

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.746/Chd/2014**  
(Assessment Year : 2010-11)

The A.C.I.T., Vs. M/s Great India Steel Fabricators,  
Yamuna Nagar Circle, Village Jorian,  
Yamuna Nagar. Yamuna Nagar.  
PAN: AAIEFG7595E

And

**C.O.No.16/Chd/2015**

**In**

**ITA No.746/Chd/2014**  
(Assessment Year : 2010-11)

M/s Great India Steel Fabricators, Vs. The A.C.I.T.,  
Village Jorian, Yamuna Nagar Circle,  
Yamuna Nagar. Yamuna Nagar.  
PAN: AAIEFG7595E (Appellant) (Respondent)

Assessee by : Shri Sudhir Sehgal  
Department by : Shri Manjit Singh, DR

Date of hearing : 05.12.2016  
Date of Pronouncement : 03.03.2017

**ORDER**

**PER ANNAPURNA GUPTA, A.M. :**

The appeal filed by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals), Panchkula dated 14.7.2014 relating to

assessment year 2010-11. The assessee has filed Cross Objections against the same.

2. Since ground No.1 of the Revenues appeal and ground No.1 of Cross Objection of the assessee are on the same issue and are interrelated, we shall be dealing with the same together.

3. Ground No.1 raised by the Revenue in its appeal in ITA No.746/Chd2014 reads as under:

*“1. On the facts and in the circumstances of the case the Ld, CIT(A) has erred in deleting the disallowance of Rs.36,11,800/- ignoring the fact the disallowance was made by the A.O. after recording the statements of two contractors u/s 131, who had denied to have done any contract work for the assessee and the other persons were not produced by the assessee for examination.*

4. Ground No.1 raised by the assessee in its C.O.No.16/Chd/2015 reads as under:

*“1. That the Worthy Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs.20,64,900/- on account of fabrication charges paid to Sh. Mange Lal to the tune of Rs.8,26,730/- and to Sh. Dushyant Kumar to the tune of Rs.12,38,170/-.*

5. The issue in both the above grounds raised by the Revenue and assessee is related to the disallowance made of fabrication charges. While the Revenue is

aggrieved by the deletion of disallowance to the extent of Rs.36,11,800/-, the assessee is aggrieved by the disallowance upheld to the extent of Rs.20,64,900/-.

6. The brief facts relating to the case are that the assessee is engaged in the business of fabrication and erection of machinery and equipments. During the course of assessment proceedings, the Assessing Officer noted that the Profit & Loss Account of the assessee firm showed debit of fabrication charges of Rs.77,21,625/- in various names. The Assessing Officer examined the same and found that the bills raised in the names of six individual contractors were in the same format and not signed by the respective contractors. They appeared to be printouts from the same computer. To further examine the fabrication charges, summons were issued u/s 131 of the Income Tax Act, 1961 (in short 'the Act') which could be served only on two persons Shri Mange Ram and Shri Dushyant Kumar. The other persons were not available at the given addresses. The statements of two persons were recorded on oath and both of them admitted that they were salaried employees of the assessee firm drawing Rs.5000/- to Rs.6000/- per month salary. Further they denied receipt of any payment for fabrication work on contract and also denied having any idea about the saving bank account in which this money was deposited by the assessee firm. They also denied any withdrawals made

from these accounts. These persons stated that passbook and cheque book were in possession of the firm and they had signed a blank cheque book as per the directions of the firm. They also stated that the bank accounts were opened in Syndicate Bank by the assessee firm only. In view of these facts, the Assessing Officer issued show cause notice alongwith copies of statements of these two persons to the assessee. In response to the show cause notice, the assessee submitted that in order to maintain confidentiality of manufacturing process it had developed its own team and engaged its team of employee workers to work as contractors themselves. The assessee also asked for an opportunity to cross examine the persons. The Assessing Officer again issued summons to provide opportunity for crass examination but no compliance to the summons was made by the two persons. Thereafter the Assessing Officer noted that the statements had been recorded on oath u/s 131 of the Act which was an admissible evidence. The Assessing Officer also noted that the copies of the statements had been supplied to the assessee. He, therefore, stated that there was no case of denial of opportunity to the assessee and placed reliance in the case of Arvind M. Karia Vs. ACIT 2013-TIOL 128-I.T.A.T.-Mum in this regard. Thereafter the Assessing Officer summarized his findings in para 3.7 of the assessment order and on the basis of circumstances of the

case reached to the conclusion that the fabrication charges debited in the names of six individual contractors were bogus. The Assessing Officer considered the case in view of the human probabilities by drawing support from the decision of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT, 241 ITR 801 and CIT Vs. P. Mohankala, 291 ITR 278. Therefore, an addition of Rs.56,76,791/- was made to the income of the assessee holding the fabrication charges to be bogus and ingenuine.

7. The matter was carried in appeal before the Ld. CIT (Appeals) where the assessee pleaded that its customers were BHEL and L & T and the items supplied to them were special job tailor made to the specification of the customers and as per terms of agreement, the assessee contended that it was duty bound to maintain the confidentiality clause with the customers and, therefore, it had to depend on its own expert technical staff to develop their own team of workers to act as contractors to do the assigned job in the factory premises of the assessee after their normal working hours. The assessee also submitted that the modus operandi followed by the assessee was normal trade practice in the area, i.e. Yamuna Nagar, Jagadhri area. The assessee also rebutted the observations made by the Assessing Officer and further stated that the disallowance had been made

without pointing out any defect in the books of account or purchases, sales and other expenses. The assessee contended that the fabrication charges in the current year were only 3.78% of the gross receipts as compared to 4.41% and 19.38% in the immediately preceding two years and also stated that under similar facts and circumstances the assessment for assessment year 2009-10 had been accepted in the order passed u/s 143(3) of the Act. The assessee contended that the disallowance on the basis of human probability and preponderance of probability cannot be made without bringing any evidence or material on record to substantiate the findings. After considering the submission of the assessee and the facts recorded by the Assessing Officer, the CIT (Appeals) partly allowed the assessee's appeal deleting the disallowance made of fabrication charges incurred on four contractors whose statements had not been recorded by stating that the facts gathered from the statements of two contractors could not be applied on the other four contractors who were neither examined, nor any contrary fact gathered that they had not carried out fabrication work of the assessee firm. As far the fabrication charges paid to two contractors whose statements were recorded and which amounted in all Rs.20,64,900/-, the Ld. CIT (Appeals) held that the assessee had failed to satisfactorily discharge its onus to support his claim for deduction u/s

37(1). The Ld. CIT (Appeals) also held that the bills of fabrication charges were not signed by the contractors who had also denied receipt of any fabrication charges which clearly established that the fabrication charges were not genuine. The relevant finding of the Ld. CIT (Appeals) at paras 6.2 to 6.7 of the order is reproduced hereunder:

*6.2 After considering the facts recorded by the AO and the appellant submissions, it is noted that the AO on examination of books of account and bills found some anomaly in the bills pertaining to fabrication charges and thus proceeded to examine the genuineness of claim of expenditure claimed as fabrication charges. The format of bills and its printing led to further examination. The AO summoned the persons in whose name such charges were debited and could examine two persons as the summons to all six persons could not be served. In the statements, the persons have clearly stated that they were employee of the firm and were drawing salary. They have denied having received any amount from the firm as payment for fabrication work on contract. In fact, they denied even the banking transactions incurred in their name for deposit and withdrawn from the bank accounts. Their statement and cheque book were kept in possession of the firm, opening of bank account by the firm and signing of blank cheque as per direction of firm clearly establishes that all the affairs related to fabrication charges were carried out by the appellant firm in the name of these persons. The bills of fabrication charges were not signed by the alleged contractors and their denial of receipt of fabrication charges by them clearly establishes the factual position that the fabrication charges claimed by the assessee in these names were not genuine. Although, the appellant has provided*

*counter submission to the observation of AO that opening of bank accounts, filing of returns by contractors and banking transaction are none of the appellant's concern, but in view of the statements given by the employees of the firm and format of unsigned bills in name of alleged contractors, the circumstances leading to managing the complete loop related to the claim of fabrication charges by the appellant firm cannot be ruled out.*

*6.3 Regarding the appellant's contention that the firm was not given opportunity to cross examine these persons, it is found that the persons were employee of the firm and it was primary onus on the part of appellant to satisfactorily explain the claim of bills/vouchers alongwith books of account, the AO noticed unsigned bills of same former. However, no satisfactory explanation was provided by assessee at that stage. The deduction for any expenditure while computing the income under the head 'profit and gains of business' is granted either under the specific provision of section 30 to 36 or under general deduction u/s 37 of the Act, if the expenditure is not in the nature as described u/s 30 to 36 of the Act. In order to claim deduction u/s 37, the expenditure should have expended wholly and exclusively for the purpose of such business. The Hon'ble Supreme Court in the case of CIT Vs. Calcutta Agency Ltd. 19 ITR 191 (SC) held that the onus of proving necessary facts in order to avail the deduction u/s 37(1) is on the assessee. If the assessee fails to establish the facts necessary to support his claim for deduction u/s 37(1), the claim for deduction of expenditure is not admissible. Therefore, it was primary onus of the appellant to explain the genuineness of the claim of fabrication charges rather asking the department to provide opportunity for cross examination of appellant's own employees. The opening of bank account, filing of return , deduction of TDS and withdrawal of refund through these bank accounts in name of alleged contractors was an effort on*



*the part of appellant firm to create evidences In its favour and to make these transactions appearing to be genuine.*

6.4 *Regarding the appellant's contention that no defects were pointed out in the audited books of account and neither the books of account were rejected u/s 145(3), I find that the AO proceeded to examine the genuineness of fabrication charges claimed in the P&L account and it is not necessary that if a claim is examined and found to be non-genuine, the books of account has compulsorily to be rejected u/s 145(3) of the Act. The AO has not made any addition on account of estimation of gross or net profit, so it was not necessary that the AO has to categorically reject the books of account to make disallowance of non-genuine claimed of expenditure.*

6.5 *However, the appellant has submitted that its gross receipts from business dealing with the reputed customers have increased and it cannot be denied that the appellant firm has not carried out the fabrication work of boiler parts to its customers if the sales of such items have been accepted. The appellant has also given the comparative chart of fabrication charges as percentage of the gross receipt. Though the fabrication charges are in congruence with charges claimed in the preceding year but this fact cannot stop the AO to make any finding based on the evidences gathered by the AO for a specific claim in a particular assessment year. He fact that there is reduction if gross profit by 0.40% during the year as compared to preceding year leads to take a view that the trading results cannot be accepted as such by following the results shown by assessee in preceding year.*

6.6 *The appellant has taken another plea that on the ground of consistency, no such disallowance of fabrication charges is warranted. The department in the earlier assessment years has accepted the book results and there is no change in facts during the year to take different conclusions. The appellant has also relied on courts judgments. In this regard and contrary to appellant's plea, it is mentioned here that as decided by he Hon'ble Supreme Court in various cases and specially in the case of Bharat Sanchar*

*Nigam Ltd. & Ans. Vs. UOI & Oors. 282 ITR 273 (SC), the res-judicata (rule of consistency) is not applicable for income tax proceedings as each assessment year is a separate proceedings. Further, the Hon'ble Madras High Court in the case of CIT Vs. Seshasayee Industries Ltd. 242 ITR 691 (Mad.) held that the fact that its claimed was not questioned in earlier years does not entitle the assessee to construe that the law should not be applied during the current assessment year. In another case, the Hon'ble Madras High Court in the case of Ace Instruments (P) Ltd. Vs. CIT 244 ITR 166 held that the facts can be reconsidered in a later year and record different findings. The finding of earlier years need not be conclusive. Therefore, in view of the backdrop of these decisions, I am of the view that the plea of the appellant to follow the principle of consistency on the facts of the present case is not applicable as in the instant case the issue under consideration in the current year has not been considered in earlier years in accordance with the varying facts and circumstances of the case.*

6.7 *However, it is also found that the AO has examined only two alleged contractors who have denied any contract work done for the appellant or received payments of fabrication charges on contract. Based on the statement of two persons, the AO has extrapolated the finding presuming that similar mode of operation was adopted by the appellant firm in the name of all six individuals. Since, there is fact finding only in respect of Sh.Mange Ram and Sh.Dushyant Singh, I am of the view that fabrication charges debited against these two persons can be considered to be non-genuine on the basis of facts and discussion as given in preceding paras. The AO was not justified in extending the facts gathered from statements given by these two persons and applying to other four individual contractors who were neither examined nor any other contrary facts were gathered that they have not carried out the fabrication work for the appellant firm. Therefore, the fabrication charges in the name of Sh.Mange Ram for Rs.8,26,730/- and Sh.Dushyant Singh for Rs.12,38,170/- is found to be bogus and disallowance of bogus fabrication charges is restricted to these amounts i.e. Rs. 20,64,900/-. This ground of appeal is partly allowed.*

8. Aggrieved by the same, the Revenue has filed its appeal in ITA No.746/Chd/2014 challenging the deletion of fabrication charges amounting to Rs.36,11,800, while the assessee in its C.O.No.16/Chd/2015 has challenged the action of the Ld. CIT (Appeals) in upholding the disallowance of fabrication charges to the extent of Rs.20,64,900/-.

9. During the course of hearing before us the Ld. counsel for the assessee contended that the assessee had duly discharged its onus of establishing the genuineness of the expenses incurred on account of fabrication charges by producing all bills relating to the same, by demonstrating that the payments had been made to the said contractors by cheques which amount had been deposited in their respective bank accounts, by filing copies of income tax returns of the contractors reflecting the income on account of fabrication charges and claiming refund of taxes deducted on the same. The Ld. counsel for the assessee also contended that the assessee had duly demonstrated before the lower authorities the reason for getting the fabrication work done by its own employees as being on account of confidentiality clause entered into with its customers on account of which the assessee had to ensure that specific designs and drawings given by the customers were not leaked to outside parties and, therefore, it got the same done from its own workers after

regular working hours on contract basis. The Ld. counsel for the assessee contended that this was the normal modus operandi of businesses in similar line and furnished a certificate from Yamuna Nagar Jagadhri Chamber of Commerce & Industry certifying the same. The Ld. counsel for the assessee further contended that the only basis for making the disallowance and for holding the fabrication charges to be bogus and in-genuine was the submissions recorded of two employees contractors Shri Dushyant Kumar and Shri Mange Ram and since no opportunity for cross examining these two persons was afforded to the assessee, the said statements could not be taken as a piece of evidence in the present proceedings. The Ld. counsel for the assessee relied upon the following case laws in support of its above contention:

- i) Kishan Chand Chella Ram Vs. CIT (1980) 124 ITR 713 (SC).
- ii) Kalra Glue Factory Vs. Sales Tax Tribunal & Others (1987) 167 ITR 498 (SC).
- iii) Dolly Farms & Resorts Pvt. Ltd. Vs. DCIT (2001) 15 ITR 159 (I.T.A.T., Delhi).
- iv) CIT, Patiala Vs. M/s Radhey Sham Sita Ram (2003) 22 ITR 667 (P&H).

10. The Ld. DR, on the other hand, relied upon the order of the Ld. CIT (Appeals) and stated that the assessee had not discharged its onus of proving its claim of expenses incurred and the statements of two workers corroborated the said facts. The Ld. DR contended that the documents filed by the assessee in the form of bank accounts of the workers/contractors, their filing of return,

deduction of TDS and withdrawal of refund through these bank accounts was only an effort on the part of the assessee to collect evidence in his favour so as to make the transaction appear to be genuine.

11. We have heard the contentions of both the parties and perused the documents produced before us. The issue in the present appeal pertains to the genuineness of the claim of the assessee of fabrication charges incurred during the year. We are in complete agreement with the Ld. CIT (Appeals) that the onus of proving the necessary facts in order to avail deduction u/s 37(1) is on the assessee and if the assessee fails to establish the facts necessary to support his claim, then the said claim for deduction of expenditure is not admissible. The Hon'ble Supreme Court in the case of CIT Vs. Calcutta Agency Ltd. 19 ITR 191 has settled the aforestated legal proposition. But having said so, we, however, do not agree with the Ld. CIT (Appeals) that the assessee in the present case before us has failed to discharge its onus. We find, that to establish the genuineness of its claim of fabrication expenses, the assessee filed the following documents/explanation:

- i) Bills/vouchers of fabrication charges.
- ii) Evidence of payments of fabrication charges through banking channels.
- iii) Copy of income tax returns of the workers/contractors disclosing the fabrication charges received by them as their income.

- iv) Proof of deposit of refund claimed of TDS in the bank accounts of the employees contractors and withdrawal of the same from said accounts.
- v) The fact that the said expenses were incurred in the preceding years also and in a higher proportion to the turnover as compared to the impugned year.
- vi) Explanation by the assessee for the modus operandi of using its own employees as contractors for carrying out the fabrication work and stating that on account of reputed customers base of the assessee and on account of the fact that the items supplied by the assessee to them were special job tailor made to the specifications of the customers for which the assessee was supplied designs and drawings of the job from the customers which was covered under the confidentiality clause as per the terms of agreement entered into with them. Therefore, to maintain the privacy of the directions, the assessee had got the fabrication work done by the contractors at its own premises developing a team of technically sound persons from its own team of workers to do the job in the factory premises after the normal working hours. The assessee contended that the practice was prevalent in other fabrication units of the area and filed copy of the certificate in this regard from Yamuna Nagar Jagadhri Chamber of Commerce and Industry.

12. All the above documents and explanations taken together amply prove the fact that the fabrication charges incurred by the assessee were genuine in nature.

13. The assessee had given detailed explanation of the circumstances which led to the employment of its own workers as contractors. The assessee had explained that it was manufacturing machinery parts and accessories thereof for reputed companies on tailor made basis as per the specifications of the customers. Designs and drawings

for the job were supplied by the customers which were covered under the confidentiality clause and to maintain the secrecy of the drawings the assessee had evolved modus operandi of getting fabrication work done at its own premises with its own machinery using his own workers and technical staff who were otherwise technically competent to undertake the work after the regular working hours on contract basis. The relevant explanation of the assessee filed to the lower authorities is reproduced hereunder:

1. *"The assessee is a fabricator/manufacturer of machineries/machinery parts and accessories thereof as in earlier years. During the year under consideration, the main customers of the assessee were Bharat Heavy Electricals Ltd. (A Govt. of India Public Sector Undertaking) and Larsen & Toubro (A reputed Private Sector Undertaking). The kind of customer base of the assessee speaks of its credibility, and expertise in the field of its operations. The items supplied by the assessee are manufactured as special jobs, tailor made to the specifications of the customers. For the purpose, the assessee is supplied with the designs and drawing of the job which as per terms of the agreement are covered under the "Confidentiality Clause" from the customers. With a view to maintain privacy of the drawings and quality of the products manufactured, the assessee chooses to get the fabrication charges done by its contractors at its own premises. In order to achieve the above objects, the assessee has developed a team of technically sound persons who are experts in their field/line. For the purpose, the assessee encourages its own technical staff to develop a team of their own workers to act as its contractors and do the job assigned in the factory premises of the assessee after their normal working*

hours. All the team leaders (Contractors) are identified keeping in view their leadership quality, technical competence and their ability to motivate and arrange their own labour force. The practice is also prevalent in the other fabrication units of the area."

2. In order to substantiate the above said submissions, we are enclosing herewith copy of the order of the "Indigenous Purchases" of Bharat Heavy Electricals Ltd (BHEL) along with details of the material to be supplied to them mentioning delivery time, unit rate and quantity as well. These supplies have to be adhered to the time, which is delivered on the schedule fixed by the BHEL and there cannot be any deviation/excuses for non supply of the material ordered.
  
3. The boiler parts which are being supplied by appellant to the "Bharat Heavy Electricals Ltd.," and to the "Larsen & Toubro Ltd." are used by these two reputed companies for making the "Boilers/Machineries" to be supplied to the Power Plants/Petro Chemical Plants/infrastructure Projects. For that purposes, it has to be ensured that the material which is used by the assessee for manufacturing of the parts to be supplied to the other parties is of specialized quality and for that purpose, a detailed list of the raw material which has to be used by the appellant is given alongwith the purchase order and detailed drawings. Sample copy of such purchase order, material to be supplied, which comes alongwith order, raw material to be used by the manufacturer (Appellant) for making parts and drawings are enclosed in the paper book to substantiate the above fact. This is being mentioned only to highlight strict norms under which the appellant has to work for providing quality products, which are only supplied to the above parties and total confidentiality is maintained in the manufacturing of the products.



4. *It is further brought to your kind notice that the manufacturing process of the assessee is highly technical in nature and strict quality norms have to be maintained. The unit of the assessee is ISO certified and for that purpose, the process wise Flow Chart is being enclosed in the paper book and this chart is being submitted to substantiate the fact that all the processes are carried out in the factory premises of the appellant only in order to maintain the confidentiality and secrecy. This is foremost concern of the customers as stated above.*
  
5. *These drawings and the list of the material and other details which are sent by customers of the appellant are highly confidential and this fact is borne out from the note given on the drawings which reads as under:*

*"Caution: The information on this document is the property of BHARAT HEAVY ELECTRICALS LTD. It must not be used directly or indirectly in any way detrimental to the interest of the company."*

6. *Thus, from the above said contention, the appellant is duty bound to own such commitment of maintaining confidentiality vis-a-vis secrecy and, therefore, it cannot afford to divulge the context of the purchase order to any outsider. For that purpose, the appellant has developed a team of its own workers for the fabrication of the parts required to be supplied to the customers and in that process, they used the infrastructure of the appellant inside the factory premises and by this, the appellant is able to maintain the confidentiality vis-a-vis secrecy. These workers, who are not much educated, but are technically experienced and sound and are expert in their field and are given some jobs charges, besides, the fixed salary given to them. By this process, the labourers get the necessary incentives and it serves the dual purpose of the appellant vis-a-vis to maintain the confidentiality and also that the parts which are being manufactured by the appellant are of the desired quality. This work is carried out by the*

persons by using the infrastructure of the appellant inside the factory premises and, during the course of such "job work" a check and control by the appellant is maintained, besides maintaining the confidentiality which is prime concern of the the customers, since on the basis of the drawings and technical know of the customers the manufacturing of parts is being made.

7. This fact is further borne out from the fact that the sales of the appellant have gone up during past few years which is borne out from the following chart: -

Year ended (Rs.in Lacs	31.03.2008 Amount	%age Receipts	31.03.2009 Amount	%age Receipts	31.03.2010 Amount	%age Receipts
Gross Receipts	571.43		918.94		2042.01	
Wages	3.50	0.61%	5.29	0.58	8.18	0.40%
Fabrication Charges	110.65	19.38%	40.50	4.41%	77.22	3.78%
		19.99%		4.99%		4.18%

14. The assessee had also contended that this practice was prevalent in other fabrication units of the area also and had filed a certificate from Yamuna Nagar Jagadhri Chamber of Commerce and Industry placed at Paper Book page No.38. The contents of the certificate are as under:

*“Yamuna Nagar - Jagadhri Chamber of Commerce & Industry , started over 40 years ago , has come a long way in becoming the foremost representative of Industry , Trade & Services in the twin towns of Yamuna Nagar and Jagadhri. The Chamber comprises of members from Trade, Services & Industry of the large, medium, small scale sectors & 100% EOU's.*

*The member industries belong to diverse manufacturing disciplines such as Heavy & Light Engineering, Paper, Sugar, Distillery, Plastics, Hydraulics, Chemical, Automoblie Components, Steel & Other Metal Fabrication, Plywood, Stone Crushers, etc. Members in Trade include dealers of Petroleum products, Automobiles, Motors, Machined parts etc and other members provide Services in the field of Technical & Professional Education, Insurance, Construction etc.*

*Normal trade practice in case of orders received for manufacture of engineering products or fabrication from OEM or MNC's would usually have a confidentiality/secretcy clause to protect the designs/drawings of the buyer. In such circumstance, it is common to either employ a team of technically sound people on a contractual basis for job work on per kg or per unit basis with material and infrastrucure being provided by the manufacturer/fabricator or in case of non availability of such skilled workers, to develop a separate team of employees who after normal working put in additional hours with an incentive of additional income thereby, ensuring timely & proper completion of these orders. The working is normally carried out in the manufacturer's/fabricator's factory/facility so that close supervision of quality and secretcy ,could be ensured.*

*This certificate has been issued on request of our member M/s Great India Steel Fabricators.*

*For Yamuna Nagar- Jagadhri Chamber of Commerce & Industry*

15. The assessee had also demonstrated that such expenses were incurred in the past also wherein the ratio of the fabrication charges was comparatively higher to that in the present year. The assessee had demonstrated that while the ratio of the fabrication charges to gross receipt was 19.38% and 4.41% in the years ending on 31-03-2008 and 31-03-2009, the ratio was 3.78% in the impugned year. The assessee had also stated that the fabrication charges had been paid to the employees contractors in the preceding years also and had filed the list of the same giving the detail of fabrication charges paid to employees contractors in the years ending 2008, 2009 and the impugned year which is placed at Paper Book page No.37 and which shows that the same employees contractors who have paid in the impugned year had also been paid in the preceding years also. It

was also submitted by the Ld. counsel for the assessee that the assessee has been subjected to regular assessment for the assessment years 2009-10 and no addition had been made on account of the fabrication charges incurred. Further bills of the fabrication charges had been produced before the Assessing Officer. It had also been shown that the payments had been made to the said contractors by cheques. The said amount, it had been demonstrated, had been deposited in the respective bank account of the contractors who had also withdrawn money from their accounts. The assessee had also filed the income tax returns of the said contractors reflecting income from fabrication charges received from the assessee firm and claiming refund of tax deducted at source thereon. The assessee had also demonstrated that the said refund had been withdrawn by the contractors after depositing the same in their bank accounts.

16. The only conclusion which can be drawn from all the above explanations and evidences taken together is that the assessee had incurred fabrication charges and had duly discharged its onus of proving the same. Further we find that no anomaly in the above evidences and explanations was pointed out by the Revenue. None of the above facts have been controverted by the Revenue except that the bills were not signed. The Revenue has not denied that the assessee had to incur fabrication charges in the course of its manufacturing process. It has not

denied or controverted the facts that the fabrication charges had been incurred by the assessee in the past also. The Revenue has not denied or controverted the fact that the assessee was manufacturing tailor made machinery parts for reputed customers as per their specifications and had to maintain privacy of the drawings supplied by them as per the confidentiality clause entered into with them. The Revenue has not controverted the fact that the practice of executing fabrication charges through employees contractors was very much prevalent in the fabrication unit of the area. The fact that the payment was made to these contractors by cheques who deposited the same in their bank accounts and also withdrew money from the same, has also not been controverted, so also the fact the income tax returns had been filed by the employees contractors reflecting the fabrication charges therein.

17. The only anomaly pointed out by the Department is that the bills were unsigned. Considering the voluminous evidences and explanations filed by the assessee, we do not consider the non-signing of the bills to be a factor major enough to displace the other evidences filed by the assessee and proving conclusively that fabrication charges incurred were bogus.

18. Further the sole basis for holding the impugned expenses as bogus is the statement of two contractors recorded by the Assessing Officer, which as per the

Revenue has evidentiary value since it was recorded on oath. On this aspect, we are in agreement with the Ld. counsel for the assessee that since no opportunity of cross examination was afforded to the assessee despite specific request made by the assessee in this behalf, the evidentiary value of such statement given at the back of the assessee have no value. The reliance placed by the assessee in this regard on the decisions of Hon'ble Supreme Court in the case of Kishinchand Chellaram vs. CIT, 124 ITR 713(SC), Kalra Glue Factory Vs. Sales Tax Tribunal And Ors., 167 ITR 498, and CIT, Patiala Vs. M/s Radhey Sham Sita Ram (2003) 22 ITR 667 is apt. The assessee has also placed before us a copy of the judgment of the Hon'ble Apex Court in the case of M/s Andaman Timber Industries Vs. CIT, Civil Appeal No.4228 of 2006 dated 2.9.2015 wherein the Hon'ble Apex Court has categorically held that by denying opportunity of cross examination of the witness of the Department there was serious flaw which made the order nullity. The relevant portion of the order is as under :

*“According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee*

*disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority.”*

19. Having said so we may also add that the assessee in any case, without having been granted an opportunity of cross examination had pointed out many contradictions in the statements of the said contractors which cast a doubt on the veracity of the statements made by them also. The assessee had pointed out that though the contractors had denied carrying out any fabrication work for the assessee, they had themselves shown receipts from fabrication charges as their income in their returns of income filed for the year and also claimed refunds of the TDS deducted thereon. The assessee had pointed out that it is not denied that the income tax returns were filed by the contractors themselves and it had not been demonstrated that the assessee had anything to do with it. The assessee had further pointed out that though these persons had stated that they had no idea about the saving bank accounts, the very same persons had gone further and stated that they had signed blank cheque books as per the directions of the firm. The Ld. counsel for the assessee pointed out that two statements of the employees contractors were in itself contradictory and if

they had no idea about the saving bank accounts how could they have stated to have signed any blank cheque books. The assessee also pointed out that if the employees contractors had no bank accounts how could they have stated that the bank accounts had been opened by the assessee firm in their names, that they had signed blank cheque books at the directions of the firm and cheque books and passbooks had been kept in the possession of the assessee firm. Thus besides the fact that no opportunity of cross examination was granted to the assessee, there are also many contradictions in the statement of the workers and therefore for both the above reasons taken together we hold that the said statements cannot be taken as a piece of evidence against the assessee.

20. Considering the totality of the facts stated above, we hold that the assessee had discharged its onus of proving that the fabrication charges were incurred by it for the purpose of its business and there was no reason to deny any portion of the expenses to the assessee at all. In view of the above, the entire expenses incurred on fabrication charges are allowed to the assessee.

21. In effect, therefore, the ground of appeal no.1 raised by the Revenue is dismissed, while the ground no.1 raised by the assessee in its Cross Objection is allowed.



22. Ground No.2 raised by the Revenue reads as under:

2. *On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.4,79,429/- made by the A.O. on account of unaccounted scrap at the rate of 05% of the total turnover ignoring the fact that the identical addition was made in the preceding year, which was accepted by the assessee.*

23. Brief facts relating to the issue are that the Assessing Officer had noted that the assessee had shown scrap worth Rs.5,41,573/- in its closing stock which came to only 0.26% of the total turnover, whereas in the preceding year the assessee had agreed that the scrap generated during its manufacturing activities was about 0.5% of the total turnover. The Assessing Officer observed that the manufacturing activities of the assessee remained the same as in the previous year and there was no major change in any of the variables. He also noted that the turnover has substantially increased and gross profit rate had fallen by 0.4%. The Assessing Officer further noted that the assessee had not mentioned ratio of material consumed/finished products in the Audit Report furnished during assessment proceedings. In the absence of such ratio the Assessing Officer held that the GP ratio only could be taken as a measure of the efficiency of the Balance Sheet run by the assessee. He, therefore, held that since there was a fall in GP ratio, it was not possible that the scrap generated in the manufacturing process

would be lesser than scrap generated in the last year. He, therefore, took value of scrap generated at 0.5% of the total turnover which came to Rs.10,21,002/- and after reducing the scrap already shown by the assessee amounted to Rs.5,41,573/-, he made an addition of Rs.4,79,429/- on account of scrap not recorded in the books of the assessee.

24. During the appellate proceedings, the assessee contended that whatever scrap had been generated during the course of manufacturing process had been duly disclosed by the assessee and on account of various processes carried out by it, which was explained by way of process-wise chart submitted also, majority of scrap was not recoverable because it was mixed up in the dust being small pieces. Whatever scrap was recovered had been reflected by the assessee in its books of account. The assessee also contended that the Assessing Officer had relied upon a ratio of scrap to total turnover which had been estimated in the preceding year and was not the actual ratio. The assessee, therefore, contended that without any other evidence, the Assessing Officer could not have made any addition on account of unaccounted scrap. The Ld. CIT (Appeals) after considering the assessee's submission deleted the addition made by holding that the addition had been made on the basis of estimation of preceding year, where the facts were different from the current year since the turnover in the

preceding year was much lower than the turnover in the current year and further since no other evidence was brought on record to suggest that the scrap shown by the assessee was not correct. The relevant finding of the Ld. CIT (Appeals) at para 10 of the order are reproduced hereunder:

*“10. I have gone through the facts of the case and written submission filed by the assessment proceedings. It is noted that the AO has applied an estimation of 0.5% of total turnover as scrap generated on the basis of the estimation adopted by AO of 0.5% in the preceding assessment year. The appellant has shown during the year scrap worth Rs.5,41,573/- in its closing stock which is 0.26% of the total turnover. The appellant has submitted that the estimation of scrap of 0.5% of total turnover was adopted in the preceding assessment year as no scrap generation was shown in the accounts in the preceding assessment year. Since, there was no other major addition in the assessment, the appellant accepted the estimation and no appeal was filed against the estimated scrap. However, during the year appellant has shown the value of scrap which not necessarily would be equivalent to the estimation made in the preceding assessment year. After considering the appellant submission, I am of the view that in the absence of any scrap shown in the accounts in the preceding assessment year, the estimation was made by the AO at 0.5% of the total turnover. The turnover in the preceding year was much lower than the turnover in the current year. There was no other evidence during the year which can*

*suggest that the scrap shown by the appellant in its account is not correct as the reasons given for the scrap generation may not remain same. Since, the addition is on the basis of estimation of preceding year where the facts were different than the current year, therefore, the AO was not justified in enhancement of scrap generation on an estimated basis. The AO is directed to delete the addition on this account. This ground of appeal is allowed.”*

25. Before us the Ld. DR relied upon the order of the Assessing Officer, while the Ld. counsel for the assessee relied upon the order of the Ld. CIT (Appeals). Having heard the contentions of both the parties and having gone through the orders of the authorities below we find no infirmity in the order of the Ld. CIT (Appeals) deleting the disallowance made on account of unaccounted scrap. It is not denied that in the preceding year scrap generated had been estimated by the Assessing Officer. The Assessing Officer in the impugned year had adopted the same basis for calculating the scrap generated without taking into consideration the fact that there were differences in the facts of the two years, the turnover in the preceding year being much lower than the turnover in the current year. More importantly the addition is based only on estimates and no other evidence was brought on record by the Revenue to suggest that scrap, more than what was shown by the assessee, was generated during manufacturing process by the assessee in the impugned year. In view of the same, we uphold the order of the CIT

(Appeals) on this account deleting the disallowance made on account of unaccounted scrap amounting to Rs.4,79,429/-. The ground of appeal No.2 raised by the Revenue is, therefore, dismissed.

26. In effect, the appeal of the Revenue in ITA No.746/Chd/2014 is dismissed, while the Cross Objection of the assessee in C.O.NO.16/Chd/2015 is allowed.

Order pronounced in the open court.

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Dated : 6<sup>th</sup> March, 2017

\*Rati\*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,  
ITAT, Chandigarh