

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'C', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No.197/Mum/2024
Assessment Year: 2016-17**

Income Tax Officer		IEP Advisors Private Limited
	vs	Unit A1, 3 rd Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025.
		PAN: AABCI 4828 E
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Kiran Mehta
Revenue by : Shri H.M. Bhatt, Sr. DR

Date of Hearing : 02.09.2024

Date of Pronouncement : 21.11.2024

ORDER

PER AMARJIT SINGH, AM:

The present appeal filed by the revenue is directed against the order of Id. CIT(A), NFAC dated 26.06.2024, for Assessment Year 2016-17. The revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of case and in law, the Ld. CIT(A) was right in allowing the appeal of the assessee by holding that the assessment order was completed after order of amalgamation (i.e.) 07.06.2017 is bad in law when the defect in recording the name of a company, which was subsequently merged (w.e.f. 01-04-2016) was a procedural defect or mistake curable u/s 292B, since no prejudice was caused to the assessee?

(ii) Whether on the facts and circumstances of case and in law, the Ld. CIT(A), is legally correct in allowing the appeal of the assessee by holding that the assessment order was completed after order of amalgamation (i.e.) 07.06.2017 is bad in law when this Hon'ble Court in the case of Mahagun Realtors (P) taxmann.com Ltd. 91 [2022] 137 [SC]

has held - "Corporate death upon amalgamation does not, in all cases, per-se invalidate and assessment framed on transferor/amalgamating company?"

(iii) Whether the assessment order passed on 28-12-2018 is valid in view of the judgement of Delhi High court in the case of Sky Light Hospitality Pvt. Ltd [W.P.(C) 10870 of 2017 and CM No. 44503/2017] confirmed by Supreme Court [SLP (C) No. 7409/2018]]?

2. Fact in brief is that return of income declaring Nil income was filed on 30.09.2016. The case was subject to scrutiny assessment and assessment u/s 143(3) of the Act was finalized on 28.12.2018 and total income was assessed at Rs. 4,51,84,025/- after making addition u/s 68 of the Act of money received as share capital from IEP Management Ltd.

3. During the course of assessment, the assessing officer noticed that assessee has received share capital from its holding company IEP Management I Ltd. Mauritius of Rs. 4,51,84,025/-. The assessing officer observed that assessee has not submitted any detail with regard to the creditworthiness of holding company of the assessee based in Mauritius. Therefore, the assessing officer held that creditworthiness and genuineness of the assessee's transaction with its holding company was not proved therefore, share application money of Rs. 4,51,84,025/- was treated as non-genuine and added to the total income of the assessee as unexplained credit u/s 68 of the Act.

4. In appeal, the ld. CIT(A) stated that assessee has provided substantial documentary evidence including FIRC's, KYC documents, the certificate of good standing and compliance

records with RBI and ROC which establish the identity and creditworthiness of the investor. Therefore, the ld. CIT(A) held that addition made by assessing officer u/s 68 of the Act was not justified and the appeal of the assessee allowed by the ld. CIT(A).

5. Heard both the sides and perused the material on record. The assessee is engaged in the business of providing management consultancy services relating to investments in India or overseas. During the financial year 2015-16, the assessee issued and allotted 29,68,727 equity shares by way of a rights issue to its existing shareholder, IEP Management I Limited, Mauritius, at a face value of INR 10/- and a premium of INR 5.22/- per share for total share subscription money including the premium amounted to INR 4,51,84,025/-. The assessee has made necessary filing with the Reserve Bank of India (RBI) and the Registrar of Companies in compliance with the Companies Act, 2013 and the Foreign Direct Investment (FDI) policy issued by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry etc. Before the ld. CIT(A) the assessee submitted it had informed the assessing officer that IEP Advisors Pvt. Ltd. w.e.f. 01.04.2016 had amalgamated with 'Stargaze Consulting Services Pvt. Ltd.' The same assessment order for the A.Y. 2016-17 was passed under section 143(3) in the PAN of IEP Advisors Pvt. Ltd. (AABCI 4828 E) and Stargaze Consulting Services Pvt. Ltd. (AACBI 7605 G). Therefore, the ld. CIT(A) held that assessment order passed for the A.Y. 2016-17 in the name of existing entity i.e. IEP Advisors

Pvt. Ltd. was a illegality since the order of assessment was completed after the date of amalgamation.

The Id. Counsel submitted that similar addition was also adjudicated by the Id. CIT(A) in the case of Stargaze Consulting Services Pvt. Ltd. vide order passed u/s 250 of the Act on 26.06.2024 wherein the addition made in the case of IEP Advisors Pvt. Ltd. for A.Y. 2016-17 sustained in the amalgamated company. With the assistance of the Id. Representative we have perused the order of the Id. CIT(A) passed u/s 250 of the Act in the case of Stargaze Consulting Services Pvt. Ltd. on 26.06.2024 and the extract of the finding of Id. CIT(A) is reproduced as under:

“The AO made an addition of Rs. 4,51,84,025 under section 68, citing the failure of the appellant to prove the genuineness and creditworthiness of the transaction. The AO stated that no details were provided regarding the bank account of the allottee, the directors of IEP Management I Limited, and the share valuation report. The appellant provided substantial documentary evidence, including FIRCS, KYC documents, the Certificate of Good Standing, and compliance records with RBI and ROC, which establish the identity and creditworthiness of the investor. The appellant also submitted a Board Resolution for the allotment of shares and confirmed that all funds were received through regular banking channels, as certified by Kotak Mahindra Bank Ltd. The appellant's compliance with RBI and FDI regulations further supports the genuineness of the transaction.

The legal precedents cited by the appellant, particularly the decisions in CIT v. Lovely Exports (P.) Ltd. and Vodafone India Services Private Limited, support the view that once the identity of the shareholder and the genuineness of the transaction are established, no addition under section 68 can be made.

Section 68 of the Act applies when any sum is found credited in the books of an assessee and the explanation offered by the assessee

about the nature and source of such credit is not satisfactory. In this case, the appellant has provided a satisfactory explanation, supported by independent documentary evidence, establishing the identity, creditworthiness, and genuineness of the transaction.

After considering the facts of the case, the submissions made by the appellant, the documentary evidence provided, and the relevant legal precedents, the following observations and conclusions are drawn.

While the appellant has submitted various documents to support the genuineness of the transaction, including FIRC's and KYC documents, the AO's observation that the appellant failed to furnish the bank account details of the allottee and the directors' details of IEP Management I Limited remains valid. The absence of these crucial details casts doubt on the appellant's claim of genuineness.

The appellant did not provide any share valuation report or substantial justification for the high premium charged on the shares. The failure to justify the premium further supports the AO's decision to question genuineness and creditworthiness. question the transaction's

While the appellant has cited several legal precedents, it is crucial to note that these precedents are applicable only when the primary burden of proving identity, creditworthiness, and genuineness is satisfactorily discharged by the appellant. In this case, the appellant's failure to provide key details and justification undermines the applicability of these precedents. The AO's assessment and addition under section 68 are justified as the appellant did not satisfactorily explain the nature and source of the credit. The provided documents and explanations do not conclusively establish the creditworthiness and genuineness of the transaction.

In view of the above observations and conclusions, the addition of Rs. 4,51,84,025 made by the AO under section 68 of the Income-tax Act, 1961, is upheld and the appeal filed by appellant is hereby dismissed.

7. *In the result, appeal of the assessee is dismissed.”*

6. Looking to the above facts and findings, we do not find any error in the decision of ld. CIT(A). Accordingly, the appeal of the revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 21.11.2024

Sd/-

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 21.11.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai