

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.Nos.372 to 376/Hyd/2022		
(Along with SA Nos.30 to 32/Hyd/2023 in ITA Nos.374 to 376/Hyd/2022)		
Assessment Years: 2013-14 to 2017-2018		
K & R Rail Engineering Limited, Hyderabad – 500082. PAN : AAACG6733D. (Appellant)	Vs.	ACIT, Central Circle-3(4) Hyderabad. (Respondent)
Assessee by:		Shri P. Murali Mohan Rao, C.A.
Revenue by:		Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:		02.02.2023
Date of pronouncement:		07.02.2023

ORDER

Per Shri Laliet Kumar, J.M.

The captioned appeals are filed by the assessee, feeling aggrieved by the orders passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad, dated 18.07.2022 for the A.Ys 2013-14 to 2017-18.

2. The grounds raised by the assessee in ITA Nos.372 and 373/Hyd/2022 for A.Ys. 2013-14 and 2014-15 are identical and hence, we are reproducing the grounds in ITA No.372/Hyd/2022 for the sake of brevity.

“1. The Ld. CIT(A) erred in not appreciating the fact that if income escapement of which was sole basis of reopening. of assessment was not assessed or reassessed, it would not be open to Assessing Officer to independently assess any other income which comes to his notice subsequently in course of reopening proceedings.

2. The Ld. CIT(A) ought to have appreciated the fact that bogus purchases was the reason to believe as per the satisfactory note which was supplemented to the assessee and no addition was made on the same. Thus, not allowing the eligible TDS credits, Advance Tax and Self Assessment Tax paid is incorrect as the addition pertaining to the reason to believe was not made.

3. The Ld. CIT(A) erred in not appreciating the fact that KVR Rail Infra Projects Pvt Ltd is now known as K & R Rail Engineering Ltd and the TDS credits, Advance Tax and Self Assessment Tax available in Form 26AS of KVR Rail Infra Projects Pvt Ltd should have been allowed to the assessee company.

4. The Ld. CIT(A) not appreciating the fact that the AO has inappropriately applied the provisions of section 234A, 234B & 234C for levy of interest for the AY under consideration as the same are not applicable since there will be no demand after consideration of taxes.”

3. The grounds raised by the assessee in ITA Nos. 374 to 376/Hyd/2022 for A.Y. 2015-16 to 2017-18 are identical except the amounts involved in and hence, we are reproducing the grounds in ITA No.374/Hyd/2022 only for the sake of brevity.

“1. The Ld. CIT(A) erred in dismissing the appeal.

2. The Ld. CIT(A) erred in not appreciating the fact that if income escapement of which was sole basis of reopening of assessment was not assessed or reassessed, it would not be open to Assessing Officer to independently assess any other income which comes to his notice subsequently in course of reopening proceedings.

3. The Ld. CIT(A) ought to have appreciated the fact that bogus purchases was the reason to believe as per the satisfactory note which was supplemented to the assessee and no addition was made on the same. Thus, not allowing the eligible TDS credits, Advance Tax and Self Assessment Tax paid is incorrect as the addition pertaining to the reason to believe was not made.

4. The Ld. CIT(A) erred in not appreciating the fact that KVR Rail Infra Projects Pvt Ltd is now known as K & R Rail Engineering Ltd and the TDS credits, Advance Tax and Self Assessment Tax available in Form 26AS of KVR Rail Infra Projects Pvt Ltd should have been allowed to the assessee company.

5. The Ld. CIT(A) erred in not considering the Advance Tax of Rs. 70,00,000/-, TDS credits of Rs. 42,16,238/- and Self Assessment Tax of Rs. 22,17,407/- paid by M/s KVR Rail Infra Projects Pvt Ltd - PAN: AABCK6791Q while issuance of the computation sheet, which is succeeded by the impugned assessee.

6. The Ld. CIT(A) ought to have appreciated the fact that the AO has brought the entire income earned by the erstwhile company M/s KVR Rail Infra Projects Pvt Ltd to tax in the assessee hands but failed to give benefit of TDS credits, Advance Tax and Self Assessment Tax to the assessee company.

7. The Ld. CIT(A) ought to have appreciated the fact that when income of predecessor company was brought to tax in the successor company, then as a natural corollary the credit for the TDS deducted, Advance Tax and Self Assessment Tax paid for that company should have been allowed to the successor company.

8. The Ld. CIT(A) has erred in sustaining the action of the AO in taking divergent stand in taking of income as taxable and not allowing credit for TDS deducted, Advance Tax and Self Assessment Tax paid from the predecessor company in the hands of the successor company.

9. The Ld. CIT(A) ought to have fairly appreciated the fact that on merger or change of name, both the assets and liabilities of predecessor entity are devolved on the successor.

10. The Ld. CIT(A) erred in sustain the action of the AO in concluding that only liabilities (tax liability) of predecessor company are devolved on successor and not the taxes paid on behalf of that company.

11. The Ld. CIT(A) erred in not appreciating the fact that the AO himself mentioned in the assessment order that M/s KVR Rail Infra Projects Pvt Ltd is now M/s K & R Rail Engineering Ltd. Accordingly, non allowance of the eligible TDS credit, Advance Tax and Self Assessment Tax paid is unjustified and bad-in-law.

12. The Ld. CIT(A) himself has allowed the benefit of the TDS credit, self-assessment tax and advance tax to the successor company in the AY 2013-14 & AY 2014-15.

13. The Ld. CIT(A) erred in observing that the TDS deducted from the contract receipts of earned by the KVR Rail Infra Projects Private Limited is exhausted and cannot be given in the hands of the assessee.

14. The Ld. CIT(A) ought to have appreciated the fact that revenue cannot be allowed to retain the amounts representing the tax deducted at source without giving credit to anybody.

15. The Ld. CIT(A) not appreciating the fact that the AO has inappropriately applied the provisions of section 234A, 234B & 234C for levy of interest for the AY under consideration as the same are not applicable since there will be no demand after consideration of taxes.”

4. As the facts of the case in all the captioned appeals are identical, we are reproducing the facts in ITA No.374/Hyd/2023 for A.Y. 2015-16 for the sake of brevity.

5. The brief facts of the case are that assessee is a company engaged in the execution of construction works, sub-contracts and railway contracts. The assessee did not file its return of income u/s 139 of the Act. A search and seizure operation u/s 132 was conducted in the case of Sri Ajaj Farooqi and related concerns on 04.07.2017, and a warrant u/s 132 was executed in the name of M/s K V R Rail Infra Projects Pvt. Ltd (which got amalgamated into the assessee company w.e.f. 01.04.2012 vide order of Hon'ble High Court dated 30.10.2014). Based on the information found during the Search proceedings, the assessee's case has been reopened by issue of notice u/s 148 of the Act dated 05.01.2021. The assessee has filed the revised return of income on 14.09.2021 admitting income of Rs.3,97,40,380/-. After verifying the information filed by the assessee, the Assessing Officer had completed the assessment by accepting the income returned, without granting credit of taxes paid under the PAN of M/s K V R Rail Infra Projects Pvt. Ltd and passed assessment order dt.30.03.2022 u/s 147 of the Act.

6. Feeling aggrieved by the orders passed by the assessing officer, assessee filed appeals before the Ld. CIT(A). However, the Ld. CIT(A) had granted partial relief to the assessee.

7. Feeling aggrieved by the orders passed by the Ld. CIT(A), the assessee is in appeal before us on the grounds mentioned herein above.

8. **First we will take ITA Nos.372 and 373/Hyd/2022 for A.Y. 2013-14 and 2014-15.**

9. Before us, ld. AR for the assessee had submitted that the reopening made by the Assessing Officer was without any basis and it is required to be quashed. He further submitted that during these two assessment years i.e., A.Ys. 2013-14 and 2014-15, the TDS credit was given to the assessee i.e., the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd by the orders of ld.CIT(A) and therefore, the assessee has no grievance. However, the assessee seeks to keep the issue of reopening alive.

10. Per contra, the ld. DR has submitted that the present appeals i.e., ITA Nos. 372 and 373/Hyd/2022 are not maintainable as the return of income has been accepted by the Assessing Officer and therefore, the assessee cannot be said to be aggrieved by the order passed by the Assessing Officer. Accordingly, the appeals are required to be dismissed.

11. We have heard the rival submissions and perused the material on record. On perusal of the records, we find that the Id.CIT(A) has directed the Assessing Officer to give credit of the TDS refund while computing the income of the assessee. Since on merit, the assessee got relief from the Id.CIT(A), no more relief is required to be given to the assessee and accordingly, the appeals of the assessee on this ground are dismissed.

12. As noted above, the assessee got relief from the orders of Id.CIT(A). Therefore, we deem it appropriate to decide the issue of reopening and the issue being kept open. During the course of argument on 31.01.2023, the Id. AR had fairly submitted that the issue of reopening is not required to be adjudicated and the same may be dismissed as not pressed. In light of the above, the appeals of the assessee are dismissed being not pressed.

13. In the result, appeals of assessee in ITA Nos.372 and 373/Hyd/2022 are dismissed.

14. **Now we will take appeals in ITA Nos.374 to 376/Hyd/ 2022 for A.Ys. 2015-16 to 2017-18.**

15. Before us, the Id. AR had submitted that the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company was amalgamated and thereafter, it was named as “M/s. K & R Rail Engineering Ltd” i.e., assessee herein, by virtue of the orders of the Hon'ble High Court of Telangana on 30.10.2014. As per the orders of the Hon'ble High Court, Telangana, the appointed date was 01.04.2012. It was the submission of the Id. AR that as per law, more particularly, as per section 170 of the Income Tax Act, assets and liability of erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd

company stands transferred to the assessee company namely, M/s. K & R Rail Engineering Ltd. As per the provisions of section 170 of the Act, it is the contention of the assessee that it is entitled to receive the credit of TDS of erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company. In this regard, Id. AR had drawn our attention to the findings of Id.CIT(A) whereby the Id.CIT(A) had denied the credit to the accounts of the assessee. The finding of the Id.CIT(A) at para 6 of his order reads as under :

“6. Decision:

The appellant company M/s K&R Rail Engineering Limited did not file the returns and had only filed returns of income in response to notices u/s 148 and the assessments were completed accepting the returned incomes and the demand was raised. In the instant case, the issue of demand pertains to claim of tax credit lying in the PAN of the company M/s KVR Rail Infra Projects Pvt Ltd which has amalgamated into the appellant company. This issue is common for AY 2015-16 to 2017-18. The appellant company filed the appeals for the above years contending that M/s KVR Rail Infra Projects Pvt Ltd has amalgamated into the appellant company and the tax credit available with the amalgamating/ transferor company M/s KVR Rail Infra Projects Pvt Ltd has not been given to the appellant being the amalgamated company.

Going into facts of the case, the appellant company M/s K & R Rail Engineering Limited (earlier known as M/s Axis Rail India Limited) had entered into a scheme of amalgamation with M/s KVR Rail Infra Projects Pvt Ltd and the scheme was approved by the Hon'ble High Court of Telangana vide order dated 30.10.2014 with the appointed date as 01.04.2012.

It was observed by the Assessing Officer that the appellant company did not file the return of income for AY 2015-16 to 2017-18 u/s 139, inspite of it being a company which is to mandatorily file returns, irrespective of the financials. Accordingly, the AO issued notices u/s 148 wherein the appellant company filed the returns of income admitting income as under:

<i>A.Y</i>	<i>Date of filing return</i>	<i>Income returned</i>
<i>2015-16</i>	<i>14.09.2021</i>	<i>Rs.3,97,40,375/-</i>
<i>2016-17</i>	<i>27.10.2021</i>	<i>Rs.3,02,12,983/-</i>
<i>2017-18</i>	<i>27.10.2021</i>	<i>Rs.2,55,06,984/-</i>

The assessments of the aforesaid returns were completed accepting the returned income.

During the appeal proceedings, the appellant company is claiming tax credit reflecting in the PAN of amalgamating company M/s KVR Rail Infra Projects Pvt Ltd to be given to the appellant company on account of scheme of amalgamation.

In this regard, it is pertinent to mention here that appeal was filed on similar issue for AY 2013-14 and 2014-15 wherein the undersigned adjudicated as under vide order in Appeal No.10305/2013-14 for AY 2014-15:

".....Going into facts of the case, the appellant company M/s K&R Rail Engineering Limited (earlier known as M/s Axis Rail India Limited) had entered into a scheme of amalgamation with M/s KVR Rail Infra Projects Pvt Ltd and the scheme was approved by the Hon'ble High Court of Telangana vide order dated 30.10.2014 with the appointed date as on 01.04.2012, which means a retrospective date and it would not be out of place to mention .that the transferor company would have prepared the accounts for these years (AY 2013-14 and 2014-15) independently between the appointed date and the date of order of Hon'ble High Court.

It was observed by the Assessing Officer that the appellant company did not file the return of income for AY 2013-14 and 2014-15 u/s 139, inspite of its independent existence even before the court order and also the status of the appellant being a company which is to mandatorily file returns, irrespective of the financials. Accordingly, the AO issued notices u/s 148 wherein the appellant company filed the returns of income admitting income as under:

<i>AY</i>	<i>Date of filing return</i>	<i>Income returned</i>
<i>2013-14</i>	<i>25.02.2021</i>	<i>Rs.5,58,73,740/-</i>
<i>2014-15</i>	<i>26.10.2021</i>	<i>Rs.3, 10,85,975/-</i>

The assessments of the aforesaid returns were completed accepting the returned income.

During the appeal proceedings, the appellant company is claiming tax credit reflecting in the PAN of amalgamating/transferor company M/s KVR Rail Infra. Projects Pvt Ltd to be given to the appellant company on account of scheme of amalgamation.

In this regard, it is observed that amalgamating/ transferor company M/s KVR Rail Infra Projects Put Ltd has filed returns of income on its PAN for AY 2013-14 and 2014-15 as under:

A.Y	Date of filing return	Income returned	TDS credit	Self-assessment Tax and/or Tax on regular assessment
2013-14	01.10.2013	Rs. 5,58,73,740/-	Rs.1,83,41,485/-	NIL
2014-15	30.11.2014	Rs. 3,10,85,975/-	Rs.46,98,389/-	Rs.62,55,364/-

The scheme of amalgamation was approved by the Hon'ble High Court on 30.10.2014 and as per the aforesaid order, the appointed date is 01.04.2012. Therefore, the scheme of amalgamation is with effect from 01.04.2012 i.e., FY 2012-13 relevant to AY 2013-14. Further, as per para 8 in page no.3 of the aforesaid Hon'ble High Court order, the amalgamating/transferor company M/s KVR Rail Infra Projects Pvt Ltd shall be dissolved upon delivering the certified copy of the order of the Hon'ble High Court order to the Registrar of Companies. The relevant para is as under:

"8. That the Transferee Company co within 30 days from the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for the state of Telangana and the state of Andhra Pradesh at Hyderabad and take all other consequential steps in pursuance of the approval of the scheme of amalgamation and on such certified copy being so delivered the transferor company shall be dissolved. Without going through the process of winding up, and It is also observed that the appellant company M/ s K&R Rail engineering (earlier known as Axis Rail Engineering) has filed annual reports with BSE indicating amalgamation, a part of the same pertaining to annual report of FY 2014-15 is as under:

"...

27 Merger/Amalgamation:

(i) In the above financials, the effect of the scheme of arrangement for internal reorganization of the Company and amalgamation of M/ s. KVR Rail Infra Projects Pvt. Ltd. with the company, has been considered, as the scheme of arrangement has been approved by the Hon'ble High Court of Hyderabad (for the state of Telangana and Andhra Pradesh), vide order dated 30th October, 2014. The said order has been filed with the office of the Registrar of Companies, Andhra Pradesh and Telangana on 10th January, 2015, being the effective date for the scheme of arrangement which shall be operative from the Appointed date i.e. 1st April, 2012.

In accordance with the said scheme of arrangement, the share capital of the company has been reduced by 75% and all the assets and liabilities of M/ s. KVR Rail Infra Projects Pvt. Ltd., the transferor company, has been taken over at its existing book. value.

*(ii) Disclosures as per Accounting Standard 14:**1. Names of merged entities- M/ s. Axis Rail India Limited**- M/ s. KVR Rail Infra Projects Private Limited**Nature of business- Both the companies are primarily engaged in execution of Railway Contracts which includes works contracts and trading in railway supply materials, etc.**2. Effective date of merger for accounting purposes-**1. Pooling of interest method has been used to reflect the merger in the books of accounts.**2. The scheme of arrangement for internal reorganization of the Company has been sanctioned by the Hon'ble High Court of Hyderabad (for the state of Telangana and Andhra Pradesh), vide order dated 30th October, 2014; details of which are stated' above in Note No. 26 (a).**3. Pursuant to the scheme of internal re-organization, share capital of Axis Rail India Ltd. has been reduced by 75%, such that any shareholder holding 100 shares of Rs. 10/- each, shall stand reduced to 25 equity shares of Rs. 10/- each. For every 100 shares held in M/ s. KVR Rail Infra Projects Pvt. Ltd., Axis Rail India Ltd. shall issue 10(Ten) equity shares of Rs. 10/- each, fully paid up and 162 (One hundred sixty two) 7% Optionally Redeemable Convertible Preference Shares (ORCPS) of face value of Rs. 10 each.**6. Good will/ Capital Reserve**Pursuant to the order passed by the Hon'ble High Court of Hyderabad (State of Telangana and Andhra Pradesh) an amount of Rs. 106,731,360/- has been transferred from General Reserves to the account of Shares Pending for Allotment, which are to be issued to the 'shareholders of M/ s KVR Infra Rail Projects (P) Ltd.**From the above, it is clear that the appellant company and M/ s KVR Rail Infra have acknowledged the amalgamation and have filed the copy of order of the Hon'ble High Court with Registrar of Companies, Andhra Pradesh and Telangana on 10.01.2015. As per para 8 of the order of the Hon'ble High Court (reproduced above), the amalgamating/ transferor company M/ s KVR Rail Infra Projects Pvt Ltd stands dissolved upon delivery of the order of the Hon'ble High Court with Registrar of Companies, which is 10.01.2015 in the instant case.**From the above, it is clear that the returns of income for AY 2013-14 and 2014-15 have been filed before the date of dissolution of amalgamating/ transferor company KVR Rail Infra Projects Pvt Ltd which is 10.01.2015. Since the amalgamating/transferor company has filed the returns before dissolution and had claimed credit of TDS, Advance Tax and Set-assessment Tax in the returns of income, the same would be eligible for credit in the PAN of amalgamated company, which is the appellant. The*

appellant company has duly included the income of the transferor company in its return of income and therefore, the due credit of TDS, Advance Tax and Self-assessment Tax paid by the amalgamating/transferor company should be allowed to the appellant company.

In view of the above, the Assessing Officer is directed to consider the above facts and verify the claim of tax credit and grant due credit of TDS and Self-assessment Tax in accordance with law to the appellant company which were claimed and available in the PAN of the amalgamating/ transferor company M/ s KVR Rail Infra Projects Put Ltd..."

The above adjudication for AY 2013-14 and 2014-15 was made considering that the transferor company would have prepared the accounts for these years (AY 2013-14 and 2014-15) independently between the appointed date being 01.04.2012 and the date of order of Hon'ble High Court being 30.10.2014.

However, for the year under consideration in the present appeal, it is observed that amalgamating company M/s KVR Rail Infra Projects Pvt Ltd has filed returns of income on its own PAN even after the scheme of amalgamation was approved by the Hon'ble High Court on 30.10.2014 culminating finally with the ROC on 10.01.2015. The returns of income filed by M/s KVR Rail Infra Projects Pvt Ltd are as under:

A.Y	Date of filing return	Income returned	TDS credit	Self-assessment Tax
2015-16	30.06.2015	Rs.3,97,40,375/-	Rs.42,16,238/-	Rs.18,46,117/-
2016-17	23.12.2016	Rs.3,02,12,983/-	Rs.64,89,929/-	Rs.34,99,386/-
2017-18	07.11.2017	Rs.2,55,06,984/-	^ Rs.52,40,031/-	NIL

It is clear that the above returns were filed after the scheme of amalgamation was approved by the Hon'ble High Court on 30.10.2014. As per para 8 in page no.3 of the aforesaid Hon'ble High Court order, the amalgamating company M/s KVR Rail Infra Projects Pvt Ltd shall be dissolved upon delivering the certified copy of the order of the Hon'ble High Court order to the Registrar of Companies. The relevant para is as under:

"8. That the Transferee Company co within 30 days from the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for the state of Telangana and the state of Andhra Pradesh at Hyderabad and take all other consequential steps in pursuance of the approval of the scheme of amalgamation and on such certified copy being so delivered the transferor company shall be dissolved. Without going through the process of winding up, and...."

From the above, it is clear that the transferor company M/s KVR Rail Infra Projects Pvt Ltd shall be dissolved upon delivering the certified copy of the order of the Hon'ble High Court order to the Registrar of Companies.

It is also observed that the appellant company M/s K&R Rail engineering (earlier known as Axis Rail Engineering) has filed annual reports with BSE indicating amalgamation, a part of the same pertaining to annual report of FY 2014-15 is as under:

".....

27 Merger/Amalgamation:

(iii) In the above financials, the effect of the scheme of arrangement for internal reorganization of the Company and amalgamation of M/s. KVR Rail Infra Projects Pvt. Ltd. with the company, has been considered, as the scheme of arrangement has been approved by the Hon'ble High Court of Hyderabad (for the state of Telangana and Andhra Pradesh), vide order dated 30th October, 2014. The said order has been filed with the office of the Registrar of Companies, Andhra Pradesh and Telangana on 10th January, 2015, being the effective date for the scheme of arrangement which shall be operative from the Appointed date i.e. 1st April, 2012.

In accordance with the said scheme of arrangement, the share capital of the company has been reduced by 75% and all the assets and liabilities of .M/s. KVR Rail Infra Projects Pvt. Ltd., the transferor company, has been taken over at its existing book value.

(i) Disclosures as per Accounting Standard 14:

7. Names of merged entities- M/s. Axis Rail India Limited

- M/s. KVR Rail Infra Projects Private Limited

Nature of business- Both the companies are primarily engaged in execution of Railway Contracts which includes works contracts and trading in railway supply materials, etc.

8. Effective date of merger for accounting purposes-

9. Pooling of interest method has been used to reflect the merger in the books of accounts.

10. The scheme of arrangement for internal reorganization of the Company has been sanctioned by the Hon'ble High Court of Hyderabad (for the state of Telangana and Andhra Pradesh), vide order dated 30th October, 2014; details of which are stated above in Note No. 26 (a).

11. Pursuant to the scheme of internal re-organization, share capital of Axis Rail India Ltd. has been reduced by 75%, such that any shareholder holding 100 shares of Rs. 10/- each, shall stand reduced to 25 equity shares of Rs. 10/- each. For every 100 shares held in M/s. KVR Rail Infra Projects Pvt. Ltd., Axis Rail India Ltd. shall issue 10(Ten) equity shares of Rs. 10/- each, fully paid up and 162 (One hundred sixty two) 7% Optionally Redeemable Convertible Preference Shares (ORCPS) of face value of Rs. 10 each.

12. Good will/ Capital Reserve

Pursuant to the order passed by the Hon'ble High Court of Hyderabad (State of Telangana and Andhra Pradesh) an amount of Rs. 106,731,360/- has been transferred from General Reserves to the account of Shares Pending for Allotment, which are to be issued to the shareholders of M/s KVR Infra Rail Projects (P) Ltd.

From the above, it is clear that the appellant company and M/s KVR Rail Infra have acknowledged the amalgamation and have filed the copy of order of the Hon'ble High Court with Registrar of Companies, Andhra Pradesh and Telangana on 10.01.2015. As per para 8 of the order of the Hon'ble High Court (reproduced above), the transferor company M/s KVR Rail Infra Projects Pvt Ltd stands dissolved upon delivery of the order of the Hon'ble High Court with Registrar of Companies, which is 10.01.2015 in the instant case. However, it is observed that, even subsequent to the dissolution, the transferor company M/s KVR Rail Infra Projects Pvt Ltd has been filing Service Tax returns, returns of income and TDS was being deducted under its PAN. The appellant company never bothered to withdraw the PAN and continued to file returns and compliances without cognizing the Hon'ble High Court order before the Income Tax department inspite of giving the effect in its books and the minutes of meeting and public disclosure. The filing of returns is not an error or a mistake but a gross intentional false verification inspite of giving the effect to the Hon'ble High Court order and also continuation of filing false declaration before the Income Tax department. Therefore, it is a clear case of not an inadvertent default on the part of appellant company and M/s KVR Rail Infra to file returns in the PAN of amalgamating (transferor) company. Further, neither the appellant company nor M/s KVR Rail Infra informed the department regarding the amalgamation and to take recourse regarding the change of PAN.

It is also important to note that the appellant company though being a listed company made such public disclosure, but did not file the returns of income u/s 139 and continued to file returns in the name of Transferor Company.

In this regard, it is also to be noted that Search u/s 132 was conducted in the case of M/s KVR Rail Infra Projects Pvt Ltd on 04.07.2017 and assessment proceedings u/s 153A were initiated by issue of notice u/s 153A dated 19.02.2018 and subsequently the assessment proceedings u/s 153A were dropped vide letter dated 31.12.2019 as M/s KVR Rail Infra Projects Pvt Ltd got amalgamated into Mis Axis Rail India Limited as per the aforesaid order of Hon'ble High Court of Telangana dated 30.10.2014. It is important to note that the appellant informed the department only after the issue of notice u/s 153A regarding the merger which further fortifies the belief regarding the misconduct of the appellant of non-compliance and non-disclosure at adequate forums.

The amalgamating company M/ s KVR Rail Infra has filed the return of income and already claimed credit of TDS and taxes paid as reproduced in the table above whereas the appellant company is now claiming credit of TDS and taxes paid which has already been exhausted by amalgamating company M/s KVR Rail Infra.

Since the credit of TDS and other taxes paid has already been exhausted by the amalgamating company M/s KVR Rail Infra, it is not under the powers of CIT(A) to grant the same especially in the manner and function and conduct of the transferor company and the appellant company inspite of the Hon'ble High Court order. In this regard, the appellant may take necessary recourse as available but this issue is not appealable as the onus is on the appellant and it is very clear that it is not a bonafide mistake but effectively of not following the order of the Hon'ble High Court which was passed as per the application made by the transferor company and the appellant company and the same were also made adequate disclosures at the Stock exchange. The conduct of both the parties clearly indicates that there is no adherence to law and the process. In view of the above, the ground no.3 to 6 are dismissed.

With regard to appellant's contention regarding validity of 148 proceedings, it is observed that the appellant did not file the return of income u/s 139 which it is mandatorily liable to do so as per IT Act as the appellant being a company and also there are various purchases made by the appellant during the year under consideration. The Assessing Officer has clearly recorded the reasons for reopening of assessment and due procedure has, been followed by the Assessing Officer for issue of notice u/s 148. In view of the same, the ground no.1 and 2 are dismissed.

The ground no.7 being consequential, the Assessing Officer is directed to levy interest as per law.

The ground no.8 and 9 pertains to initiation of penalty proceedings which are not part of this proceeding but a separate proceeding and therefore is dismissed accordingly.

The ground no.10 being general in nature needs no separate adjudication.

To sum up the appeal is dismissed."

16. Ld. AR for the assessee further submitted that the finding recorded by the ld.CIT(A) is wrong and incorrect as the ld.CIT(A) had wrongly mentioned that the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company has already exhausted the TDS credit and therefore, the assessee is not entitled to the TDS credit of the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd. Further, it was submitted that the finding recorded by the

Id.CIT(A) is against the tone and tenor of section 170 of the Income Tax Act. He had finally relied upon the decision of Hon'ble Supreme Court in the case of Dalmiya Power Ltd Vs. ACIT reported in (2019) 112 taxmann.com 252 (SC) to strengthen its case, wherein the Hon'ble Supreme Court held as under :

“4.6 Pursuant thereto, the Schemes were sanctioned by the NCLT, Chennai vide Orders 16.10.2017, 20.10.2017, 26.10.2017, 28.12.2017, 10.01.2018, 20.04.2018 and 01.05.2018; and, vide Orders dated 18.05.2017 and 30.08.2017 by the NCLT, Guwahati. Accordingly, the Schemes attained statutory force J.K. (Bom.) (P.) Ltd. v. New Kaiser-I-Hind Spg. & Wvg. Co. Ltd. [1970] 40 Comp. Cas. 689 not only inter se the Transferor and Transferee Companies, but also in rem, since there was no objection raised either by the statutory authorities, the Department, or other regulators or authorities, likely to be affected by the Schemes.

4.7 As a consequence, when the companies merged and amalgamated into another, the amalgamating companies lost their separate identity and character, and ceased to exist upon the approval of the Schemes of Amalgamation Pr. CIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613 .

4.8 Every scheme of arrangement and amalgamation must provide for an Appointed Date. The Appointed Date is the date on which the assets and liabilities of the transferor company vest in, and stand transferred to the transferee company. The Schemes come into effect from the Appointed Date, unless modified by the Court.

This Court in Marshall Sons & Co. (India) Ltd. v. ITO [1997] 223 ITR 809 held that where the Court does not prescribe any specific date but merely sanctions the scheme presented, it would follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It was held that:

"14. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz. 1-1-1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it — as has happened in this case — it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound

to take some time because several steps provided by Sections 391 to 394-A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e., the Transferor Company and the Transferee Company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation."

It was further held that pursuant to the Scheme of Arrangement and Amalgamation, the assessment of the Transferee Company must take into account the income of both the Transferor and Transferee Companies. The Court observed as follows:

"15. The counsel for the Revenue contended that if the aforesaid view is adopted then several complications will ensue in case the Court refuses to sanction the scheme of amalgamation. We do not see any basis for this apprehension. Firstly, an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Companies. Secondly, and probably the more advisable course from the point of view of the Revenue would be to make one assessment on the Transferee Company taking into account the income of both of Transferor or Transferee Companies and also to make separate protective assessments on both the Transferor and Transferee Companies separately. There may be a certain practical difficulty in adopting this course inasmuch as separate balance-sheets may not be available for the Transferor and Transferee Companies. But that may not be an insuperable problem inasmuch as assessment can always be made, on the available material, even without a balance-sheet. In certain cases, best judgment assessment may also be resorted to. Be that as it may, we need not pursue this line of enquiry because it does not arise for consideration in these cases directly."

4.9 In the present case, Appellant Nos.1 and 2/Transferee Companies filed their original Returns of Income on 30.09.2016 and 30.11.2016 respectively. Thereafter, they entered into Schemes of Arrangement and Amalgamation with 9 Transferor Companies in 2017. The Schemes were finally sanctioned and approved by the NCLT, Chennai vide final orders dated 20.04.2018 and 01.05.2018. The Appointed Date as per the Schemes was 01.01.2015. Consequently, the Transferor/ Amalgamating Companies ceased to exist with effect from the Appointed Date, and the assets, profits and losses etc. were transferred to the books of the Appellants/ Transferee Companies/Amalgamated Companies.

The Schemes incorporated provisions for filing the revised Returns beyond the prescribed time limit since the Schemes would come into force retrospectively from the Appointed Date i.e. 01.01.2015.

Accordingly, the Appellants filed their Revised Returns on 27.11.2018. The re-computation would have a bearing on the total income of the Appellants with respect to the A.Y. 2016-2018, particularly on matters in relation to carrying forward losses, unabsorbed depreciation etc.

.....

10. Section 170(1) of the Income-tax Act, provides that the successor of an assessee shall be assessed in respect of the income of the previous year after the date of succession.

Section 170(1) of the Income-tax Act provides as under:

"170. Succession to business otherwise than on death.

(1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,-

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession."

Sub-section (1) of section 170 makes it clear that it is incumbent upon the Department to assess the total income of the successor in respect of the previous assessment year after the date of succession.

In the present case, the predecessor companies/transferor companies have been succeeded by the Appellants/transferee companies who have taken over their business along with all assets, liabilities, profits and losses etc.

In view of the provisions of section 170(1) of the Income-tax Act, the Department is required to assess the income of the Appellants after taking into account the revised Returns filed after amalgamation of the companies."

17. Per contra, the Id. DR relied upon the orders passed by the Id.CIT(A). It was the contention of the Id. DR that the assessee has filed the return of income in its present name only in response to notice u/s 148 of the Act on 14.09.2021 for A.Y. 2015-16. Prior thereto, the erstwhile company namely M/s. K V R Rail Infra Projects Pvt. Ltd had filed the return of income on 30.09.2015 despite the order of amalgamation passed by the Hon'ble High Court of Telangana on 30.10.2014. Further, as per paragraph 8 of Hon'ble High Court's order, M/s. K V R Rail Infra Projects Pvt. Ltd company ceases to exist and stood dissolved, which was duly

mentioned in the order of the Id.CIT(A) reproduced hereinabove. It was submitted that the finding recorded by the Id.CIT(A) is in accordance with the law.

18. During the course of argument, we had enquired from the parties whether the earlier company namely, M/s. K V R Rail Infra Projects Pvt. Ltd had exhausted the TDS credit for the A.Ys. 2015-16 to 2016-17 in appeal Nos.374 to 376/Hyd/2022 or not ? In reply, the Id.DR submitted that the above said information is not readily available and it needs to be verified. However, it was contradicted by the Id. AR, who had submitted that the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company had not received any credit and it had also not exhausted the TDS credit.

19. We have heard the rival submissions and perused the material on record. With respect to the finding of the return of income and computation had been succinctly being mentioned in section 170 of the Act which is to the following effect :

“Section 170 - Succession to business otherwise than on death

(1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,-

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub- section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the 1 Assessing] Officer shall record a finding to that effect

1. Substituted for " Income- tax" by the Direct Tax Laws (Amendment) Act, 1987, w. e. f. 1- 4- 1988.

and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section. Explanation.- For the purposes of this section, " income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession- as a result of the succession.

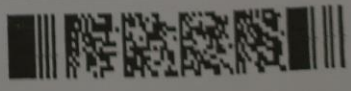
20. From the perusal of section 170 of the Income Tax Act, 1961, it is abundantly clear that once the company is dissolved then the income of the predecessor company shall be required to be assessed in the hands of the successor company in interest. In the present case, the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company ceases to exist and is succeeded by the assessee company by the order of Hon'ble High Court of Telangana passed on 30.10.2014. To the above said proposition, there is no quarrel and it is an admitted fact that by the orders of Hon'ble High Court of Telangana on 30.10.2014, the amalgamation has taken place and the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company stands amalgamated and the new name came into existence and later, it was renamed as M/s. K & R Rail Engineering Ltd. From the conceptus of the fact, it is abundantly clear that the assessee is the successor in interest in the erstwhile M/s. K V R Rail Infra

Projects Pvt. Ltd and the income and expenditure of the erstwhile company is required to be assessed in the hands of the assessee only after the date of amalgamation and more particularly, from the appointed date. Once the income is to be assessed in the hands of the assessee company, then all the consequences of the amalgamation are required to be followed.

21. In the present case, for A.Y. 2015-16, the KVR Rail Infra had filed the return of income on 30.09.2015, thereby claiming nil refund, in the name of non-existing company as by virtue of the orders of Hon'ble High Court of Telangana dt.30.10.2014, this company stood amalgamated with the assessee company. In our view, the return was required to be filed after amalgamation in the name of new company. The search in the premises of assessee took place on 03.04.2017 and the case of the assessee was reopened u/s 148 of the Act. In response to the notice u/s 148, the assessee for the first time filed the return in its own name. The said return of income was accepted by the Assessing Officer by accepting the returned income. In the return KVR Rail Infra, the following ITR-IV was filed (Page 2 of the paper book). After the receipt of notice, for A.Y. 2015-16, the assessee had filed ITR-V on 14.09.2021. As the facts and issues in A.Ys 2015-16 to 2017-18 are identical, we are not reproducing the ITR-IV and V hereinbelow and the ITR -IV and V for A.Y. 2015-16 are to the following effect :

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INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT				Assessment Year 2015-16		
Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-2A, ITR-3, ITR-4S (SUGAM), ITR-4, ITR-5, ITR-6, ITR-7 transmitted electronically with digital signature]						
PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION	Name K V R RAIL INFRA PROJECTS PRIVATE LIMITED			PAN AABCK6791Q		
	Flat/Door/Block No 12-05-34 ,35, VIJAYAPURI,SOUTH LALAGUDA	Name Of Premises/Building/Village		Form No. which has been electronically transmitted ITR-6	Status Pvt Company	
	Road/Street/Post Office	Area/Locality SECUNDERABAD				
	Town/City/District SECUNDERABAD	State Telangana	Pin 500017	Aadhaar Number		
	Designation of AO(Ward/Circle) ITO			Original or Revised ORIGINAL		
	E-filing Acknowledgement Number 842118231300915			Date(DD/MM/YYYY) 30-09-2015		
	COMPUTATION OF INCOME AND TAX THEREON	1	Gross total income		1	39740375
		2	Deductions under Chapter-VI-A		2	0
		3	Total Income		3	39740380
		3a	Current Year loss, if any		3a	0
4		Net tax payable		4	12893767	
5		Interest payable		5	168591	
6		Total tax and interest payable		6	13062358	
7		Taxes Paid				
		a	Advance Tax	7a	7000000	
		b	TDS	7b	4216238	
	c	TCS	7c	0		
	d	Self Assessment Tax	7d	1846117		
	e Total Taxes Paid (7a+7b+7c +7d)		7e	13062355		
8	Tax Payable (6-7e)		8	0		
9	Refund (7e-6)		9	0		
10	Exempt Income					
		Agriculture		0		
		Others		754002	754002	
This return has been digitally signed by <u>AMIT BANSAL</u> in the capacity of <u>DIRECTOR</u>						
having PAN <u>ACFPB7608E</u> from IP Address <u>49.206.12.231</u> on <u>30-09-2015</u> at <u>HYDERABAD</u>						
Dsc SI No & issuer 1394102495CN=(n)Code Solutions CA 2014, OID.2.5.4.51="301, GNFC Infotower", STREET="Bodakdev, S G Road, Ahmedabad", ST=Gujarat, OID.2.5.4.17=380054, OU=Certifying Authori						

FORM ITR-V		INDIAN INCOME TAX RETURN VERIFICATION FORM		Assessment Year 2015-16		
[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-2A, ITR-3, ITR-4S (SUGAM), ITR-4, ITR-5, ITR-7 transmitted electronically without digital signature]. (Please see Rule 12 of the Income-tax Rules, 1962)						
PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION	Name K&R RAIL ENGINEERING LIMITED			PAN AAACG6733D		
	Flat/Door/Block No 12-5-34 & 35/1		Name Of Premises/Building/Village		Form No. which has been electronically transmitted ITR-6	
	Road/Street/Post Office VIJAYAPURI,		Area/Locality SOUTH LALLAGUDA		Status Pte Company	
	Town/City/District SECUNDERABAD		State Telangana	Pin 500017	Aadhaar Number	
	Designation of AO (Ward / Circle) Central Circle-3(4)			Original or Revised ORIGINAL		
	E-filing Acknowledgement Number 506799650140921			Date(DD-MM-YYYY) 14-09-2021		
	COMPUTATION OF INCOME AND TAX THEREON	1 Gross Total Income		1		39740375
		2 Deductions under Chapter-VI-A		2		0
		3 Total Income		3		39740380
		a Current Year loss, if any		3a		0
4 Net Tax Payable		4		12893767		
5 Interest Payable		5		168591		
6 Total Tax and Interest Payable		6		13062358		
7 Taxes Paid		7e		13433645		
a Advance Tax		7a	7000000			
b TDS		7b	4216238			
c TCS		7c	0			
d Self Assessment Tax		7d	2217407			
e Total Taxes Paid (7a+7b+7c +7d)		7e		13433645		
8 Tax Payable (6-7e)		8		0		
9 Refund (7e-6)		9		371290		
10 Exempt Income		10				
		Agriculture				
		Others				
VERIFICATION						
I, <u>AMIT BANSAL</u> son/ daughter of <u>SATYENDRA KUMAR GUPTA</u> , holding Permanent Account Number <u>ACFP67608E</u> solemnly declare to the best of my knowledge and belief, the information given in the return and the schedules thereto which have been transmitted electronically by me vide acknowledgement number mentioned above is correct and complete and that the amount of total income and other particulars shown therein are truly stated and are in accordance with the provisions of the Income-tax Act, 1961, in respect of income chargeable to income-tax for the previous year relevant to the assessment year 2015-16. I further declare that I am making this return in my capacity as <u>DIRECTOR</u> and I am also competent to make this return and verify it.						
Sign here		Date 14-09-2021		Place HYDERABAD		
If the return has been prepared by a Tax Return Preparer (TRP) give further details as below:						
Identification No. of TRP		Name of TRP		Counter Signature of TRP		
For Office Use Only Receipt No		Filed from IP address		 AAACG6733D06506799650140921null		
Date		Seal and signature of receiving official				
Please send the duly signed Form ITR-V to "Centralized Processing Centre, Income Tax Department, Bengaluru 560500", by ORDINARY POST OR SPEED POST ONLY, within 120 days from date of transmitting the data electronically. Form ITR-V shall not be received in any other office of the Income-tax Department or in any other manner. The confirmation of receipt of this Form ITR-V at ITD-CPC will be sent to the e-mail address <u>krrailengg@gmail.com</u>						

22. From the perusal of the two ITRs, it is clear that the assessee had sought the refund of Rs.3,71,290/- for the first time. However, there was only change in figure of self-assessment tax only.

23. It is the settled position of law that the return of income filed in the name of old company namely, KVR Rail Infra is non-existent in the eyes of law as the said company ceased to exist after its amalgamation with the assessee company.

24. Once the Revenue is admitting the gross total income of the assessee and is also taking into account the advance taxes, TDS, self-assessment tax claimed by the assessee in the return filed on 14.09.2021, then it is contrary to law to deny the claim of assessee for excess taxes deposited by the old company. The Revenue cannot withhold or usurp the excess tax lying with it which was earlier deposited either by the assessee or by the predecessor in interest.

25. In view of the above, we are of the opinion that the assessee is entitled for TDS credit for all these three assessment years, if not already adjusted towards the tax demand for the gross total income of the assessee / predecessor in interest.

26. Having held that the assessee is entitled to the credit for all the three assessment years, now we wish to deal with the issue of exhausting of the TDS credit by erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company as mentioned by the Id.CIT(A). The above exhausting of the TDS credit has been disputed by the Id. DR as well as by the Id. AR. Since the fact of exhausting of TDS credit has been disputed by both the parties, we therefore,

deem it appropriate to remand back the issue to the file of the Assessing Officer for limited purpose only i.e. for verification as to whether the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company had exhausted the TDS credit for these three assessment years i.e., A.Y. 2015-16 to 2017-18 or not in the return of income. In case, the Assessing Officer on verification of the record, comes to a conclusion that the erstwhile M/s. K V R Rail Infra Projects Pvt. Ltd company has not exhausted the TDS credit and there is a surplus of the tax credit lying in its account, then the Assessing Officer is directed to grant the same to the assessee. Needless to say that the above said exercise has to be carried out by the Assessing Officer in accordance with law, after affording due opportunities of hearing to the assessee. The assessee is directed to produced all the relevant information and data in support of its claim. Accordingly, these appeals of assessee are allowed for statistical purposes.

27. In the result, the appeals ITA Nos.374 to 376/Hyd/2022 are allowed for statistical purposes.

28. **Now we will deal with S.A.Nos.30 to 32/Hyd/2022.**

As we have remitted back the appeals of assessee i.e., ITA Nos.374 to 376/Hyd/2022 to the Assessing Officer, the stay applications filed by the assessee will become infructuous. Thus, the stay applications filed by the assessee are dismissed as infructuous.

29. In the result, the stay applications of the assessee are dismissed.

30. To sum up, appeals of assessee in ITA No.372 and 373/Hyd/2022 and they stay applications in SA Nos.30 to 32/Hyd/2022 are dismissed and the remaining appeals i.e., ITA Nos.374 to 376/Hyd/2022 are allowed for statistical purposes. A copy of the same may be placed in their respective case files.

Order pronounced in the Open Court on 7th February, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 7th February, 2023

TYNM /sps

Copy to:

S.No	Addresses
1	K & R Rail Engineering Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad - 500082.
2	ACIT, Central Circle-3(4) Hyderabad.
3	CIT(A)-11, Hyderabad
4	Pr.CIT (Central), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order