



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

**BEFORES/SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.68/RAN/2017**  
Assessment Year: 2007-08

Usha Martin Limited,(earlier known as Usha Beltron Limited), 2A, Shakespeare Sarani, Kolkata	Vs.	Asst. Commissioner of Income tax, Circle-3, Ranchi
PAN/GIR No.		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : S/Shri Aditya Hans/Vishal Jain and Ashis Jain  
Revenue by :Smt. Rinku Singh, CIT DR

**Date of Hearing : 12/06/2025**  
**Date of Pronouncement :12/06/2025**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A)-Ranchi dated 27.1.2017 in Appeal No. 411/Ran/Oth/10-11 for the assessment year 2007-08.

2. S/Shri Aditya Hans/Vishal Jain and Ashis Jain, Id Ars appeared for the assessee and Smt. Rinku Singh, Ld CIT DR appeared for the revenue.

3. At the time of hearing, it was submitted by Id AR that in the original grounds of appeal, the assessee has raised seven grounds. It was the submission that Ground No.1 is general in nature. Ground Nos.3&4 are not pressed. Consequently, Ground Nos.3 & 4 are dismissed as not pressed.

4. The assessee has filed additional ground on 17<sup>th</sup> July, 2019. In the said grounds of appeal, the assessee has raised four issues. The assessee has submitted that he does not wish to press the claim of education cess and consequent to this effect, he has endorsed in the ground of appeal. Accordingly, Ground No.1.1, 1.2 & 1.3 are dismissed as not pressed.

5. In regard to Ground No.1.4 regarding double disallowance of general expenses of Rs.11,38,453/-, Id AR submitted that the assessee has incurred expenses under the head "miscellaneous expenses" of Rs.4,10,64,429/- of which, the assessee itself has made *suomoto* disallowance of Rs.2,27,69,056/-. It was the submission that without considering the disallowance as made by the assessee, the Assessing Officer has disallowed 5% of the miscellaneous expenses totaling to Rs.11,38,453/-. It was the submission that the total disallowance of 5% of Rs.4,10,64,429/- being Rs.20,53,221/- had made without considering the fact that the assessee itself has disallowed Rs.,2,27,69,056/-. In the ground, the assessee has prayed for reduction of the disallowance of 5% on the balance amount after reducing the disallowance made by the assessee. It was the submission that consequently, it is a total disallowance of Rs.11,38,453/- being 5% of Rs.2,27,69,056/-.

6. In reply, Id CIT DR vehemently supported the order of the AO and Id CIT(A).

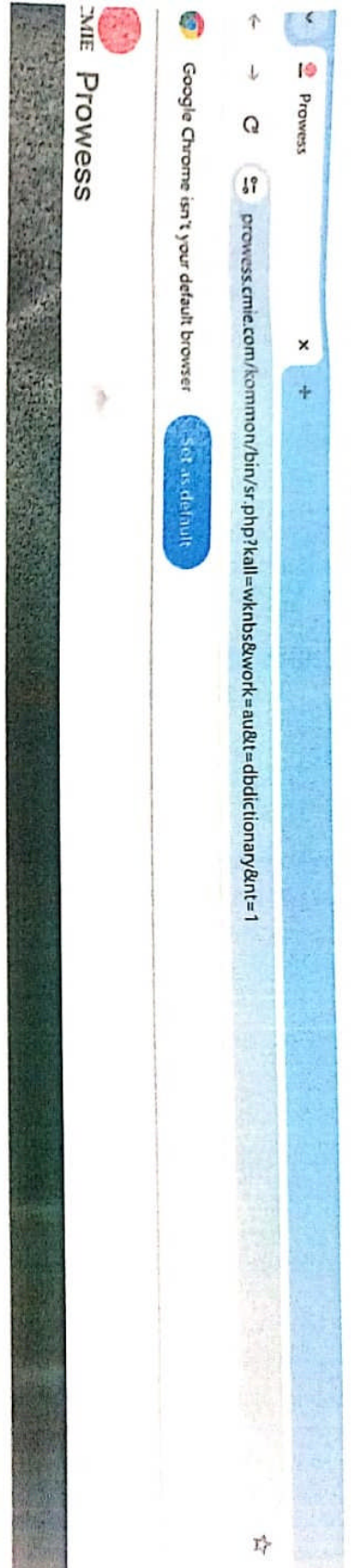
7. We have considered the rival submissions. As it is noticed that the assessee itself has made suo moto disallowance of Rs.2,27,69,056/-, which is far in excess of the total disallowance of Rs.20,53,221/-, the disallowance as made by the AO is deleted in its entirety. Consequently, additional grounds No.1.4 and 1.5 of the assessee stand allowed.

8. Coming to additional Ground No.1.6, same is against interest under section 244A of the Act. No arguments have been placed. Ground No.1.7 is against interest under section 234 B and 234D, these are consequential in nature. Consequently, additional grounds raised by the assessee stand disposed as per the above direction.

9. Now coming to the main appeal filed by the assessee, Ground No.1 is general in nature and consequently not adjudicated.

10. In Ground No.2, the same has three limbs. In Ground No.2.2, most specifically Ground No.2.2.2, it was submitted that the assessee has applied Transaction Net Margin (TNMM) method. When computing the transfer pricing, it was submitted that the assessee is in the business of manufacture of steel wire, steel ropes, wire rods, billets, wires, and other steel products etc. It was the submission that the products manufactured by the assessee were in the realm of steel. The assessee had provided its TNMM calculation and had given multiple

comparable, which is extracted in the TPO's order at page 25. The comparables were nearly 10. As the turnover of the assessee was around 1500 crores, the TPO found that the comparables adopted by the assessee were of the same range. Consequently, the TPO applied filter of 1000 to 2000 crores and did search. As per search of the TPO, three companies were identified, first one being Motherson Sumi Systems second one Ramswaroop Industries Ltd., and third one Hindustan Copper Limited. Here, it would be worthwhile to mention that in the comparables selected by the assessee, two companies being Uttam Galva Steels Ltd., and Welspun Gujrat StahiRohren Ltd., were also identified but the turnover of both the companies was 2190 crores and was 2735 crores. As these companies' turnover were above the selected margins, the AO rejected them from the assessee's comparable and in respect of others, they were below 500 crores and, therefore, they were also rejected. The assessee objected to the comparables selected by the TPO in respect of Hindustan Copper Limited. The assessee has submitted that the assessee is dealing in steel products whereas Hindustan Copper Limited is dealing in purely copper products. It was the submission that even in ferrous, the selection specifically shows ferrous products. It was the submission and the copper was of non-ferrous products and the assessee is dealing in steel was purely ferrous products. LdAR placed before us copy taken of from google i.e. Prowers, which is as follows:



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11, It was the submission that in regard to Hindustan Copper Limited, same was a Government Company and as a Govt company it operates under a different parameter compared to a Public Limited Company such as the assessee. It was the submission that HCL receives grant from the Government, which reduces the cost of machinery and consequently depreciation expenses. It was the submission that the rejection of a government company is supported by various judicial rulings also. It was fairly admitted that in regard to other two comparable i.e. being Ramswaroop Industries Ltd, the profitability rate was 7.1% and in regard to other company i.e. Motherson Sumi Systems, the profitability rate was 15.06%, whereas the profit rate of the assessee is at about 16.10%. It was the submission that if Hindustan Copper Limited, which showed a profitability rate of 36% is excluded, then the assessee's profitability is well within the permissible range. It was the submission that the Hindustan Copper Limited could be nowhere comparable to the assessee's activity insofar as (i) it was dealing in copper products and (2) it was a Govt company subsidized heavily by the Government. It was the further submission that the products manufactured by the assessee being steel wire and steel rods are used in construction activity whereas the products manufactured by Hindustan Copper Limited are basically electrical utility products. The structural strength requirement of both the products are totally different and the cost of the material

also are highly variable. It was the submission that consequently, HCL is liable to be excluded from the comparable.

12. In reply, Id CIT DR submitted that TNMM method has been applied. When TNMM method is applied, its functional compatibility i.e. important. It was the submission that both HCL and the assessee are manufacturing company and it does not matter as to whether the raw materials used by the assessee is different from that of HCL. Both being manufacturing company, the profitability was comparable. It was also the submission that the product comparison cannot be made insofar as the functional test being manufacturing company what is to be considered.

13. We have considered the rival submissions. Admittedly, there are enumerable decisions which categorically says that government companies should not be used as comparable when comparing the profitability of private company and govt company. This is because the functional and the performance of the government companies are at high variation on account of various benefits received from the Government. Such benefits are not available on private and public sector undertakings. Now coming to the fact that the functionality is to be considered, admittedly, both HCL and the assessee are in manufacturing. But that does not mean that all manufacturing is comparable. The process of manufacturing of copper wires from copper is entirely different from the manufacturing of steel wire and rods from steel. The purpose of end products decides the process of manufacture. The copper wires admittedly are not used

for load bearing strength. They are stenciled structure completely different from that of steel wire and rods. The arguments of Id CIT DR that they are manufacturing and the functionality should also only be considered cannot be supported, insofar as, if that is so, the manufacturing of automobile can also be considered so also the manufacturing even ancillary products in steel would be comparable. That is what is expected in TNMM method. Further, as the products manufactured by both HCL and the assessee are completely at variance, admittedly HCL cannot be considered as comparable when computing the profitability margin in the case of steel products. This being so, the Assessing Officer is directed to exclude HCL when computing the PLI in the case of the assessee. Consequently, Ground No.2.2.2 is allowed.

14. Coming to Ground No.2.2.3, being the issue how the margin is to be computed, it is noticed that there has been confusion in the adoption of the figures in the computation of margin by the AO. The AO shall recompute the margin by adopting the annual report only. With these directions, the issue of computation is restored to the file of the AO. Consequently, Ground No.2.2.3 is partly allowed for statistical purposes.

15. The next ground i.e. Ground No.2.3 which is in respect of interest on the loans given by the assessee to its AE in Thailand. It was the submission the assessee had funded for setting up of a sister concern in Thailand. The funding of the same was done under an agreement with the Bank in Thailand, which had undertaken to fund 50% of the cost subject to the assessee being the promoter

funding the balance 50%. As per the agreement with the Bank, the assessee being the promoter was to fund the initial 50% and the final 50% would be funded by the Bank. Interest was chargeable at 7.5% by the Bank and the agreement also specified that only interest of 7.5% could be charged by the assessee. It was thus a condition that the recovery shall be made by the bank and adequate amount subsequently can be recovered by the assessee. It was submitted by Id AR that as of date, the Thailand Company has repaid 50% of the bank loan and proportionately 50% of the funding by the assessee company being the promoter. It was the submission that on the ground that the assessee has funded the sister concern on the Thai Baht currency being the currency of Thailand and on account of possible higher risk, the TPO had applied 15% as the interest chargeable in place of 7.5% as charged by the assessee. It was the submission that the project was fully functional and the project was also repaying the loan and the assessee could not have charged more than 7.5% in view of the agreement with the bank in Thailand, which barred charging any higher percentage than 7.5%.

16. It was submitted by Id CIT DR that the control over the sister concern was not complete with the assessee and, therefore, there was higher risk in regards to the funds provided by the assessee company. It was the further submission that no banks were willing to fund the said company that it compelled the assessee to fund 50% of the cost of the project as risk was higher

and no corporate guarantee was also provided. The higher rate of 15% as levied by the AO was liable to be upheld.

17. We have considered the rival submissions. Here, we are live to the fact that the bank in Thailand has granted the funds in the form of loan only subject to the assessee providing equal amount as loan in the setting up of the factory in Thailand. We are also live to the fact that no corporate guarantee has been provided by the assessee on the said loan. Further, it must be accepted that there is a risk involved and the risk is to be considered as a factor. It is mentioned by Id AR that the loan is subordinated loan. Considering the fact that there is risk involved in the said loan, admittedly 7.5% was charged by the bank and which has been accepted by the assessee is comparatively on the lower side, this is because the loans in India itself normally hold the interest 9%, as against 15% adopted by the AO and 7.5% as adopted by the assessee. Consequently, the AO is directed to recompute the interest portion at 9% as against 15% adopted by the AO. Consequently, Ground No.2.3 of the assessee stands partly allowed.

18. In Ground No.2.4.1, it was the submission that this is a corporate guarantee. This specifically argued that this issue is squarely covered by the various decisions of the Hon'ble High Courts. It was thus the submission that corporate guarantee @ 0.3% may be fixed.

19. In reply Id CIT DR submitted that as per the citations submitted by the assessee itself the Hon'ble Bombay High Court decision in the case of [Everest Kanto Cylinder Ltd. vs. DCIT](#), clearly shows corporate guarantee is at 0.5%. It was the submission that the corporate guarantee may be fixed at 0.5%.

20. We have considered the rival submissions. A perusal of the various case laws submitted by AR clearly shows that Hon'ble Bombay High Court in the case of M/s. [Everest Kanto Cylinder Ltd. vs. DCIT](#), reported at TS 200 HC 2015 as also the decision of Bombay High Court reported in TS 960 HC 2018 has fixed the corporate guarantee at 0.5%. Consequently, respectfully following the decisions of Hon'ble Bombay High Court and as no other decision on the issue has been placed before us, the AO is directed to adopt the corporate guarantee at 0.5%.

21. In Ground No. 6.&7, it was submitted by Id AR these are taxation issue. It was the submission that the issue was in regard to claim of 80IA in respect of applicability of the electricity tariff. It was the submission that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Jindal Steel and Power Ltd., reported in **No.13771 of 2015**( 157 taxmann.com 207 (Del), wherein, in para 30 and 31, the Honble Supreme Court has held as follows:

"30. Thus on a careful consideration, we are of the view that the market value of the power supplied by the State Electricity Board to the industrial consumers should be construed to be the market value of electricity. It should not be compared with the rate of power sold to or supplied to the State Electricity Board since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. The State

Electricity Board's rate when it supplies power to the consumers have to be taken as the market value for computing the deduction under Section 80-IA of the Act.

31. That being the position, we hold that the Tribunal had rightly computed the market value of electricity supplied by the captive power plants of the assessee to its industrial units after comparing it with the rate of power available in the open market i.e., the price charged by the State Electricity Board while supplying electricity to the industrial consumers. Therefore, the High Court was fully justified in deciding the appeal against the revenue."

22. Respectfully following the principles laid down by the Hon'ble Supreme Court in the case of Jindal Steel and Power Ltd (supra), the AO is directed to adopt the rate at State Electricity Board rates applied when it supplies power to consumer in the open market for computing deduction u/s.80IA of the Act. Ground No.6 & 7 stands allowed.

23. In Ground No.5, the assessee has challenged the disallowance under foreign travel expenses. It was the submission that the assessee has incurred the total travelling expenses of Rs.5 crores and the foreign travel expenses of Rs.2 crores, the AO has disallowed 15% of Rs.2 crores. It was the submission that the assessee itself has disallowed Rs.2.74 crores under FBT. It was the submission that the wife of the Director has accompanied the Director on the foreign during the year. It was the submission that as Rs.2.74 crores have already been disallowed in FBT, under FBT, no disallowance is called for in the hands of the assessee.

24. Ld CIT DR supported the order of the AO and Id CIT(A).

25. As it is noticed that the assessee has already made disallowance under FTP of Rs.2.74 crores, which is far in excess of 15% of Rs.2.74 crores made by the AO, the disallowance stands deleted. Ground No.5 stands allowed.

26. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 12/06/2025.

Sd/-  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(GEORGE MATHAN)**  
**JUDICIAL MEMBER**

Ranchi; Dated 12/06/2025  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Usha Martin Limited,(earlier known as Usha Beltron Limited), 2A, Shakespeare Sarani, Kolkata
2. The Respondent: Asst. Commissioner of Income tax, Circle-3, Ranchi
3. The CIT(A)-Ranchi
4. Pr.CIT,Ranchi
5. DR, ITAT,
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Ranchi**