

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 2924/DEL/2023
Assessment Year: 2012-13

Ess Kay Fabrication, 519, Sector 37, Pace City-2, Gurgaon (Haryana) Delhi- 122001 PAN No. AAAFE3257B	Vs.	Income Tax Officer, Ward 1(4), Gurgaon
(Appellant)		(Respondent)

Assessee by:	Shri Suraj Bhan Nain, Adv.
Department by:	Shri Rajesh Kumar Dhanesta, Sr. DR
Date of Hearing:	03.03.2025
Date of pronouncement:	16.05.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal filed by the appellant/assessee is against order dated 21.08.2023 passed by Learned Commissioner of Income-Tax(Appeals), Delhi/National Faceless Appeal Centre(NFAC) (hereinafter referred as 'Ld. CIT(A)') under Sections 250 of the Income-Tax Act, 1961 (hereinafter referred as "the Act") arising out of assessment order dated 30.03.2015 under Section 143(3) of the Act by the Income Tax Officer, Ward-1(4), Gurgaon

(hereinafter referred as 'Ld. A.O.')

for the assessment year 2012-13.

2. Brief facts of the case are that return of income declaring an income of Rs. 1,49,430/- was filed on 06.09.2012. The case was selected for scrutiny in CASS. Statutory notice under Section 143(2) of the Act was issued on 10.08.2013. Subsequently, statutory notices and questionnaire were issued. Shri Vikas Gupta, CA attended the proceedings from time to time. Written replies of the assessee were filed. On perusal of the balance sheet of the assessee as on 31.03.2012, it was noticed that there is capital introduction of Rs.1,15,000/- by partners of the firm. The Learned Authorised Representative for the assessee filed copy of capital account of the partners. From capital account, it is noticed that the two partners, Smt. Saroj Yadav and Sh. M.S. Yadav introduced Rs. 70,00,000/- and Rs. 45,00,000/- respectively in the firm. The Learned Authorised Representative of the assessee vide Order Sheet Entries dated 17.2.2015 and 11.3.2015 was specifically asked to file the source of capital addition. The source of Rs. 70,00,000/- from Smt. Saroj Yadav was claimed as gift by Mr. Vijay Singh Yadav and Ms. Preeti Yadav. In the gift deeds, following was noticed:-

- (i) No occasion for gift has been furnished.
- (ii) No date of making the gift deed has been mentioned in the gift deed of Ms. Preeti Yadav.
- (iii) No source and date of loan given by the donors which have later on changed it to gift have been furnished.
- (iv) No bank statement/ITR of the donors could be furnished.
- (v) The gift deed has not been signed by the donee Smt. Saroj Yadav.

3. On completion of assessment proceedings, Ld. AO vide order dated 30.03.2015 made an additions of Rs.95,00,000/-, Rs.1,19,84,000/-, Rs.4,34,738/- and 1,22,196/-.

4. Against order dated 30.03.2015, appeal was preferred before the Ld. CIT(A), which was partly allowed vide order dated 21.08.2023. Additions of Rs.95,00,000/- and Rs.1,19,84,000/- were upheld and other additions deleted.

5. Being aggrieved, appellant/assessee preferred present appeal.

6. Learned Authorised Representative for appellant/assessee, submitted that Ld. CIT(A) grossly erred in confirming addition of Rs.95,00,000/- made by Ld. AO on account of Saroj Yadav for book entry transfers of outstanding loans Mahavir Singh Yadav

Rs.25,00,000/- ignoring submissions made by assessee firm, evidence adduced in appellate proceedings, facts and circumstances of the case and the decided cases on the issue. Ld. CIT(A) grossly erred in confirming addition of Rs.1,19,84,000/- (a) Rapid Portfolio Private Ltd. Rs.25,00,000/-; (b) Eagle Polymers Pvt. Ltd. and Rs.5,00,000/-; (c) Goldline Polymers Pvt. Ltd.; Rs.40,00,000/-; (d) IBEX Rs.5,00,000/-; Shere Punjab Rs.10,00,000/-; (f)Shiv Ravi Marketing Pvt. Ltd. Rs.5,00,000/-; (g) The Mechanical Energy Rs.17,00,000/- total from (a) to (g) Rs.1,07,00,000/- and interest @ 12% on above amount Rs.12,84,000/- Total Rs.1,19,84,000/- out of unsecured loan, with reference to section 68 of the Act, ignoring the submissions made by assessee firm, evidences produced in appellate proceedings, facts and circumstances of the case and the decided cases.

7. Learned Authorised Representative for the assessee submitted that Ld. CIT(A) grossly erred in not admitting additional evidences produced during appellate proceedings, which are vital and essential to decide the appeal in judicious manner and also goes to the root of the issue involved, therefore, appellate order is against the principles of natural justice and is

bad in law. Ld. CIT(A) grossly erred in not allowing additional depreciation allowable on the addition of new Plant and Machinery during the year to which assessee is duly eligible under law. Reliance was placed on following decisions where partners admitted having made capital contributions to the assessee firm, even if it is was considered unexplained investment, it could only be assessed in the individual hands of the partners, if that was permissible:

- (i) Commissioner of Income-tax v. Metal & Metals of India [2007] 208 CTR 457 (Punj. & Har.);
- (ii) Commissioner of Income-tax v. Burma Electro Corpn. [2003] 126 TAXMAN 533 (Punj. & Har.)
- (iii) Commissioner of Income-tax v. Md. Perwez Ahmed [2004] 268 ITR 381 (PAT.)
- (iv) Commissioner Income-tax of V. Metachem Industries [2000] 245 ITR 160 (MP)
- (v) Commissioner of Income Tax - I, Patna v. Anurag Rice Mills [2017] 88 taxmann.com 420 (Patna)
- (vi) Nova Medicare v. Income-tax Officer [2023] 150 taxmann.com 363 (Telangana)
- (vii) Principal Commissioner of Income-tax-4 v. Vaishnodevi Refoils & Solvex [2018] 89 taxmann.com 80 (Gujarat)

[Department SLP dismissed-Principal Commissioner of Income-tax V. Vaishnodevi Refoils & Solvex [2018] 96 taxmann.com 469 (SC)]

(viii) Shri Gems V. ITO in ITA No. 2912/Del/2014
Order dated- December 20, 2017[ITAT-New Delhi]

8. Learned Authorised Representative for the appellant/assessee submitted that Ld. CIT(A) erred in confirming the addition of Rs.1,84,000/-. There was an opening balance of Rs.36,33,459/- as on 01.04.2011 and the assessee firm received loan of Rs.40,00,000/- through four RTGS (Rs.7,00,000+8,00,000+13,00,000+12,00,000) on 08.09.2011.

9. Learned Authorised Representative further drawn our attention on the decision of Ld. CIT(A) towards additional ground regarding the claim of additional depreciation under Section 32(1)(iia) of the Act at the rate of 20% of cost of new machinery acquired and installed during FY 2011-12 of Rs. 1,33,30,382 (more than 180 days Rs. 42,03,372 + less than 180 days Rs. 91,27,010) [Page 43 of order of CIT(A)]. It is submitted that the addition to machinery has been duly shown in the deprecation chart as per the I.T. Act. However, Ld. CIT(A) did not allow additional depreciation observing that "The appellant has neither

submitted any documents nor explained as to how it fulfils the conditions laid down u/u 32(1)(iia) of the Act."

10. Learned Authorised Representative for the Revenue relied on the order of Ld. CIT(A).

11. From examination of record, in the light of aforesaid rival contentions, it is crystal clear that Ld. CIT(A) upheld addition of Rs.95,00,000/- made by Ld. AO on account of capital addition of partners Smt. Saroj Yadav, Rs.70,000/- and Rs.25,00,000/- by M.S. Yadav. Book entry Book entry transfers of outstanding Loans of Ms. Preeti Yadav (Daughter) Rs.49,98,311, Mr. Vijay Yadav (Son) Rs.22,01,616/- totalling to Rs. 71,99,927/-. Ms. Preeti Yadav has an old balance from earlier years and there is no introduction of any sum during the year. Copy of ledger account is annexed to at PB-Page 2. Mr. Vijay Yadav has an old balance of Rs. 1,96,236/- and introduced fresh loan of Rs. 20,00,000/- during the year, which was paid to the firm after receiving the amount from his father Sh. M.S. Yadav, copy of ledger account and bank account statements of relevant period of Mr. Vijay Yadav and Sh. M.S. Yadav (Annexed to PB at pages 5 to 8). Hence, no addition was warranted on account of addition in capital account of Smt. Saroj Yadav.

11.1 Sh. M.S. Yadav has paid Rs.25,00,000/- on 07.09.2011 from his bank account with Indian Overseas Bank

- Confirmation of Sh. M.S. Yadav.
- Bank Account Statement of Sh. M.S. Yadav.
- Copy of ITR-V for AY 2012-13

(PB-Page 10-14)

11.2. In view of confirmation of Shri M.S. Yadav, bank account of statement of Shri M.S. Yadav, copy of ITR for assessment year 2012-13 (PB Page Nos.10-14), no addition was warranted on account of addition in capital account of Sh. M.S. Yadav was warranted. Therefore, the addition of Rs.95,00,000/- deserves to be deleted. Ground no.2 is allowed.

12. Regarding cash credits of Rs.25,00,000/- by Rapid Portfolio Pvt. Ltd., there was an opening balance of Rs.26,00,253/- as on 01.04.2011. The assessee received a loan of Rs.25,00,000/- on 23.03.2012. The assessee filed following documents:

- “(i) Copy of confirmation from the creditor (PB-Page 44)
- (ii) Copy of bank account statement with Punjab National Bank of the creditor for the relevant period. (PB-Page 45)
- (iii) Copy of ITR V (PB-Page 69)

(iv) Copy of Audited Balance Sheet of the creditor as at 31.03.2012. (PB-Page 79-108)

(v) Copy of Company Master Data from MCA showing the company status as 'Active'. (PB-Page 70)

(vi) The assessee has repaid the loan in F.Y. 2020-21 (7,00,000 on 30.06.2020 + 20,00,000 on 07.08.2020 + 25,00,000 on 11.09.2020 + 20,88,000 on 19.10.2020 + TDS of Rs. 18,180 on 31.03.2021) duly reflected in TAR in F.Y. 2020-21 (PB-Page 60).

(vi) The assessee paid interest on loan and deducted TDS.”

12.1 Regarding Rs.5,00,000/- dated 23.08.2011 by Eagle Portfolio Investment Pvt. Ltd., following documents were filed:

(i) Confirmation from the creditor -(PB page 110);

(ii) Copy of bank account statement of the creditor for the relevant period – (PB page 112);

(iii) Copy of ITR V for assessment year 2012-13 – (PB page 109);

(iv) Copy of balance sheet of the creditor dated 31.03.2012 reflecting the loan to the assessee under the head 'Long Term Capital Gain and Advances – (PB 123);

(v) Copy of the creditor company Master Data from MCA showing status as 'Active' – (PB 118);

(vi) Loan was repaid on 04.01.2013 through banking channel i.e. Indian Overseas Bank ; (PB 112 duly reflected in TAR – Column 31(b) PB page 115); &

(vii) The assessee had paid interest on loan and deducted TDS.

12.2 Regarding Rs.40,00,000/- dated 08.09.2011 by M/s. Goldline Polymers (P) Ltd., there was an opening balance of Rs. 36,33,459/- as on 01.04.2011 and the assessee firm received loan of Rs. 40,00,000/- through four RTGS (7,00,000 + 8,00,000 + 13,00,000+ 12,00,000) on 08.09.2011, the details documents of as follows:

- (i) Copy of confirmation from the creditor. (PB-Page 15)
- (ii) Copy of bank account statement of Kotak Mahindra Bank for the relevant period. (PB-Page 16)
- (iii) The assessee has repaid Rs. 75,00,000/- in next F.Y. 2012-13 (PB-Page 18) (5,00,000 on 10.12.2012 + 20,00,000 on 24.12.2012 + 15,00,000 on 14.03.2013 + 20,00,000 on 14.03.2013 + 15,00,000 on 15.03.2013) duly disclosed in TAR (PB-Page 26) and paid Rs. 8,75,345/- during F.Y.2016-17 (Refer TAR - PB-Page 38).

12.3 Regarding Rs.5,00,000/- dated 23.08.2011 by Ibex Infotech Pvt. Ltd., following documents were filed:

- (i) Confirmation from the creditor. [PB-Page 115]
- (ii) Copy of bank account statement of the creditor for the relevant period. [PB-Page 153]
- (iii) Copy of ITR for AY 2012-13 & AY 2013-14 [PB-Page 154-155]
- (iv) Copy of Balance Sheet of the creditor as at 31.03.2012 [PB-Page 170]
- (v) Copy of the creditor company Master Data from MCA showing status as 'Active'. [PB-Page 181]

(vi) The loan was repaid on 07.06.2017 through banking channel Kotak Mahindra Bank, duly reflected in TAR Column 31(c) [PB-Page 169]

12.4 Regarding Rs.10,00,000/- dated 23.08.2011 by Sher-e-Punjab Engineering Works, documents produced are as follows:

- (i) Confirmation from the creditor. [PB-Page 151]
- (ii) Copy of ITR V for A.Y. 2012-13 [PB-Page 152]

12.5 Regarding Rs.5,00,000/- dated 23.11.2011 by Shiv Ravi Marketing Pvt. Ltd., documents are as under:

- (i) Confirmation from the creditor. [PB-Page 125]
- (ii) Copy of ITR V for A.Y. 2012-13 [PB-Page 146]
- (iii) Copy of Balance Sheet of the creditor as at 31.03.2012 [PB-Pages 147-151]
- (iv) The loan was repaid on 11.10.2018 through banking channel Kotak Mahindra Bank, duly reflected in TAR Column 31(c) [PB-Page 138]

12.6 Regarding Rs.17,00,000/- (i.e. Rs.6,00,000/- dated 09.11.2011, Rs.5,00,000/- dated 12.11.2011 and Rs. 6,00,000/- dated 17.11.2011) by The Mechanical Energy, the details of documents are as follows:

- (i) Confirmation from the creditor. [PB-Page 183]

(ii) Copy of bank account statement of the creditor for the relevant period. [PB-Page 187-229]

(iii) Copy of ITR for AY 2011-12, AY 2012-13 & AY 2013-14 [PB-Page 232,230 & 231]

(iv) Copy of Balance Sheet of the creditor as at 31.03.2011 [PB-Page 235-243]

12.7 In view of above documents, it is evident that all the persons creditors had given loans, the assessee had received and repaid the amounts through banking channel. The creditors had filed their ITRs. The assessee had paid interest and deducted TDS on the loan to the creditors. Therefore, addition of Rs.1,19,84,000/- is unsustainable and deleted. Ground of appeal no. 3 is allowed.

13. Ld. CIT(A) admitted the additional ground regarding claim of additional depreciation under Section 32(1)(iia) of the Act at the rate of 20% of cost of new machinery acquired and installed during FY 2011-12 of Rs. 1,33,30,382 (more than 180 days Rs. 42,03,372 + less than 180 days Rs. 91,27,010) [Page 43 of order of CIT(A)]. The addition to machinery has been duly shown in the deprecation chart as per the I.T. Act. However, Ld. CIT(A) did not allow additional depreciation observing that "The appellant has neither submitted any documents nor explained as to how it

fulfils the conditions laid down under Section 32(1)(iia) of the Act. The assessee is engaged in manufacturing Copper Bended Tubing Components [As mentioned TAR-Col. 8(a) and addition of machinery has been shown in the depreciation chart as per Income Tax Act available on record. Therefore, Ld. AO is directed to consider additional depreciation under Section 32(1)(iia) after considering additional evidence regarding the claim.

14. Ground nos. 4 and 5 are allowed.

15. Ground nos. 1 and 6 are left open being not pressed.

15. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 16/05/2025.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 16/05/2025
Mohan Lal

Copy forwarded to -

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4. CIT (A)
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