

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1741/HYD/2017**

Assessment Year: 2011-12

BP Ferrium Industries  
Private Limited,  
(formerly known as Godavari  
Exports and Imports Private  
Limited),  
HYDERABAD  
[PAN: AABCG3774H]

DCIT, Circle-2(3),  
Vs HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri P.Murali Mohana Rao, AR  
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 22-04-2021  
Date of Pronouncement : 20-05-2021

**ORDER**

**PER S.S.GODARA, J.M. :**

This assessee's appeal for AY.2011-12 arises from the CIT(A)-2, Hyderabad's order dated 28-03-2016 passed in case No.0066/2014-15, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. Coming to assessee's sole substantive grievance raised in the instal appeal seeking to revive both the lower authorities' action disallowing the finance charges of Rs.1,81,07,126/-.

3. Mr.Pandey took us to the Assessing Officer's sole reason that this taxpayer as well as its group companies had taken recourse to accommodation entries only. He next invited our attention to the CIT(A)'s detailed discussion deleting the impugned addition as under:

*"5.2. I have considered the assessment order and grounds of appeal and submissions made by the AR. It can be seen from the assessment order that the AO has made out the case that the assessee is not conducting any trading activity and hence, the financial charges of Rs.1,81,07,126/- debited to the profit & loss account are disallowed. However, during the course of appeal proceedings, the AR failed to rebut the conclusions of the AO with any cogent evidence and hence, I am of the considered view that the action of the AO is justified in disallowing the said amount of Rs.1,81,07,126/-*

*5.3 Further, the assessee's case is required to be judged on the basis of circumstantial evidence and human probability. The principles governing these doctrines are summarized below.*

*a) One of the established laws is that the documents may lie but not the circumstances. This shows the importance attached to circumstances in the matter of evaluation of evidence. Direct evidence is not always necessary to reach an inference. It is drawn by appreciating a chain of evidence cumulatively. Law does not require that reliance on circumstantial evidence must answer to all and every hypothesis advanced by the assessee, however extravagant and fanciful the same might be.*

*b) Direct evidence proves or disproves a fact directly. Circumstantial evidence allows a fact to be inferred from common course of natural events, human conduct and their relation to the facts of the particular case. This can be made use of in order to prove or disprove a fact in issue. The word "evidence" is used in Sec.143(3) of the Income Tax Act. Under the Income Tax Act, the connotation of the term "evidence" is wider.*

c) A number of decisions have been rendered by the Hon'ble Apex court. The same firmly establishes the use and validity of circumstantial evidence a part of which is human probability. These decisions are

- i) CIT Vs. Durga Prasad (1971) 82 ITR 540 (SC)
- ii) Sumati Dayal (1995) 80 Taxman 89 (SC)
- iii) CIT Vs. P.Mohan Kala (2007) 291 ITR 273 (SC)

In the case of Durga Prasad More, the Hon'ble Apex court observed that

*"It is true that an apparent must be considered real until it is shown that there are reasons to believe that apparent is not the real. Party who relies on a recital in e deed has to establish the truth of those recitals, otherwise, it will be very easy to make self- serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour. Then, the door will be wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The Taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into surrounding circumstances to find out the reality of the recitals made in those documents."*

Thus, this case of the Hon'ble Apex Court provides the foundation for application of the theory of use of circumstantial evidence and human probability.

5.4. The facts and circumstances of the case of the assessee is required to be judged in the light of principles enunciated in the above cases by the Hon'ble Apex Court. A perusal of the assessment order shows that the plea advanced by the assessee cannot be taken as cogent to claim huge expenditure on account of expenditure claimed of financial charges of Rs.1,81,07,126/- in view of the following.

- (i) The assessee is stated to have been engaged in business of purchase and sale of steel and iron.
- (ii) During the previous year, the, financials depict purchases of Rs.348,72,51,636/-
- (iii) During the previous year/ it recorded sa.es of Rs.352,14,05,836/-
- (iv) The assessee debited selling and administrative expenses of Rs.2,25,92,885/- which is abnormally low compared to the purchases and sales turnover depicted

*in the financials and the assessee has not debited any expenditure towards handling charges.*

- (v) It is to be noticed that a large number of transactions were with group companies/concerns.*
- (vi) AO, during scrutiny, asked the assessee to produce correspondence with seller / evidence regarding negotiation of rate and evidences as to the manner in which lowest price was accepted as it claimed that after getting orders from various customers, it places order with the supplier. Taking into account the turnover which ran into Crores of rupees / it is not believable that there was no correspondences at all.*
- (vii) It failed to file the evidences regarding procurement of orders from the customers and the manner in which the same was delivered. Similar is the case with regard to sales.*
- (viii) Movement of goods which includes LR's, evidence regarding passing through check gate / handling expenses of huge purchases of material were not produced.*
- (ix) The assessee has not debited any expenditure towards material handling charges/transport charges/labour charges/any other expenditure that was related actual delivery of the traded goods.*
- (x) As mentioned in the assessment order the assessee produced some copies of purchases and sale bills only. The descriptions in the said bills were insufficient or vague.*
- (xi) The place of delivery was not mentioned. In some cases/ place of delivery was mentioned as 'head office'. When confronted, it was claimed that the goods were delivered to the buyer. How the goods moved and who met the expenses is not forthcoming. Similar transactions were found in respect of some of group concerns as mentioned by the AO in Peres 3 to 5 of the order. The transaction effected to the extent of Rs.7,721 Cr followed the same pattern.*
- (xii) The assessee failed to rebut the findings of the AO during the course of the appeal proceedings also by*

*producing any supportive and cogent evidence. Therefore, there was no change with regard to Production of evidence. The assessee harped on the arguments that these transactions were made through bank for Which the financial charges by way of discounting expenses were Incurred to the extent of Rs.1,81,07,126/-. In this regard, It is relevant to mention that the transaction through letter of credit (LC) can be manipulated, which is quite common. When the purchaser and seller join hands, without real purchase, LCs can be generated and there will be movement of money. In case of availing LC facility, the seller sends his intimation to the buyer of goods who maintains LC account in bank. The seller in turn discounts the same from his banker and gets payment after meeting discounting charges. After the lapse of period of LC, the banker of the seller of the goods realizes the amount from the banker of the purchaser who opened the LC facility With his bank. Apparently, this looks a perfect arrangement. But at the same time the entire device can be so arranged that there will be movement of money without real purchase or sale. The case of the assessee is that there are numerous gaps in the transactions as Pointed out by the AO in the assessment order. However, the AR has not made good the above observations by producing Supporting evidences even during the appeal proceedings also. Therefore, this is a case where the apparent is not real. It Is further settled that mere transaction through bank will not tantamount to a proper and correct transaction. This is a case where circumstantial evidence and theory of human probability as evolved by the Hon'ble Apex court would come into play. If the entire facts and circumstances are considered as discussed above, prudence will guide a person to arrive at a conclusion that no transaction in purchase and sale has taken place during the previous year relevant to the assessment year under appeal. Assessee relied on the decision rendered in the assessee's own group case of M/s. Global Forgings Ltd for A.Y.2010-11 wherein the Hon'ble ITAT, Hyderabad Bench 'B', vide ITA No.1269/2014 dt.26-11-2014 has dismissed the appeal of the Department and upheld the order of the CIT(A) wherein the disallowance of financial charges was deleted. The relevant extract is as under.*

***"The only reason for the disallowance made by the Assessing Officer was that the assessee has incurred the expenditure,***

*while discounting the bills from outside parties and providing goods to its sister concerns on credit basis. In our view, the conclusions drawn by the Assessing Officer is based on mere presumptions and surmise, rather than evidence. It is evident from the discussion made by the Ld. Commissioner of Income Tax(Appeals) in the impugned order, extracted above, the expenditure incurred by the assessee is fully supported by evidence and also certified by banks and financial institutions. That being the case, there cannot be any reason to doubt the genuineness of the expenditure. In this view of the matter, there being no infirmity in the order of the learned CIT(A), we do not find any reason to interfere with the same. We accordingly reject the grounds of the Revenue in this appeal”.*

5.5. I have gone through the said decision. It may be pertinent to mention that the theory of circumstantial evidence and human probability was not placed before the Hon'ble jurisdictional ITAT for consideration. Therefore, with utmost obedience to the Hon'ble ITAT, I hereby differ with the ratio laid down in the case mentioned supra. Further, it would be proper to mention here that a legal proof is not always a perfect proof. Probability surrounding the case is required to be judged. Hence, taking into account the entire transactions as pointed out by the AO, I am of the considered opinion that no transaction in purchase and sale has taken place. This being the position, the question of payment of financial charges of Rs.1,81,07,126/- cannot be treated as incidental to the business of the assessee. Therefore, the action of the AO is justified in disallowing Rs.1,81,07,126/- claimed out of business expenditure. As a result, the grounds raised are dismissed”.

4. We find no merit in Revenue's foregoing arguments challenging lack of bonafides on assessee's part in raising the impugned finance charges claim. It has already come on record that this tribunal's co-ordinate bench's decision(s) in assessee's very group concern's appeals ITA Nos.406, 543 and 1269/Hyd/2014 (M/s.Global Forging Ltd) has already declined Revenue's very argument in the order dt.26-11-2014. Learned co-ordinate bench rather gave a categorical finding that the said group entity had duly supported the impugned financial charges by banks and other institutes' certificates. We thus

find no reason to adopt a different approach in instant lis raising the very aspect of suspicious circumstances. The CIT(A)'s action affirming the impugned finance charges disallowance stands reversed therefore.

5. This assessee's appeal is allowed.

*Order pronounced in the open court on 20<sup>th</sup> May, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 20-05-2021

TNMM

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

*Copy to :*

*1. BP Ferrium Industries Private Limited (formerly known as Godavari Exports and Imports Private Limited), C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad.*

*2. The DCIT, Circle-2(3), Hyderabad.*

*3. CIT(Appeals)-2, Hyderabad.*

*4. Pr. CIT-2, Hyderabad.*

*5. D.R. ITAT, Hyderabad.*

*6. Guard File.*