IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos.404 & 405/CTK/2017
Assessment Years : 2012-13 & 2013-14

ACIT Corporate Circle -1(2), Bhubaneswar.	Vs.	M/s. T.S.Alloys Limited, N-3/24, IRC Village, Nayapali, Bhubaneswar.
PAN/GIR No.AACCR 7005 H		
(Appellant)	..	(**Respondent**)

Assessee by : Mss Swati Kejriwal, AR
Revenue by : Shri Saad Kidwai CIT DR

Date of Hearing : 08/08/ 2018
Date of Pronouncement : 9 /08/ 2018

O R D E R

Per N.S.Saini, AM

These are appeals filed by the revenue against separate orders of the CIT(A)-1, Bhubaneswar both dated 12.7.2017 for the assessment years 2012-13 & 2013-14, respectively.

2. In both the appeals, the common ground of appeal taken by the revenue is that the CIT(A) is not justified in deleting an addition of Rs.4,06,06,511/- for the assessment year 2012-13 and an addition of Rs.3,46,16,358/- for the assessment year 2013-14 made on account of expenses for low recovery of chromium.

3. As the facts and issue involved in both the appeals are common, therefore, both the appeals are disposed of together as under:

4. The brief facts of the case are that the Assessing Officer observed that the assessee has debited an amount of Rs.4,06,06,511/- for the assessment year 2012-13 and an amount of Rs.3,46,16,358/- for the assessment year 2013-14 towards low recovery of chromium. He observed that the assessee company supplies high carbon ferro chrome to Tata Steel Ltd., on conversion basis and as per agreement between Tata Steel Limited and the assessee company, if the chrome contents in the materials offered by the assessee company is less than the minimum percentage against respective weighted average of chrome and iron ratio' indicated in product quality/norms, pro rata deduction will be made on conversion and coke charges payable to the assessee. During the relevant previous year, the total deduction so made by Tata Steel Limited from the bills of the assessee company on account of the low recovery of chrome is Rs.4,06,06 511/- for the assessment year 2012-13 and Rs.3,45,16,358/- for the assessment year 2013-14. The Assessing Officer suspected the intent of such an understanding between Tata Steel Limited and the assessee company, which is a sister concern of the Tata Steel Limited and for the reasons stated in the assessment order, held that such an arrangement was made with the assessee company to reduce its taxable income. The reasons given by the Assessing Officer are as under:

> "4.6 The details furnished and the submission made by the assessee has been duly considered, in this regard the following need mention that

i) The assessee did not establish any exact manufacturing loss in the process of making the finished goods,

ii) The assessee was unable to explain how in the chromium level as stipulated by TSL occurred.

iii) In fact, this occurrence was beyond the control probably due to the technological limitations,

iv) Further, the level of chromium in the finished by the assessee was consistently maintained at this level,

v) Despite this fact, TSL had been offering contracts assessee on a continuous basis,

vi) It was also not explained how the slight difference in the chromium content would affect the quality of the end products produced by TSL on the basis of the finished goods supplied by the assessee.

vii) The significance of the slight variation in the chromium content was not explained.

viii) From the replies- furnished by the assessee it is to be inferred that the levels maintained by the assessee is normal based on the manufacturing process adopted by the assessee and the standards stipulated by TSL was not possible due to the technology being employed.

ix) It was not established by the assessee, that whether it would be possible to maintain such a level of standard of output expect by TSL and that whether any other similarly placed manufacturer in maintaining the levels as stipulated by TSL.

x) Being a group company, TSL is well aware of this and continued to provide contracts for the manufacture of the product to the assessee, which only confirms, that the difference in the chromium levels found in the finished products by the assessee had no real impact in the products produced by TSL.

xi) Thus, it is inferred that the stipulation for maintenance of output level in the finished products and making recoveries from the assessee for the marginal difference is only a ploy to reduce the profit margin of the assessee company to reduce the tax liability,

xii) The loss that has occurred to the assesses is not on account of any manufacturing loss to the company

xiii) The computation furnished by the assessee for working out the recovery for low recovery of chromium reveals that the loss so worked out is not an actual loss but the netting off of the output for a certain period of time and based on such netting off, I amounts are being worked out and charged by TSL

xiv) It is to be mentioned that having made a claim, the onus is on the assessee to establish its genuineness beyond doubt.

xv) In this regard, reference is made to the decision of the Hon'ble Supreme Court of India in the case of Shri Sun Siddharthbhai vs CIT (1985) 156 ITR 509 (SC), held that it is the right of the income-tax authorities to consider the genuineness of the transactions and to penetrate the veil and ascertain the truth. It is within their power to consider whether a particular transaction was to evade tax.

5. Before the CIT(A), the assessee submitted that the Assessing Officer stated that the level of chromium in the finished goods was beyond the control of the assessee. But when we go through the manufacturing process and the factors, we can easily understand that the process is in the control of the assessee. The total lower recovery quantity wise and year wise is as follows:

Year	Total delivery quantity	Total quantity of low recovery	% of low recovery	Industry standards
2011-12	54437 mts	972 96 mts	1.79%	3-5%
2012-13	56261 mts	892.85 mts	1.59%	3-5%

6. The Assessing Officer has not considered the fact that the assessee is doing conversion job and the finish product has certain qualitative requirements which has been spelled out in the agreement entered into between both the parties. Similar agreements have also been entered into by M/s. Tata Steel Limited with other parties in the State on the same and similar terms and conditions as with the assessee. The assessee enclosed agreement entered into between Tata Steel Limited and Nava Bharat Ventures Limited, which was not a group company. The

assessee also attached a detailed calculation wherein the recovery of Chrome Ore percentage wise and the recovery by Tata Steel Limited is laid out. Similarly, for the same financial year, the recovery of Chrome Ore percentage wise and recovery by Tata Steel Limited for M/s. Nava Bharat Ventures Limited is attached. It was pointed out that it can be seen from the two that this recovery is not happening from just the assessee but from every entity in the similar trade. The Assessing Officer has stated that it is ploy to reduce the profit margin of the assessee and, hence, the tax liability by Tata Steel Limited. It was very surprising to see that the Assessing Officer has stated things so callously without going into the facts of the case and without going into the Industry practices. Hence, it was submitted that the stand of the Assessing Officer that the assessee company being group company and, therefore, have entered into such agreements is not correct and bad in law.

7. It was submitted that the Chrome Content in the finished goods supplied by the assessee is the price determining factor in the market. The price so determined is increased or decreased on a pro rata basis by the buyer as per the content of Chrome in the finished goods. The assessee attached one sales bill of M/s. Tata Steel Limited, wherein the rate of the finished good is decided at Rs. 113,513.40 at 60% chrome content. However, because the chrome content is 60.21%, the price of the product has become Rs.113,910.70 which is increased due to higher

chrome content in the finished good. Therefore, it was submitted that the chrome content in High Carbon Ferro Chrome is a very important and a determining factor for the buyer, hence the quality of the product needs to be maintained by the assessee at all times. Therefore, it was submitted that the expenditure was incurred wholly and exclusively for the purposes of business and hence, allowable deduction.

8. On appeal, the CIT(A) vacated the disallowance observing that there is no doubt that Tata Steel Limited has deducted the impugned amount of Rs.4,06,06,511/- for the assessment year 2012-13 and Rs.3,46,16,358/- from the conversion charges payable to the assessee company during the relevant previous year. The Assessing Officer has doubted the genuineness of this deduction by Tata Steel Limited probably because the assessee company is a sister concern of Tata Steel Limited. The Assessing Officer's doubt was that this sort of arrangement of making deduction on account of low chrome recovery may be a method adopted by Tata Steel Limited and its sister concern for mutual benefit of both. May be the Assessing Officer is hinting at the fact that the transactions in question may not be at 'arm's length' terms and conditions. However, no materials have been brought on record by the Assessing Officer to establish that this sort of arrangement was deliberately made between Tata Steel Limited and the assessee company and the transactions were not real. Moreover, in the course of appeal hearing, the assessee has

filed copies of arrangements of Tata Steel Limited with others who are engaged in supplying the same product i.e. high carbon ferro chrome to Tata Steel Limited, wherein, the same provision for recovery/deduction on bills due to low chrome recovery is there. For instance, Tata Steel Limited has an agreement with Nava Bharat Ventures Ltd. which is not a Tata Group company and in the agreement same terms & conditions are there which exist in the agreement with the assessee company. Hence, it cannot be said that Tata Steel Limited and the assessee company has entered into an agreement deliberately so that the tax liability of the assessee company could be reduced because of deduction on account low chrome recovery. Moreover, the deduction made by Tata Steel Limited is real and the assessee company cannot be taxed on income not accrued or received. The Assessing Officer is justified to have a genuine doubt about the genuineness of the transactions of the assessee company with its sister concern Tata Steel Limited. However, on the basis of suspicion alone, no addition or disallowance can be made in the assessment. Therefore, he deleted the addition of Rs.4,06,06,511/- for the assessment year 2012-13 and Rs.3,46,16,358/- for the assessment year 2013-14 on account low chrome recovery.

9. Ld A.R. supported the order of the CIT(A) whereas ld D.R. supported the order of the Assessing Officer.

10. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer observed that the assessee has claimed deduction of Rs.4,06,06,511/- for the assessment year 2012-13 and Rs.3,46,16,358/- for the assessment year 2013-14, which was debited by Tata Steel Limited of which the assessee is a sister concern from the conversion charges on account of low recovery of chrome. The Assessing Officer has doubted the deduction claimed on the ground that the assessee is a sister concern of Tata Steel Limited and according to him, the agreement entered into with the assessee company was a ploy to reduce the income of the assessee.

11. Before the CIT(A), the assessee filed similar agreement entered into by Tata Steel Limited and Nava Bharat Ventures Limited and submitted that similar deduction from the bills of conversion charges was made in the case of Nava Bharat Ventures Limited and the agreement entered into with the assessee was at par with that entered into with Nava Bharat Ventures Limited.

12. The CIT(A) considered the submission of the assessee and held that the Assessing Officer has doubted the agreement between Tata Steel Limited and the assessee for the conversion charges and, therefore, has made disallowance of the expenditure claimed by the assessee. He has

brought no material on record to show that the arrangement was deliberate between Tata Steel Limited and the assessee company and the transactions were not real. The CIT(A) held that on the basis of suspicion alone, no disallowance can be made of the expenditure claimed by the assessee.

13. Before us, ld D.R. though supported the order of the Assessing Officer but could not bring any cogent and positive material on record to controvert the findings of the CIT(A). No material has been brought on record to show that the deduction claimed on account of low recovery of chrome of Rs. Rs.4,06,06,511/- for the assessment year 2012-13 and Rs.3,46,16,358/- for the assessment year 2013-14 is bogus or inflated by the assessee in order to reduce its taxable income. It is trite law that suspicion howsoever grave cannot takes place of proof. The Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd vs CIT, reported in 26 ITR 775/783 (SC) has held that "As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a Court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment

without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh vs. CIT"

Further, the Hon'ble Supreme Court in the case of Uma Charan Shaw Brors vs CIT, West Bengal reported in (1959) 37 ITR 271 (SC) has held that " Taking into consideration the entire circumstances of the case, we are satisfied that there was no material on which the Income Tax Officer could come to the conclusion that the firm was not genuine. There are many surmises and conjectures, and the conclusion is the result of suspicion which cannot take the place of proof in these matters."

14. Similarly, in the appeal before us, we find that there is no material brought on record by the revenue to show that the agreement between the assessee and M/s. Tata Steel Limited for manufacture of high carbon ferro chrome is sham. The Assessing Officer has treated the agreement as sham on the basis of suspicion and conjetures and without any proof and, therefore, the Ld CIT(A) has rightly vacated the disallowance of expenditure.

15 In the result, appeals filed by the revenue are dismissed.

Order pronounced on 9 /08/2018.

Sd/-	sd/-
(**Pavan Kumar Gadale)**	**(N.S Saini)**
JUDICIALMEMBER	**ACCOUNTANT MEMBER**

Cuttack; Dated /08/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : ACIT Corporate Circle -1(2), Bhubaneswar
2. The Respondent. M/s. T.S.Alloys Limited, N-3/24, IRC Village, Nayapali, Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

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BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack