

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**आयकर अपील सं./ITA No.238/RPR/2019**

(Assessment Year: 2015-2016)

M/s Metex Engineers, Shop No.10-11, Ganesh Complex, Shakti Vihar, Risali Bhilai, Durg	Vs	ITO, Ward-1(2), Bhilai
<b>PAN No. :AAWFM 8852 G</b>		

**AND**

**आयकर अपील सं./ITA No.247/RPR/2019**

(Assessment Year: 2015-2016)

ITO, Ward-1(2), Bhilai	Vs	M/s Metex Engineers, Shop No.10-11, Ganesh Complex, Shakti Vihar, Risali Bhilai, Durg
<b>PAN No. :AAWFM 8852 G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R.B.Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri V.K.Singh, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	24/04/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	14/06/2023

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

These two cross appeals are filed by the assessee and revenue against the order dated 02.09.2019, passed by the CIT(A)-II, Raipur, for the assessment year 2015-2016.

2. First, we shall decide the appeal of the assessee in ITA No.238/RPR/2019, wherein the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.5, 50,000/- on account of addition to Partners' Capital Account by invoking Section 68 of the Income Tax

*Act, 1961 and the Learned CIT (Appeals)-2, Raipur has erred in setting aside the same to the Learned AO instead of deleting the impugned addition which is contrary to the decision of the then jurisdictional High Court in CIT v, Metachem Industries [2002] 245 1TR 160 (MP), hence, it is prayed that the addition and consequential enhancement to the total income may kindly be deleted.*

2. *On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making disallowance of Rs. 11, 54, 593/- on account of sales commission and the Learned CIT (Appeals)-2, Raipur is not justified in confirming the disallowance on account of extraneous reasons, hence, it is prayed that the disallowance made by the Learned AO and confirmed by the Learned CIT (Appeals)-2, Raipur may kindly be deleted.*

3. *The Appellant craves leave to add, amend, alter vary and or withdraw any or all the above grounds of Appeal.”*

3. Brief facts of the case are that the assessee derives income from running business of manufacturing, trading of refractory and other allied items, besides rendering services on commission basis and filed its return of income for the year under consideration on 28.11.2015 declaring a total income of Rs.7,43,550/-. During the course of assessment proceedings, on being queried by the Ld AO, the assessee produced its books of accounts, written submissions were made and was also personally heard. However, Ld. AO dissatisfied with the response of the assessee on several issues, has made additions/disallowances aggregating to Rs. 5,22,48,323/-, consequently, the taxable assessed income becomes Rs. 5,29,91, 873/-.

4. Against the above order of AO, the assessee preferred an appeal before the Id. CIT(A) and Id. CIT(A) has adjudicated the ground raised in appeal by partly allowing the appeal of the assessee.

5. Now, aggrieved by the order of Ld CIT(A), the assessee is in further appeal before the Tribunal.

**Ground No. 1: Addition of Rs.5, 50,000/- on account of addition to Partners' Capital Account by invoking Section 68:**

6. At the outset Ld AR of the assessee has preferred not to press Ground Number 1 of the appeal by submitting as under:

*Ground No.1 - of the assessee's appeal is directed against addition of Rs.5,50,000/- is not pressed as the Learned AO has allowed relief as per direction of Learned CIT (A) while giving effect to the order passed by the Learned CIT(A) and therefore, this ground of appeal is not pressed and is withdrawn.*

6.1 Thus, Ground Number 1 of the appeal for addition of Rs. 5,50,000/- on account of addition to Partners' Capital Account has been dismissed as not pressed.

**Ground No. 2: Disallowance of Rs. 11, 54, 593/- on account of sales commission:**

7. The brief facts of this issue are that, an amount of Rs. 11,54,593/- is debited to P&L A/c under the head Commission expenses. The Ld AO has observed that the Commission was paid only to four parties including some relatives / family members. As per Ld AO, the assessee was unable to substantiate that the commission was paid against particular service or benefit rendered to the business entity with some basis or standard commensurate to the benefit derived. According to the Ld AO, the assessee was also unable to establish that the recipients were qualified enough and have adequate experience to perform the desired services. TDS made on

the Commission expenditure was merely for completion of formalities for eye wash. Ld AO was of the belief that, the assessee has failed to justify the claim by producing evidence in support of job performed or services rendered by the beneficiaries, therefore, the payment of Commission made was entirely considered as bogus and added to the total income of the assessee.

7.1 Aggrieved, by the assessment by the AO, assessee preferred an appeal before the Ld CIT(A), wherein, Ld CIT(A) has discussed the issue and observed as under:-

*“8.3 I have gone through the facts and the submissions of the appellant. The AO has questioned the clarification in respect of commission. The appellant has contended that the work was done by these parties. It was stated that the payments have been made for the services of sales performed by these persons which are recorded in the respective ledgers. As per the assessee total sales of Rs 92.89 lakh has been made by these six persons for which they were paid the commission of Rs 11,54,593/- Ld AR has submitted sale bills. As per details filed, M/s AVN Steeltech has made sales to JSW Steels, Mukund Ld and Neclanchal Ispat Ltd. Total sales was Rs 53,35,000/- on which commission 7.5% has been paid. On going through the bills raised by JSW Steels, Mukund Ld and Neelanchal Ispat Ld the bills have been raised directly on the purchaser party and in none of the bills there is any mentioned of selling agent. The fact is similar in respect of other recipients of commission. Thus, the argument of the assessee is not backed by any documentary evidence. In view of these, the disallowance is hereby sustained, and the ground is dismissed.”*

7.2 Ld AR of the assessee placed before us a written submissions on the issue, which reads as under:-

**Ground No.2** of the assessee's appeal is directed against disallowance of Rs. 11,54,593/- on account of commission which has been confirmed by the Learned CIT (Appeal).

*Details of commission paid by the assèssee, as per details herein below:-*

Sr. No.	Name of the Party	Amount of Commission paid	Details of Income Tax return	Commission amount shown in computation	TDS Deducted	PAN No.

1	M/s. AVN Steel Tech Prop. Vivek K.J. Nigam	400,000.00	Yes ITR & Computation submitted.	Yes	40350	AKRPN4794M
2	M/s. Swarz Enterprises (Prop. Sujit Zemse)	18,500.00	Do	Yes	Below Limit	AACPZ6674M
3	V.K. Shrivastava	1,648.00	Do-	Yes	Below limit	CGLPS4768Q
4	Aruna Lata Nigam	200,000.00	Do	Yes	20'000/-	AXRPN8596N
5	Vinita Shrivastava	534445.00	Do	Yes	54445/-	AVPPS0684Q
	Total	1,154,593.00				

The supporting documents of the aforesaid parties to whom the commission was paid are placed on Page No.241 to 265 of the Paper Book.

1. Details of expenditure incurred on account of commission in other years which has been duly accepted as genuine business expenditure is as under:-

Sl.No.	A.Y.	Turnover	Commission	Remarks
1	2016-17	2,86,58,138/-	18,05,540/-	No addition made under scrutiny assessment u/s 143(3) vide order dated 12.12.2018
2	2018-19	2,17,16,077/-	4,76,607/-	No addition made under scrutiny assessment u/s 143(3) vide order dated 19.03.2021

Accepted in the scrutiny completed u/s 143(3) and no adverse view was drawn, copy of assessment order for AY 2016-17 is placed on Page No.233 to 240 and for AY 2018-19 are placed on Page No.181 to 184 of the Paper Book.

Details of commission expenditure is placed on Page No. 241 of the Paper Book.

1. The genuineness of the expense is self-evident from the fact that the recipient of commission has duly offer the commission for taxation in the ROI filed by the recipient, details whereof are as under: -

Sl. No.	Name	PAN	Amount of commission	Copy of ITR and computation is placed on following Page No. of the Paper Book
1	M/s. AVN Steel Tech Prop. Vivek Kr. Nigam	AKRPN4794M	400,000.00	242 to 244
2	M/s. Swarz Enterprises (Prop. Sujit Zemse)	AACPZ6674M	18,500.00	—
3	V.K. Shrivastava	CGLPS4768Q	1,648.00	251 to 258
4	Aruna Lata Nigam	AXRPN8596N	200,000.00	245 to 250
5	Vinita Shrivastava	AVPPS0684Q	534445.00	259 to 265_

	Total		1,154,593.00	
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*The Return of Income filed by the aforesaid parties have been duly accepted by the Income Tax Department.*

*10.3 Moreover, the commission has been paid to the very same parties in the subsequent year which stands accepted, therefore, there is no reason to take an adverse view in the year under consideration, kind attention is invited to Page 234 to 235 and 239 to 240 of the paper book which is internal page No. 2, 3, 7 and 8 of the assessment order wherein name of the parties has been mentioned by the Learned AO in the assessment order to whom commission was paid from which it is discernible that commission was paid to the very same parties.”*

7.3 Arguing on the issue further, Ld AR of the assessee drew our attention to page 345 of their paper book having details of commission paid and submitted that, the commission was paid to persons towards their services rendered after deduction of tax at source as applicable under the Income Tax Act. Ld AR also drew our attention to page 242 to 265 of the paper book having copies of ITRs, Computation, P&L A/c and form 16A of the service providers, showing the disclosure of commission received as taxable income by the service providers in their respective ITRs. Ld AR submitted that such similar expense of commission were allowed by the department in the subsequent AY 2016-17 to 5 parties, out of which 2 parties are common to whom commission was paid in the AY 2015-16. Copy of assessment order for the AY 2016-17 is also placed before us at page 234 of the Paper Book to strengthen the fact that alike expenses were allowed by the revenue in different AY's. It was the submission that the commission was paid to parties towards sale procurement by them the

same, details were submitted at page 371 of the paper book of the assessee.

7.4 Ld AR further contended that the commission was paid to the parties for sales of the products of the assessee and to further assisting in collecting money from the debtors, with the help of services of such persons, the assessee was able to perform & execute various works before steel plants and has got a commission income of Rs. 92.89 Lacs. It was mentioned that Ld AO has not made any enquiry from the parties to whom the commission was paid before deciding that the commission paid was bogus. The addition made by the Ld AO was based on suspicion and thus needs to be deleted. Ld CIT(A) has also not considered the explanation of the assessee in right spirit, without appreciating the facts of the case and confirmed the disallowance. It was therefore the prayer that disallowance made by the Ld AO under preconceived notion without taking into consideration the substance of the facts on the issue, is liable to be deleted.

7.5. On the other hand, Ld. CIT-DR relied on the orders of the revenue authorities and submitted that the assessee was unable to produce the required primary evidence or explanation to justify its claim in support of job performed by the beneficiaries. Ld AO and Ld CIT(A) has rightly dealt with the issue and lawfully made the disallowance, therefore no different view in this respect can be taken and thus the disallowance of commission expenses deserves to be upheld.

7.6 We have considered the rival submissions and perused the material available on record. Admittedly, as per the facts available on records the commission paid by the assessee to various parties was a practice of the trade of the assessee. Such commission was paid in the other assessment years also. Ld AO has made the addition, assigning the reason that the assessee was unable to substantiate its contention by not furnishing the evidence in support of the job performed by the service providers. Assessee has furnished information and evidence like ITR, Computation form 16A of the commission recipients. AO has not initiated or conducted any further enquiry from the beneficiaries concerned. Merely on the basis of information which was not available with the Ld AO regarding qualification and experience of service providers, since some of them are connected people to the assessee the disallowance was made. No specific finding / reasoning to the disallowance was commented by the Ld AO. Ld CIT(A) also have analysed the issue, only on the basis of fact that the bills raised on the buyer's has no mention about the selling agent thus the argument of the assessee is not backed by any documentary evidence. We have thoughtfully considered the issue, material available on records and have noted that in absence of any cogent finding by the authorities below, we are unable to understand that how it was perceived that the commission paid was bogus without making any enquiries with the concerned payees. The fact that the similar payment of commission, which was a practice of the trade of the assessee, was allowed by the department in the immediately

succeeding assessment years makes the assessee's contention more believable. No specific details to dislodge the contention of the assessee were brought to our knowledge, thus the revenue is unable to distinguish, as to how the transactions for the year under consideration are different in nature than that of the AY 2016-17 wherein such expenses were treated as eligible expenses to be allowed by the department. In view of such observations, we are of the considered opinion that the disallowance made by the Ld AO and confirmed by the Ld CIT(A) is liable to be quashed and we do so. In the result Ground no 2 of the appeal of the assessee is allowed.

8. Under Ground No 3, the assessee has not raised any further ground or amended the existing grounds thus general in nature and needs no separate adjudication.

9. Resultantly, the appeal no 238/RPR/2019 of the assessee is allowed in terms of our observations herein above.

**Now, we are taking the appeal no 247/RPR/2019 of the revenue.**

10. The revenue in its appeal has raised the following grounds :-

*"1. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,42,085/-u/s. 14A r.w.r 8D of I.T. Rules ,19,62 made by the AO who disallowed the expenses related to investment of Rs 2.77 Crores as the same was unexplained during the course of assessment proceedings?"*

*2. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 64,59,510/-u/s. 41(1) of the Act , made by the AO who treated the credit amounts shown as outstanding consecutively for more than three years without any reason as cessation and remission of liability, on the grounds that still it had not become non-payable and neither the assessee nor the creditors have written off the balances from their respective books ?"*

3. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 11,50,000/-u/s, 68 of the Act , made by the AO who treated this entry also as the other two identical reimbursements which was treated as income by the assessee Firm itself, as income of the assessee?"*
4. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 26,27,464/-, made by the AO who treated the stock purchased on 31.03.2015 i.e. on the last day of the financial year as suppressed closing stock due to lack of any entry regarding consumption or sale of the said stock and the closing stock did not include the said purchase?"*
5. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,89,21,363.89/- received from Eco Master Beads India (P) LTD made by the AO who treated the advances received as suppressed income by categorically mentioning in the assessment order that the narration against the alleged entry dtd. 27/01/2015 reads as USD 238750.32 @ 61.18 expenses for setting up technical equipments for demonstrating new **technologies (Against Advance Payment material supply)**, by relying on assessee's contention that the entire amounts were spent on R 8 & D contract with Pragti Construction between December , 2018 to February 2019.*
6. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.1,08,95,414/- received as commission income from export -import business made by AO as suppressed Income on the grounds that the assessee's audited financial statements did not show any sale /receipts or work in progress relating to it ?*
7. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 47,894/-made by the AO, who treated the post assessment assessable value of the foreign purchases determined by the Customs for levying duty instead of the amount shown in the bills as the cost of the foreign purchases made by the assessee firm ?*
8. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,00,000/-, made by the AO who treated the non-business nature of expenses claimed under the Head Business promotion by the assessee firm as business expenses ?*
9. *The order of Ld. CIT(A) is erroneous both in law and on facts.*
10. *Any other ground that may be adduced at the time of hearing."*

**Ground no 1: Deleting the addition of Rs. 2,42,085/-u/s. 14A r.w.r 8D of I.T. Rules ,1962.**

11. Apropos Ground No 1, at the outset Ld CITDR has vehemently supported the order of Ld AO and submitted that as per para 2 of the assessment order it is apparent that the Ld AO has pointed out that the assessee has invested Rs. 2,77,42,426/- in shares and shown under the head 'Investment'. When enquired by the Ld AO that why the disallowance u/s 14A should not be made on the said investment? No satisfactory response was given by the assessee and thus disallowance was made by the Ld AO following provisions of section 14A r.w.r. 8D. However, subsequently, Ld CIT(A) has vacated the disallowance observing that assessee has not received any dividend during the year, has made the investment from own funds in the form of capital surplus and no loan was used for making investment. On the observation of Ld CIT(A), the Ld CIT-DR submitted that the decision is erroneous, devoid of merits, unlawful, thus, requested to reverse the order of Ld CIT(A) and to restore the addition made by the Ld AO.

11.1 In response, Ld. AR submitted a written synopsis on ground no 1 of the revenue, which reads as under: -

**1. Ground No.1 of Revenue's Appeal directed against addition of Rs.2,42,085/- u/s.14A.**

*The assessee had no exempt income and sufficient own funds, hence, the disallowance u/s 14A is not sustainable.*

**Reliance is placed on the following decisions:**

S. No.	Case Law	Issue / Held	Remarks

1.	<b>South Indian Bank Ltd. vs. CIT (2021) 438 1TR 001</b>	No disallowance u/s 14A when interest free own funds available with the assessee exceeds the investments.	<b>Hon'ble Supreme Court of India</b>
2.	<b>Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 0640</b>	No exempt income then no disallowance u/s 14A.	<b>Hon'ble Supreme Court of India</b>
3.	<b>PCIT vs. Oil Industries Development Board (2019) 262 Taxman 103</b>	No exempt income then no disallowance u/s 14A.	<b>Hon'ble Supreme Court of India</b>
4.	<b>CIT vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxman 2</b>	No exempt income then no disallowance u/s 14A.	<b>Hon'ble Supreme Court of India</b>
5.	<b>CIT vs. Essar Teleholdings Ltd.(2018) 401 ITR0445</b>	No exempt income then no disallowance u/s 14A.	<b>Hon'ble Supreme Court of India</b>
6.	<b>PCIT vs. Patel Alloy Steel Co. Pvt. Ltd.(2019) 262 Taxman 166</b>	No disallowance u/s 14A when assessee having enough surplus funds.	<b>Hon'ble Supreme Court of India</b>
7.	<b>PCIT (Central)-2 vs. M/s Era Infrastructure (India) Ltd. ITA 204/2022 &amp; CM APPL.31445/2022 dated 20.07.2022</b>	Amendment in Section 14A is prospective.	<b>Hon'ble Delhi High Court</b>

**Prayer:** It is prayed that appeal filed by the Revenue may kindly be dismissed.

11.2 Ld AR further submitted that, It is apparent from the order, the Assessing Officer taking cognizance of the fact that the assessee had made investment of Rs.1,29,24,000/- in unquoted shares of Chhattisgarh Captive Coal Mining Limited, a joint venture company, thus, called upon the assessee to explain as to why corresponding expenditures may not be disallowed by triggering the provisions of section 14A r.w.r.8D. As the reply

filed by the assessee did not find favor with the Assessing Officer, therefore, he worked out the disallowance u/s.14A r.w.r.8D at Rs.13,29,277/-.

11.3 Before us, it was submitted by the Ld. AR of assessee that as the assessee has no exempt / dividend income during the year under consideration, therefore, no part of the expenditure in question could have been disallowed u/s.14A of the Act. It was claimed by the Ld. AR that when the assessee company during the year under consideration had not earned any exempt income, the authorities below had erred in working out disallowance u/s 14A of the Act. To support the contention Ld AR relied upon the following judicial pronouncements:

- (i) Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33 ( Delhi)
- (ii) Pr. CIT Vs. Karnataka State Financial Corporation Ltd. (2021) 127 taxmann.com 115 ( Karnataka)
- (iii) Pr. CIT Vs. Kohinoor Project (P) Ltd. (2020) 425 ITR 700 ( Bom.)
- (iv) Pr. CIT Vs. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 (Bom.)

11,4 Ld AR further submitted that in a case decided by the coordinate bench of ITAT Raipur on the similar issue has taken a view, in the case of M/s. Ind Synergy Limited Vs. DCIT ITA No. 312/RPR/2016 dated 30.03.2022, wherein the finding of Tribunal is as under:

*“6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions. As is discernible from the orders of the lower authorities, the Assessing Officer taking cognizance of the fact that the assessee had made investment of Rs.1,29,24,000/- in unquoted shares of Chhattisgarh Captive Coal Mining Limited, a joint venture company, thus, called upon the assessee to explain as to why corresponding expenditures may not be disallowed by triggering the provisions of section 14A r.w.r.8D. As the reply filed by the assessee did not find favor with the Assessing Officer, therefore, he worked out the disallowance u/s.14A r.w.r.8D at Rs.13,29,277/-.*

7. *Before us, it was submitted by the Ld. Authorized Representative (for short 'AR') that as the assessee has not earned any exempt dividend income during the year under consideration, therefore, no part of the expenditure in question could have been disallowed u/s.14A of the Act. It was claimed by the Ld. AR that now when the assessee company during the year under consideration had not earned any exempt income, therefore, the authorities below had erred in working out disallowance u/s 14A of the Act. After deliberating at length on the aforesaid issue in question, we find, that as stated by the Ld. AR, and rightly so, now when the assessee company had admittedly not received any exempt income during the year under consideration, therefore, no disallowance u/s.14A could have been made in its hands. Our aforesaid view is fortified by the following judicial pronouncements:*

*(i) Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33 ( Delhi)*

*(ii) Pr. CIT Vs. Karnataka State Financial Corporation Ltd. (2021) 127 taxmann.com 115 ( Karnataka)*

*(iii) Pr. CIT Vs. Kohinoor Project (P) Ltd. (2020) 425 ITR 700 ( Bom.)*

*(iv) Pr. CIT Vs. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 (Bom.)*

8. *Backed by our aforesaid observations, we are unable to persuade ourselves to subscribe to the disallowance worked out by the Assessing Officer u/s.14A of the Act, i.e, de-hors any exempt dividend income having been earned by the assessee during the year under consideration. We, thus, direct the Assessing Officer to vacate the disallowance of Rs.13,29,277/- made by him u/s.14A r.w.r 8D. Thus, the Ground of appeal No.2 raised in appeal by the assessee is allowed in terms of our aforesaid observations.”*

11.5 To advance its arguments further, Id. AR of the assessee has submitted that Id. AO has not recorded any satisfaction/finding in support of the disallowance made. On this contention Id. AR placed his reliance on following judgements:

1. Godrej Consumer Products Ltd. v. Addl. CIT (2204) 151 ITD 566 (Mum.)
2. CIT vs U.P. Electronics Corporation Ltd. (2017) 397 ITR 113 (All.)
3. Pradeep Khanna vs. ACIT order dated 11.08.2016 of Delhi HC.

11.6 We have considered the rival submissions and contentions, perused the material available on records and have perused the case laws placed before us. In view of the various judgments quoted by the Ld AR, it is the settled law now that No disallowance u/s 14A can be made if there are

interest free funds available with the assessee exceeds the investment. In the present case Ld AO has not checked this aspect, which was observed by the Ld CIT(A). It was also a fact that there was no exempt income of the assessee during the relevant AY, therefore, disallowance u/s 14A r.w.r. 8D is not called for. After deliberating thoughtfully on the aforesaid issue in question, we find, that as stated by the Ld. AR, and rightly so, when the assessee company had admittedly not received any exempt income, which is apparent from the records, during the year under consideration, no disallowance u/s.14A could have been made in its hands. Ld CIT(A) has correctly dealt with the issue considering facts of the case and therefor the finding of the Ld CIT(A) on this issue needs no further interference. In the result Ground No 1 of the revenue in the instant appeal is dismissed.

**Ground No 2:           Deleting the addition of Rs. 64,59,510/-u/s. 41(1) of the Act.**

12. Ld CITDR, on this issue has submitted that the assessee was asked to file list of sundry creditors for last 3 years to examine the movement of the balances and genuineness of liability shown in its books of accounts. It was the observation of the Id. AO that as per the details provided by the assessee, six parties were found with very old balances and are casually continuing. Ld. AO further observed that the credit amount shown against these six creditors were outstanding intact consecutively for more than previous three years without any reason. This fact establishes that these entries are paper entries without any intention to pay back and therefore,

assessable to tax u/s 41(1) of the Act, as cessation and remission of liability. As per Ld CITDR, however, Ld. CIT(A) has deleted the addition without appreciating the fact that the credit amounts shown as outstanding consecutively for more than three years without any reason, therefore, the same should have been treated in the nature of cessation and remission of the liability and are liable to be added to the income of the assessee under the provisions of section 41(1). It was therefore, the prayer that the addition deleted by Ld. CIT(A) shall be restored in terms of observations of Ld. AO.

12.1 The Ld. AR in response has argued that the amounts shown as liability in the balance sheet was added to the taxable income of the assessee without assigning any cogent reason or without bringing any material on record to show that there is remission or cessation of liability or to show that any benefit was derived by the assessee. It was the submission that conditions of section 41(1) were not satisfied in the present case and therefore, the addition made was bad in law, unjustified and has rightly deleted by the Ld. CIT(A).

**12.2 The Ld. AR has submitted a written submission on this ground, the same is extracted as under:**

2. ***Ground No.2 of Revenue's Appeal directed against addition of Rs.64,59,510/- made by invoking Section 41(1) of the Income Tax Act, 1961.***

2. ***It is submitted that all the creditors are duly appearing in the audited Balance sheet of the assessee which is placed on Page No. 5 to 25 of the Paper Book, Confirmation of Account of the Sundry Creditors is placed on Page No. 37 to 38 of the Paper Book.***

2. ***Details of Sundry Creditors is as under:-***

<b>Sl.No.</b>	<b>Name</b>	<b>Address</b>
1	Shri Atul Verma	H.No. 1, Kabir Marg Gali, Kabirdham, Kawardha-491995 Chhattisgarh State
2	Shri D.K. Shrivastava	Plot No. 19/1, Radhika Nagar,  Supela-490023. Dist. Durg Chhattisgarh State
3	M/s Hema Electrical	Sector-6, Bhilai Chhattisgarh- 490006
4	M/s Presidency Exports & Industries Ltd.	3, Netaji Subhas Road, Kolkata-700001
5	M/s Krishna Associates	Main Market, New KhursiparBhilai, Durg (C.G.)
6	Shri Jitendra Shrivastava	248, Ward No.37, Balgovind Chowk, Gali No.I, Rajnandgaon Bansh Pal Para, Rajnandgaon-491441

2.3 The payments have been made to all the aforesaid creditors in the subsequent years through proper banking channel, details whereof are enclosed in the list placed on **Page No. 37 to 80 of the Paper Book**.

2.4 Thus the aforesaid liabilities did not cease to exist, in other words, there was no cessation or remission of the aforesaid creditors and therefore, the provisions of Section 41(1) do not apply.

2.5 Reliance is placed on following judicial pronouncements wherein it has been held that no addition u/s 41(1) is warranted if the creditor is appearing in the Balance sheet.

<b>S. No.</b>	<b>Title</b>	<b>Citation</b>	<b>Authority</b>
1.	<b>PCIT Vs. Batliboi Environmental Engineering Ltd.</b>	(2022) 6 NYPCTR 731 (Bom)	Hon'ble High Court of Bombay
2.	<b>ACIT Vs. Popular Vehicles &amp; Services Ltd.</b>	(2006) 5 SOT 739 (Coch)	Hon'ble ITAT, COCHIN BENCH

<b>Nitin M. Panchamiya Vs. ACIT</b>	(2012) 148 TTJ (Mumbai) 96	Hon'ble ITAT, MUMBA
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**Prayer:** It is prayed that appeal filed by the Revenue may kindly be dismissed.

12.3 To substantiate the contentions advanced by Id. AR in their written submission, following case laws were relied upon:

CIT vs. Jain Exports (P.) Ltd. (2013) 217 taxmann.com 54 (DEL), in this judgment Hon'ble Delhi High Court has held that

*“in order to attract the provisions of section 41(1) of the Act, it is necessary that there should have been a cessation or remission of liability. Section 41(1) contemplates obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is sine qua non for applications of this section. Although, enforcement of debt being barred by limitation does not ipso facto lead to the conclusion that there is cessation or remission of liability, in fact of present case, it is also not possible to conclude that the date has become unenforceable. It is well settled that reflecting an amount as outstanding in the balance sheet by a company amounts to the company acknowledging the debt.”*

12.4 The Id. AR also relied upon the case laws in the case of Pr. CIT vs. New World Synthetics Ltd (2018) 102 CCH 245(DEL HC), wherein the decision was made on the same preposition as observed in the decision of CIT vs. Gen Exports (supra).

12.5 In the same context, Ld AR also relied upon the following case laws:

Pr. CIT vs. Eco Auto Components P. Ltd (2017) 409 ITR 202 (P&H)  
CIT vs. GP International Ltd. (2010) 325 ITR 25 (P&H)

12.6 While carrying the arguments further, Id. AR drew our attention to the judgment of ITAT, Raipur in the case of A.C. Strips Pvt. Ltd., in ITA No. 53/RPR/2020 dated 06.01.2023, wherein, under the similar circumstances as of the present case, it has been categorically held as under:

*“11. On a careful perusal of the aforesaid statutory provision, it transpires that for triggering Section 41(1) of the Act two important aspects have to be duly considered, viz. (i) the assessee has obtained benefit in respect of such trading*

*liability qua which deduction had earlier been claimed ; and (ii) the amount of benefit so claimed by the assessee is to be brought to tax in his hands during any previous year, in which, the benefit has been so obtained by him. However, in the case before us, we find that neither of the aforementioned mandatory conditions have been satisfied. Neither the A.O has been able to conclusively prove that the liabilities in question which the assessee company had projected as outstanding in its balance sheet had in fact ceased, nor has he given any cogent reason as to why the same was to be assessed in its hands during the year under consideration i.e. A.Y.2013-14. On the contrary, we find that the only reason given by the A.O was that the said respective liabilities had remained unpaid till 31.03.2014. We are unable to concur with the aforesaid observation of the A.O, as the same is seriously short of the preconditions which were indispensably required before giving the liabilities in question a color as that of "ceased liabilities", and much the less in the year under consideration. Neither is anything discernible from the orders of the lower authorities which would reveal that the liabilities in question had ceased, nor anything can be gathered therefrom as to on what basis the alleged remission or cessation of the liabilities in question were to be assessed during the year under consideration. Merely for the reason that the aforesaid liabilities are outstanding would by no means justify dubbing the same as ceased liabilities in the hands of the assessee company. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of CIT, Delhi-II Vs. Jain Exports (P) Ltd. (2013) 217 Taxman.com 54 (Del). In the aforesaid case, the Hon'ble High Court had observed that in order to attract the provisions of Sec. 41(1) of the Act it is necessary that there should be a cessation or remission of liability. It was further observed by the Hon'ble High Court, that as the assessee before them had acknowledged its debt payable to the creditor under consideration, and there was no material to indicate that the parties had contracted to extinguish the liability, therefore, it could not be concluded that the said debt owed by the assessee towards the said party stood extinguished. Accordingly, we are of the considered view that in the present case before us, in the absence of any evidence to conclude that there was a final remission or cessation of the trading liabilities or any part of it the provisions of Sec.41(1) could not have been invoked by the A.O."*

12.7 We have considered the rival submissions, perused the orders of authorities below, material available on record and the case laws relied upon by the assessee. Admittedly, the 6(six) parties, whose balances were considered as ceased / remitted to remain as an existing liability and treated the same as income assessable to tax under section 41(1) of the Act, whereas the same is in existence in the books of assessee as well as in the books of the counters parts. Ld. AO has not found or brought on the record anything conflicting, to prove that the alleged liabilities were ceased. All the alleged creditors have confirmed that the outstanding amounts are

payable to them, such confirmations were available in the paper book of the assessee. It was also substantiated by the Id. AR that almost entire amounts of the said creditors were paid in the subsequent years, details of the same were furnished before the Id. CIT(A), placed on page No. 285 of the paper book of the assessee. Ld. CIT(A) has dealt with this issue exhaustively, has rightly appreciated the facts of the present case and has judiciously decided the issue in favour of the assessee by deleting the addition made by the Id. AO. Under the factual matrix of the case and according to the settled legal position on the issue, we are in agreement and in concurrence with the judgment of the Id. CIT(A). In such a situation, since the matter has rightly adjudicated, also no material evidence against the contentions of the assessee were brought before us by the revenue, we do not see any reason to grant a verdict different from the decision observed by the Id. CIT(A), we therefore, have no hesitation to uphold the findings of the Id. CIT(A). In the result ground No. 2 of the revenue is dismissed.

**Ground No. 3: Deleting the addition of Rs. 11,50,000/- u/s 68 of the Act.**

13. Apropos ground 3, Ld CIT-DR drawn our attention to para 5 on page 5 of the assessment order, wherein Ld AO has observed that there was a credit balance in the balance sheet of the assessee, recorded under the head "Reimbursement for BG" for Rs. 11,50,000/-, explanation for the same were sought from the assessee, in response the assessee submitted

that the amount was received from the party to whom they were rendering services and copy of ledger account has been filed. Taking into consideration the submissions of the assessee, Ld AO observed that as per narration against the relevant entries the bills were raised in the earlier years but there is no outstanding balance in the account, hence it was taken this year. Ld AO further stated that if the amount was spent in the preceding year and there is no outstanding balance in account, it establishes that there was no such liability really exists in the accounts. It is also found from the ledger entries that assessee firm had issued invoices for services against such charges and payments were received, two amounts of Rs. 2.00 Lac and Rs. 4,15,630/- of similar transactions were shown as income in name of reimbursement. In light of such facts, Assessee's explanations were not found satisfactory by the Ld AO that assessee has treated and accounted for similar transactions in different way. Therefore, Ld CITDR relied on the order of Ld AO and submitted to confirm the addition, since the conclusion of the LD CIT(A) was erroneous and thus deserves to be reversed.

13.1 On this ground no 3 of the revenue, Ld AR submitted a written synopsis, the same is reproduced here under:-

*3. **Ground No.3** of Revenues Appeal directed against addition of Rs. 11,50,000/- made by the Learned A.O treating the same as income as against liability disclosed by the assessee in the Balance sheet.*

*3.1 The Learned AO had not invoked Section 68 as is mentioned in the ground, ledger copy of amount paid for providing Bank Guarantee on behalf of Refratechnik Steel GmbH, copy of Bank Guarantee along with fixed deposit receipts are placed on **Page No. 81 to 99 of the Paper Book**, copy of agreement between Refratechnik Steel GmbH and the assessee for Bank Guarantee is placed on **Page No. 100 to 101 of the Paper Book***

3.2 The assessee was appointed as Agent/Distributor of Germany based company namely Refratechnik Steel GmbH, copy of agreement is placed on **Page No. 185 to 190 of the paper Book**. Refratechnik Steel GmbH had procured business from various companies located in India, in pursuance of work order issued to Refratechnik Steel GmbH by its service receiver, Refratechnik Steel GmbH had to furnish Bank Guarantee to the service receiver details whereof are as under: -

S. No	BG No.	Date of Guarantee	Date of FD	Name of Bank	Amount of Bank Guarantee	Name of the Party
1	02981GFIN 000314	14.06.2014	14.06.2014	Uco Bank, Bhilai	250000/-	Steel Authority of India, Dugapur
2	02981GFIN 000414	26.06.2014	25.06.2014	Uco Bank, Bhilai	200000/-	Neelanchal In\spat Nigam Limited, Bhubaneswar
3	02981GFIN 000214	07.04.2014	07.04.2014	Uco Bank, Bhilai	500000/-	Steel Authority of India, Asansol
4	02981GFIN 000114	10.03.2014	10.03.2014	Uco Bank, Bhilai	200000/-	SAIL A/c Alloys Steels Plant, Durgapur
			Total		1150000/-	

3.3 The foreign company namely Refratechnik Steel GmbH transferred sum of Rs. 11,50,000/- to the assessee's bank account for the purposes of furnishing Bank Guarantee in the form of Fixed Deposit to the service receivers, accordingly, at the instance of Germany based company, the assessee got prepared fixed deposit receipt copy whereof is placed on **Page No.83 to 99 of the paper Book**, the aforesaid fixed deposits were kept as margin money for Bank Guarantee, copy of Bank Guarantee issued by the bank wherein name of foreign company is explicitly appearing is placed on **Page No.99 of the paper Book**.

3.4 Thus, there is a direct nexus between the funds received from the principal foreign company and fixed deposit made on its behalf for the purpose of Bank Guarantee, due to above reasons, there was no income element in the impugned sum of Rs. 11,50,000/- the fixed deposits made out of impugned amount of Rs. 11,50,000/- is duly appearing in the Balance sheet of the assessee, kind attention is invited to **Page No.21 of the Paper Book**.

3.5 Supplementary agreement dated 15.12.2014 between Refratechnik Steel GmbH and the assessee particularly in respect of Bank Guarantee to be secured by Refratechnik Steel GmbH to its parties/customers in India, kind attention is invited to supplementary agreement between the assessee and Refratechnik Steel GmbH dated 15.12.2014 wherein it has been clearly mentioned that the assessee executed Bank Guarantee for Refratechnik Steel GmbH in India for the purposes of complying with the tender conditions and in this process, the assessee deposited the required amount in the bank in the form of fixed deposits.

**Prayer:** It is prayed that appeal filed by the Revenue may kindly be dismissed.

13.2 Ld AR further submitted that the assessee is an agent appointed by Refratech GmbH, a Germany Company. The assessee was to assist Refratech in existing various orders procured by Refratech from various steel plants in India. Against the orders, assessee in capacity of an agent was required to submit bank guarantee to various steel plants for performing transactions during the guarantee/warranty period. Assessee appointed as distributor of all products of Refratech. Copy of Agency agreement has been placed before us available at page 185 to 190 of the paper book, also a supplementary agreement is made available at page 100-101 of the paper book, wherein there is a mention that ***'in case the tender materializes and the order is established, the bank guarantee is required for performance during the guarantee/ warranty period'***. It is further stated that the amount was received from Refratech against such bank guarantee given. Details of bank guarantee were available at page 81 of the paper book. Out of such amount, FDs of Rs. 11,50,000/- were made (details on page 81 of the Paper Book). Copy of BGs were placed before us on page 87-90, 93-95 and 98-99 of assessee's paper book. The amount received is clearly in the nature of liability cannot be termed as income. Amount of Rs. 2,00,000/- and Rs. 4,15,630/- were expenses incurred by the assessee in earlier year, debited to profit & loss account in earlier year. When recovered in this year, was credited as income in the P&L account. Nature of these amounts was different than that of Rs 11,50,000/-. Therefore, Ld CIT(A) has rightly concluded that the findings of assessing officer do not lead to any conclusion that the amount should be treated as

assessee's income and has deleted the addition. Thus, It is prayed that appeal filed by the Revenue may kindly be dismissed.

13.3 We have considered the rival submissions, perused the material evidence placed before us. Admittedly, the amount available in the credit side of balance sheet of the assessee shown as reimbursement of bank guarantee was reflecting the amount of bank guarantees extended to various parties as per the terms of agreement between the assessee as an agent and M/s Refratechnik GmbH as the principle. The Id. AO could not establish the fact that how and why the amount of the bank guarantees has to be treated as income of the assessee. The Id. CIT(A) has correctly appreciated the facts of the issues and deleted the addition. The revenue has reiterated the observations of Id. AO, nothing new has been brought to our attention in order to substantiate the contentions of the department, we therefore, are of the opinion that the issue has dealt with justifiably by the Id. CIT(A), thus, no interference is called for. In the result Ground No. 3 of the revenue is dismissed.

**Ground No. 4: Deleting the addition of Rs. 26,27,464/- on account of suppression of closing stock.**

14. Regarding Ground 4 of the revenue, Id. CIT-DR drew our attention to para 6 of the assessment order and narrated that the Id. AO has inquired about quantitatively details of the stocks like opening stock, purchase, sales and closing stock and details of valuation of closing stock along with

supporting documents were also called for. In compliance, details were submitted by the assessee, after examining the details, Id. AO observed that there was a purchase of Rs. 26,27,464/- on 31<sup>st</sup> March, 2015 through four bills of M/s Gita Refractories. Since, these purchases were made on very last day of the year, consumption or sales of such huge stock on the date is not established, AO concluded that the entire purchase should form part of closing stock at the end of year and has added the said amount to total income of the assessee. Ld. CIT(A) has deleted the addition based on explanation of the assessee that the impugned stocks were not received by the assessee from M/s Gita Refractories Pvt. Ltd. but the items were directly supplied by M/s Gita Refractories to M/s M/s Neelachal Ispat Nigam Ltd. (NINL). These purchases were made on behalf of M/s Refratechnik. Thus, the reference drawn by AO regarding non-inclusion of stock was incorrect. It was the submission Id. CIT-DR that all such explanations and evidences were produced by the assessee before the Id. CIT(A) which were never produced before the AO, therefore, there was a clear violation of rule 46A by the Id. CIT(A). It was therefore, the prayer that the decision of the Id. CIT(A) on this issue was based on additional evidences with no cognizance to provisions of rule 46A of the Act, thus, the decision of Id. CIT(A) is subject to reversal and the findings of AO deserves to be restored. Alternatively, the issue should be remanded back to the files of AO for fresh adjudication.

14.1 Against the arguments of the revenue, Id. AR submitted that the impugned purchases which were treated as closing stock by the Id. AO

were made on behalf of the M/s Refratechnik, the ultimate buyer M/s Neelachal Ispat Nigam Ltd. has also issued a purchase order in favour of M/s Refratechnik, copy of the same was submitted in the paper book at page 107 to 112. The assessee has purchased the required material from M/s Gita Refractories which was directly send to M/s Neelachal Ispat Nigam Ltd., invoices of M/s Gita in favour of M/s NINL were placed at page 103 to 106 of paper book, date of the said invoice was in the month of January and February, 2015. Ld. AR further submitted that all the said purchases were debited to the account of Refratechnik, to substantiate this fact our attention was drawn on page 195 of the paper book consisting the copy of ledger account of the Refratechnik in the books of assessee. Against the contention of the department that the information furnished before Id. CIT(A) were submitted as additional evidence covered by provisions of rule 46A, Id. AR submitted that all the books of accounts, details and information were available before the Id. AO also, but Id. AO has decided the issue in haste without causing any further inquiry or further explanation from the assessee on the issue, therefore, the contention of the revenue are baseless, bereft of merit are liable to be rejected. Ld. AR also submitted a written submission on Ground No. 4 of the revenue the same is extracted here under:

**4. Ground No.4 of Revenues Appeal directed against addition of Rs.26,27,464/- on account of under valuation of closing stock.**

**4.1 Neelachal Ispat Nigam Limited (PSU) had issued Purchased Order to Refratechnik Steel GmbH dated 09.10.2014, copy whereof is placed on Page No. 107 to 112 of the paper Book, in pursuance thereof the assessee had procured goods from M/s Gita Refractories Pvt. Ltd (GFPL) which were supplied to Neelachal Ispat Nigam Limited (NINL) directly, details whereof are as under: -**

Sl. No.	Invoice date	Invoice No.	Amount	Date of passing of accounting entry in the books
1	16.02.2015	0338	4,53,376/-	31.03.2015
2	17.02.2015	0339	5,78,346/-	31.03.2015
3	13.02.2015	0335	9,57,513/-	31.03.2015
4	29.01.2015	0328	6,38,528/-	31.03.2015
		<b>Total</b>	26,27,763/-	

4.2 Ledger account of GRPL in the books of accounts of the assessee is placed on **Page No.113 of the paper Book**, copy of ledger account of NINL in the books of accounts of the assessee is placed on **Page No.114 to 116\_ of the paper Book**, the goods purchased from M/s GRPL were sold to NINL as per details herein below: -

Sl.N o.	Invoice date	Amount	Date of passing accounting entry
1	31.03.2015	5,78,346/-	31.03.2015
2	31.03.2015	4,53,376/-	31.03.2015
3	31.03.2015	2,57,213/-	31.03.2015
4	31.03.2015	71,910/-	31.03.2015
	<b>Total</b>	<b>13,60,845/-</b>	

4.3 On perusal of invoices raised by GRPL, the name of NINL is duly appearing as consignee and the goods were dispatched directly by GRPL to NINL on various dates before 31.03.2015, due to said reason there was no question of any stock lying with the assessee as the corresponding sales had been booked by the assessee.

4.4 Copy of purchase order dated 09.10.2014 issued by NINL to Refratechnik Steel GmbH is placed on Page No. 107 to 112 of the Paper Book, in pursuance of said purchase order, the assessee in its capacity as agent of Refratechnik Steel GmbH had purchased goods from GRPL which was supplied directly to NINL and the same is evident also from the invoice issued by GRPL wherein the name of Refratechnik Steel GmbH is explicitly appearing, copy of invoice of GRPL is placed on **Page No. 103 to 106 of the Paper Book**. The scope of work was not limited merely supplying the product it was coupled with application of maintenance of ladle refractory on total refractory maintenance which was supplied by Refratechnik Steel GmbH. As a result, there was no stock and addition made was contrary to facts.

**Prayer:** It is prayed that appeal filed by the Revenue may kindly be dismissed.

14.2 We have considered the submissions of the rival parties and perused the material available on record. The explanations advanced by the assessee before revenue authorities supported with information and evidence were found to be plausible, Id. CIT(A), who had analyzed the issue after considering all the material facts, therefore, in our considered view has substance to concur with. Ld. AO's observation was based on half facts which is evident from the observation of the Id. CIT(A) while deciding this issue that in the ensuing year the explanation for the similar transaction has been accepted by the revenue, thus, contains no merits. In sight of such factual findings by the Id. CIT(A), the view of the Id. AO is unacceptable and deserves to be quashed. Ld. CIT(A) therefore, has rightly deleted the addition, thus, needs to be acclaimed. With regard to applicability of provisions of rule 46A as contended by Id. CIT-DR, since, all the information were available with the Id. AO, also the similar transactions were accepted by the revenue in assessment year 2016-17, sending the matter back to AO for re-adjudication would cause further prolonging the litigation on the issue on which department has already taken a view in favour of the assessee, thus, we do not see any reason to restore the matter back to the files of Id. AO. Consequently, Ground No.4 of the revenue is dismissed.

**Ground Nos. 5 & 6: Deleting the addition of Rs. 2,91,21,363.89 and Rs. 1,08,95,414/- on account of suppression of income.**

15. Concerning Ground 5 & 6, the Id. CIT-DR drew our attention to para 7 and 8 of the assessment order. For better examination of facts on the issue, para 7 and 8 of the assessment order are reproduced here under:

*"7. The Balance Sheet as on 31.03.2015 shows an amount of Rs.3,74,89,676.53 as advance from customers on the liability side, whereas in previous year it was NIL. There is no party-wise list of advance as Schedule. Therefore it was asked to furnish complete details viz. copy of ledger account, complete address, phone numbers and details when supply was made to them in subsequent year or the balances were liquidated. In response the assessee filed only copy of ledger account of Eco Master Beads-India Pvt. Ltd. and Refratechnik Gmbh Reimb (Advance) and no other details were filed. Perusal of copy of ledger accounts show that an amount of Rs 2,89,21,363.89 was received from Eco Master Beads India Pvt. Ltd. The assessee firm had invested an amount of Rs 2.77 crore in its shares and one of the partners of the assessee firm is Managing Director of said company. Thus, it is a group company of the assessee firm. The narration against entry dated 27.1.2015 reads as "USD 238750.32 @ 61.18 Expense for setting up technical equipments for demonstrating new technologies (Agst Adv. Payment material supply). It is clear from the narration that the funds were received through foreign exchange against supply/ executed work. The amounts of receipts are also in odd figures, it can't be advance. As observed above, instead of including the receipt in income, the assessee had shown the same as 'Advance'. The entire amount shown as 'Advance' should have been declared as receipts in the Profit & Loss account.*

*8. Similarly, in the account of Refratechnik Gmbh Reimb (Advance), several payments were received in foreign currency and in odd figures. The entries appearing on 18/12/2014 & 27/01/2015 of Rs 21.05 lakhs, 1.32 lakhs and 7.03 lakhs bear the narration as "agst commission on export import". It proves that the invoice value which was received against some liaisoning work and clearly should have been formed part of business receipts and nothing else. The narration clearly shows that the assessee has received the commission income. Total of such commission receipts are Rs. 1,08,95,414/-. The assessee firm had neither shown this as sales/receipts nor was it shown against work in progress in audited financial statements. All the details called for were deliberately denied. It is a case of apparent suppression of receipts and resulting concealment of income to the tune total of Rs.3,98,16,777/- (Rs.2,89,21,363.89 and Rs.1,08,95,414/-) and assessable to tax accordingly. In the case of Pest-O-Kill vs. CIT reported in (2009) 30 DTR 285, the Hon'ble Jurisdictional High Court has held that the entire receipt suppressed by assessee is assessable to tax. Therefore the above amount of Rs. 3,98,16,777/- is added to the total income on account of suppression of receipts. Penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 are separately initiated."*

15.1 Based on observations of the Id. AO in para 7 & 8 of the assessment order Id. CIT-DR further submitted that there was an amount of Rs. 3,74,89,676.53/- shown as advance received from customers as liability, whereas in the immediate the previous year the corresponding figure of this

head was Nil. As per copies of ledger account furnished by the assessee before the Id. AO, these amounts were received from M/s Eco Master Beads India Pvt. Ltd and M/s Refratechnik GmbH. The assessee has received Rs. 2,89,21,363.89/- from Master Beads, the entry for the said amount has a narration that *“USD 238750.32 @ 61.18 expense for setting up technical equipment for demonstrating new technologies (Agst Adv. Payment material supply)”*, accordingly the AO observed that the funds were received in foreign exchange against supply/execution of work. The assessee has shown the entire amount as advance, whereas the same should have been declared as income / receipt in the profit and loss account. With regard to Ground 8, Ld CITDR submitted that, the assessee has received certain amounts from Refratechnik also and shown as advance with a narration *“Agst commission on export import”*, this should have been also treated as income of the assessee, therefore, such commission receipt of Rs. 1,08,95,414/- were treated as apparent suppression of receipts by the assessee and thus added back to the income of the assessee. The Id. CIT(A) has discussed the issue but has not appreciated facts in correct perspective, Id. AO has rightly dealt with the issue and therefore, the addition proposed by the Id. AO deserves to be upheld and the observation of the Id. CIT(A) shall be set aside.

15.2 In rebuttal, Id. AR of the assessee submitted that requisite details were furnished before the Id. AO however, the Id. AO has made the additions based on his own understanding and presumptions without show causing the assessee about the view or negative inference to be drawn

against the assessee. Ld. CIT(A) has dealt with the issue in exhaustive and justified manner, understand the transactions, accounting treatment and analyzed the same in light of the supporting evidences, therefore, has rightly deleted the addition. The Id. AR also submitted a written submission on the issue, extracted as under:-

**Ground No.5 of Revenues Appeal directed against addition of Rs.2,89,21,363.89 as appearing in the Balance sheet of the assessee as advance against party holding the same as income of the assessee.**

5.1 The assessee and a South Korea based company namely M/s Ecomaister Co. Ltd. (ECL) had entered into Research and Development Agreement on 20.09.2014 whereby it was decided to collaborate for developing a new technologies project. The project pertains to certain research and development over a newly developed quick hardening cement formula, copy whereof is placed on **Page No.117 to 123 of the Paper Book**, kind attention is invited to **Clause 1.6** of the said agreement on **page No.118 of the Paper Book** wherein the purpose of remittance has been clearly spelt out.

5.2 It is discernible from the said clause in the agreement that the purpose was furthering of the research and development of project in India, in this view of the matter the remittance of US\$ 470341 which was remitted to the assessee equivalent to INR 289.21 Lacs constituted nothing else but the capital receipt/liability for the assessee and by no stretch of imagination one can infer that it had any element of income in it so far as the assessee is concerned. The Learned A.O made wild presumption that the entire sum of Rs.289.21 Lacs is income of the assessee from business and the said inference has been drawn merely by misinterpreting the nomenclature in FIRC which is placed on **Page No. 124 to 126 of the Paper Book**.

5.3 The assessee has maintained regular books of accounts as required u/s 44AA on mercantile basis and the accounts are duly audited u/s 44AB, the auditor has given clean report as regards Balance sheet and Profit & Loss account maintained by the assessee based on its books of accounts.

5.4 The Learned AO did not reject the books of accounts of the assessee by invoking statement, there is no definite finding that:-

(a) The assessee has not following any notified accounting standard. (b)The assessee has not regularly followed the method of accounting.

(c) Books of account of the assessee are correct and incomplete to the extent that the reasonable profits cannot be deduced there from.

(d)The Learned A.O drew the impugned inference and made the addition disregarding the fact that there is no qualification by the auditor that the assessee has understated its income by not crediting business receipts to its Profit & Loss Account.

5.5 The sum of Rs.289.21 Lacs did not have any income element in to at the first place inasmuch as the amount was held by the assessee in the fiduciary capacity for the specific purpose of carrying out research and development work, kind attention is also invited to Clause 3.1 of the said agreement which is placed on Page No.119 of the paper Book, since there was no element of income, therefore, the question of recognizing the same as income does not arise.

5.6 Kind attention is invited to Clause 3.4 of the said agreement which is placed on Page No.119 of the Paper Book from which it is discernible that the assessee was under an obligation to furnish the detailed expenses accrued by the assessee i.e. to the South Korea based company ECL. Kind attention is invited to Clause 3.6 of the said agreement which is placed on Page No.119 of the paper Book from which it is discernible that there was no element of income in the impugned sum of Rs.289.21 Lacs inasmuch as it was neither any compensation nor any consideration. Kind attention is invited to Clause-8 of the said agreement which deals with advance payment terms which is placed on Page No.121 of the paper Book.

5.7 The inference drawn by the Learned AO is contrary to the documentary evidences on record in the form of aforesaid agreement between the assessee and ECL which unequivocally establishes that the sum of Rs.289.21 Lacs received by the assessee was held as liability and did not constitute income at all in the hands of the assessee.

5.8 Assessee is regularly following Mercantile system of accounting. Income has to be completed u/s 28 with reference to Section 145 of the Income Tax Act,

Reliance is placed on the following decision:-

S. No.	Title	Citation	Authority
1.	Atharva Rainbow Infratech vs. DCIT-I(I), Raipur	ITA No. 177/RPR/2016 dated 01.04.2022	Hon'ble ITAT, Raipur Bench

5.9 Moreover, there is nothing on record which establishes that the income had accrued or arisen to the assessee in the year under consideration, other documentary evidence as per details given below:-

S.No.	Details of Evidence	Placed on following Page No. of the Paper Book
1	Year wise ledger Copy of Ecomaister Company Limited, Korea alongwith confirmation	127 to 131
2	Copy of correspondence made with Ecomaister Company Limited, Korea in the matter.	132 to 134
3	Copy of R and D Agreement entered between Metex Engineers and Pragati Construction	135 to 140
4	Complete project details of technical know how.	141 to 174
5	Acceptance Letter by Ecomaister Company Limited, Korea.	175
6	Ledger Copy of Pragati Construction alongwith confirmation.	176 to 178
7	Ledger Copy Ecomaister Company Limited, Korea against repayment of the advance as on 31.03.2019	127

5.10 It is respectfully submitted that the case of the assessee was selected for scrutiny assessment for A.Y. 2018-19 in view of large creditors, during the assessment, the Learned AO enquired into the nature of credit appearing in the Balance sheet of the assessee amounting to Rs.289.21 Lacs towards ECL, after considering the explanation of the assessee, the Learned AO did not draw any adverse inference and was satisfied with the explanation that the impugned sum of Rs.289.21 Lacs does not constitute income at all in the hands of the assessee

after considering all the documentary evidences which were thoroughly examined, copy of the assessment order passed in the case of the assessee for A.Y 2018-19 is placed on **Page No. 181 to 184 of the Paper Book**, copy of the query letter issued by the Learned A.O during assessment proceedings is placed on **Page No.179 to 180 of the Paper Book**.

5.11 It is relevant to mention here that no adverse view was drawn in the scrutiny assessment completed in the case of the assessee in A.Y 2016-17 also in respect of amount of Rs.289.21 Lacs, copy of ITR and Computation and audited financial statements of the assessee for the financial year ended 31.03.2016 and 31.03.2018 and copy of assessment order for AY 2016-17 are placed on **Page No.233 to 240 of the Paper Book** respectively.

**5.12 Accepted in scrutiny assessment of A.Y. 2018-19:**

The case of the assessee was subjected to scrutiny assessment for A.Y. 2018-19 under the faceless assessment scheme wherein the assessee was asked to discharge the onus u/s 68 in respect of sum of Rs.289.21 appearing in the balance sheet of the assessee as advance from ECL and sum of Rs. 14,73,484/- appearing in the Balance Sheet against M/s Refratechnik Steel GmbH, copy of the notice u/s 142(1) dated 31.12.2020 issued by the Learned AO during scrutiny assessment for A.Y 2018-19 is placed on **Page No. 179 to 180 of the paper book**, the assessee had furnished detailed explanation vide reply dated 14.01.2021 the explanation given by the assessee in respect of sum of Rs.289.21 Lacs and sum of Rs. 14.73 Lacs was duly accepted and no adverse inference was drawn under the faceless assessment completed u/s 143(3) vide order dated 19.03.2021 for A.Y 2018-19, copy of the assessment order passed and u/s 143(3) for A.Y 2018-19 is placed on Page No. 181 to 184 of the paper book, kind attention is invited to para 3 of the said order which is placed on **page No. 182 to 183 of the paper book** equivalent to internal page number 2 of the assessment order where in the Learned AO has specifically mentioned about the sum of Rs.289.21 Lacs received from ECL and outstanding balance of Rs. 14,73,484/- received from M/s Refratechnik Steel GmbH and after elaborate discussion in the assessment order, the AO accepted the explanation of the assessee and no adverse view was drawn against the assessee..

5.13 Regarding contention of the Learned AO that out of sum of Rs.289.21 Lacs the assessee had transferred sum of Rs.277.00 Lacs to Ecomaister Co. Ltd for investing in share capital of Ecomaister India Private Limited, it is respectfully submitted that the said contention of the Learned AO is factually incorrect inasmuch as the assessee had made investment in shares of Ecomaister India Private Limited during the year under consideration to the tune of Rs. 125.00 Lacs only and not Rs.277.00 Lacs as inferred wrongly by the Learned AO, the same is evident from the ledger account of investment in shares of Ecomaister India Private Limited from the audited books of accounts of the assessee, from which it is discernible that the investment in share was made by the assessee in the earlier year which was carried forward as opening balance to the tune of Rs. 152.00 Lacs and after adding the amount of investment in shares made during the year under consideration amounting to Rs. 125.00 lacs the total investment in shares at the end of the year under consideration stood at Rs.277.00 Lacs, thus, there is no merit in the contention of the Learned AO.

Prayer: It is prayed that appeal filed by the Revenue may kindly be dismissed.”

15.3 Regarding Ground no 5 of the revenue, It was the submission by the Ld AR that the assessee has entered into a research and development (R&D) agreement with Ecomaister Co. Ltd., a South Korea based company (copy of agreement placed at page 117 to 123 of assessee's PB). According to the said agreement the assessee has agreed to undertake R&D, with the consideration that the assessee was appointed as sole distributor for the newly developed product in India with exclusive marketing rights. Clause 3 of the agreement is relating to incurring expenses of R&D. Clause 3.6 of the agreement clearly shows that ***"the sum received by the recipient is neither any compensation nor any consideration for the agreed work carried by the recipient. Thus, the same shall not be used either directly or indirectly by the recipient or its authorized representative for any purpose other than for the development of the said project"***. Ld. AR in furtherance of the arguments has drawn our attention to para 1.6 of the agreement placed at page 118 of the paper book, which reads as under:

*"1.6 Remittance: Remittance will for the purpose of this agreement shall be the sum of money given in foreign exchange by the sponsor to the recipient against furthering the research and development of product in India. The origin country of remittance shall for the purpose of this agreement will not be the same as its destination."*

15.4 The Id. AR has further submitted correspondence received from Ecomaister and also the confirmation, to substantiate that money was received for R&D work and the amount was liable to be returned to Ecomaister, if it was not utilized towards R&D. (such confirmation and correspondence were placed at page 131 to 134 of the paper book). It was

also the submission of the Id. AR that the amount so received from Ecomaister was further paid to another company namely M/s Pragati Construction for carrying out the R&D work, the report submitted by M/s Pragati Construction was accepted by M/s Ecomaister and therefore, there is no reason for considering the amount received by the assessee to be treated as income of the assessee.

15.5 The Id. AR placed his reliance on this issue on the judgment in the case of CIT vs. Shyam Telelink Ltd. (2019) 410 ITR 31 (Del.). Findings of the Hon'ble Delhi High Court are as under:-

*“9. However, we would not like to dispose of the present appeals only on the aforesaid basis, for we find that there is merit in the findings recorded by the Tribunal, accepting the method of accounting followed by the respondent- assessee. The Tribunal in the impugned order has referred to the difference between receipt of an amount and accrual of income. Every receipt is not income, for income is something which the assessee is legally entitled to appropriate to the exclusion of the giver. However, contention of the Revenue that the prepaid amount once paid and received by the assessee was foregone by the subscriber and accordingly appropriated by the respondent- assessee is substantially correct. At the same time, the payment was an advance and was subject to the respondent-assessee providing basic telecom service as promised, failing which the unutilized amount was required to be refunded to the pre-paid subscribers.”*

*“17. The appropriation of prepaid amount was contingent upon the respondent-assessee performing its obligation and rendering services to the prepaid customers as per the terms. If the respondent-assessee had failed to perform the services as promised, it would be liable and under an obligation to refund the advance payment received under the ordinary law of contract or special enactments, like the Consumer Protection Act. The aforesaid legal position would meet the argument of the Revenue that the prepaid amount received was not liable to be refunded or repaid, whether or not any services were rendered.”*

15.6 The Id. AR further drew our attention to para 7.3 of the order of Id. CIT(A) on this issue, wherein the matter has been discussed and deliberated at length, the same is reproduced as under:-

*"7.3 I have gone through the facts and the submissions of the appellant. The AO did not accept the assessee's explanation that the amount of Rs. 2,89,21,363/- was received for Product development and liaisoning work as per assessee's agreement with M/s. Ecomaister Company Limited of South Korea which was sponsor of the project. The two parties were required to collaborate for developing new technology of quick hardening cement manufacturing unit to be manufactured from the used product by product from steel manufacturing process. Such by-products are procured from ladle furnace of steel plant. Unlike the traditional cement which takes several days to set this new product will set in few hours as per clause 3.1 of the agreement with M/s. Echomaister Co. Limited, South Korea. The advance so received by the assessee will be used by the assessee in development of this product. Assessee furnished complete details viz., copy of ledger account, complete address, phone numbers and details when supply was made to them in subsequent year or when the balances were liquidated. In response, the assessee filed only copy of ledger account of M/s. Ecomaister Co. Ltd, and M/s. Refratechnik: Steel GMBH Reimbursement (Advance). The ledger account showed that an amount of Rs.2,89,21,364/- was received from M/s. Ecomaister Co. Ltd. The assessee firm had invested an amount of Rs 2.77 Crores in its shares and one of the partners of the assessee firm is Managing Director of the said company. Thus, it is a group company of the assessee firm. The narration against entry dated 27.1.2015 reads as "USD 238750.32 61.18 expense for setting up technical equipments for demonstrating new technologies". By observing as above, the AO erroneously presumed that the impugned sum was received against supply of material/execution of work. According to AO, the impugned sum should have been shown as income and not as advance received from the principals. On this erroneous consideration and understanding of facts, the impugned addition was made by the Leamed AO Whereas the fact is that the assessee was approached by a South Korean company viz, M/s. Ecomaister Co., Ltd. with a request to oversee an R&D work on their behalf for supervising fees to be paid to the assessee on each stage of completion which is accepted by them. The nature of work is that the said R&D works needs to be conducted as instructed by M/s. Ecomaister Co., Ltd. by coordinating various stages of process for successfully finalizing technology called "Immediate freezing of concretes as compared to the traditional method of splashing water and periodical vetting which takes a long period for setting of concrete. Accordingly, the assessee had, during the previous year relevant to the assessment year, under consideration, entered into an agreement on 20.09.2014 with M/s.*

*ECOMAISTER Co., Ltd, South Korea for the above project of supervising and executing the R&D work. Para No.1, 3, 8 and 13 of the said agreement dtd. 20.09.2014 stated as under:-*

*"Whereas, the parties have decided to collaborate for developing a new technologies project. This new project pertains to certain Research and Development over a newly developed quick hardening cement formula which is mant factised Using a product by-product from stee manufacturing process procured from ladle furnace of steel plant hereinafter referred as "Product", Unlike existing cement mechanism which requires caressing and monitoring by human labors and abundant supply of water for days in order to turn into its concrete form, this product as developed by the Sponsor will exponentially reduce the waiting period from days to mere few hours. Also, this product will save thousands of gallons of water. This makes the product highly cost-effective saving labor and water.*

*The sum so received shall be an advance against furthering the research and development of the product for all the relevant purposes according to any law in force in India before or after the effective date."*

*As per this agreement did. 20.09.2014 the assessee has received advances on 27.1.2015 and on 25.02.2015 totaling to Rs 2,89,21,364/-, This was grouped and accounted for the head current liabilities at "Advance from party" in the financials Copy of the Foreign Inward Remittance Certificates (FIRC) issued by the Authorized Dealer (AD Banker) HDFC is enclosed and the purpose of remittance as mentioned therein is: "Expenses for setting up technical equipments for demonstrating new technology". From this it is evident that the amounts were received for expenses to be incurred on their behalf for demonstrating a new technology and not received as income for supply of products. The assessee had ultimately made agreement with another concern M/s. Pragati Infratech Pvt. Ltd, Bhilai on 01.06.2018 on behalf of M/s. Ecomaister Co. Ltd. as per the agreed terins and conditions to develop the product and various correspondence and discussion made from time to time. M/s. Pragati Infratech Co. Pvt. Ltd, Bhilai has finally developed product design and technical knowhow and trail production have been accepted by M/s. Ecomaister Co. Ltd. The Id. AO has questioned the receipt of the amount in odd figures and has informed that since the amount received by the assessee were in odd figures the same cannot be advances. In this respect as per clause 3.5 of the agreement "The recipient can receive the sam in remittance of their need against their demand to the Sponsor. This could eithe be on installment or in toto." Farther as per clause 3.6 of the agreement the sum received by the assessee is neither any compensation nor any consideration for the agreed work carried by the recipient. Therefore it shall not be used directly or indirectly for any purpose other than the development of the said project. This clause makes it clear that the amount received was pure advance and not income of the*

assessee. Thus the entire advance will not be received in one amount how it will be remitted as per the need and as demanded. As per the ledger account and bank statement the assessee has made full payment of company M/s. Pragati Infrastructure Private Limited, Bhilai who had carried out the job assigned to them. As per the satisfaction certificate issued by the Ecomaister Co., Limited.

The assessee has received a confirmation cum satisfaction letter against the said payment duly signed by Ecomaister Co. Ltd Korea dated 31.2019 which states as under.

"We hereby duly confirm that following amount was paid to Metex Engineers, Bhilai, Chhattisgarh as advance money for the purpose of setting up technical equipments for demonstrating new technologies in India on following dates:"

<i>Date of receipt</i>	<i>Amount in USD</i>	<i>Rate of Exchange</i>	<i>Amount in INR</i>
27.01.2015	2,38,750.32	61.81	1,46,06,745.00
25.02.2015	2,24,903.67	61.81	1,39,01,296.00
25.02.2015	6687.00	61.81	4,13,323.00
		<i>Total</i>	2,89,21,364.00

On receipt of the observation report after sufficient trial as agreed we are satisfied with the summary report based on the trail and testing services of Quick Hardening Cement."

Thus the assessee was acting as agent of foreign company. When entire amount received from Sponsor has been paid to M/s. Pragati Infrastructure Private Limited, Bhilai there is no profit in the hands of the assessee.

Regarding the receipt from M/s. Refratechnik Steel GMBH the assessee company worked as an agent of M/s. Refratechnik for executing the work and incurred expenses on behalf of that company. As per agreement dated 15.12.2009 the assessee will offer to M/s. Refratechnik Steel GMBH the products for sale at the best obtainable market price. The amount was paid to the assessee for supply of material to M/s. NINL as payment to directors vide agreement dated 15.12.2009 between assessee and M/s. Refratechnik Steel GMBH. The assessee was entrusted with distribution of products. The assessee has paid an amount of Rs. 85,68,312/- towards cost of material supplied to M/s. NINL and Rs. 11.5 lakhs as Bank Guarantee and FDR with banker. When the amount was received as advance for material and services the AO's conclusion that the amount is concealed income as there was no sale is misplaced. Assessee has furnished copies of FIRC (Foreign Inward Remittance Certificate) issued by the Bank HDFC. In the next asst. year 2016-17 the assessee

has started receiving commission income from this company and has credited an amount of Rs. 25,39,867/- as income from this project. In view of these facts there is no doubt that the amount received from Refratechnik was advance for -expenses to be incurred in execution of work as per agreement executed with that party and cannot be treated as income of the assessee.

In view of above, it is found that the amounts received as per agreement for making expenses and payment and no part of the amount was income of the assessee. Therefore, the addition of Rs. 3,98,16,777/- is hereby deleted.”

15.7 Regarding Ground No. 6 written submission furnished by the assessee are as under:-

**6. Ground No.6** of Revenues Appeal directed against addition of Rs. 1,08,95,414/-made by the Learned AO presuming that the same was commission income earned by the assessee in the year under consideration.

6.1 It is respectfully submitted that an agency agreement was entered into between the assessee and Refratechnik Steel GmbH a Germany based company on 15.12.2009, copy of the agreement is placed on Page No. 185 to 190 of the paper Book, in pursuance of the said agreement, the assessee was appointed as an Agent of M/s Refratechnik Steel GmbH for undertaking sale of product of Refratechnik Steel GmbH, kind attention is invited to Clause-6 of the said agreement regarding the payment of commission by Refratechnik Steel GmbH to the assessee, in pursuance of the aforesaid agreement the assessee had received aggregate amount of Rs. 108.95 Lacs in the year under consideration towards reimbursement of expenses. The Learned AO presumed that the entire amount of Rs. 108.95 Lacs is commission income of the assessee and the said inference was drawn based on the purpose of remittance as mentioned in certificate of foreign inward remittance, copy whereof is placed on **Page No.191 of the Paper Book** wherein the following terms have been specifically mentioned as **“related as services, reimbursement and commission on export and import”**

6.2 The Learned AO overlooked the term **“reimbursement”** and embarked upon one sided conclusion that the entire sum of Rs. 108.95 Lacs is towards commission income of the assessee which is contrary to the books of accounts and documentary evidence on record.

The breakup of sum of Rs. 108.95 Lacs is as under:-

Sl.No.	Particulars	Amount	Amount (Rs.)
1	Aggregate amount received from Germany based company		1,08,95,414/-
Less:	Amount appropriated/adjusted for the purpose of Bank Guarantee to be given by Refratechnik Steel GmbH to its Indian parties		
	01.04.2014	2,00,000/-	
	01.04.2014	5,00,000/-	
	04.07.2014	2,50,000/-	
	04.07.2014	<u>2,00,000/-</u>	11,50,000/-

	Reimbursement against expenses incurred during the F.Y 2014-15 by the assessee on behalf of Refratechnik Steel GmbH for JSPL		11,77,102/-
			85,68,312/-

6.3 It is submitted that the entire amount of Rs.85,68,312/- was utilized by the assessee in its capacity as agent towards purchase of material and contractors payment for lining charges on behalf of Refratechnik Steel GmbH which was supplied to NINL, the ledger account of Refratechnik Steel GmbH in the books of accounts of the assessee is placed on **Page No. 193 to 197 of the Paper Book.**

6.4 To conclude the entire amount of Rs. 108.95 was received by the assessee towards reimbursement and as such did not have any element of income and therefore, the question of recognizing the same as income did not arise. The assessee had received commission income of Rs.46,24,959/- from the said Refratechnik Steel GmbH in the F.Y 2015-16, copy of ledger account of Refratechnik Steel GmbH from the books of accounts of the assessee is placed on **Page No.209 to 211 of the Paper Book**, the ledger account of foreign commission is placed on **Page No210 of the Paper Book.**

6.5 Outstanding advance of Rs. 14.73 Lacs from Refratechnik Steel GmbH appearing in the Balance sheet of the assessee as on 31.03.2018 was duly examined by the Learned AO in the scrutiny assessment of A.Y. 2018-19 and after considering the explanation of the assessee that the sum represents advance from customer/principal, the Learned AO accepted the submissions of the assessee and did not draw any adverse inference as has been drawn in the scrutiny assessment of A.Y 2015-16, copy of assessment order passed u/s 143(3) for A.Y 2018-19 is placed on **Page No. 181 to 184 of the Paper Book**, copy of query letter issued by the A.O is placed on **Page No.179 to 180 of the Paper Book.**

The impugned sum of Rs. 108.95 had been spent/utilized by the assessee in making payments towards the purchase of material and services on behalf of Refratechnik Steel GmbH, in pursuance of the work order issued by NINL to Refratechnik Steel GmbH which is placed on Page No.107 to 112 of the Paper Book, the same is also evident from the ledger account of Refratechnik Steel GmbH in the books of accounts of the assessee for the F.Y 2015-16 which is placed on Page No.195 to 197 of Paper Book, It would be relevant to mention here that there is a direct nexus between the goods purchased by the assessee from GRPL and supplied to NINL on behalf of the principal namely Refratechnik Steel GmbH as on 31.03.2015 the ledger account of NINL shows debit balance of Rs.26,99,370/- in the books of account of the assessee which was subsequently adjusted against the outstanding balance of Rs.85.68 Lacs in the immediately succeeding year as the sale was made to NINL was on behalf of Refratechnik Steel GmbH.

Prayer - No commission accrued to the assessee in the year under consideration and therefore, the addition of Rs. 108.95 Lacs has been rightly deleted by the Learned CIT (A), hence, it is prayed that the appeal filed by the Revenue may kindly be dismissed.

15.8 Regarding Ground 6 of the revenue, the Id. AR submitted that the amount received from Refratechnik for Rs. 1,08,95,414/- was an advance for making payments on behalf of Refratechnik, in support of this contention, the Id. AR drew our attention to page 193 to 197 of the paper book consisting of ledger account of the Refratechnik GmbH Reimb. (Advance) for the F.Ys 2014-15 and 2015-16. Out of the impugned amount received as advanced a sum of Rs. 26,27,424/- was paid to Gita Refractories towards purchases on behalf of Refratechnik. It is submitted that, The assessee was acting as an agent of the Refratechnik and has not made any amount by supply or services. FIRC (Foreign Inward Remittance Certificate) was misinterpreted by the Id. AO since there was a common purpose available for remittances pertaining to services, reimbursement and commission etc., thus, without any cogent evidence the AO was not justified in treating the receipt as income. It was the submission that nature of receipt is also proved as advance as the assessee has adjusted a sum of Rs. 11,50,000/- against the bank guarantees issued on behalf of Refratechnik and Rs. 11,77,102/- were incurred as expenses on behalf of Refratechnik, etc. The Id. AR further submitted that the assessee has received an amount of Rs. 74,34,697/- from Refratechnik in assessment year 2016-17 and the same was also shown as advanced and not as income, the same was duly accepted in the scrutiny assessment by the AO, copy of ledger account of Refratechnik was placed before us at page No. 195 to 197 and copy of the assessment order for A.Y 2016-17 at page 233 to 240 of the paper book. It was therefore, the submission that the AO has totally out-of-place with the facts of the transaction and has concluded the

issue based on his on surmises / presumptions, no further enquiry was made or explanations were called for from the assessee, thus, the Id. CIT(A) has rightly deleted the addition. The Id. AR further drew our attention to para 3 on page 27 of the Id. CIT(A), which is already extracted hereinabove.

15.9 We have considered the rival submissions, have carefully perused the orders of authorities below and have gone through the material available on record. While appreciating the factual details of the issue and its adjudication by Id. AO as well as Id. CIT(A), we have appraised the fact that Id. AO has made his observations based on information furnished in the form of ledger account of the parties without considering the other aspects of issue or supporting evidence, nor any further explanation regarding the issue were called for from the assessee. Id. CIT(A) has deliberated on the issue exhaustively and arrived at a just and appropriate finding that the amount available on the liability side of the assessee's balance sheet were not receipts of the assessee in the nature of income but were amounts received towards contractual obligations of the assessee towards agreements entered into. Since, we are in agreement with the observations and finding arrived at by Id. CIT(A), having no conflicting material fact or decision brought to our attention by the revenue, we do not have any deviating observation on the issue, therefore, we refrain ourselves from interfering with the findings of the Id. CIT(A). In the result ground Nos. 5 and 6 of the appeal of the revenue are hereby dismissed.

**Ground No 7. :** **Deleting the addition of Rs. 47,894/-made by the AO, who treated the post assessment assessable value of the foreign purchases determined by the Customs for levying duty instead of the amount shown in the bills as the cost of the foreign purchases made by the assessee firm.**

16. Ld CIT DR has vehemently supported the order of Ld AO on this issue and reiterated the observation of Ld AO in para 10 of the assessment order. Extract of para 10 relied upon by the revenue is as under:

*“10. As per ITS information received from Export-Import Summary of Central Board of Excise and Customs import transactions were made in the name of Smt. Sapna Shrivastava under PAN BOHPS1607F the invoice value of all four transactions was Rs. 23,51,987/- whereas the post assessment assessable value was Rs. 27,03,786/-. In the course of assessment proceedings in the case of Smt. Sapna Shrivastava, Partner, the assessee has explained that it has made purchases and IEC name was of the firm but PAN of Partner Smt. Sapna Shrivastava was used as the firm was earlier her proprietary concern. The details of foreign purchases were shown in the case of firm at Rs. 26,55,892/-. Therefore, the difference between the post assessment assessable value of Rs. 27,03,786/- as per ITS information and the value shown by assessee at Rs. 26,55,892/- is added at Rs. 47,894/- to the total income as unexplained investment u/s 69 of the Act and subjected to tax u/s 115BBE of the Act.”*

16.1 LD AR made written submission on ground no 7 of the revenue, which reads as follows:

*7. Ground No.7 of Revenues Appeal is directed against addition of Rs.47,894/- by invoking Section 69 in respect of import of goods.*

*The assessee had imported certain goods, the aggregate value whereof in terms of INR was Rs.26,55,892/-, the complete details of the purchase/import is on Page no. 30 of CIT (Appeals) order, the Learned AO compared the value recorded in the books of the assessee with the assessable value for the purpose of payment of custom duty and added the difference as unexplained investment u/s 69, it is not the case of the Learned AO that the assessee had made payment of on money to the foreign supplier which is condition precedent for applying the deeming fiction of Section 69, the Learned AO cannot resort to deeming fiction by referring to another deemed value i.e. assessable value which has limited relevance i.e. only for the payment of custom duty it cannot be over stretched to conclude that the assessee had actually made the payment of Rs.47,894/- and therefore, the addition has been rightly deleted by the Learned CIT (A).”*

16.2 We have heard the rival contentions, perused the material placed before us and carefully analyzed the issue. Admittedly, the assessee has imported material from abroad for Rs. 26,55,892/- however the custom authorities had assessed the value of the same at Rs. 27,03,784/- for the purpose of levying of duty, the difference of Rs. 47,894/- was considered as unexplained investment u/s 69. We do not find any merit in the observation of the Ld AO, therefore, are of the considered opinion that view taken by the Ld CIT(A) has no infirmity in it and thus deserves to be upheld and we do so. In the result Ground No 7 of the revenue is dismissed.

**Ground No 8. : *Deleting the addition of Rs. 2,00,000/-, made by the AO who treated the non-business nature of expenses claimed under the Head Business promotion by the assessee firm as business expenses***

17. Ld CIT DR has vehemently supported the order of Ld AO on this issue and reiterated the observations of Ld AO in para 11 of the assessment order. Extract of para 11 relied upon by the revenue is as under:

*“11. The assessee claimed Rs.4,30,071/- as expenses under the head 'Business Promotion'. Perusal of the ledger account shows that most of the expenses claimed are in the nature of personal expenses like purchasing clothes, jewellery, shoes, ice cream, hotel bills, etc. An amount of Rs.50,000/- was paid to one Shri Rajendra Shrivastava on 25.07.2014, Rs.40,000/- to Shri Santosh for making payment to some Shri Sameer Patra on 14.11.2014, Rs.25,000/- to Shri Santosh on 19.01.2014. Looking the nature of expenses and mode of payment, which are more of personal and non-business nature or payment of kickbacks, the entire claim is apparently not allowable. Therefore, after considering the facts and of Rs.2,0 circumstances of the case, an amount of Rs.2,00,000/- is disallowed on estimate basis and added to the total income being not relatable to business purposes.”*

17.1 LD AR on the other hand has made written submission on ground no 8 of the revenue, which reads as follows:

8. **Ground No.8 of Revenues Appeal directed against disallowance of Rs.2,00,000/- on adhoc basis under the head Business Promotion expenses.**

8.1 *The Learned AO has made adhoc disallowance without pointing out any specific instance of non business expenditure incurred by the assessee which was debited to Profit and Loss Account and since the book results have been rejected and books of account have undisputedly been accepted as correct, therefore, the action of the Learned AO in resorting to adhoc disallowance of expenses is self-contradictory.*

8.2 *Detailed breakup of business promotion expenses amounting to Rs.4,30,071/- is placed on **Page No. 218 to 219 of the Paper Book**, specific details of payment made to the following parties were duly furnished/produced which has been reproduced by the Learned CIT (A) on Page No.32 of his order and after considering the explanation and documentary evidences, the Leaned CIT (A) came to the conclusion that the expenses have been incurred for the purpose of business and thus allowable as deduction. The supporting documentary evidences are placed on **Page No. 220 to 232 of the Paper Book**, expenses claimed are genuine business expenses.*

*Ground regarding business promotion expenses, the assessee had incurred expenditure under the head business promotion even in A.Y. 2016-17 and claimed deduction of Rs.4,30,470 which has been duly accepted and allowed in the scrutiny assessment completed in u/s 143(3) in the assessee's case for A.Y. 2016-17, copy of the assessment order is placed on **Page No. 233 to 240 of the Paper Book**, kind attention is invited on page No. 237 of the paper book which is internal page number 5 of the assessment order of A.Y 2016-17 wherein the details of business promotion expenses has been duly mentioned by the Learned AO and allowed as deduction.*

17.2 We have considered the rival submissions and contentions and carefully perused the material available on record. Ld AO has allegedly doubted certain expense incurred by the assessee under the head Business Promotion expenses and has made an estimated adhoc disallowance of Rs. 2,00,000/-. The disallowance was on lumpsum basis stating the reason that the expenses are of personal/ non business or in the nature of kickback. No justification in support of view expressed by the Ld AO was offered. Such lumpsum / adhoc disallowance without pointing out specific expense or payment with a reasonable cause to be disallowed, is not permissible. We therefore of the considered view that Ld CIT(A) has rightly deleted the addition made, which was based on estimation without

pointing out any specific transaction not eligible to be allowed as expense.

We therefore uphold the finding of Ld CIT(A). In the result Ground No 8 of the revenue is dismissed.

**Ground No 9 & 10 of the revenue are general in nature, needs no separate adjudication.**

18. In the result, appeal no ITA 247/RPR/2019 of the revenue is dismissed in terms of our observations herein above.

19. In combined result, appeal of the assessee in ITA 238/RPR/2019 is allowed and appeal of revenue ITA 247/RPR/2019 is dismissed in accordance with our observations herein above.

Order pronounced in the court on 14/06/2023.

Sd/-

Sd/-

**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 14/06/2023

*Ganesh Kumar, P.S(on tour)*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur