

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'DB': NEW DELHI.**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.133/DDN/2024  
(Assessment Year: 2013-14)**

ACIT  
International Taxation  
Aayakar Bhawan 13A  
Subhash Road, Dehradun

vs.

Power Machines  
24 Ferozeshah Road  
New Delhi  
**(PAN: AADCP2816R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY: Shri Ansaal Sachar, Adv.  
REVENUE BY: Sh. Mohan Lal Joshi, Sr. DR

Date of Hearing: 14.01.2026  
Date of Order : 27.02.2026

**ORDER**

**PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

The Revenue has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals), Noida-2 [“Ld. CIT(A)”, for short] dated 13.05.2024 for the Assessment Year 2013-14.

2. Brief facts of the case are that the assessee for the captioned assessment year (AY), filed its return of income on 30<sup>th</sup> September 2013 declaring losses amounting to Rs. 66,870,483/-. The return of income filed by the assessee was selected for scrutiny and the assessment was completed under section 144/144C(13) of the Income Tax Act, 1961 (in short ‘Act’) in

consonance with directions of the Ld Dispute Resolution Panel (DRP) at Rs. 106,810,379/-. Thereafter, the assessee preferred an appeal to Income Tax Appellate Tribunal (ITAT) wherein the tribunal directed the Assessing Officer (Ld. AO) to decide afresh after providing assessee an opportunity of being heard. The assessee is a foreign company registered under the laws of Russia. It is well experienced and have expertise in the engineering-design, manufacturing and supply of equipment sets for thermal, nuclear, hydro and gas-turbine power plants. In India, assessee entered into a contract with National Thermal Power Corporation Limited (NTPCL) for supply of equipment and to provide service facilities in connection with Balimela, Sipat and Barh projects which were involved in setting up of hydro-electric power generating facilities. During the year under consideration, the status of each project/ contract viz a viz their revenue/ status of operation is as under:

Sr. No.	Project Name	Contract Number	Site Status	Revenue
1	Balimela	OHPC-LMZ/01/2003	Completed	No income during subject year
2	Sipat	Bid Document No. CS-9518-108-2	Completed	No income during subject year
3	Barh	CS-9558-110-20FC-COA-4523	Completed	No income during subject year

2.1 Subsequently, the assessment in case of the assessee was completed under section 143(3)/144C(3)(b)/254 of the Act, determining the total income of the assessee at Rs. 104,546,281/- as against the loss declared by the assessee in its income tax return. The books of accounts of the assessee were rejected by the Ld. AO at the conclusion that no revenue has been reported and only expenses have been claimed, therefore there is discrepancy in reporting of operations. The Ld. AO further made addition of Rs. 7,54,699/- by considering 25% of total foreign exchange fluctuation gain of Rs. 3,018,797/- as reported in the profit & loss account as fee for technical services. In addition, the Ld. AO made an addition of Rs 103,791,582/- being remittance received from the head office for execution of project and incurring expenses in India as introduction of capital during the year.

**3.** Aggrieved with the above order, the assessee preferred the appeal before the Ld. CIT(A) and filed following grounds:

*“1. The Ld. AO has erred in laws and facts by computing the income of appellant at INR 104,546,281/- as against the loss reported by OJSC.*

*2. The Ld. AO has erred in laws and facts by rejecting the audited books of account of the appellant merely due to non-reporting of revenues from operations.*

*3. The Ld. AO has erred in laws and facts by bringing to tax foreign exchange fluctuation gains amounting to INR 3,018,797/- at an arbitrary rate of 25%.*

4. *The Ld. AO. has erred in laws and facts in considering the nature of transactions and holding head office transactions as undisclosed income under section 69 of the Act.*

5. *The Ld. AO. has erred in laws and facts by not considering the evidences and information as provided by the appellant.*

6. *The Ld. AO. erred in laws and facts by initiating penalty proceedings under section 271(1)(c) of the Act.*

7. *The Ld. AO. has erred in acknowledging the fact that the appellant has neither concealed any income nor furnished inaccurate particulars of income in respect of the addition made to warrant levy of penalty."*

4. Before the Ld. CIT(A), the assessee filed a detailed submission as under:

*“Ground No. 4*

*The Ld. AO. has erred in laws and facts in considering the nature of transactions and holding head office transactions as undisclosed income under section 69 of the Act.*

*and*

*Ground No. 5*

*The Ld. AO. has erred in laws and facts by not considering the evidence and information as provided by the appellant.*

*For sake of brevity, ground no. 4 & 5 have been merged and responded together as under:*

*In the subject assessment order, the Ld. AO held that there has been an introduction in capital during the subject AY. Whereas, in fact, the appellant during the course of assessment proceedings duly submitted that OJSC is a project office of a Russian company as per FEMA guidelines and do not have any share capital. The amount shown under head share capital is in fact the balance of head office account where money is received from Head office for project office expenses and payments to be made on behalf of head office are controlled. As such there is no separate column in Income Tax return to show such an account. Hence, this balance has been controlled under the head Share capital' due to administrative reason.*

*During the year under consideration, there were some liabilities/expenses to be met by project office on behalf of head office for which the funds were remitted by head office to project office account. These receipts were recorded in project office's books as share capital due to system constraints discussed above. The Ld. AO has grossly erred in holding head office transactions as undisclosed income under section 69 of the Act.*

*Reliance is placed on Mohammed Meerakhan (P.M.) vs Commissioner of Income-tax [TS-7-SC-1969] wherein it was held that it is not possible to*

*evolve any formula to determine nature of transaction; all relevant factors and circumstances together determine the character of transaction. It depends in each case on the total impression and effect of all the relevant factors and circumstances proved therein and which determine the character of the transaction.*

*In the instant case, despite a complete and valid explanation by the appellant, the Ld. AO went on to tax the receipts transferred from head office as unexplained investments under section 69 of the Act. The Ld. AO completely disregarded the head office account as produced by the appellant during the course of assessment proceedings.*

*Notwithstanding the above, the Ld AO considered receipt from head office as increase in share capital and accordingly it is a capital receipt. Under the Income tax law, capital receipt is not considered as income and thus not taxable. Even going by the mindset of the AO, the increase in capital cannot be termed as undisclosed receipt as it is coming from an identified source and in no situation can to considered as a taxable receipt.*

*Further, as submitted by the appellant vide submission dated 05 May 2016, the Ld. AO has failed to recognize that these receipts were all for the purpose of business. The fact that such amount has been received from the head office is well known and the fact, that between the project office and head office, there cannot be any accrual of income has been ignored. The source from where the monies emanated is beyond doubt or denial. In such circumstances, to make an addition under section 69 of the Act, is grossly arbitrary, totally erroneous and wholly uncalled for.*

5. After considering the detailed submission of the assessee, Ld. CIT(A) allowed the appeal of the assessee by observing as under:

**“5. Decision**

*I have carefully considered the facts and circumstances of the case, the order of the Ld. AO and the submission of the appellant in response to the hearing notices. All the grounds of appeal are interconnected and relate to the primary issue. The issue imbibed in the grounds of the appeal is adjudicated as under.*

*5.1 Ground no. 1 and 2: The said grounds are interrelated and thus have been dealt together. Vide these grounds, the appellant has challenged the AO's action of disregarding the books of accounts produced by the appellant and converting the taxable loss into taxable income as reported in the tax return. From the facts and findings in this case, the rejection of books of accounts by the AO without disclosing any specific defect upon which the rejection has been based is not justified. The AO is not justified in picking up only the income of the appellant from the books of accounts and ignoring the expenses incurred during the subject year, without providing any specific reason for his actions.*

5.2 *The appellant has also drawn my attention to the fact that documentary evidences were produced before the AO and proper explanation was provided by the appellant wherever required.*

*In view of the overall discussion made above and respectfully following Hon'ble Supreme Court in CIT v. Woodward Governor [2009] 312 ITR 254/179 Taxman 326 (supra) decision, the books of accounts produced by the appellant cannot be rejected till the Assessing Officer comes to know the reasons to be given that system does not reflect correct picture and true profits. The books of accounts maintained by the appellant are as required by law and are duly audited with an unqualified report and the AO has not provided an appropriate reason for rejecting the same.*

5.3 *Accordingly, the books maintained by the appellant should be considered after confirming that the audit and other regulatory compliances are appropriately covered as per law. Therefore, these grounds are decided in favour of the Appellant and the AO is directed to consider the profit and loss account during the assessment after due consideration of the applicable laws.*

6. *Ground no. 3 I have perused the facts stated in the assessment order as well as the facts stated by the appellant in their submissions. In the said ground the Assessing Officer after rejecting the books of accounts of the appellant company, picked abruptly the value related to exchange fluctuation gains and on an adhoc basis of 25% considered it as an Income of the appellant. This is an alleged violation of judicial discipline by the AO. Keeping in view that the amount of Rs 30,18,797 has been wrongly added as income, the addition made is hereby deleted and the ground allowed to the appellant.*

7. *Ground no. 4 and 5 The said grounds are interrelated and thus have been dealt together. Vide these grounds, the appellant has challenged the AO's action on interpreting the capital receipts received from the head office as an undisclosed Income by the appellant. This is an alleged violation of judicial discipline by the AO. Keeping in view that the amount of Rs 10,37,91,582 has been clearly stated as receipts from the shareholders (head office in this case as it is a project office of a foreign company registered in India) and under no provision of law a capital receipt from the shareholders/ head office can be regarded as unexplained Investment as the entire money is appearing in the books of accounts of the company and received through proper banking challan from outside India. The addition thus made by the AO is hereby deleted and the ground allowed to the appellant."*

6. Aggrieved, the revenue is in appeal before us raising following grounds:

*"1 (i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the facts that, the AO rejected the books of*

*accounts and disallowed the loss shown of Rs. 6,68,70,483/-in the return. The Ld. CIT(A) has mentioned in her order that the rejection of books of accounts by the AO is without disclosing any specific defect upon which the rejection has been made, is not justified. The Ld. CIT(A) has completely ignored the findings of AO in para 4 for rejection of books of account*

*2 (ii) Whether the CIT (A) has erred in deletion of addition of Rs 10,37,91,582/- as 'Unexplained Investment' u/s 69 of the Income Tax Act, 1961. The Ld. CIT (A) has treated this as a capital receipts from the shareholders/head office, but ignored the fact that even after repeated requests from AO, no evidence/material was provided by the assessee during the assessment proceedings, therefore, the AO was correct in adding the amount as 'Unexplained Investment' in absence of any documentary proof*

*3. Whether the CIT (A) has erred in deletion of addition of Rs. 30,18,797/-, as in the assessment order it was clearly mentioned that that assessee has PE in India and the service offered by the assessee are specialized technical services the revenue received in India are liable for taxation in India. The AO determined profits u/s 44DA @25% on amount of Rs. 30,18,797/-, i.e. Rs. 7,54,699/-, whereas Ld. CIT(A), in para 6 of her order has wrongly deleted the addition of Rs. 30,18,797/- without considering the facts narrated by the AO in her assessment order.”*

7. At the time of hearing, Ld. DR brought to our notice detailed findings of the Ld. Assessing Officer and relied on the same.

8. On the other hand, the Ld. AR submitted that the Assessing Officer proceeded to make the various additions on the basis that the assessee has not declared any revenue for the year under consideration. He submitted that the assessee is only extension of foreign office and it receives regular funds from head office. The Assessing Officer proceeded to make the addition unjustly. He submitted that the addition was proposed for the simple reason that books were not produced. He relied on the detailed findings of the Ld. CIT(A).

9. Considered the rival submissions and material placed on record, we observed that the assessee is a project office and it only oversees the project undertaken in India. We noticed that the AO in the para no 4, he only discussed the fact that the assessee had not declared any income during the year and only claims the expenditures, merely on the above reasons, he proceeded to reject the books, he has not brought any cogent material to substantiate the above action. At the same time, we observed that he restrict himself to make addition on the forex loss claimed by the assessee as Fees for technical services and also proceeded to add the remittance from its head office as undisclosed income of the assessee. This kind of assessments bring bad name to our country, proceeding to make the addition without their being any substance or material with the officers. After considering the detailed findings of Ld CIT(A), we are inclined not to disturb the same. In the result, appeal preferred by the revenue is dismissed.

10. In the result, appeal filed by the revenue is dismissed.

**Order pronounced in the open court on this 27<sup>th</sup> February, 2026.**

**Sd/-**

**(SATBEER SINGH GODARA)  
JUDICIAL MEMBER**

**Sd/-**

**(S.RIFAUZ RAHMAN)  
ACCOUNTANT MEMBER**

**Dated:27.02.2026**

**BINITA, SR. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI