

आयकर अपीलिय अधिकरण
देहरादून पीठ "डीबी", देहरादून
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH "DB", DEHRADUN (THROUGH VIRTUAL HEARING)
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं.6446/दिल्ली/2016(नि.व. 2012-13)
ITA No.6446/DEL/2016(A.Y.2012-13)

KVN Auto Engineering (P). Ltd.,
Plot No. 62, Ramji Vihar, Near Transport Nagar,
Haldwani, Uttarakhand
PAN: AADCK-9080-A

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer-1(2),
Haldwani, Uttarakhand

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Dr. Rakesh Gupta, Advocate
प्रतिवादीद्वारा/ Respondent by : Shri Amar Pal Singh, Sr. DR (Through VC)
सुनवाई की तिथि/ Date of hearing : 11/02/2025
घोषणा की तिथि/ Date of pronouncement: : 21/02/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Haldwani (hereinafter referred to as 'the CIT(A)') dated 26.10.2016, for assessment year 2012-13.

2. The assessee in appeal has raised as many as eight grounds. The gist of grounds raised in appeal is ad under:

- (i) In ground no. 1 and 2 of appeal, the assessee has assailed addition of Rs.3,30,00,000/- u/s. 68 of the Income Tax Act,1961(hereinafter referred to as 'the Act')
- (ii) Ground no. 3 and 4 of appeal are in respect of addition of Rs.61,00,000/- u/s. 69A of the Act on account of cash deposits in cash credit loan account.
- (iii) Ground no. 5 of appeal, the assessee has assailed addition of Rs.40,000/- on account of alleged difference in loan account.
- (iv) Ground no. 6 & 7 of appeal are in respect of disallowance of Rs.16,82,240/- on account of depreciation on plant & machinery.
- (v) Ground no. 8 of appeal is general in nature.

3. Dr. Rakesh Gupta, appearing on behalf of the assessee submits that he would be pressing only ground no. 1 & 2 of appeal i.e. qua addition of Rs.3.30 crores u/s. 68 of the Act made by Assessing Officer (AO) and confirmed by the CIT(A). The Id. Counsel submits that addition has been made on account of bogus share capital and share premium received from various persons. Narrating facts of the case, he submitted that the Chartered Accountant of assessee has window dressed the balance sheet for obtaining higher credit facilities from the bank had shown share capital and share premium to the tune of Rs.3,30,00,000/- whereas in actual no share capital was received by the assessee/appellant. It was merely a book entry this fact was admitted by auditors of the company and MD before the AO. The Assessing Officer forwarded the bank details received from assessee from where alleged share capital/share premium was received. The AO has mentioned

the fact in assessment order that banks have confirmed that neither there was such branch or bank account number wherefrom alleged share capital was received by the assessee. The assessee had made corresponding entries on assets sides of Balance Sheet as Plant and Machinery which were in fact never purchase by the assessee. The assessee had claimed depreciation on such non-existing plant and machinery, the same was disallowed by the AO on statement made by the assessee. Once the claim of depreciation has been disallowed by the AO, on the ground that there is no such plant and machinery, no addition was warranted in respect of share capital and share premium. The AO and the CIT(A) should either have believed entire statement made by the assessee or should have rejected statement in whole. He finally submitted that in facts of the case, no addition on account share capital and share premium could have been made by the AO. To support his contentions, he placed reliance on the following decisions to contend that where the balance sheet was window dressed for obtaining higher banking facilities, no addition could have been made under the provisions of the Act:

- (i) DCIT vs. M/s Galss Tech India, ITA No. 6241/2017, dated 25.03.2022 (Del.);
- (ii) ITO vs. Zexus Air Services (P.) Ltd. (2021) 189 ITD 434 (Del.);
- (iii) Rich Paints Ltd. ITO, (2021) 199 DTR 249 (Ahd); and
- (iv) ACIT vs. Shri Suren Goel, ITA No. 1767/2011, dated 01.12.2011 (Del.).

He finally submitted that entries in books of account do not create any income. To buttress his argument; he placed reliance on the decision in the case of *ITO vs. V.R. Global Energy (P.) Ltd., (2020) 268 taxmann.com 392 (SC.)*.

4. Per contra, Shri Amar Pal Singh representing the department vehemently defended the order of CIT(A) and the AO. The Id. DR submits that a perusal of Audited balance sheet of the assessee shows that there is increase of share capital and share premium to the extent of Rs.3.30 crores. The explanation furnished by the assessee is merely an afterthought. He thus, prayed for upholding the impugned order and dismissing appeal of the assessee.

5. Both sides heard, orders of the authorities below examined. The solitary issue assailed by the assessee in appeal is the addition of Rs.3.30 crores u/s. 68 of the Act on account of share capital and share premium. During assessment proceedings, the AO questioned increase in share capital and share premium to the extent of Rs.3,30,00,000/-. The assessee was asked to furnish details of subscribers to prove genuineness of the said transactions and creditworthiness of subscribers. Notices sent by the Assessing Officer to the alleged subscribers of share were received back un-served. The AO made inquiries from the banks. The banks confirmed that the details of bank accounts were not genuine. Even confirmations from the so called subscribers and the statement of their bank accounts were found not to be genuine. Hence, the AO made addition of share capital and share premium of Rs.3.30 crores u/s. 68 of the Act. During First Appellate proceedings, the Chartered Accountant of the assessee Shri Saurabh Bhardwaj filed an affidavit before the CIT(A) stating that to secure higher bank credit facilities, the balance sheet of company was window dressed Rs.3.30 crores was added on both sides of Balance Sheet. On liabilities side Rs.3.30 crores was increased on account of share capital and share premium and on the assets sides equal value of plant and machinery was increased. We find that the CIT(A) deleted addition of bogus claim of depreciation, whereas confirmed the addition

in respect of bogus entry of share capital and share premium. Once it is established that the increase in assets and liabilities in the balance sheet is on account of bogus entries, the statement with regard to bogus entries on the asset sides having been accepted corresponding effect on the liability side should also have been given. The affidavit sworn by Chartered Accountant of the assessee is either have to be accepted in whole or rejected *in toto*. Once it is accepted that there were bogus entries on the assets side and corresponding entire on the liability side should also have been accepted. Taking into consideration entire facts of the case, the addition of Rs.3.30 crores made on account of bogus share capital and share premium is deleted.

6. Before parting with the order we would like to observe that the addition is deleted under the provisions of Income Tax Act, however, we do not subscribe to the unscrupulous method adopted by the assessee for obtaining higher credit facilities from the bank by window dressing balance sheet. The conduct of the assessee is deplorable.

6. As regards ground no. 3 to 7 of appeal, since, no submissions were made by the Counsel for the assessee, Hence, the same are dismissed.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Friday the 21st day of February, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 21/02/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि. देहरादून /DR,ITAT,Dehradun
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Delhi