

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.618/Bang/2019
Assessment year : 2015-16

M/s. Edulink Private Limited, No.41/1, HAL Airport Road, Murugeshpalya, Bangalore – 560 017. <b>PAN: AABCE 4871B</b>	Vs.	The Income Tax Officer, Ward 2(1)(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Padamchand Khincha, CA
Respondent by	:	Shri Vikas Suryavamshi, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.07.2019
Date of Pronouncement	:	.07.2019

**ORDER**

*Per N V Vasudevan, Vice President*

This is an appeal by the assessee against the order date 26.03.2019 of the CIT(Appeals), Bengaluru-2, Bengaluru relating to assessment year 2015-16.

2. The only issue that arises for consideration in this appeal is with regard to the correctness of an addition of Rs.5,09,04,876 made by the Assessing Officer (AO).

3. The aforesaid addition was made by the AO under the following facts and circumstances. The assessee is a company engaged in the

business of commercial training of computer gaming, art and animation. In the course of assessment proceedings u/s. 143(3) of the Income-Tax Act, 1961 [“the Act”] for the AY 2015-16, the AO noticed from the audited financials of the assessee that assessee has shown a sum of Rs.5,09,04,876 under the head ‘Other current liability’ – “Share application money received (Amount received in excess of authorized capital – Note 1.1)”. In the Notes to the Accounts in Note 1.11, it was mentioned as follows:-

“1.11 Share application money received towards allotment of shares has been categorized under Other Current Liabilities pending increase in the authorized share capital”.

4. The break-up of the share application money received by the assessee, the Financial Years in which they were received are reflected in the ‘Other current liabilities’ were as follows:-

Financial Year	Amount Received	Remarks
2006-07	36,16,000	
2007-08	1,98,11,127	By 04/01/2008 crossed Authorized Share Capital limits of Rs.1.30 crore <b>(Rs.1,04,27,127/- received in</b>
2008-09	<b>1,74,20,589</b>	In excess of Authorized Share Capital
2012-13	<b>12,30,000</b>	In excess of Authorized Share Capital
2013-14	<b>50,00,000</b>	In excess of Authorized Share Capital
2014-15	<b>35,00,000</b>	In excess of Authorized Share Capital

5. The individuals who provided share application money were all non-residents and this fact is not disputed. The details of persons who contributed to the share application money and their status is as follows:-

Sl. no.	Name of the shareholders	Status (Foreign/NRI)	Amount Paid (Rs.)	% of share	PAN status
1	Ali Said Ali Al Urami	Foreign	4,00,000	5%	No PAN
2	Dr. Abdullah Saif Ahmed Al Sabahi	Foreign	1,68,87,750	30%	No PAN
3	Dr. M Shareef	Foreign	18,047		No PAN
4	Lefeer Muhamed	Foreign	2,43,88,000	35%	AGEPR1378
5	Shatoon Enterprises	Foreign	88,83,919		No PAN

6. The query of the AO was two-fold: (i) How the assessee received share application money in excess of authorized share capital of assessee; & (ii) receipt of share application money is liable to be taxed as income from other sources u/s. 56(2)(viib) of the Act. The provisions of sec.56(2)(viib) of the Act, reads as follows:-

Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i) .....

.....

(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate

consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Explanation.—For the purposes of this clause,—

- (a) the fair market value of the shares shall be the value—
  - (i) as may be determined in accordance with such method as may be prescribed; or
  - (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

whichever is higher;

(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation to clause (23FB) of section 10;”

7. In reply to the aforesaid query of AO, the assessee pointed out that—

- (i) the provisions of section 56(2)(viib) applies only to issue of shares. Since the assessee has received only share application money, those provisions are not attracted;
- (ii) the aforesaid provisions are applicable only when shares are issued for a consideration which exceeds face value in such shares. Since there was no premium charged by the

assessee, there is no question of invoking the aforesaid provisions; and

- (iii) the aforesaid provisions are applicable only for receipt of consideration for issue of shares by a person, who is a resident and since the persons from whom the assessee received share application money were non-residents, the aforesaid provisions are not applicable.

8. The assessee submitted that the fact that share application money received exceeds the authorized share capital of assessee will have no effect on the genuineness of transaction as it was only lack of awareness that the assessee received share application money beyond authorized share capital. The assessee also submitted that it would take necessary steps to increase its authorized share capital. The assessee gave details of the Foreign Inward Remittance Certificates (FIRCs) evidencing receipt of share application money from non-residents through inward remittances from outside India. The assessee submitted that even the provisions of section 68 of the Act cannot be applied by the AO because the assessee has established the identity of the share applicants, their creditworthiness and genuineness of the transaction.

9. The AO, however, was of the view that the act of receiving share application money in excess of authorized share capital of assessee was not in accordance with law and therefore money received cannot be considered as towards share application money. The AO therefore treated the money received from non-residents as income of the assessee. He ultimately brought the sum of Rs.5,09,04,876 to tax under the head 'income from other sources' for the following reasons:-

Conclusion:

11.1. Considering the following fact that:

11.1.1. Huge amount is received totally amounting to Rs.5.09 crore is received by the assessee company since financial year 2007-08.

11.1.2. The amount received crossed the limits of Authorized Share Capital on 04/01/2008.

11.1.3. No evidence is produced that the money is kept separately in bank account.

11.1.4. The entire money is utilized in the business.

11.1.5. No effort is made to increase the Authorized Share Capital till the date of this assessment order.

11.2. Further, the only reason quoted by the assessee for not increasing the Authorized Share Capital and allotment of shares is 'the lack of awareness which would be rectified in the due course by the company' is not acceptable from a corporate entity more particularly when the default is for 10 years.

11.3. The AR's submission that the money received is towards 'equity contribution' is not acceptable as the assessee company is not authorized to receive the same as 'Capital'. For the same reason it cannot be treated as capital receipt. As such the money received in excess of Authorized Share Capital cannot be termed as received for 'equity contribution'. The AR's submission is clearly an afterthought and doesn't hold water.

11.4. In view of the above, the money received and claimed as in excess of Authorized Share Capital can only fall under the head 'Income from Other Sources' under the Income Tax Act, 1961. Hence, an amount of Rs. Rs.5,09,04,876/- is treated as 'income from other sources' and is added to the returned income.

Add: Rs.5,09,04,876/- ”

10. On appeal by the assessee, the CIT(Appeals) confirmed the action of the AO. The CIT(A) did not address the contention of assessee as were

put forth before the AO. Aggrieved, the assessee is in appeal before the Tribunal.

11. The Id. counsel for the assessee reiterated the submissions as were made before the AO. He also brought to our notice that if the provisions of section 68 are sought to be applied, the AO or the CIT(A) has not brought on record as to which of the three ingredients necessary for making the addition u/s. 68 of the Act were present in the case of assessee. His next submission was that an addition u/s. 68 can be made in an assessment year relevant to previous year in which there was an entry of cash credit. He pointed out that the undisputed factual position is that during the previous year relevant to AY 2015-16, the assessee received share application money only to the tune of Rs.35 lakhs and therefore addition of Rs.5,09,04,876 made by the revenue authorities cannot be sustained.

12. The Id. DR relied on the order of the CIT(Appeals).

13. We have considered the rival submissions. The details of receipt of share application money on various dates given in page 50 of assessee's PB is enclosed as Annexure-I to this order. The assessee had applied to the Registrar of Companies for increase in authorized share capital of 32,90,000 equity shares and application money received from various share applicants was converted into equity shares under Board Resolution allotting shares to the various share applicants dated 26.03.2018 at page 57 of assessee's PB. We are of the view that in the light of evidence available on record, no case has been made out by the revenue for invoking the provisions of section 68 of the Act.

14. As far as invoking the provisions of section 56(2)(viib) is concerned, as rightly contended by the Id. counsel for the assessee, those provisions are applicable only for receipt of consideration for issue of shares from a

resident and not in the case of a non-resident. As we have already noticed, in the present case, the consideration for issue of share application money was received from non-residents. Secondly, those provisions are applicable only when the shares are issues over and above the face value of such shares. Admittedly, the shares have been subscribed at face value and there is no premium whatsoever. In the facts and circumstances of the case, we are of the view that the aforesaid provisions of law are also not attracted. There is no other basis on which the addition made by the AO and confirmed by the CIT(Appeals) can be sustained. In the circumstances, we hold that the addition made by the AO and confirmed by the CIT(A) is unsustainable and the same is directed to be deleted.

15. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 17<sup>th</sup> day of July, 2019.

Sd/-  
( JASON P. BOAZ )  
Accountant Member

Sd/-  
( N.V. VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 17<sup>th</sup> July, 2019.  
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.

**ANNEXURE-I**

Annexure 1

**EduLink Private Limited  
Summary of Share Application Money Received (Year wise)**

S/No	FY	Date of Receipt	Transferred by	FIRC NO	Received Bank	Account No.	Transferred from
1	FY 2006-07	20-Mar-07	Leifer Muhammed & Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
Total for FY 2006-07							
						<b>35,16,000</b>	
1	FY 2007-08	22-Aug-07	Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	SIB Cheque
2	FY 2007-08	22-Aug-07	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	SIB Cheque
3	FY 2007-08	5-Nov-07	Leifer Muhammed & Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	form Vellancode
4	FY 2007-08	6-Dec-07	Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
5	FY 2007-08	6-Dec-07	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	form Vellancode
6	FY 2007-08	4-Jan-08	Shatoon Enterprises		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
7	FY 2007-08	13-Feb-08	Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
8	FY 2007-08	15-Feb-08	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
9	FY 2007-08	14-Mar-08	Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
10	FY 2007-08	17-Mar-08	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	form Vellancode
Total for FY 2007-08							
						<b>1,68,11,127</b>	
1	FY 2008-09	16-Apr-08	Ali Arathi		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
2	FY 2008-09	16-Apr-08	Ali Arathi		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
3	FY 2008-09	29-Apr-08	Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
4	FY 2008-09	8-May-08	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
5	FY 2008-09	21-May-08	Shatoon Enterprises		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
6	FY 2008-09	21-Jun-08	Leifer Muhammed & Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
7	FY 2008-09	23-Jun-08	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
8	FY 2008-09	0-Aug-08	Leifer Muhammed		The South Indian Bank, Indirangar Branch	0399 73 334	form Vellancode
9	FY 2008-09	4-Sep-08	Leifer Muhammed & Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
10	FY 2008-09	1-Oct-08	Leifer Muhammed & Dr. Abdullah	1048	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
11	FY 2008-09	27-Oct-08	Leifer Muhammed & Dr. Abdullah	1949	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
12	FY 2008-09	25-Nov-08	Leifer Muhammed & Dr. Abdullah	1050	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
13	FY 2008-09	4-Nov-08	Dr. M Shareef	18,047	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
14	FY 2008-09	1-Jan-09	Leifer Muhammed & Dr. Abdullah	25,80,900	The South Indian Bank, Indirangar Branch	0399 73 334	form Vellancode
15	FY 2008-09	27-Jan-09	Leifer Muhammed & Dr. Abdullah	10,00,000	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
16	FY 2008-09	3-Mar-09	Leifer Muhammed & Dr. Abdullah	20,09,000	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
17	FY 2008-09	12-Mar-09	Leifer Muhammed & Dr. Abdullah	1053	The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
Total for FY 2008-09							
						<b>1,74,20,589</b>	
1	FY 2012-13	5-May-12	Leifer Muhammed & Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
2	FY 2012-13	9-Jun-12	Leifer Muhammed & Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
Total for FY 2012-13							
						<b>12,30,000</b>	
1	FY 2013-14	30-May-13	Dr. Abdullah		The South Indian Bank, Indirangar Branch	0399 73 334	Muscat
2	FY 2013-14	1-Jul-13	Leifer Muhammed		The South Indian Bank, Prepusarinda Branch	8542 73 136	form 50 32553 NRE
Total for FY 2013-14							
						<b>50,00,000</b>	
1	FY 2014-15	22-Sep-14	Leifer Muhammed		The South Indian Bank, Prepusarinda Branch OD Ac.	0542 81 5	form 50 32553 NRE
Total for FY 2014-15							
						<b>35,00,000</b>	
Grand TOTAL							
						<b>5,05,77,716</b>	

Opening share Application  
Share allotted against: Rs 1,23,27,160/-  
Balance  
Grand Total

1,23,27,160  
(1,20,00,000)  
3,27,160  
5,09,04,876

5,05,77,716  
3,27,160  
5,09,04,876

Tally  
Share application  
Share application