

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA Nos. 643 & 644/Del/2024
(Assessment Years: 2014-15 & 2015-16)**

ACIT (OSD) Room No. 405, 4 th Floor, CR Building, IP Estate Delhi – 110001	Vs.	M/s Gemco Energy Ltd. Kaushambhi Road, Village Dinod, Bhiwani Haryana – 127111
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AADCG5971E		
Appellant	..	Respondent

**C.O. Nos.58 & 59/Del/2024
Arising out of ITA Nos. 643 & 644/Del/2024
(Assessment Years: 2014-15 & 2015-16)**

Gemco Energy Ltd. Kaushambhi Road, Village Dinod, Bhiwani Haryana – 127111	Vs.	ACIT (OSD) Room No. 405, 4 th Floor, CR Building, IP Estate Delhi – 110002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AADCG5971E		
Appellant	..	Respondent

Appellant by :	Sh. Gagan R. Khandelwal, Adv, Sh. JitendraWadhwa, CA Sh. Jaingd Kr. Jaiswal, Adv.
Respondent by :	Ms. Indu Bala Saini, Sr.DR

Date of Hearing	19.01.2026
Date of Pronouncement	18.02.2026

ORDER

PER ANUBHAV SHARMA, JM:

These appeals and cross objections preferred by the revenue and Assessee against the orders of the Ld. Commissioner of Income-tax (Appeals) (hereinafter referred to as the First Appellate Authority or 'the Id. FAA' for short) in appeals filed before him against the orders of the Id. Assessing Officer (hereinafter referred to as the Ld. AO, for short) passed u/s 143(3) of the Income-tax Act, 1961 (hereafter referred to as 'the Act'). Further details of the orders of the lower authorities are as under:-

ITA No. & AY	Ld. FAA who passed the appellate order	Appeal No. & Date of order of the Ld. FAA	AO who passed the assessment order & Date of order
643/D/24 2014-15	NFAC, Delhi	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1058804920(1) Dated 15.12.2023	DCIT, Circle-10(1) Dated 15.12.2016
644/Del/24 2015-16	NFAC, Delhi	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1058810735(1) Dated 15.12.2023	DCIT, Circle-10(1) Dated 19.12.2017

2. The assessee is a private limited company engaged in the production of electricity from biomass mustard husk, Guar husk, cotton waste, rice husk and other agriculture waste and comes under renewable energy project. The case of the assessee was opened to verify share capital received in AY: 2015-16 and share capital and unsecured loans received in AY: 2014-15. The assessing officer was not satisfied with the genuineness of transactions and made an addition of Rs.5,85,00,000/- u/s 68 of Rs.1,12,49,998/- and u/s 56 in AY: 2015-16 and made an addition of Rs.705,93,467/- u/s 68 of the Act.

3. Ld. CIT(A) has benefitted the assessee of the explanation for which department is in appeal and we find that amongst ground raised by the AO there is ground that ld. CIT(A) has failed to take into consideration the decision of Hon'ble Supreme Court in Rupal Jain Vs. CIT (2023) 152 taxman.com 346 (SC).

4. At the outset we consider this decision it appears that AO while raising the ground has relied the decision in Rupal Jain (supra) in perfunctory manner as that decision was in regard to an assessee who was an individual and in whose case an addition of Rs.63,58,520/- was made on the basis of unsecured loan which was deleted by the Tribunal itself. It was with

regard to addition of Rs.15,00,000/- arising out of introduction of Rs.15,00,000/- to the proprietorship concern that the Tribunal had sustained the addition for which assessee had subsequently filed appeal before Hon'ble High Court and the SLP of the assessee was dismissed. Thus, to rely the decision in Rupal Jain (supra) to contend that Id. CIT(A) has fallen in error in not following the ratio in Rupal Jain (supra) is not sustainable and on that counts alone the appeals of the revenue deserves to be dismissed.

5. Further, Id. DR has heavily relied impugned assessment orders and the findings for which we find that for AY: 2014-15 assessee had received share capital with share premium from Nine parties on the basis of the share valuation report prepared as per Rule 11A. Assessee had filed relevant evidence in the form of ITR of shareholders, bank statement of shareholders, copy of board resolution list of allottees. However, Assessing Officer had made additions in respect of four of the investors. In the appellate proceedings assessee filed evidence in the form of bank statements and source of payments. Thus, taking into account it was established that one of the investor Dinesh Sadana had invested Rs.1,38,00,000/- in previous year and Rs.19,00,000/- was actually received in the present assessment year. The

investment of Radhey Sham Dang of Rs.4,00,00,000/- was received in earlier years. Rakesh Mohan had money from fixed deposits closures and that became the basis to give relief to the assessee. We are of the considered view that assessee had sufficiently discharged the burden and in the absence of any evidence to the contrary at this stage the findings of Id. CIT(A) in regard to deletion of additions of Rs.607,00,000/- deserves no interference.

6. Then with regard to deletion of Rs.98,93,467/- of the addition made by the Assessing Officer on account of unsecured loan it comes up that assessee had filed copy of ITR bank statements and party confirmations of certain parties except M/s Gurudev Financial Services and M/s SaiMaa Associates and in appeal copy of ITR , copy of audited financial statements, source of income and bank statements were provided which have been considered by the Id. CIT(A) to make the deletion.

7. In regard to AY: 2015-16 the assessee had received share capital of Rs.418,74,980/- from 11 investors for which assessee claims they were existing shareholders or close relatives only. The share premium was determined as per Rule 11A and before the Assessing Officer copy of ITR of shareholder copy of bank statement of shareholder and copy of financial

statements were filed. However, AO was not satisfied with regard to 6 of the investor and made addition of Rs.585,00,000/-. Assessee filed additional evidence only and the copy of ITR and bank statement including source of each payment which have been relied by ld. CIT(A) to make deletion.

8. As with regard to addition of Rs.112,49,998/- u/s 56(2)(viib) of the Act. One of that shares of companies were transferred to related parties @ Rs.24 per share including face value of Rs.10 and premium of Rs.14 and assessee had claimed that value of share was determined as per Rule 11(UA) of the Act at Rs.19.48 per share. The AO only considered book value of Rs.19 and allowed the premium only to the extent of Rs.9 per share. However, ld. AO did not consider the fact that assessee had considered fair market value of immovable property while calculating the value per share as prescribed in Section 56(2)(viib) of the Act. The value of land as on 31.03.2014 was Rs.6,82,80,000/- whereas original purchase price as per books as on 31.03.2009 was Rs.289,96,986/-. Thus, this appreciation of Rs.896,83,013/- was considered to value the shares at Rs.24. We find that ld. CIT(A) has duly appreciated these aspects to benefit the assessee.

9. At the same time we find that AO has challenged the relief given by the Id. First Appellate Authority by relying additional evidences and Id. CIT(A) had called for remand report from the AO, then in spite of repeated reminders reflecting in the order of Id. CIT(A), the assessing officer had not responded on the additional evidences which have been relied by Id. CIT(A) to give relief to the assessee.

10. Thus, the grounds as raised in the appeal of department have no legs to stand. The grounds in both the appeals are accordingly rejected. The appeals of the revenue deserves to be dismissed and the Cross Objection filed by the assessee primarily supporting the impugned orders in the appeals stand allowed.

11. The appeals of the revenue are dismissed and Cross Objections filed by the assessee are allowed.

Order pronounced in the open court on 18.02.2026

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 18.02.2026

Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI