



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.04/CTK/2020**

Assessment Year : 2014-15

Orissa Chrome Export & Mining Company Pvt Ltd., A-65/1, Bhubaneswar	Vs.	ACIT, Circle-1(2), Bhubaneswar
PAN/GIR No.AAACO 4389 B		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.R.Mohanty, AR  
Revenue by : Shri Suresh Shivanandan, CIT DR

**Date of Hearing : 22/02/2023**  
**Date of Pronouncement : 22/02/2023**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A) -1, Bhubaneswar, dated 17.9.2019 in Appeal No.0344/16-17 for the assessment year 2014-15.

2. Shri P.R.Mohanty, Id AR appeared for the assessee and Shri Suresh Shivanandan, Id CIT DR appeared for the revenue.

3. The appeal is time barred by 34 days. The assessee has filed condonation petition. After going through the condonation petition, we find that the assessee had reasonable cause for not filing the appeal

within the stipulated time. Ld D.R. did not have any objection for condoning the delay. The Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swarup and another vs. ITAT, 271 ITR 512 (All) held that the delay of short period should be condoned because the assessee was not going to gain anything out of it. We, therefore, condone the delay of 34 days in filing the appeal before the Tribunal and admit the appeal for hearing.

4. It was submitted by Id AR that in the assessee's appeal, three primary issues are involved, the first was against the action of the Id CIT(A) in confirming the addition representing the disallowance of purchase of machinery costing Rs.10,15,000/- on the ground that the Assessing Officer had held the purchase to be bogus insofar as the original bills and vouchers were un-dated and were in A4 size paper. Ld AR has placed before us the copy of the said bill, which is placed at page 20 of PB. It was the submission that the bill is dated 30.8.2013, which contain TIN No., Mobile No. and Fax No. It was the submission that the Assessing Officer had not done any examination and had disbelieved the claim of the assessee. It was the submission that he had no objection if the issue is restored to the file of the Assessing Officer for examination of the bill and if necessary for physical verification of the machinery.

5. In reply, Id CIT DR submitted that he had no objection if the issue is restored to the file of the AO for verification.

6. We have considered the rival submissions. A perusal of the bill issued by M/s. India Chrome & Exports for an amount of Rs.10,15,000/- clearly shows that the bill is dated 30.8.2013. The address of the supplier is available. The TIN No., mobile No., and Fax No. of the supplier are also available. The bill is inclusive of all taxes. Just because the bill is printed in A4 paper, it would not make the bill bogus. As it is noticed that the Assessing Officer has not done any examination in respect of the bill produced or examined the existence of the machinery, we are of the view that the issue in respect of this ground is liable to be restored to the file of the Assessing Officer for reexamination after granting the assessee adequate opportunity to substantiate its claim. The Assessing Officer shall take necessary confirmation from the supplier and if necessary he will do verification of the existence of the machinery at the premises of the assessee company. This ground is partly allowed for statistical purposes.

7. In regard to second issue, it was submitted by Id AR that the Assessing Officer had disallowed the opening balance representing the liability for expenses, the claim for Loading hire charges and bogus sundry creditors. It was the submission that in all three issues, additions were made by the Assessing Officer of the opening balances for the relevant assessment year. It was the submission that the Assessing Officer

recognizes that these were opening balances and closing balances for the last few years. It was the submission that the opening balance is not liable to be disallowed during the impugned assessment year.

8. In reply, Id CIT DR submitted that the opening balance, admittedly, are figures appearing in the balance sheet of the assessee for the impugned assessment year. These figures represented the credits in the books of account of the assessee. These credits are open for examination in view of the provisions of section 68 of the Act. It was the submission that consequently, the Assessing Officer was right in making the disallowance as the assessee has been unable to prove the genuineness of the said claim. He has placed reliance on the decision of the decision of the Co-ordinate Bench of Bangalore ITAT in the case of Suresh Kumar T Jain vs ITO (2011) 128 ITD 74 (Bangalore), wherein, the Co-ordinate Bench has categorically held that the assessee has failed to discharge the onus cast on him to substantiate his claim whereas the Assessing Officer has brought on record with documentary evidences that such liability did not exist at the end of the accounting year and had rightly added the said liability which had ceased to exist. It was the submission that this order of the Tribunal had been upheld by the Hon'ble Karnataka High Court reported in (2019) 101 taxmann.com 164 (Karnataka). It was the submission that the addition as made by the AO and confirmed by the Id CIT(A) is liable to be upheld.

9. In rejoinder, Id AR has placed before us the decision of the Hon'ble High Court of Punjab & Haryana in the case of CIT vs. Smt. Sita Devi Juneja in I.T.A. No.619 of 2009 dated 2.12.2009, wherein, the Hon'ble Punjab & Haryana High Court has categorically given a finding that merely because such liability is outstanding for the last six years, it cannot be presumed that such liability ceased to exist. In the absence of any bilateral act, the said liability could not have been ceased. He further relied upon the decision of the co-ordinate bench of Ahmedaba Tribunal in the case of Nitin S Garg vs ACIT, in ITA Nos.169,170, 171 and 172/Ahd/2009 order dated 4.6.2010, wherein, also similar view has been expressed. So also the decision in the case of the Co-ordinate Bench of Bangalore ITAT in the case of Shri K A Rame Gowda in ITA No.456/Bang/2019 for A.Y. 2012-13 order dated 12.11.2021, wherein, it has been held that admittedly, the liability is in respect of loan creditor and not a trading liability. So the assessee has not obtained allowance or deduction in computing the profits and gains of business or profession in respect of assessment of any year. Consequently, the same cannot be treated as cessation of liability or as an income for the impugned assessment year. It was the submission that the disallowance of the opening balance is not permissible. It was the submission that there is no cessation of liability.

10. We have considered the rival submissions. A perusal of the claim in respect of liability for expenses, the claim for loading hire charges and the

claim in respect of sundry creditors treated as bogus by the Assessing Officer clearly shows that these are not trade creditors. As these are not trade creditors, the decision relied upon by Id CIT DR in the case of of Suresh Kumar T Jain(supra) could not be applied to the facts of the present case. A perusal of the assessment order clearly shows that the Assessing Officer has recognized that these are opening and closing balance and the same amount was also shown in the immediately preceding assessment years also to remain the same and it has been continuing for some years. The Assessing Officer has consequently questioned the existence of the liability and has made the disallowance. A liability, which is not a trade creditor but shown in the balance sheet of the assessee, is clearly an acceptance by the assessee that the liability does exist. This being so, as these are opening balances, we are of the view that no addition on this count is liable to be made in the assessment for the impugned assessment year especially in the absence of any evidence with the AO that these liabilities do not exist. Consequently, this issue is held in favour of the assessee. The Assessing Officer is directed to delete the disallowance in respect of liability for expenses, claim for loading hire charges and alleged bogus sundry creditors.

11. In respect of third issue, it was submitted by Id AR that the Assessing Officer had disallowed 75% of tours and travel expenses. It was the submission that the assessee had incurred Rs.10,14,523/- on the travels of

the assessee's Director's to Germany. It was the submission that the visa details of the travel to Germany alongwith invitation was at pages 83 to 99 of PB. A perusal of the invitation shows that the invitation is to visit the headquarters of Burbnach-Wahibach on 12.5.2014 for commercial and technical discussion. A perusal of Schengen visas at page 92 shows that visa is issued from 21.8.2014 to 30.9.2014. The invitation itself is to visit to the headquarters of Hess Group for discussion regarding the installation of concrete block making plant. Obviously, the same cannot be treated as being not for business proposes. Further, the Assessing Officer himself has held that 25% of the expenses could be for the purpose of business and had held 75% to be personal in nature. How this demarcation has been done is not coming out of the order of the Assessing Officer. It was the prayer that the expenses in respect of tour and travels is liable to be allowed.

12. In reply, Id CIT DR vehemently supported the order of the Assessing Officer as well as the order of the Id CIT(A).

13. We have considered the rival submissions. A perusal of the invitation to visit Germany shows that the assessee has categorically given the purposes of its business. The Schengen Visa also substantially tallies with the invitation date. Further, how the Assessing Officer has taken presumption that 75% of the expenses is in the personal nature is also not coming out of the assessment order. This being so, we are of the view that

no disallowance under the head 'tour and travels' is called for in the hands of the assessee. Consequently, the addition made by the Assessing officer and confirmed by the Id CIT(A) stands deleted.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 22/02/2023.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 22/02/2023  
B.K.Parida, SPS (OS)

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant : Orissa Chrome Export & Mining Company Pvt Ltd., A-65/1, Nayapali, Bhubaneswar
2. The Respondent: ACIT, Circle-1(2), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**