

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

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

I.T.A. No. 4186/DEL/2016 (A.Y 2011-12)

ACIT Circle-50(1) New Delhi (APPELLANT)	Vs	Amba Metals 21/6, West Patel Nagar New Delhi AAKFA0755C (RESPONDENT)
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C.O No. 308/Del/2016 (A.Y 2011-12)

Amba Metals 21/6, West Patel Nagar New Delhi AAKFA0755C (APPELLANT)	Vs	ACIT Circle-50(1) New Delhi (RESPONDENT)
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Appellant/Respondent by	Sh. Ashok Gautam, Sr. DR
Respondent/Appellant by	Sh. Ved Jain, Adv & Sh. Aashish Goyal, Adv

Date of Hearing	08.03.2021
Date of Pronouncement	07.04.2021

ORDER

PER SUCHITRA KAMBLE, JM

The appeal is filed by the Revenue and Cross Objection is filed by the against order dated 09/06/2016 passed by CIT(A)-17 New Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

ITA No. 4186/Del/2016 Revenue's appeal

"1 The Ld CIT(A) has erred in deleting the addition of Rs. 2,00,89,648/- on account of bogus Sundry creditors.

2. The Ld CIT(A) has erred in deleting the addition of Rs. 2,00,89,648/- on account of the fact that even after issuing ;summons to the 21 parties for ascertaining the genuineness of Sundry Creditors, neither parties even appeared nor given any confirmation.

3. The Ld.CIT(A) has erred in taking into consideration of fact that every assessment year is distinct from each other and cannot be compared with the results of the current year consideration on account of genuineness and creditworthiness of facts.

4. The Ld.CIT(A) has erred in deleting the addition of Rs. 74,55,600/- without taking consideration of facts that bills have been raised @ Rs. 2100/MT only. Therefore, there is no reason to make payment to its sister concern @ 2500/Mt on account of job work charges.

5. The Ld.CIT(A) has erred in not taking consideration of facts that the assessee is not responsible for expenses incurred by its sister concern on job work charges and making payment accordingly as it is against the concept of any business prudence."

C.O No. 308/Del/2016 (A.Y 2011-12)

1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eyes of law and facts.

2. (i)On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in restricting the deduction under Section 80-IC to Rs.6,96,627/- as against Rs.13,72,033/- claimed and allowable under the provisions of the Act.

(ii) On the facts and circumstances of the case, the leaned CIT(A) has erred both on facts and in law in confirming the action of the AO in holding that the assessee is not entitled to 80-IC deduction in respect of sale of TMT bars, angles/channels.

(iii) That the said order has been passed rejecting the contention of the assessee that the observation of the learned AO that the assessee is not engaged in manufacturing is against the facts on record.

3. That in the alternative and without prejudice to the above, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the

assessee that the AO while re-computing deduction under section 80 IC has ignored the fact that the TMT bars being sold by the assessee are also produced out of the billets being manufactured by the assessee and hence the assessee is eligible to deduction under Section 80-IC in respect of the billets produced and consumed for producing TMT bars, angles/channels.

3. The assessee firm is engaged in the business of manufacturing of M S Billets. The assessee declared income from business or profession and income from other sources. The assessee filed return of income on 20/9/2011 declaring income of Rs. 47,50,900/-. The Assessing Officer made an addition of Rs.6,75,406/- in respect of Section 80IC deduction which was claimed by the assessee to the extent of manufacturing of TMT BARS as well as Rs. 2,22,89,648/- in respect of Sundry Creditors. The Assessing Officer further made an addition of Rs.74,55,600/- in respect of Job Work Expenses claimed in profit and loss account.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards Ground No. 1, 2 & 3 of the Revenue's appeal relating to addition of Rs. 2,22,89,648/- on account of bogus creditors, the Ld. DR submitted that the CIT(A) have not taken the cognizance of genuineness of 21 parties as those parties has not given any confirmation or not appeared before the Assessing Officer. Thus, the creditworthiness as well as genuineness was not proved by the assessee.

6. The Ld. AR submitted that the creditworthiness's was never doubted by the Assessing Officer and all the relevant documents were filed before the Assessing Officer as all the creditors have replied and given the response. The Ld. AR further submitted that summons u/s 131 were issued on 26/2/2014 to the parties who were having outstanding balance of more than Rs. 1 lac as on 31/3/2011. Out of all the creditors to whom summons were issued all the creditors replied except 21 creditors to whom either summons could not be

served or no compliance was made by the creditor to the summon. The assessee also filed confirmation of 4 creditors along with their replies and their PAN numbers. These are M/s Raj Nandi Metal Pvt. Ltd., M/s Ajay Enterprises, M/s Saton Reflectors Enterprises and M/s Shiv Enterprises, Ahmedabad. The assessee has filed copy of ledger account of all the parties where in the amount of outstanding has been squared off by making payment through proper banking channel. The Ld. AR also submitted the bank statements highlighting the payments made to the above parties through account payee cheque as well as indicating the outstanding balance of each 21 parties was also provided by the Assessee before the Assessing Officer. The said documentary evidences submitted by the assessee were totally ignored by the Assessing Officer in the assessment order. The Ld. AR submitted that the Assessing Officer has never rejected books of accounts and has not pointed out any discrepancy in the books of account. The Ld. AR relied upon the order of the CIT(A) and submitted that the CIT(A) has given a cogent and reasoned finding while deleting the addition. The Ld. AR relied upon the following decisions:-

- (a) DCIT Vs. Norma India Ltd. 2016 TMI 645 ITAT, Delhi
- (b) M/s Hind Globe Link Vs. ITO

7. We have heard both the parties and perused the material available on record. It is pertinent to note that in the present case the assessee disclosed the bank account numbers, name of the bank of the parties vide letter dated 07.02.2013 and 20.02.2013. During the Assessment Proceedings, the assessee also furnished the confirmations of outstanding balance obtained from the said parties, but those parties could not be produced for the reason that a prolonged litigation was going on and the parties were absconding. However, the assessee furnished the details of their bank account wherein the payment made by the assessee in subsequent year was credited. In fact, the Assessing Officer accepted the purchases made from these parties in whose names, balances were outstanding but only doubted the genuineness. When the

purchases from the parties were accepted and the sales made out of those purchases were not doubted, the payments outstanding in the name of those parties were accepted in the subsequent year, then there was no reason to doubt the genuineness of the outstanding balance. These findings given by the CIT(A) are correct as per the records. Merely, non-producing the parties in person despite knowing that these parties are identified parties, cannot determine the non-genuineness of the transaction. Thus, the CIT(A) rightly deleted the addition and there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 1 to 3 of the Revenue's appeal is dismissed.

8. As regards Ground No 4 & 5 relating to addition of Rs. 74,55,600/- relating to job work charges, the Ld. DR submitted that the Assessing Officer has rightly made addition and relied upon the order of the assessment order.

9. The Ld. AR submitted that the job work was related to the sister concern and, therefore, the CIT(A) has rightly deleted this addition.

10. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has given a categorical finding that the Assessing Officer has not brought any comparable cases in respect of increase in job work charges as there is increase in labour and electricity cost which was categorically proved by the assessee before the CIT(A). Thus, Ground No. 4 & 5 are dismissed.

11. As related to Cross-Objection of the assessee the disallowance relating to deduction u/s 80IC claimed by the assessee, the Ld. AR submitted that the assessee firm was engaged in the manufacture of MS Billets i.e. the raw material required to manufacture the final product TMT Bars. This manufactured raw material is further supplied to its sister concern M/s Amba Shakti Ispat Pvt. Ltd. which in turn manufactures the final product TMT bars for the assessee on job work basis. The assessee has duly submitted the ledger account for job work charges, auditor report in Form 10CCB, Certificate of

commencement of commercial production from District Industries Centre, Nahan. The Ld. AR submitted that no deduction is disallowed in AY 2012-13 & 2013-14 and claim of assessee was accepted by the Revenue. The Ld. AR relied upon the decision of Tribunal in case of Sunrise Metal Industries Vs. ITO 2002(11) TM 284 & DCIT Vs. Legancy Foods Pvt. Ltd. (ITA No. 3643/Del/2013 order dated 22/08/2014) as well as Shah Originals Vs. ACIT (ITA No. 3206/Mumbai/2006).

12. The Ld. DR relied upon the assessment order and the order of the CIT(A).

13. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee firm was engaged in the manufacture of MS Billets i.e. the raw material required to manufacture the final product TMT Bars. This manufactured raw material is further supplied to its sister concern M/s Amba Shakti Ispat Pvt. Ltd. which in turn manufactures the final product TMT bars for the assessee on job work basis. It is pertinent to note that TMT bars made from MS Ingots suffer from a deficiency in tensile properties, and there arises inconsistency in tensile strength and elongation. But TMT bars produced from continuous casting MS Billets show a remarkable consistency of properties because of the high tensile strength and elongation. Thus, the Ld. AR submitted that it is a manufacturing activity itself and thus, the assessee has rightly claimed the deduction under Section 80IC of the income Tax Act, 1961 which is also accepted in subsequent years by the Revenue. As per the CIT(A) and the Assessing Officer the assessee has not provided all the requisites in respect of claiming deduction under Section 80IC of the Act. Therefore, we are remanding back this issue to the file of the Assessing Officer for verifying whether the assessee is carrying out any manufacturing activity or not as envisaged under Section 80IC for claiming deduction and if the revenue has allowed the deduction in subsequent years, why the same should not be allowed in this year. Hence, the issue relating to deduction under Section 80IC in the present assessment year is restored to the

file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, Ground Nos. 1 to 3 of Cross Objection filed by the assessee is allowed for statistical purpose.

14. In result, the appeal of the Revenue is dismissed and the Cross-Objection of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on this 07th Day of April, 2021

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER
Dated : 07/04/2021

*R. Naheed **

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DEHI

