

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1624/Mum/2023
(A.Y. 2015-16)**

Income-tax Officer 10(2)(3), Room No. 212, 2 nd Floor, Aayakar Bhavan, Mumbai – 400020	Vs.	M/s Maiden Marketing India Private Limited 1601, Plot No. A-4, CTS No. 694, Peninsula Park, 16 th Floor, Fun Republic Lane, Andheri (West), Mumbai – 400 053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAICM7168E		
Appellant	..	Respondent

**C.O No.62/Mum/2023
(A.Y. 2015-16)**

M/s Maiden Marketing India Private Limited 1601, Plot No. A-4, CTS No. 694, Peninsula Park, 16 th Floor, Fun Republic Lane, Andheri (West), Mumbai – 400 053	Vs.	Income-tax Officer 10(2)(3), Room No. 212, 2 nd Floor, Aayakar Bhavan, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAICM7168E		
Appellant	..	Respondent

Appellant by :	Himanshu Gandhi
Respondent by :	Mahita Nair

Date of Hearing	19.07.2023
Date of Pronouncement	17.08.2023

आदेश / ORDER

Per Amarjit Singh (AM):

The appeal filed by the revenue and cross objection filed by the assessee are interconnected to the fact and issue contested in the appeals, therefore, both these appeals are adjudicated together. The revenue has raised the following grounds before us:

- “1. *Whether on the facts and in the circumstances of the case and in law, the CIT(Appeals) erred in holding that the issues of share capital and share premium were already examined at the time of the original assessment proceeding under section 143(3) of the Act and the additions on the same in the present proceeding u/s 147 r.w.s. 1448 amount to exercise of power of review which is not available to the Assessing Officer ignoring that the provisions of section 56(2)(viib) relevant to the original assessment proceeding and 68 relevant to the present assessment proceeding are not pari materia?”*
 2. *The Ld. CIT(A)'s order is contrary in law and on facts and deserves to be set aside.*
 3. *The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.”*
2. The assessee has raised the cross objections as under:
1. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the reopening of the assessment u/s 147/148 which is bad in law and deserves to be quashed.*
 2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming disallowance of Rs.3,36,100/- expenditure incurred for increasing share capital paid to ROC.*
 3. *The respondent craves leave to add, alter, amend, modify or delete any of the aforesaid grounds of appeal.”*
3. Fact in brief is that assessee filed return of income on 26.09.2015 declaring loss of Rs.17,71,490/-. The assessment u/s 143(3) of the Act was finalised on 31.10.2017 by determining the total income of Rs.75,12,491/- u/s 115JB of the Act.

Subsequently, the case of the assessee was reopened u/s 147 of the Act by issuing of notice u/s 148 of the Act on 25.03.2021 on the ground that the expenses debited towards increase in share capital amounting to Rs.336,100/- is capital expenditure and same cannot be

allowed as revenue expenditure. The assessment u/s 147 r.w.s. 144B was finalized on 21.03.2022 by adding Rs.336,100/- as expenses for increase in share capital by treating as capital expenditure. The AO has also added the share capital of Rs.2,15,09,920/- and share premium of Rs.626,25,000/- received during the financial year 2014-15. In respect of increased in the share capital by Rs.215,09,920/- and share premium of Rs.626,25,000/- received by the assessee company from its related group company the assessing officer was of the view that 99.99% of share of the assessee company was held by its holding company namely Maiden Marketing Pte. Ltd., Singapore and being a related company it could easily manipulate transactions.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant decision of ld. CIT(A) is as under:

“6.2 Ground No:2 Addition of fees paid to Registrar of Companies on increase in the Authorised Capital:

On the addition of fees paid to Registrar of Companies on increase in the Authorised Capital, the matter is settled with the apex court decision. Hon'ble Supreme Court in the case of Brookebond India Ltd. v. CIT (supra) and Punjab State Industrial Development Corporation v. CIT (1997) 225 ITR 792 (SC) 1997 TaxPub (DT) 0919 (SC) wherein it was held that the ROC expenses claimed in the income tax return as fees for enhancement of capital were not revenue expenditure. Therefore, this ground of the assessee cannot be allowed.

This ground is dismissed.

6.3 Ground No:3 Addition on account of share capital and share premium:

On the same score on which ground number 1 was decided against the appellant, it has to be held that the limited scrutiny assessment was principally on the issue of Large Premium. It is also clear that the appellant had submitted all the requisite details. When that being the case, the present addition by the AO amounts to a mere change of opinion which was not called for, as the said addition cannot be considered to be any other issue which comes to the notice of the AO during the course of such assessment. Therefore, taking into account the reasons given for making the additions by the AO which are not at all relevant for the issue on hand, the impugned additions are directed to be struck down, as it

amounts to the AO having exercised the power of review which is not available to him.

Therefore, this ground is allowed.”

5. During the course of appellate proceedings before us in respect of cross objection filed by the assessee, at the outset the ld. Counsel submitted that approval u/s 151 of the Act in the case of the assessee for reopening assessment was provided by the Joint Commissioner of Income Tax, Range-22, Mumbai which is not valid as the case of the assessee company was reopened after 4 year for which the approval of Commissioner of Income Tax was required as provided u/s 151 of the Act.

On the other hand, the ld. D.R could not controvert this material fact that approval u/s 151 in the case of the assessee as per the order u/s 151 of the Act placed in the paper book at page no. 35 was given by the JCIT and not by the CIT(A).

6. In respect of the appeal filed by the revenue the ld. D.R has supported the order of assessing officer.

On the other hand, the ld. Counsel submitted that ld. CIT(A) has rightly deleted the addition as during original assessment the assessee has submitted all the details. In respect of sustaining the addition on account of ROC expenses the ld. counsel submitted that same should have been allowed as revenue expenditure.

7. Heard both the sides and perused the material on record. Regarding the cross objection filed by the assessee that action of the ld. CIT(A) in confirming the reopening assessment u/s 147/148 was bad in law because the notice u/s 151 for giving approval reopening was invalid. The ld. Counsel contended that the sanction obtained under Sec. 151 of the Act was not valid since the sanction after the expiry of 4 year from the relevant assessment year was obtained from the Joint

Commissioner of Income Tax. After expiry of four year of relevant assessment year sanction for issuing notice u/s 148 as provided under section 151(1) of the Act can only be provided by a principal Chief Commissioner of Chief Commissioner or Principal Commissioner or Commissioner of Income Tax. With the assistance of the Id. Representative we have perused the copy of approval u/s 151 of the Act placed at page no. 35 to 37 of the paper book. It is clearly established from the approval letter that same was approved by JCIT, range 2(2) on 25.03.2021 in the case of the assessee for assessment year 2015-16 and original assessment in this case was completed on 31.03.2017. The aforesaid facts demonstrate that reopening u/s 147 in the case of the assessee was made after 4 years. We have perused the provision of Sec. 151(1) of the Act which provide that no notice shall be issued u/s 148 by assessing officer after the expiry of a period of 4 year from the end of the relevant assessment year unless the Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner is satisfied, on the reason recorded by the assessing officer, that it is a fit case for the issue of such notice.

We find Hon'ble jurisdictional High Court in the case of Voltas Ltd. Vs. ACIT (Bombay) (2022) 141 taxmann.com 127 held that as per provisions of Sec. 151(1) sanction of Commissioner or Principal Commissioner is a pre-requisite for issuance of a reopening notice under section 148 after expiry of four years from end of the relevant assessment year therefore the impugned notice issued with sanction of Addl. Commissioner and not Pr.CIT being legally invalid was liable to be set aside. The Hon'ble jurisdictional High Court of Bombay also in the case of Sidhmicro Equities (P) Ltd vs. DCIT (2023) 150 taxman.com 460 (Bombay) held that where AO issued reopening notice after obtaining necessary sanction from Addl. Commissioner since notice was issued beyond period of four year approval ought to have been obtained from

Pr. Chief Commissioner/Chief Commissioner/Pr. Commissioner as per section 151 and thus, impugned notice was to be quashed.

In view of the above fact and finding and material on record it is evident that sanction u/s 151(1) has been given by the Joint Commissioner of Income Tax and not Principal Commissioner as prescribed in the provision of Section 151(1) of the Act. Since in the case of the assessee four years had expired from the end of relevant assessment year as provided u/s 151(1) of the Act therefore, only the Pr. Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner could have accorded the sanction not the Joint Commissioner of Income Tax. Therefore, we find merit in the cross objection filed by the assessee, as the notice issued u/s 148 of the Act is bad in law. Consequently we set aside the impugned notice and subsequent assessment order passed on the basis of the impugned notice. Since we have set aside the order therefore, grounds of appeal of the Revenue and Cross Objection no. 2 of the assessee become infructuous.

8. In the result, the appeal filed by the revenue is dismissed and the cross objection filed by the assessee is allowed.

Order pronounced in the open court on 17.08.2023

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.08.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.