

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BANGALORE BENCH**

**BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

<b>ITA No.523/Bang/2019</b>
<b>Assessment Year : 2010-11</b>

M/s. Indusage Advisors Limited, #60, Vittal Mallya Road, Ashok Nagar, Bengaluru – 560 001. <b>PAN : AAACI 7137 H</b>	Vs.	The Deputy Commissioner of Income Tax, Circle –11(4) Bengaluru.
<b>Appellant</b>		<b>Respondent</b>

Assessee by	:	Shri. S. Ramasubramanian, CA
Revenue by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	23.02.2021
Date of Pronouncement	:	24.02.2021

**ORDER**

**PER SHRI N.V VASUDEVAN, VICE PRESIDENT :**

This is an appeal by the assessee against the order dated 14.01.2019 passed by CIT(A)-3, Bengaluru, relating to Assessment Year 2010-11.

2. The only issue that arises for consideration in this appeal by the assessee is as to whether the Revenue authorities were justified in adding a sum of Rs.2,94,57,825/- which was shown as receipt of share application by the assessee in its books of account, as unexplained credit under section 68 of the Income Tax Act, 1961 (the ‘Act’).
3. The assessee is a company engaged in the business of rendering corporate and investment advisory services. In the course of assessment proceedings for

Assessment Year 2010-11, the AO noticed that the assessee had shown infusion of capital of Rs.7,24,57,825/- in the form of share application money. The AO called upon the assessee to explain the receipt of share application money towards issue of share capital by the assessee by furnishing the name and address of the share applicant and other details. In response to the same, the assessee submitted that the share application money was received from M/s. Kivar Holding Private Limited (KHPL) and also produced ledger extract of KHPL as appearing in the books of accounts of the assessee which was as follows:-

<b>INDUSAGE ADVISORS LTD</b>				
<b>KIVAR HOLDINGS PVT LTD</b>				
<b>Ledger Account</b>				
<b>1-Apr-2009 to 31-Mar-2010</b>				
<b>Date</b>	<b>Particulars</b>	<b>Veh Type</b>	<b>Debit</b>	<b>Credit</b>
17/07/2009	Ch. No. : 321146 – SHARE APPLN MONEY – RECD			10000000.00
21/07/2009	Ch. No. : 321147 – RECD TOWARDS SHARE APPLN MONEY	HDFC BANK LTD – A/C NO. 0102320000747	Receipt	15000000.00
21/09/2009	Ch.No. : 321166 – SHARE APPLN MONEY	HDFC BANK LTD – A/C NO. 0102320000747	Receipt	18000000.00
				***This amount will be adjusted against the Consultancy Charges payable to Indusage Advisors Ltd
30/11/2009	BEING THE SHARE APPLICATION MONEY ADJUSTED AGAINST PRIMUS LOAN ACCOUNTED	PRIMUS – LOAN	Journal	29457825.00
				<u>72457825.00</u>
<b>Cr</b>	<b>Closing Balance</b>		<b>72457825.00</b>	
			<b>72457825.00</b>	<b>72457825.00</b>

4. In this appeal, we are concerned only with the sum of Rs.2,94,57,285/- which was the share application money received on 30.11.2009 and which was claimed to be the receipt of share application money on account of adjustment of primus loan.

The assessee explained before the AO that a company by name Primus Retail Private Limited (PRPL) owed amount to KHPL. PRPL approached the assessee to take over the liability of PRPL to KHPL. According to the assessee, there was inter corporate loan agreement dated 10.03.2009 under which KHPL provided short term inter corporate loan of Rs.3,00,00,000/- to PRPL. PRPL repaid Rs.30,00,000/- to KHPL as on 26.05.2009. In respect of remaining sum of Rs.2,70,000/-, interest accrued to the extent of Rs.24,57,825/- and the total sum payable by PRPL to KHPL was a sum of Rs.2,94,57,825/-. According to the assessee, KHPL, PRPL and the assessee entered into an triparted agreement dated 02.02.2010 and as per the terms of the triparted agreement, the assessee undertook to discharge the loan payable by PRPL to KHPL. Subsequently, KHPL agreed that the sum which had been taken over by the assessee being the liability of PRPL should be treated as a share application money by KHPL for issue of the shares of the assessee company. The various clauses of the agreement by which the assessee took over the liability of PRPL to KHPL was as follows:

**"NOW IT IS HEREBY MUTUALLY AGREED AND DECLARED AS FOLLOWS:**

1. *The agreement is deemed entered on 30.11.2009*
2. *TAAL paid, by this day, on behalf of PRPL, a sum of Rs. 2,94,57,825/- (Rupees Two Crore Ninety four Lakhs Fifty Seven Thousand Eight Hundred Twenty Five only) (hereinafter referred to as "Outstanding Loan") divided into Principal amount of Rs. 2, 70,00,000/- and outstanding interest of Rs. 24,57, 825/- to KHPL. and KHPL acknowledges the receipt of the outstanding loan.*
3. *KHPL. confirms that there are no dues, either Principal or Interest outstanding, to it either from PRPL or VBB or IAAL.*
4. *KHPL hereby releases PRPL, VBB including all PRPL directors and officers from all obligations under the ICLA.*
5. *KHPL, P PL and VBB do agree that ICLA is cancelled and nullified herewith once for all."*

5. The AO did not agree with the plea of the assessee for the reason that as per clause 2 of the agreement dated 02.02.2010, it was recited that **the assessee has paid a sum of Rs.2,94,57,825/- to KHPL on behalf of PRPL** and therefore the sum

which has already been paid cannot be treated as a share application by the assessee. The AO therefore treated the sum of Rs.2,94,57,825/- as unexplained credit under section 68 of the Act.

6. On appeal by the assessee, the CIT(A) confirmed the order of the AO over the very same reasons assigned by the AO. The relevant observations of the CIT(A) in this regard were as follows:

*"5.12 The submissions of the appellant have duly been considered. In this regard it is important to peruse the tripartite agreement between the appellant (IAAL), KHPL and PRPL. The relevant part of the same is reproduced as follows:*

*" IAAL paid, by this day, on behalf of PRPL, a sum of Rs-2,94,57,825/- (Rupees Two Crore Ninety Four Lakhs Fifty Seven Thousand Eight Hundred Twenty Five only) (hereinafter referred to as Outstanding Loan) divided into Principal amount of Rs,2,70,00,000/- and outstanding interest of Rs.24,57,825/- to KHPL and KHPL acknowledges the receipt of the Outstanding loan."*

*5.13 Thus as per the agreement the amount of Rs 2,94,57,825/- was duly paid by the appellant to KHPL on behalf of PRPL on 30.11.2009 and KHPL acknowledged receipt of the same. There is nothing in the agreement to suggest that the appellant had treated the amount payable to KHPL by PRPL as its (KHPL's) share application money or the amount will be paid in future by it to KHPL although PRPL stood discharged of its obligation. So the claim of the appellant that the amount relates to the liability taken over and thus outstanding towards KHPL and treated as share application money does not carry any weight. So the action of the J in treating the amount of Rs 2,94,57,825/- as unexplained is upheld."*

7. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that recitals which were relied upon by the AO and the CIT(A) in clause 2 of the agreement dated 02.02.2010 are not correct and that there was no actual payment of any sum by the assessee to KHPL and there was only a book entry passed regarding the adjustment of sums payable by PRPL to KHPL being treated as share application money. It was submitted the assessee neither paid loan amount to KHPL nor received any share application money from KHPL. Our attention was drawn to an affidavit dated 11.12.2020 of Mr. Vinod Kumar, the director of KHPL affirming that the purpose of the agreement is to transfer the loan liability of PTPL due to KHPL to the Assessee. The objective was achieved through passing book entries and not by actual repayment of loan either by banking channel or in cash. The expression "IAAL paid" and "KHPL acknowledges the receipt of outstanding loan" in clause-2 of the agreement do not mean that actual payment has been made. It only means that the assessee has taken over the loan. This is also clear from para 4 of the Preamble of the agreement dated 02.02.2010 wherein it is clearly mentioned that M/s. Indusage Advisors Ltd has agreed to take-over the loan. Our attention was also drawn to the ledger account of PRPL in the books of the assessee wherein a journal entry is passed by crediting KHPL to the extent of Rs.2,94,57,825/- towards share application money adjusted against Primus Loan. It was submitted that from the ledger account of KHPL in the books of the assessee it would be clear that only a journal entry was passed by debiting PRPL to the extent of Rs.2,94,57,825/- towards share application money adjusted against Primus Loan. Our attention was also drawn to the ledger extract of the assessee's account in the books of KHPL wherein a journal entry is passed by crediting Primus loan account to the extent of Rs. 2,94,57,825/- towards loan amount transferred from PRPL to the appellant as per the agreement dated 02.02.2010. It was argued that it can be seen from the ledger extract of the assessee's account in the books of PRPL wherein a journal entry is passed by debiting KHPL to the extent of Rs.2,94,57,825/- towards loan of KHPL is

taken over by the assessee. It was submitted that in view of the above ledger extracts, it is very clear that the loan of PRPL due to KHPL was taken over by the assessee and there was no actual payment of cash. Further, the assessee did not receive any money from KHPL towards share application money. These are mere book entries. Therefore, the addition u/s. 68 of the Act cannot be made.

9. The assessee has filed application for admitting additional documents as additional evidence which are as follows:

- *Ledger extract of appellant in the books of Primus Retail Pvt Ltd for the period 1.4.2009 to 31.3.2010*
- *Ledger extract of the appellant in the books of Kivar Holdings Pvt Ltd for the period 1.4.2009 to 31.3.2010*
- *Financial statements of Kivar Holdings P Ltd for the year ended 31<sup>st</sup> March 2010*

10. The application for admission of additional evidence is supported by an affidavit of Shri. Vinod Kumar, Director of KHPL in which he has stated that there was no actual payment by the assessee to KHPL of the loan liability of PRPL. In support of the assessee's contention, the additional evidence was sought to be filed before the Tribunal. It has been submitted that since this additional evidence goes to the root of the matter and has a bearing on the evidence as to whether there was actual repayment of loan of PRPL to KHPL or was there only a merely book entry. The assessee has prayed for additional evidence. Learned DR relied on the order of the CIT(A).

11. We have considered the rival submissions and are of the view that the additional evidence now sought to be filed is required to be admitted as it is necessary for deciding the issue in controversy. As we have already seen the only

basis on which the addition is made is clause 2 of the agreement dated 02.02.2010. If there is no actual payment as recited in clause 2 of the agreement dated 02.02.2010, then the impugned addition under section 68 of the Act cannot be sustained. Since the contention of the assessee is that there was no actual payment but there was only a mere book entry and since this is sought to be proved with the help of the additional evidence and since such evidence has not been examined by the AO, we deem it fit and proper to remand the issue for fresh consideration in the light of the additional evidence produced by the assessee before the Tribunal. The AO will afford opportunity of being heard to the assessee in the set aside proceedings. The appeal is accordingly treated as allowed for statistical purposes.

12. In the result, appeal by the assessee is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(CHANDRA POOJARI)**  
**Accountant Member**

Bangalore,  
Dated : 24.02.2021  
/NS/\*

Sd/-  
**(N.V VASUDEVAN)**  
**Vice President**

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.