

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI SONJOY SARMA, JM**

**ITA No.1163/KOL/2024  
(Assessment Year:2009-10)**

**Dy. CIT, Circle 5(1)**  
Aaykar Bhavan, 8<sup>th</sup> Floor,  
P7, Chowringhee Square,  
Kolkata-700069  
West Bengal

**(Appellant)**

**PAN No. AAACG9903B**

**PLG Power Ltd.**  
6<sup>th</sup> Floor, 11 Pollock Street  
**Vs.** Kolkata-700001, West Bengal

**(Respondent)**

**Assessee by** : None  
**Revenue by** : Shri B. Satyanarayana Raju, DR

**Date of hearing:** 25.02.2025  
**Date of pronouncement :** 28.03.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the Revenue against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 17.11.2023 for the AY 2009-10.

02. At the outset, we note that there is a delay in filing the appeal by the Revenue by 126 days for which the Revenue has filed condonation petitions. In the condonation petitions, the Revenue has stated that the delay in filing the appeal was on account of time taken in taking administrative approvals and therefore, may be condoned. After considering the contentions of the revenue and the reasons stated in the condonation petition, we find that the delay in filing the appeals is for genuine and bonafide reasons and accordingly, the same is condoned by admitting the appeals for adjudication.



03. The ground raised by the Revenue is as under:-

"1. Whether in the facts and circumstances of the case, the CIT (A) was justified in deleting the addition of ₹26,60,32,067/- made on account of increase in inventory, without appreciating the fact that the assessee did not furnish any explanation for such increase in the value of the inventory.

2. Whether in the facts and circumstances of the case, the CIT (A) was justified in deleting the addition of ₹4,91,906/- being the amount of income made on the basis of ITS details, without assigning any valid reason."

04. The issue raised in ground no.1 is against the deletion of addition of ₹26,60,32,067/- by the Id. CIT (A) made by the Id. AO on account of increase in inventory for the reason that the assessee did not furnish any explanation for such increase.

05. The assessee filed the return of income on 30.09.2009, declaring total income t ₹1,76,19,160/-. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and statutory notices were duly issued and served upon the assessee, however, there was no compliance to the said notices. Finally a show cause notice was issued on 14.11.2011, as to why the assessment should not be framed u/s 144 of the Act. But the same was also returned unserved along with summons issued by the Id. Assessing Officer. Thereafter, the Id. AO on the basis of information available in the balance sheet made an addition in respect of share application money, increase in loan funds, increase in sundry creditors and sundry increase in advance from customers aggregating to ₹44,00,02,044/- and added the same to the income of the assessee. Besides, the Id. AO also made an addition of ₹26,60,32,067/- on account of increase in inventories of ₹26,60,32,067/-, addition to fixed assets amounting to ₹20,82,58,144/- and addition of Miscellaneous Expenses of ₹19,29,968/-, ₹3,46,96,171/- on account of manufacturing expense,



selling expenses, administrative expenses, Interest and other finance charge and ₹4,91,906/- on the basis of ITS details.

06. In the appellate proceedings, the Id. CIT (A) deleted the addition in respect of increase in inventories and addition of income on the basis of ITS by observing and holding as under:-

*"4.0 Assessee in its grounds of appeal no. 4 has challenged the addition of Rs.26,60,32,067/- on account of inventory of stock. He has labelled this addition as arbitrary. In the statement of facts, the appellant has stated that the A.O. had not only added the credit entries but has also added the debit entries. The Assessing Officer at para 4 pf his order has given his comment in this regard as under:-*

*As per inventory in schedule G there is an increase of by Rs.26,60,32,067/-. In the absence of any explanation the assessee is taken as unexplained investment u/s 69C of the I.T. Act 1961. Penalty proceedings u/s 271(1) (c) is separately initiated.*

*4.1 It appears that the Assessing Officer has not given any factual reason for making the addition. A query was asked from the assessing officer in the remand report about this addition. The query is as under:-*

*3. There have been addition of items debited in the Balance Sheet like inventories and fixed assets. If addition of Rs.44,00,00,000/- on account of credit entries were already made how and why the addition of these items were made. Can these be not treated as double /duplicate addition.*

*4.2 The Assessing Officer in his remand report dated 03.11.2023 has responded to the query as under: -*

*3.1 In this regard, it may be stated that, the assessment order has not brought anything or record as to why the theory of telescoping has not been applied in the assessment order. Accordingly, applying the theory of telescoping, additions made on account of unexplained liability can be presumed to be the source of the increase of assets to the extent of additions made on account of unexplained liability.*

*4.3 From perusal of para 4 of the Assessment Order it is found that addition has been made on account of absence of explanation (compliance by the assessee). This, in itself, cannot be a ground of addition when the source of funds have been added u/s 68. It is a fact that the company has brought money in the form of share application money, creditors, advance etc. Though these items have been treated as unexplained credit u/s 68 but there is no denying the fact that the money was there. If money was there, money must be lying in any form i.e. cash, bank, assets etc. The present Assessing Officer also in his remand report has not given any convincing reply in favour of the addition. He has suggested the theory of presumption that investment in inventory might have been made out of the money added u/s 68 on account of*



*unexplained liability. The Assessing Officer passing the order and the Assessing officer sending the remand report has not provided any reason on explanation other than the non-compliance by the assessee. In view of these facts and availability of fresh money during the year which has been treated as unexplained credit u/s 68, the addition of Rs.26,60,32,067/- is deleted.*

*5.0 Ground no.5 is about addition of Rs.3,46,96,171/- on account of manufacturing, selling and administrative expenses and sum of Rs.4,91,906/- on account of TDS as unexplained expenditure u/s 69C of the I.T. Act, 1961. The only reason for addition of expenses was on account of non-compliance. The appellant has not complied even during the appeal proceeding. Even in the grounds of appeal and statement of facts, nothing is worth cognizance to decide in favour of the assessee. However, it is a fact that the appellant has shown an income of Rs. 1,76,19,160/-. Some expenditure must have been done for earning this income. So, taking a reasonable approach, 50% of the expenditure out of Rs. 3,46,96,171/- is allowed. The assessee gets a relief of Rs. 1,73,48,086/-. From perusal of para 6 of the order, I get the impression that the assessee company has deducted TDS of Rs. 4,91,906/-. The appellant in the last para of the statement of facts has stated that this addition is also on account of expenditure u/s 69C. It is not so proved but prima facie it appears that the TDS related to the same expenditure, which has been disallowed and added u/s 69C. In any case benefit of doubt goes to the assessee. So, this addition of Rs. 4,91,906/- is also deleted."*

07. After hearing the rival contentions and perusing the materials available on record, we find that the Id. CIT (A) has rightly deleted the addition in respect of increase in inventories as well as income added on the basis of ITS details. So far as the deletion of addition of ₹26,60,32,067/-, is concerned the Id. CIT (A) called for the remand report from the Id. Assessing Officer for this addition and when the Id. AO failed to give any reasons for the same, the Id. CIT (A) deleted the same. We note that in this case, the Id. AO has already added in the liability sites of the balance sheet of ₹44.00,02,044/- which comprises of 4 items namely share application money of ₹5,13,55,000/-, loans received of ₹24,45,44,001/-, increase in sundry creditors of ₹9,37,87,858/- and advance from customers of ₹5,03,15,185/-. We do not find any infirmity in the order of the Id. CIT (A), therefore, the order of Id. CIT (A) is confirmed on this issue. The ground no.1 of the Revenue's appeal is dismissed.



08. So far as the ground no.2 is concerned, the Id. CIT (A) noted that the addition of ₹3,46,96,171/-, was made on account of manufacturing, selling, administrative expenses and a sum of ₹4,91,906/- was on account TDS which was treated as unexplained expenditure u/s 69C of the Act. The Id. CIT (A) noted that this addition was only made for the reason that assessee was non-compliant. Therefore, the Id. CIT (A) has rightly deleted the addition as prima facie it appears that TDS relates to the same assessment year which was disallowed u/s 69C of the Act and thus, the Id. CIT (A) allowed the benefit of doubt. Accordingly, we are also inclined to confirm the order on this issue. The ground no.2 of the appeal of the Revenue is dismissed.

09. In the Result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 28.03.2025.

Sd/-  
(SONJOY SARMA)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 28.03.2025

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata