

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.250/CTK/2014

(निर्धारण वर्ष / Assessment Year :2007-2008)

DCIT, Cir-1(1), Bhubaneswar	Vs.	M/s Kalinga Power Corporation Pvt. Ltd., M-10, Samanta Vihar, NALCO Square, Near Kalinga Hospital, Bhubaneswar-751017
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK 7224 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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

निर्धारिती की ओर से /Assessee by : None

सुनवाई की तारीख / Date of Hearing : **21/08/2017**

घोषणा की तारीख/Date of Pronouncement **29/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The revenue has filed an appeal against the order of CIT(A), Berhampur (Camp: Bhubaneswar), dated 21.03.2014, passed in I.T.Appeal No.0226/10-11(BBS), u/s.143(3)/147 of the Income Tax Act, 1961 for the assessment year 2007-2008, wherein the revenue has raised the following grounds :-

1. *On the facts and in the circumstances of the case, the Id. CIT(A) was not justified in accepting the contention of the assessee and deleting the addition of Rs.7,14,20,259/- made by the AO on account of unexplained advance against share capital.*
2. None appeared on behalf of the assessee when the matter was called for hearing, neither any adjournment application was placed on record by the assessee, therefore, the bench deem it fit dispose off the

appeal on the basis of material available on record and the submissions of Id. DR.

3. Brief facts of the case are that the assessee is a private limited company registered under the Companies Act, 1956 with the object to establish a thermal power project in the State of Odisha and derives interest income dividend income and short term capital gains and filed the return of income electronically for the assessment year 2008-09 on 30.11.2007 with total income of Rs.5,54,788/- and the return of income was processed u/s.143(1) of the Act. Subsequently, the AO had reason to believe that income has escapement assessment and issued notice u/s.148 of the Act on 25.1.2010 and the reasons for re-opening were also communicated to the assessee company. As per the AIR information, the AO found that the assessee company has invested an aggregate amount of Rs.23,00,000/- in purchase of units of mutual funds and hence assessment was reopened. In compliance, Id. AR appeared from time to time and submitted that the original return of income filed earlier be treated as due compliance.

4. Thereafter the AO issued notice u/s.143(2) of the Act and to file detailed information as per the questionnaire, referred at page 3 to 6 of the order and the assessee filed submissions. In respect of disputed issue the Id. AO found in the balance sheet advance against share capital of Rs.7,14,20,259/- and the assessee has filed detailed reply dtd. 26.11.2010, referred at page 7 of the order. But the AO was no satisfied with the explanations and maintenance of books of accounts and found

that the said advance was foreign remittance through State Bank of India prior to year 1999-2000 and the same has been reflected in the balance sheet of previous years. Since the assessee company could not produce or furnished the details with valid information, the AO has doubted the genuineness of the transaction as the amount disclosed is not proved in the assessment proceedings and identity of remittance was not established and finally with these observations the AO made addition as unexplained cash credit u/s.68 of the Act of Rs.7,14,20,259/- and passed the order u/s.143(3) of the Act, dated 24.12.2010.

5. Aggrieved by the order, the assessee filed an appeal before the CIT(A). In the appellate proceedings, Id. AR argued the grounds and reiterated the submissions made before the CIT(A). The CIT(A) considered the findings of AO and also the submissions of the assessee and dealt on the disputed issue at page 12 para 6.1 of the order and referred to the written submissions of the assessee at para 6.2 and finally concluded at page 17 para 6.3 was of the opinion that the AO did not bother to verify the factual position and as the assessee did not file any evidence in support of his contention in assessment proceedings and the AO has made addition. With this observation the CIT(A) finally deleted the addition and partly allowed the appeal of the assessee observing at para 6.3 which reads as under :-

“6.3 I have carefully considered the matter and gone through the assessment records. During the scrutiny proceeding, the appellant stated before the AO that the share capital advance was received in financial year 1999-2000. The AO did not bother to verify the factual position and on the ground that the appellant did not file any evidence in support of his contention added the entire brought

forward share capital as income for the impugned assessment year without bringing anything on record that the share capital was received during the year. Now, during the appeal and remand proceeding, as per the details filed by the appellant and as verified by the AO, the advance in share capital definitely do not belong to the relevant assessment year. This advance as reported by the AO is appearing since 31.03.2000. I, therefore, see no reason to sustain the addition of Rs.7,14,20,259/- made by the AO. The same is, accordingly, deleted and the grounds No.6,7 and 8 are decided in favour of the appellant.

6. Aggrieved by the order of CIT(A), assessee has filed an appeal before the Tribunal. Before us, Id. DR of the revenue submitted that the CIT(A) has erred in deleting the addition of Rs.7,14,20,259/- made by the AO on account of unexplained advances and submitted that the CIT(A) has not verified the facts and the genuineness of the transaction in respect of advance amount received in the earlier years from abroad and prayed for allowing the revenue's appeal.

7. We have heard the submissions of Id. DR and the material available on record. Prima facie, the AO made addition u/s.68 of the Act is based on the submissions of the assessee. But in appellate proceedings it was explained that the amount has been received as advance against share capital from two foreign companies prior to assessment year 2000-2001 through banking channel. Assessee has disclosed these facts from the year 2000-01 onwards. Further, the amount has been carried forward from earlier years. But Id. DR's contention that though the amount has been routed through banking channel the assessee has not proved the creditworthiness, genuineness of the transaction. We have considered the findings and observations of CIT(A) in respect of allowing the claim. Prima facie, the CIT(A) found that the AO over looked to verify that the said

amount was not received in current assessment year and is carried forward balance from earlier assessment years. 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.*

On understanding provisions the addition has to be made in respect of credits of amount in books of accounts of previous years relating to current assessment year but not on the opening balance. Further we also found as per the submissions of assessee in the appellate proceedings the said amount was received prior to year 1999-2000 through banking channel which is not disputed. The Id. CIT(A) has dealt elaborately on relevant findings that this amount was not received during the current assessment year and on the query from the Id. DR explained that the said facts were accepted by the department in the earlier assessment

years and only in this particular assessment year addition was made by the AO. We found that the CIT(A) has dealt elaborately on the provisions of section 68 of the Act and the facts in deleting the addition. Accordingly, in the interest of justice, we are not inclined to interfere with the order of CIT(A), who has directed the AO to delete the addition as the said advance amount is only a carry forward balance of the earlier years from the year 1999-2000 onwards and we confirm the action of CIT(A) and dismiss the grounds of appeal of the revenue.

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 29/08/2017.

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 29/08/2017

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
DCIT, Circle-1(1), Bhubaneswar
2. प्रत्यर्थी / The Respondent-
M/s Kalinga Power Corporation Pvt. Ltd.,
M-10, Samanta Vihar, NALCO Square,
Near Kalinga Hospital, Bhubaneswar-751017
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