loss/expenditure of Rs.99,75,614/- which was debited to the profit and loss account towards goods lost in transit. The observation in the impugned appellate order in this regard is reproduced hereunder:-

*“The assessee in his explanation for the debit entry of Rs.99,75,614/- in the Trading, Profit a Loss A/c. towards goods lost in transit, confirmed in his letter dt. 08.09.2008 that he had received the full payment from the customers towards the cement exported, since these were advance payments made by them. Hence, though the amount was debited to the Trading Profit a Loss A/c, this was only the book Loss recorded by the assessee and no short shipping of exports up till now. According to the A.O., the assessee could not produce any evidence in support of the claim of the customers of the assessee for short shipment of goods. The assessee appeared to have lodged his claim for insurance money for goods Lost with the ICICI Lombard based on the loss assessment report of an insurance agent abroad. The ICICI Lombard had, however, rejected the assessee's claim on technical grounds. The A.O. observed from the copies of the documents produced that the assessee had filed a complaint against the decision of ICICI Lombard with the 'Maharashtra State Consumer Dispute Redressal Commission'. The result of this complaint was still awaited. Taking into account all these facts, the A.O.*

*observed that the claim of the assessee for expenses debited to the Trading profit a Loss A/c. was incorrect. The Assessing Officer, therefore, issued show-cause notice calling for the assessee's explanation in the matter.*

*2.1.5 The assessee explained that he was following mercantile system of accounting and the loss on account of goods lost in transit needed to be claimed and allowed in the relevant previous year itself. According to the A.O., the assessee had received the full payment from the customers and he had neither acknowledged the liability in his books towards the customers nor paid them the amount. The assessee had also not foregone his insurance claim and the matter was still to be decided. The amount debited to the Trading, Profit a Loss A/c. was equal to the amount of insurance claimed. No liability accrued to the assessee during the previous year but might arise in future which would be a contingent liability'. The amount debited to the P & L A/c was not an actual expenditure incurred and it could at best be called only a Reserve made in anticipation of a contingent liability. Even for settlement of the contingent liability, the insurance claim outstanding would have to be taken into account. The assessee's claim for insurance had not been rejected so far by the Maharashtra State Consumer Disputes Redressal Commission. The AO accordingly disallowed the amount*

of Rs.99,75,614/-”.

8. From the above it is seen that the assessee's claim has been denied mainly on the ground that, *firstly*, that the assessee had received full payment from the customers towards the cement exported as advance payment and no monetary loss had been caused to the assessee and *secondly*, the assessee lodged a claim with an insurance company which has been rejected. The assessee before the authorities have submitted the letters stating that customers had pressed for their pending amount and assessee has not forgone his insurance claim. This fact has been noted by the first appellate authority in para 2.1.6. Thus, on the facts of the case, and in the light of various evidences and documents, the preponderance of probability lies in favour of the assessee indicating that the claim made by the assessee has not been found to be false by the AO either during the course of assessment proceedings or during the course of penalty proceedings. Rejection of a claim on 'technical grounds' by the insurance company or by consumer forum, cannot be held against the assessee. The explanation given by the assessee before the authorities below has not been found to be false or erroneous by bringing any cogent material on record and, therefore, the primary onus of the claim made in the profit and loss account has been discharged. Moreover assessee has produced evidences in support which has

not been held to false. Merely because in quantum proceedings this matter has been decided against that does not mean that in penalty proceedings it can be held that assessee has not been able to substantiate its claim, because, none of the explanations and evidences filed by the assessee have been found to be false. Therefore, it cannot be held that assessee has furnished any inaccurate particulars of income or has concealed the particulars of his income. Accordingly, penalty levied by the AO and confirmed by the CIT(A) stands deleted.

9. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 31<sup>st</sup> May, 2016

**Sd/-**  
(राजेंद्र)  
लेखा सदस्य  
**(RAJENDRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
(अमित शुक्ला)  
न्याईक सदस्य  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Mumbai, Date: 31<sup>st</sup> May, 2016**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A)-23, Mumbai.
- 4) The CIT -12, Mumbai.
- 5) विभागीय प्रतिनिधि "ए", आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. "A" Bench, Mumbai.

6) गार्ड फाईल \  
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आदेशानुसार/By Order

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, मुंबई  
Dy./Asstt. Registrar  
I.T.A.T., Mumbai

\*चव्हान व.नि.स

\*Chavan, Sr.PS