

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

आयकर अपील सं./ITA No.117/CTK/2014

(निर्धारण वर्ष / Assessment Year :2010-2011)

ACIT, Circle-1(2), Bhubaneswar	Vs.	M/s Kaushal Ferro Metal Private Limited, 8, Badabahal, Kundukela, Sundergarh
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCK 4906 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Kunal Singh, DR

निर्धारिती की ओर से /Assessee by : Shri J.M.Pattnaik, AR

सुनवाई की तारीख / Date of Hearing : **27/06/2017**

घोषणा की तारीख/Date of Pronouncement **12/07/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The revenue has filed this appeal against the order of CIT(A)-I, Bhubaneswar, dated 23.01.2014 in I.T.Appeal No.0208/13-14, wherein the revenue has raised the following grounds :-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs.5,52,82,000/- made by the AO on account of share premium money holding it as undisclosed investment.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as facts in deleting the addition of Rs.2,44,100/- on account of garden expenses, since the same is not incidental to the business of the assessee.*

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of sponge iron and filed the return of income for the assessment year 2010-2011 on 06.10.2010 declaring total loss of

Rs.3,18,05,725/-, subsequently the case was selected for scrutiny and notices u/s.143(2) & 142(1) were issued along with questionnaire. In compliance to notice Id. AR of the assessee appeared and produced the details of financial statements, and documents on perusal of the Balance Sheet, the AO found that there is an increase in share premium amount and during the financial year the equity shares were allotted with the premium and the Id. AO referred to the share premium statement of 13 investors aggregating to Rs.5,52,82,000/-. The contention of Id. AO that there is no valuation report and also there is no basis of charging premium considering the growth of the company for the shareholders to make investments.

3. The AO recorded statement u/s.131 of the Act from the four parties and dealt exhaustively on the statements of the parties who were allotted the shares and found that the persons does not have adequate income sources and the AO further observed that the amount of Rs.5,52,82,000/- shall be treated as undisclosed income in the hands of the assessee. The assessee filed explanations that the assessee company is a private company and is not governed by the guidelines of SEBI for allotment of shares. The allotment of shares is at the sole discretion of management and the shares were allotted at Rs.30/- i.e. Rs.10/- face value + Rs.20/- share premium considering the growth of the industry.

4. The AO was not satisfied with the allotment of shares and also the assessee company could not produce any documents supporting proof to establish on the charging the premium. Further, the assessee company is

loss making industry and there is no proper mechanism for allotment of shares and charging of share premium. The investors could not substantiate the source with the required details and creditworthiness. The AO finally concluded that the share allotment process was not proper and shares were not valued diligently for charging the premium and made addition of Rs.5,52,82,000/-. The assessee has claimed garden expenses of Rs.2,44,100/- and the same was disallowed as there is no nexus with assessee's business on the claim of expenditure and Id. AO assessed income at Rs.2,37,20,375/- and passed order u/s.143(3), dated 25.03.2013.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings, Id. AR of the assessee argued the grounds and reiterated the submissions made before the AO. Ld. CIT(A) referred to the submissions of the assessee on 21.4.2014 at para 3 of the order. On perusal, it was found that the total amount received from earlier year by the assessee company as on 1.4.2009 is Rs. 5,39,31,000/-, whereas in the current financial year 2008-09 the amount was Rs.2,90,00,000/-and the Id. CIT(A) also considered the provisions of Section 78 of the Companies Act and the submissions on introduction of cash and dealt on the judicial decisions and observed that the assessee is entitled to receive premium as the AO has not doubted allotment process and violation of any other laws and deleted the addition and observed at para 4 as under :-

I have given careful consideration to the matter. During the financial year 2009-10, relevant to the impugned assessment year, an

amount of Rs.2,90,00,000/- only has been received out of which Rs.2,06,66,000/- has been credited to the share premium account. The balance amount of share/share premium has been received in the earlier year whereas the AO has wrongly concluded that Rs.5,52,82,000/- has been received as share premium in the previous year relating to the impugned assessment year. The AO has not given any adverse comments against the allotment of share and receipt of money against share allotment. The AO has not found the share applicants as bogus nor the AO concluded that the share applicants do not have the capacity to pay for the shares or share premium. There is no finding that the money received from the share applicants in the form of share premium account is the money of the appellant routed through the share applicants. The only finding of the AO is that due procedures had not been followed in allotment of shares and no proper valuation has been done, which in itself could not be a ground to conclude that the money received in the form of share premium is undisclosed income of the appellant. The AO has not discussed how the norms of allotment have been violated or what laws or guidelines have been contravened. Only because proper valuation has not been done and the value has been determined by the management on the basis of unknown parameters, this itself could not lead to conclusion that the money received on the premium account is undisclosed. Most of the share applicants are private limited companies and the money received in the financial year relevant to the impugned assessment year is from a company namely M/s. Berlia Associates (P) Ltd. There are no findings or grounds to assume that the share applicants are nonexistent, do not have capacity to pay or the transactions are not genuine. The conclusion of the AO that the share premium introduced is undisclosed is not/correct. In view of the same, the addition of Rs.5,52,82,000/- is hereby deleted.”

On the second disputed issue, Id. CIT(A) on garden expenditure of Rs.2,44,100/- observed that the garden expenses is necessary considering the better environment for work and motivating worker for better productivity and deleted the addition and allowed the appeal.

6. Aggrieved by the order of the CIT(A) the revenue has filed the present appeal before the Tribunal.

7. Before us, Id. DR argued that the assessee has disclosed total share premium of Rs.5,52,82,000/- in the balance sheet and out of which share premium of Rs.2,06,66,000 premium was received from M/s Berlia

Associates Pvt. Ltd. in the previous year 2009-10, further the AO observed that the documents were not produced before him and also reasons and basis of charging the share premium decided by the management. The AO issued summons to the four shareholders and recorded the statement and further the AO identified that the assessee company is a loss making company and there is no basis on commercial exigency for charging of premium and the Id. DR further submitted that CIT(A) has ignored the findings of AO and erred in deleting the addition and prayed for restoration of the order of AO.

8. Contra, Id. AR relied on the order of CIT(A) and filed paper book and supported the arguments with audit report and financial statements.

9. We heard rival submissions and perused the findings of lower authorities and material on record. Ld. DR's contention on charging of premium is in the nature of sham transaction and there is no proper basis of charging share premium. We on perusal of the CIT(A) found that Rs.2,06,66,000 was received towards share premium during the current financial year and whereas Rs.5,39,31,000 was received as on 1.4.2009. We also perused the provisions of Section 68 of the Act which reads as under :-

Cash credits.

68. *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :*

Provided *that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital,*

share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further *that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.*

10. On applying the provisions of Section 68 of the Act, we find that in the previous year i.e. 2009-2010 the assessee has received share premium of Rs.2,06,66,000 from Beria Associates Pvt. Ltd. And there is no valuation report to substantiate the charging of premium and it was submitted by the Id. AR submitted that the assessee being a private limited company, the Board of Management shall decide the premium; we cannot accept fact of charging the share premium solely on the basis of management views. The share premium is charged based on the net worth of the company.

11. We found the CIT(A) observed that an amount of Rs.5,39,31,000 was received prior to 1.4.2009 in respect of 13 parties whereas M/s Berlia Associates Pvt. Ltd paid share premium amount of Rs.2,06,66,000/- during the financial year 2009-10, we are of the considered view that the CIT(A) was not correct in deleting the premium, as there is no valuation report and no proper sources were explained and further the provisions of Section 68 of the Act cannot be applied to the opening balance.

12. We are of the opinion that the CIT(A) order has to be modified to the extent of share premium of Rs.2,06,66,000 received during the year where the assessee could not prove with reasons for charging the premium except relying on the management decision. Accordingly, we modify the CIT(A)'s order, who has deleted the entire addition of AO and we sustain the addition to the extent of Rs.2,06,66,000/- made by the AO. In respect of other ground, we considered the nature of business and turnover and image of the company and are not inclined to interfere with the order of CIT(A) in deleting the addition of Rs.2,44,100/- towards garden expenses and uphold the same.

13. In the result, appeal of the revenue is partly allowed.

Order pronounced in the open court on this 12/07/ 2017.

**Sd/
(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/
(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 12/07/2017

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- ACIT,
Circle-1(2), Bhubaneswar
2. प्रत्यर्थी / The Respondent-
M/s Kaushal Ferro Metal Private Limited,
Badabahal, Kundukela, Sundergarh
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**(Senior Private
Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack