

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “G” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7158/DEL/2018  
Assessment Year 2009-10

Dy. Commissioner of Income Tax, Central Circle-II, Noida.	v.	M/s. Tirupati Udyog Ltd., D-14, IInd Floor, Preet Vihar, New Delhi.
TAN/PAN: AABCT3941R		
(Appellant)		(Respondent)

Appellant by:	Shri Amit Goel, Adv.		
Respondent by:	Shri H.K. Chaudhary, CIT-DR		
Date of hearing:	23	05	2022
Date of pronouncement:	26	05	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-IV, Kanpur ('CIT(A)' in short) dated 30.08.2018 passed under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. The grounds of appeal raised by the Revenue reads as under:

*“1. Whether on facts and circumstances of the case, the Ld. CIT(A) has erred in law by deleting addition on grounds that the share capital and security premium was received in earlier years without appreciating that no evidence of receipt of these sums in earlier year was provided before the A.O.*

*2. Whether on facts and in the circumstances of the case, the Ld.*

*CIT(A) erred in admitting additional evidences in form of copy of balance sheet & P&L account of assessee for earlier years without giving the opportunity u/s 46A(2) of I.T. Rules to examine the genuineness & correctness of such documents, which were never furnished before the A.O. and hence violated the principles of admission of additional evidence, as laid down in CIT Vs Ranjit Kumar 288 ITR 179 (Guj), Raj Kumar Srimal 102 ITR 515 (call), Ganpat Rai & Sons Ltd. 24 ITR 362 (Bom).*

*3. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition based on claim made by assessee for the first time claiming that such receipts were actually received in earlier years, whenever before CIT(A), the assessee did not furnish any details/evidences as to which F.Y. these were actually received, without appreciating that as per facts recorded by A.O. the persons claimed to be providing such receipts were found to be non-existent.*

*4. That the order of the Ld. CIT (A) being erroneous in law and on facts which needs to be vacated and the order of the A.O. be restored.*

*5. That the appellant craves leave to add or amend any other more ground of appeal as state above as and when needs for doing so may arise.”*

3. Briefly stated, a search and seizure operation under Section 132 of the Act was conducted on 11.11.2014 at the premises of the assessee. Accordingly, notice under Section 153A of the Act was issued and the assessment was completed under Section 153A r.w. Section 143(3) of the Act. Vide order dated 31.12.2018, the Assessing Officer made an addition of Rs.16,08,10,250/- on account of unexplained cash credit under Section 68 of the Act

alleging receipt of bogus share capital and share premium from non-existing bogus companies/concerns. On challenge, the First Appellate Authority reversed the action of the Assessing Officer on the ground that share capital/premium/application money was not received in the Financial Year 2008-09 relevant to Assessment Year 2009-10 and therefore Section 68 has no application. The relevant paragraph dealing with the issue by the CIT(A) reads as under:

*6.1 Ground no. 4 to 6 pertain to addition of Rs. 16,08,10,250/- on account of unexplained cash credit u/s 68 of the Act. As per Assessing Officer, appellant company has received Rs. 3,49,97,750/- A Rs. 12,58,12,500/- on account of share capital and share premium respectively, during this relevant assessment year. It is observed by the A.O., during the course of re-assessment proceedings, u/s 153A of the Act, appellant could not substantiate the same, therefore, addition of Rs. 16,08,10,250/- is made by the A.O.*

*6.2 In this regard, appellant has filed it written submissions, which is reproduced as under:-*

*"All the grounds, in substance relate to addition of Rs. 160810250/- made by the assessing officer u/s 68 of Income Tax Act, 1961 in respect of share capital / share premium.*

*Without prejudice to the fact that the addition made by the assessing officer is beyond the scope of provisions of section 153 A of the Act (as it is not based upon any seized material and as on date of search, no assessment for the year was pending), it is humbly submitted that even otherwise on facts, the addition made by the assessing officer is grossly erroneous. During the year under consideration, there is no increase in the share capital / share*

*premium during the year. The amount of share capital (Rs. 34997500/- wrongly mentioned by A.O. as Rs. 34997750/-) and share premium (Rs. 125812500/-) is the opening balance prior to 31.03.2008.*

*There is no movement / change in the amount of share capital / share premium during the F.Y. 2008-09 (A.Y. 2009-10) i.e. the year under appeal. Accordingly, the addition made by the A.O. is totally arbitrary and erroneous and the same is liable to be deleted.*

*It is also worthwhile to point out that original assessment for the A.Y. 2009-10 was made u/s 143(3) and copy of assessment order is enclosed.*

*So you are requested to allow the appeal.”*

*6.3 The undersigned has carefully gone through the assessment order, written submission as well as verbal arguments of the Ld. A.R. It is seen that, A.O. has mentioned the list of 90 shareholders in the assessment order, from whom the share capital/premium is alleged to have been received by the appellant company. However, it is not shown how, it pertains/relates to this relevant assessment year. During the course of this appeal proceedings, it was submitted that, no share capital/premium/application money was received by the appellant company, during this relevant A.Y. 2009-10. This fact is also, corroborated from the financial statements submitted by the appellant. Perusal of page -5 of the paper book submitted by the appellant, which, shows the balance sheet of the appellant company as on 31.03.2009, reveal that, there is no change in share capital/premium/application money received as on 31.03.2008 and 31.03.2009. Further, the appellant has submitted an affidavit on 24.08.2018, stating therein .that, during the F.Y. 2008-09 relevant to this A.Y. 2009-10, the appellant has neither*

*received nor allotted any amount of share capital/premium/application money. Thus, it is concluded that, the addition made by A.O. on account share capital/premium /application money does not relate to this relevant assessment year. Therefore, addition made by Assessing Officer cannot be sustained and grounds of appeal of the appellant are allowed.”*

4. Aggrieved by the relief granted by the CIT(A), the Revenue has preferred appeal before the Tribunal.

5. Ld. DR for the Revenue relied upon the order of the Assessing Officer.

6. Per contra, ld. counsel for the assessee referred to the paper book showing year-wise increase in share capital supported by the audited financial statement to submit that assessee has received share capital/share premium from Financial Year 2001-02 onwards upto Assessment Year 2004-05 and there is no increase thereafter in the share capital/share premium. It was further submitted that there was no receipt on account of share capital/share premium during the Financial Year 2008-09 relevant to Assessment Year 2009-10 in question. It was thus contended that in the absence of any credit in the books of account towards share capital/share premium during the year, Section 68 does not come into play at all and the Assessing Officer had wrongly invoked provisions of Section 68 and made unlawful addition which has been rightly reversed by the CIT(A).

7. On consideration of the factual matrix, we take note of year-wise receipt as tabulated in the paper book filed by Assessee.

<i>Financial Year</i>	<i>Share Capital</i>	<i>Security Premium</i>
2001-02	5,00,000	-
2002-03	1,21,77,500	3,65,32,500
2003-04	1,20,80,000	4,83,20,000
2004-05	1,02,40,000	4,09,60,000
<i>Total as on 31/03/2005</i>	3,49,97,500	12,58,12,500

8 As noted above, it is the case of the assessee that Section 68 applies only to the credit/ receipts entered in the books during the Financial Year in question and its operation is not extended to other assessment years. This position is fortified by plethora of judicial precedents including *CIT vs. P.K. Mohankala (2007) 291 ITR 278 (SC)*. It is an admitted factual position that the share capital/share premium in dispute has been received in the earlier years and no amount whatsoever has been credited in the books of account during the Financial Year 2008-09 in question. In this factual and legal matrix, the CIT(A), in our view, has rightly concluded on inapplicability of Section 68 of the Act to the facts of the case. We thus see no error in the conclusion drawn by the CIT(A) in favour of the assessee. Hence, we decline to interfere.

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

**Order pronounced in the open Court on 26/05/2022.**

Sd/-  
[KUL BHARAT]  
JUDICIAL MEMBER

DATED: /05/2022

Prabhat

Sd/-  
[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER