

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.1657/MUM/2018
(Assessment Year :2008-09)**

ACIT-1(1)(1) Mumbai	Vs.	M/s. ATC Telecom Infrastructure Pvt. Ltd. (Legal successor of ATC Telecom Tower Corporation Pvt. Ltd.) ATC Telecom Tower Corporation, 403, 4 th Floo, Skyline ICON, Andheri Kurla Road, Andheri East Mumbai-400 059
PAN/GIR No.AAECA9823E		
(Appellant)	..	(Respondent)

**CO No.88/Mum/2019
(Arising out of ITA No.1657/MUM/2018)
(Assessment Year :2008-09)**

M/s. ATC Telecom Infrastructure Pvt. Ltd. (Legal successor of ATC Telecom Tower Corporation Pvt. Ltd.) ATC Telecom Tower Corporation, 403, 4 th Floo, Skyline ICON, Andheri Kurla Road, Andheri East Mumbai-400 059	Vs.	Dy. Commissioner of Income Tax Range9(1)(2), Mumbai
PAN/GIR No. AAECA9823E		
(Appellant)	..	(Respondent)

Assessee by	Shri Poras Kaka (virtually present) & Shri Hiten Chande
-------------	---

Revenue by	Shri P.D. Chougule (Sr. DR)
Date of Hearing	23/08/2024
Date of Pronouncement	20/11/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid cross appeals have been filed by the Revenue and assessee against order dated 26/12/2017, passed by Id. CIT(A)-16, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 263 for A.Y.2008-09.

2. In the grounds of appeal the Revenue has raised the following grounds:-

1 *"Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in not subjecting the fund statements (submitted by the assessee for the first time during appeal proceedings) to the rigours of Rule 46A(1) despite the fact that the assessee failed to comply on 5 occasions to the specific requirement of Assessing Officer to submit the very same documents during the assessment proceedings."*

2. *"Whether the CIT(A) has erred in facts and law in not addressing the objections raised by the A.O. in the remand reports dated 13.12.2017 & 20.12.2017"*

3. *"Whether the Ld. CIT(A) has erred in facts and law in holding that information received from Mauritius Revenue Authority vide letter dated 18.03.2013 was complete (and that the Assessing Officer, has wrongly rejected this information,) despite the fact, the ITAT has held in ITA 2706/Mum/2015, dated 03.10.2017 in the assessee's case that the said information from Mauritius Revenue*

Agency was neither complete nor explained the sources and creditworthiness of the persons giving share application money "

4. "Whether on the facts and circumstances of the case, the order of the Ld.CIT(A) has erred in deleting the additions made by the AO u/s 68 totaling to Rs. 726, 16,35,000/- with respect to share application money credited in the appellants books without appreciating the fact that the assessee failed to submit information/documentary evidences to substantiate the nature and source of the said share application money credited in its books, including identities of the remitters, their creditworthiness and the genuineness of the transactions. The appellant has not been able to prove the sources and the nature of the funds raised under the garb of share application money."

3. The brief facts are that assessee company, i.e. ATC Telecom Tower Corporation Pvt. Ltd., (hereinafter referred to as ATC) which is now known as ATC Telecom Infrastructure Pvt. Ltd., is engaged in the business of telecom infrastructure providing services i.e. allowing private telecom players like Vodafone, Airtel etc., to use the telecom infrastructure towers set up by the assessee in various cities of India. During the year under consideration, ATC had received USD 185 million which was equivalent to INR 726.13 Crores from its parent company **Essar Communications Holdings Ltd., Mauritius (ECHL)** as share application money. The said investment by ECHL was made from the funds infused by its parent company **Essar Global Fund Ltd. (EGFL)**. The share application money of USD 185 million was received by ATC in two tranches, the first being USD 100 million which was received directly from EGFL on behalf of ECHL and USD 85 million was received directly from ECHL which in turn

had received from EGFL. In the subsequent years, out of total share application money the amount of INR 126.13 Crores i.e., USD 29.59 million was refunded and for balance amount 6 Crores shares of face value of 600 shares was allotted to ECHL.

4. Earlier, ATC's case was selected for scrutiny assessment under section 143(2) of the Act. After taking into consideration various details filed by ATC, the ld. AO passed an assessment order dated 29/12/2010 u/s. 143(3) of the Act, without making any addition to the total income of ATC. Then, on 20/02/2012, a notice was issued u/s.148 of the Act initiating reassessment proceeding. During the course of reassessment proceeding, the ld. AO had made a reference through FT & TR Division to Mauritius Revenue Authority ("MRA") for exchange of information regarding infusion of share application money by ECHL for A.Y 2008-09. After receiving the information from MRA vide letter dated 18/03/2013, the ld.AO accepted the genuineness of the transaction and did not draw any adverse inference with regard to the share application money received by the assessee. Accordingly, the reassessment proceeding was concluded vide order dated 28/03/2013 wherein, certain other additions were made by the ld.AO.

5. Thereafter, the Principal Commissioner of Income-tax 9, proposed to initiate the proceeding under section 263 for revision of the reassessment order dated 28/03/2013 passed by the ld. AO, because according to him, the share application money of USD 185 million received from ECHL (of which USD 100 million

received directly from EGFL) was required to be examined again by the ld. AO as the nature and source of share application money of USD 185 million was not verified and the information received from MRA vide letter dated 18 March 2013 required further examination by the ld.AO. Accordingly, the ld. PCIT revised the reassessment order directing the ld. AO to examine the applicability of section 68 of the Act with respect to the share application money of USD 185 million and pass a fresh assessment order.

6. The assessee challenged the revision order passed under section 263 of the Act by filing an appeal before the ITAT. The appeal of the assessee was dismissed, and the revision order passed by the ld. PCIT was upheld. The Tribunal however, did not give any finding on the merits with respect to the applicability of section 68 of the Act to the share application money of USD 185 million received from ECHL and the direction of the PCIT allowing the ld.AO to examine the entire issue afresh after giving a fair opportunity to the assessee was upheld.

7. Now, pursuant to the said revision order, the ld. AO had passed a fresh assessment order dated 5/12/2016 wherein he made an addition u/s. 68 of the Act for sums amounting to Rs. 7,26,13,35,000 (USD 185 million) received on account of share application money.

8. Before the ld. AO, assessee has to prove the source of monies invested, i.e. share application money received by the assessee

company from its parent companies. It was stated that Affiliate Company, Essar Communications Mauritius Ltd., (ECML) had secured loan of USD 3.59 billion which was raised from the Standard Chartered Bank, UK in August 2007. In support, copy of balance sheet for the year ending 31/03/2008 relevant to A.Y. 2008-09 of ECML was given and specific attention was drawn to note No.12 which has been reduced in the assessment order at page 6 & 7. The ld. AO during the course of assessment proceedings required the assessee to furnish bank statement and other documentary evidences showing trail of fund flow from loan receipt of USD 3.59 billion raised by ECML to various step down subsidiary companies to look into investment in the form of share application money in ATC. Further, ld. AO has also referred to the information sought through FT & TR division of Ministry of Finance sought from Mauritius authorities, the content of which has not been stated in the assessment order. The assessee in response to all the queries and details sought by the ld. AO had furnished all the requisite information and gave explanation which has been reproduced in the assessment order and specifically the summary of details which has been incorporated in tabular form at page 11 & 13 of the assessment order. Ld. AO then has then reproduced his show-cause notice from pages 14 & 15 which again was replied by the assessee alongwith various details which is incorporated from pages 15-21 of the assessment order. However, the ld. AO without even discussing the details filed by the assessee held that, even the documents obtained from FT & TR cannot lead to inference that

onus to prove the creditworthiness and genuineness has been discharged with regard to share application money and it does not establish that the documents obtained from FT & TR were sufficient to establish the source of USD 185 million flowing from EGFL and ECHL to ATC. Thereafter, he has quoted the ratio laid down by the ITAT Kolkata Bench in the case of Subhalakshmi Vanijya (P) Ltd. vs. Commissioner of Income Tax-I, Kolkata in ITA No. 1104/Kol/2014. Although AO has not doubted the fund flow or trail of money from ECML to EGFL to ECHL to ATC, however he held that assessee has failed to establish the rationale behind the flow of funds to various group entities and source and the nature of funds invested in the books of the assessee on garb of share application money. Moreover, from the balance sheet of the assessee nowhere the amount of share application money of Rs.726.13 Crores is reflected. Finally, after quoting certain decisions, he held that assessee could not explain the source and genuineness of the share application money of Rs.7,26,13,35,000 received as share application money which was added u/s.68.

9. Before the ld. CIT (A) assessee pointed out the summary of the details which was filed during the course of assessment proceedings to prove the nature and source of share application money including identity, creditworthiness and genuineness of all the companies namely EGFL and ECHL. For the sake of ready reference details furnished before the AO were as under:-

Sr.	Particulars
-----	-------------

No.	
1	<i>Details of shareholders (name, address and percentage holding)</i>
2	<i>Details of the subscribers of share capital, number of shares, amount of share capital, amount of securities premium, etc</i>
3	<i>Bank statement of the Appellant evidencing the share application money received</i>
4	<i>Details of shares allotted to ECHL at premium (along with copies of Form 2 filed under company law evidencing allotment of shares to ECHL) and refund of excess share application money of RS. 126.13 crores subsequently to ECHL</i>
5	<i>Details of receipt of share application money and allotment of shares</i>
6	<i>Extract of resolutions for allotment of shares to ECHL</i>
7	<i>Letter dated 12 November 2014 from ECHL confirming the investment towards subscription in shares of the Appellant and the source of funds for such investment</i>
8	<i>Letter dated 12 November 2014 received by ECHL from EGFL enclosing a certificate dated 11 November 2014 issued by Mazars, Chartered Accountants, Mauritius, in respect of investment by EGFL in ECHL and the source of funds for such investment</i>
9	<i>Bank statement of EGFL and SWIFT advice forwarded by EGFL evidencing direct remittance to the Appellant by EGFL on behalf of ECHL to the Appellant was out of closure proceeds of fixed deposit of EGFL with ICICI Bank UK Plc</i>
10	<i>Letter from Standard Chartered Bank, London ('SCB') confirming granting of loan of USD 3.59 billion to Essar Communications (Mauritius) Ltd ('ECML') on 28 August 2007</i>
11	<i>Foreign inward remittance certificates issued by State Bank of India evidencing the receipt of share application money by the Appellant</i>

12	<i>Letter dated 18 March 2013 from the Mauritius Revenue Authority (MRA) along with bank statement of ECHL explaining the nature and source of money received by the Appellant</i>
13	<i>Filings with Reserve Bank of India (in Form FC-GPR for the allotment of shares to ECHL against the share application money of USD 185 million)</i>

6.2.2 In addition to the above mentioned details furnished by the Appellant to the AO, EGFL vide its authorised representative's letter dated 16 September 2016 had furnished the following details to the AO:

a. A copy of EGFL's audited financial statements for FY 2007-08

b. An explanation that EGFL is an Exempted Company as per the laws of Cayman Islands and that an Exempted Company is not required to file a tax return or pay taxes in the Cayman Islands

c. A copy of EGFL's annual return and declaration dated 6 May 2008 of exempted company filing by EGFL in Cayman Islands

d. Copies of documents (including extracts of bank statements) evidencing the flow of funds from the loan of USD 3.59 billion taken by ECML from SCB till remittance of USD 100 million to the Appellant as share application on behalf of ECHL”.

10. Further, assessee also referred to correspondence exchanged through FT & TR division of CBDT from the Mauritius Revenue Authorities and Tax Information Authority where following information was forwarded by the Tax Information Authorities to

the Indian Revenue Authority and also by the Mauritius Revenue authorities.

- a. *Copies of the Certificate of Incorporation and certificate for change of name of EGFL.*
- b. *A copy of the Memorandum and Articles of Association of EGFL*
- c. *A copy each of the Annual Returns filed by EGFL for 2007 and 2008*
- d. *Copy of EGFL's bank statement evidencing the remittance of USD 85 million to ECHL*
- e. *Copy of EGFL's bank statement and SWIFT advice evidencing the remittance of USD 100 million to the Appellant on behalf of ECHL*
- f. *copy of a certificate dated 11 November 2014 issued by Mazars, Chartered Accountants, Mauritius, in respect of investment by EGFL in ECHL and the source of funds for such investment*
- g. *Copies of signed audited financial statements of EGFL for FY 2006-07 and FY 2007-08*

10.1 Also, the following information was forwarded by the Mauritius Revenue Authority to the Indian revenue authorities:

- a. *Copies of the certificates of incorporation and certificates for change of name of ECHL and ECML*
- b. *Copies of the Constitutions of ECHL and ECML*
- c. *Copies of the financial statements of ECHL and ECML for FY 2007-08*
- d. *Copy of income tax return of ECHL for the year ended 31 March 2008*
- e. *Details of investment of USD 185 million made by ECHL in the Appellant and the source of funds enabling the investments*

f. Copies of ECHL's bank statements showing the remittance of USD 85 million to the Appellant.

g. Copies of EGFL's bank statement and SWIFT notification showing the remittance of USD 100 million to the Appellant.

h. A copy of certificate dated 11 November 2014 issued by Mazars, Chartered Accountants, Mauritius, in respect of investment by EGFL in ECHL and the source of funds for such investment.

11. Assessee again filed the details of fund flow both for USD 100 million and USD 85 million received by ATC in various trenches which has been incorporated from pages 17-24 of the appellate order.

12. Ld. CIT (A) for understanding the creditworthiness and source of the funds forwarded the fund flow chart to the ld. AO for verification and report on the trail of funds. In response, ld. AO submitted the remand report which has been incorporated at pages 24 & 25 and also the counter submissions made by the assessee in response to the remand report. The ld. CIT(A) after examining and analyzing the documents furnished and the report of the AO on all the ingredients of Section 68, i.e., identity, genuineness and creditworthiness have given his specific finding with respect to all the evidences, facts and material brought on record and in remand report of the ld. AO. For the sake of ready reference his relevant finding are reproduced hereunder:-

6.2.8 The Appellant had credited the share application money of USD 185 million in the name of ECHL in the books of accounts however, USD 100 million was remitted directly by EGFL on behalf of ECHL. Since, the Appellant has submitted the documents

pertaining to ECHL as well EGFL the (a) identity of the parties, (b) genuineness of the transaction, (c) source of funds and (d) credit worthiness of the parties from which funds were received. The identity of ECHL and EGFL was never in doubt However for the sake of completeness, I consider the following documents which have been submitted by the Appellant for establishing the identity of ECHL and EGFL

For ECHL-

a. Letter dated 28.6.16 from the MRA (Mauritius Revenue Authorities) forwarding the Certificate of Incorporation of ECHL, Certificate of Change of Name to ECHL, Final Accounts for year ended 31.3.08, Income-tax return filed with MRA

b. Letter dated 28.11 16 wherein the Appellant communicates permanent account number ('PAN') of ECHL.

For EGFL-

a. Information received by FT&TR from Tax Information Authority, Cayman forwarding documents such as Certificate of Incorporation of EGFL and certificate of change of name to EGFL, Final Accounts for years ended 31.3.07 and 31/3.08, Annual Return filed with Cayman authorities. (Vol-II, page 190) b. Letter dated 28.11 16 wherein the Appellant communicates PAN of EGFL (Vol- I, page 205).

6.2.9 Above mentioned details were received through FT & TR division of CBDT From the above. I find that the identity of ECHL. and EGFL is proved beyond doubt as the Incorporation certificate alongwith change of name have been submitted by the relevant government authorities of Mauritius and Cayman Island. The return of income and Financial statements of both the parties establish the fact that the said companies were operational in the year under consideration. The Appellant has also submitted the PAN of both the parties. Therefore, I am satisfied about the identity of ECHL and EGFL

6.2.10 Next ingredient to be considered is the genuineness of the transaction namely, share application money received by the Appellant. In this regard, the Appellant has submitted the following documents which have been filed with various authorities like RBI ROC and FIPB

a. FIRC dated 11.1.2008 for Rs. 333 Crores (USD 85 Million) says the purpose of remittance is advance towards equity capital

b. SWIFT instruction dated 10.1.08 for Rs. 393 Crores (USD 100 Million) says the purpose of remittance is advance towards equity in the Appellant on behalf of ECHL

c. Letter dated 28.2.08 filed by ECHL to State Bank of India confirming that Rs 393 Crores (USD 100 Million) is advance towards equity capital

d. Resolution passed on 19.3.08 for converting share application monies of Rs. 45 crores (out of the RS. 726 Crores) into 45 lakh shares

e. Filings with Reserve Bank of India ('RBI') on 17.4.08 for the allotment of above shares to ECHL and referring to approval from the Foreign Investment Promotion Board ('FIPB')

f. Form 2 alongwith Certificate of Allotment of shares to ECHL, filed with the Registrar of Companies ('ROC') u/s 75(1) of the Companies Act, 1956 for these shares

g. Resolution passed on 7.5.08 for converting share application monies of RS. 455 crores into 4.55 Crore shares.

h. Filings with RBI on 28.5.08 for the allotment of above shares to ECHL and referring to approval from the FIPB

i. Form 2 alongwith Certificate of Allotment of shares to ECHL, filed with ROC u/s 75(1) of the Companies Act, 1956 for these shares.

j. Resolution passed on 13.5.08 for converting share application monies of Rs.100 crores into 1 Crore shares.

k Filings with RBI on 28.5.08 for the allotment of above shares to ECHL and referring to approval from the FIPB.

l. Form 2 alongwith Certificate of Allotment of shares to ECHL, filed with ROC u/s 75(1) of the Companies Act, 1956 for these shares.

m. Communication dated 18.3.13 from MRA confirming share investment by ECHL in the Appellant and also recording refund of the balance of Rs 126 Crores (USD 30 Million)

n. Note 30 to Final Accounts of ECHL for year ended 31.3.08 shows investment by ECHL. in the Appellant.

6.2.11 After examining the above documents, I find that the genuineness of the transaction is clearly proved by the Appellant. On perusal of the above documents like FIRC, various resolutions passed, documents filed with RBI and ROC for allotment of shares, and the Financial statement of ECHL, I find that the genuineness of the transaction being share application money cannot be doubted. The genuineness of the transaction is also proven from the fact that subsequently the shares were issued to the same applicant in whose name the amount was credited in the books of accounts as share application money Further, various authorities like RBI, ROC or FIPB have accepted the genuineness of the transaction. Therefore, in view of the above, I hold that the genuineness of the transaction is proved beyond doubt by the Appellant. Further, the AO has not brought any material or evidence on record to cast any doubt on the genuineness of the transaction. On the contrary, when the AO sought to verify the transaction with the Mauritius Revenue Authority through FT & TR division, the same was confirmed by them vide letter dated 28.02.2016 wherein USD 185 million remitted was considered towards subscription of shares of the Appellant Therefore, in my opinion, the genuineness of the transaction cannot be doubted and the contention of the AO is hereby rejected

6.2.12 The next ingredient for the purpose of section 68 to be considered is the source of the share application. In this regard, the Applicant has submitted the following documents:

Source of funds (i.e. 185 Million USD) received by the Appellant is ECHL

a. Communication dated 18.3.13 from MRA confirming share investment by ECHL in the Appellant.

b. Confirmation dated 12.11 14 by ECHL

c. ECHL's bank statement showing remittance of USD 85 Million.

d. Letter dated 28.2.08 filed by ECHL to SBI confirming that RS. 393 Crores (USD 100 Million) is advance towards equity capital.

e. EGFL's bank statement showing remittance of USD 100 Million.

f. MRA's communication dated 28.6.16 forwarding ECHL's communication regarding details of investments by ECHL in the Appellant.

*g. Note 30 to Final Accounts of ECHL for year ended 31.3.08 shows investment by ECHL, in the Appellant. (Vol-II, page 172)
Source of funds (i.e. 185 Million USD) for ECHL, is EGFL*

a. EGFL's bank statements showing remittances of USD 100 Million (Vol-I, page 182) and USD 85 million.

b. SWIFT instruction dated 10.1.08 for RS. 393 Crores (USD 100 Million) says the purpose of remittance is advance towards equity in the Appellant on behalf of ECHL

c. Communication dated 18.3.13 from MRA confirming share investment by ECHL in the Appellant was sourced from EGFL

d. MRA's communication dated 28.6.16 forwarding ECHL's communication regarding details of investments by ECHL in the Appellant.

e. Confirmation dated 12.11 14 by ECHL and forwarding certificate from Mazars, Chartered Accountants.

f Financial statements of EGFL for year ended 31.3.2008 shows a fresh investment of USD 321 Million in ECHL during FY 2007-08.

g. Financial statements of ECHL for year ended 31.3.2008 show increase in share capital of USD 321 Million and that EGFL is the 100% shareholder of ECHL

6.2.13 On perusal of above documents, I find that the source of share application money is ECHL. This fact has been confirmed by the Mauritius Revenue Authority vide communication dated 18.03.2013 and 28.06.16. The communication by the Mauritius Revenue Authority not only confirms that ECHL remitted the share application money to the Appellant but also give information about the source of ECHL ie. EGFL. The communication gives information that USD 185 million remitted by ECHL was infused by EGFL in ECHL by way of subscription of shares. This fact is also corroborated from the financial statement of ECHL and EGFL for the year ended 31.03.2008. The Appellant has also submitted the bank statement of ECHL showing remittance of USD 85 million and EGFL showing USD 100 million which further proves the source of share application money of USD 185 million.

6.2.14 Now, the next ingredient to be considered is the credit worthiness of the person remitting the money In this regard, the Appellant has submitted the following documents.

For ECHL

a. Communication dated 18.3.13 from Mauritius Revenue Authority confirming source of investment by ECHL is the infusion of capital by EGFL

b. Financial statements of ECHL for year ended 31.3.2008 show total share capital and reserves as on 1.4.2007 of USD 1 14 Billion and increase in share capital of USD 321 Million during FY 2007-08

c. ECHL's communication stating source of investment in the Appellant is the infusion of capital by EGFL

d. Mauritius Revenue Authority's communication dated 28.6.16 forwarding ECHL's communication as to the source of funds of ECHL.

For EGFL

a. The total share capital and reserves as on 1 April 2007 of USD 2.14 Billion.

b. The net cash flows from operating activities during FY 2007-08 was itself USD 355 million.

c. The cash/cash equivalents increased from USD 1.4 million on 1 April 2007 to USD 820 million on 31 March 2008

6.2.15 I have perused the above documents submitted by the Appellant. I find that the creditworthiness of ECHL is established by the Appellant beyond any doubt. From the Financial statements for the year ended it is seen that the net worth of ECHL as on 01.04.2007 is USD 114 billion and there is increase in share capital of ECHL of USD 321 million. Further, the Mauritius Revenue Authority's communication dated 18.03.13 and 28.06.16 confirms the fact that the share application money of USD 185 million was remitted by ECHL from the money infused in ECHL by EGFL during the year. Therefore, the credit worthiness of ECHL cannot be doubted Further insofar as EGFL is concerned. I find that the creditworthiness of EGFL also cannot be doubted From the Financial statement submitted, it is seen that the net worth of EGFL as on 01.04.2007 is USD 214 billion. During the year, EGFL has generated cash of USD 355 million from operating activities and cash has increased from USD 1.4 million as on 01.04.2007 to 820 million on 31.03.2008. Therefore, I hold that the credit worthiness of ECHL and EGFL stands established.

13. Thereafter, the ld. CIT (A) had also examined the flow of funds of USD 185 million from the loan of USD 3.95 million raised from Standard Chartered Bank, London with various documentary evidences which he has called upon as per his

direction. The said fund flow has been summarized by him in the following manner:-

- a. *The said USD 185 million being share application money from Essar Communications Holdings Ltd, Mauritius ('ECHL) was from funds ultimately sourced from a loan of USD 3.59 billion raised from Standard Chartered Bank (London) by an affiliate of ECHL, Essar Communications (Mauritius) Ltd, Mauritius ('ECML) (formerly known as Essar Communications (India) Ltd, Mauritius)*
- b. *Out of the USD 3.59 billion loan issued to ECML, approximately USD 1.41 billion was directly applied by the lenders towards prepayment of a prior loan, legal fees, arrangements fees and agency fees and the balance loan proceeds of approximately USD 218 billion was remitted by the lenders to the bank account of ECML on 28 August 2007*
- c. *The said approximately USD 2.18 billion was thereafter lent by ECML to Telecom Holdings (Cayman) Ltd. Cayman Islands (THCL), which was paid by THCL to ECHL on 28 August 2007 towards purchase of shares by THCL from ECHL ECHL in turn remitted the sum to the bank account of Essar Global Fund Ltd ('EGFL') (formerly known as Essar Global Ltd) with J P Morgan Private Bank, UK on 28 August 2007 primarily towards dividend (approximately USD 0.07 billion being towards loan).*
- d. *Remittances of USD 100 million and USD 85 million to the Appellant and USD 85 million to ECHL are explained below:*

USD 100 million remitted by EGFL to the Appellant

Out of the said remittance of USD 2.18 billion received in its said bank account with JP Morgan Private Bank, UK, EGFL transferred USD 500 million to its bank account with ICICI Bank, UK on 6 September 2007. Out of the same, it placed a deposit with the

same bank for USD 300 million on the same date. The said deposit was partly renewed for USD 150 million on 9 November 2007 which was closed on 10 December 2007 and from it EGFL placed a deposit with the same bank for USD 100 million on 11 December 2007. The said deposit of USD 100 million was closed on 9 January 2008 from which USD 100 million was remitted by EGFL to the Appellant

USD 85 million remitted by EGFL to ECHL

Out of the said USD 2.18 billion received by EGFL in its said bank account with J P Morgan Private Bank, UK on 28 August 2007, EGFL made inter alia transfers to its other bank accounts with various banks and advances towards subscription of shares of Essar Steel Holdings Ltd, Mauritius (ESHL') (now known as Essar Steel Ltd, Mauritius). From the said funds transferred to other bank accounts and deposit accounts with Amex Bank, UK, on 10 January 2008 EGFL transferred sums aggregating USD 55 million to its current account with Amex Bank, UK and on the same date received USD 30 million from ESHL as refund of advance earlier given by EGFL towards subscription of shares of ESHL. The aggregate USD 85 million was remitted by EGFL to ECHL on the same date.

USD 85 million remitted by ECHL to the Appellant:

The USD 85 million remitted to ECHL by EGFL on 10 January 2008 was remitted by ECHL to the Appellant on the same date

14. Ld. CIT (A) has also relied upon ld. AO's remand report and further information received from the Mauritius Revenue authorities and has given his finding as below:-

6.2.17. *The aforementioned details were sent to the AO for his comments on 08.12.17. The AO in his remand report dated 20.12.2017 has not commented adversely on the trail of USD 100 million and USD 85 million. She has merely raised questions on the 67 internal transfer of funds from EGFL's different bank accounts to Amex bank account amounting to USD 85 million. At the same time, the AO did not find any infirmity in the flow funds from Standard Chartered Loan account of USD 2.18 billion upto EGFL. Once, it is shown that EGFL received USD 2.18 billion in its bank account which is more than 20 times of the sum remitted from Amex account, I find no reason to doubt the fund flow submitted by the Appellant. Further, the net worth of EGFL, cash generation from various activities and increase in the cash from USD 1.4 million to USD 820 million further substantiates the credit worthiness of EGFL as submitted by the Appellant.*

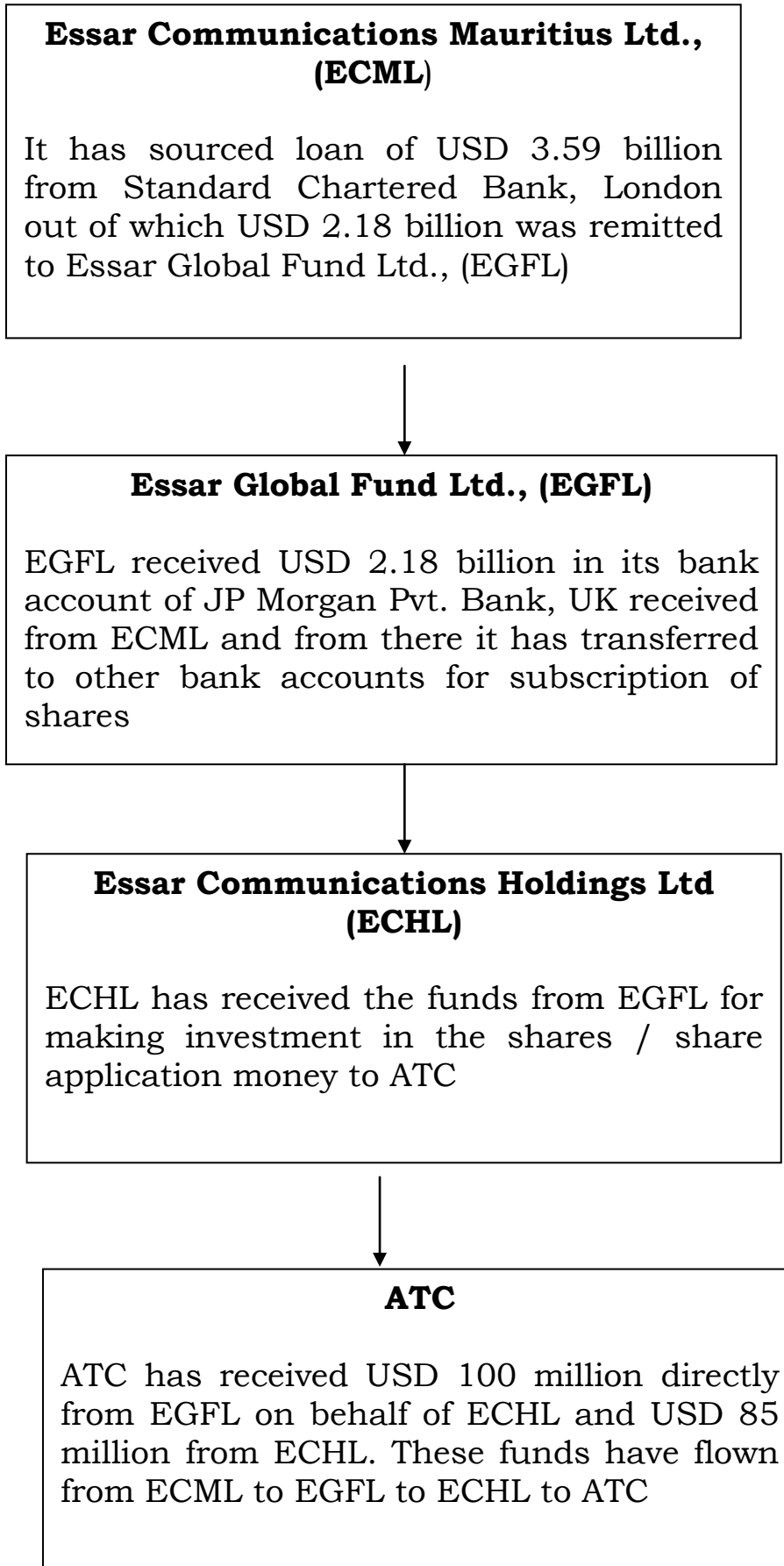
15. Thus, ld. CIT (A) held that ld. AO is not justified in not accepting the information received from Mauritius Revenue Authority and finally, he has deleted the said addition holding that assessee has proved not only the genuineness of the transaction and identity but also the creditworthiness and also in view of the trail of fund with documentary evidences prove the source of the source of the funds.

16. We have heard both the parties at length and also perused the relevant finding given in the impugned order as well as various materials referred to before us. The ld. AO has made the addition on account of share application money received from ECHL i.e. Essar Communication Holdings Ltd. and Rs. 7,26,13,35,000 (USD 185 million) holding that;

- *firstly*, assessee has not proved the source and nature of funds received in the garb of share application money;
- *secondly* assessee has failed to explain with the documentary evidences, genuineness of the transaction for not submitting the trail of fund flow from the loan received of USD 3.59 billion raised by ECML and not linking the source there to; and
- *lastly*, though the ld. AO received information from the CBDT (FT & TR division) still the onus was on the assessee to prove the genuineness and the creditworthiness of the transaction which it failed to do so.

17. After going through the assessment order and the records produced before us, we find that assessee had duly submitted before the authorities below that it has received USD 185 million i.e., Rs.726.13 Crores from Mauritius based company ECHL as share application money. The said investment by ECHL was from the funds infused by Essar Global Fund Ltd. (EGFL) which is a holding company of ECHL. The infusion of funds by EGFL was towards subscription of equity shares of ECHL. Out of the said USD 185 million, USD 100 million was remitted by EGFL on behalf of the ECHL to the assessee and USD 85 million was remitted by ECHL to the assessee. The entire source of the funds of USD 185 million which was remitted by EGFL was ultimately sourced from loan of USD 3.59 billion raised from Standard Chartered Bank, London by Essar Communications Holdings

Ltd., Mauritius (ECHL), Mauritius. Thus, the flow of funds can be explained in the following manner:-



18. For all the steps and trial of funds, various documentary evidences have been filed before the ld. AO as well as before the ld. CIT (A) which has been discussed in detail by the Ld. CIT (A) as incorporated above. For instance to prove the genuineness of the share application money, the following documents were submitted:-

a. FIRC dated 11.01.2008 for INR 333 Crores (USD 85 Million) says the purpose of remittance is advance towards equity capital.

b. SWIFT instruction dated 10.01.2008 for INR 393 Crores (USD 100 Million) says the purpose of remittance is advance towards equity in ATC on behalf of ECHL

c. Letter dated 28.02.2008 filed by ECHL to State Bank of India confirming that INR 393 Crores (USD) 100 Million) is advance towards equity capital

d. Resolution passed on 19.03.2008 for converting share application monies of INR 45 crores (out of the INR 726 Crores) into 45 lakh shares.

e. Filings with Reserve Bank of India (RBI) on 17.04.2008 for the allotment of above shares to ECHL and referring to approval from the Foreign Investment Promotion Board (FIPB).

f. Form 2 along with Certificate of Allotment of shares to ECHL, filed with the Registrar of Companies (ROC) u/s 75(1) of the Companies Act, 1956 for those shares.

g. Resolution passed on 07.05.2008 for converting share application monies of INR. 455 crores into 4.55 Crore shares.

- h. Filings with RBI on 28.05.2008 for the allotment of above shares to ECHL and referring to approval from the FIPB.
- i. Form 2 along with Certificate of Allotment of shares to ECHL, filed with ROC u/s 75(1) of the Companies Act, 1956 for these shares.
- j. Resolution passed on 13.05.2008 for converting share application monies of INR 100 crores into 1 Crore shares.
- k. Filings with RBI on 28.05.2006 for the allotment of above shares to ECHL and referring to approval from the FIPB.
- l. Form 2 along with Certificate of Allotment of shares to ECHL, filed with ROC u/s 75(1) of the Companies Act, 1956 for these shares.
- m. Communication dated 18.03.2013 from MRA confirming share investment by ECHL in ATC and also recording refund of the balance of INR 126 Crores (USD 30 Million).
- n. Note 30 to Final Accounts of ECHL for year ended 31.03.2008 shows investment by ECHL in ATC.

19. Further, shares were issued by the assessee to ECHL in the subsequent year in whose name assessee had credited the share application money of USD 185 million received in the year under consideration. Genuineness of the transaction is also further corroborated by the fact that when reference was made through FT & TR for verification of the aforesaid transaction Mauritius Revenue Authority vide letter dated 18/03/2013 has confirmed the identity and source of remittance of USD 185 million by

ECHL towards share application money by ECHL towards share application money. Thus, the genuineness of the transaction cannot be doubted at all.

20. Further, to prove the source of share application money i.e. from ECHL the documents which were submitted were as under:-

- a. Communication dated 18.03.2013 from MRA confirming share investment by ECHL in ATC
- b. Confirmation dated 12.11.2014 given by ECHL regarding remittance of USD 185 million.
- c. ECHL's bank statement showing remittance of USD 85 million.
- d. Letter dated 28.02.2008 filed by ECHL to SBI confirming that INR 393 Crores (USD 100 Million remitted by EGFL on behalf of ECHL) is advance towards equity capital.
- e. EGFL's bank statement showing remittance of USD 100 Million
- f. MRA's communication dated 28.6.2016 forwarding ECHL's communication regarding details of investments by ECHL in ATC.
- g. Note 30 to Final Accounts of ECHL for year ended 31.03.2008 shows investment by ECHL in ATC.

21. Apart from that assessee has also submitted the following documents to prove the source of source i.e. source of funds received from EGFL:-

a. EGFL's bank statements showing remittances of USD 100 Million and USD 85 million.

b. SWIFT instruction dated 10.01.2008 for INR 393 Crores (USD 100 Million) says the purpose of remittance is advance towards equity in ATC on behalf of ECHL.

c. Communication dated 18.03.2013 from MRA confirming share investment by ECHL in ATC was sourced from EGFL

d. MRA's communication dated 28.06.2016 forwarding ECHL's communication regarding details of investments by ECHL in ATC

e. Confirmation dated 12.11.2014 by ECHL and forwarding certificate from Mazars, Chartered Accountants

f. Financial statements of EGFL, fur year ended 31.3.2008 shows a fresh investment of USD 321 Million in ECHL during FY 2007-08.

g. Financial statements of ECHL for year ended 31.3.2008 show increase in share capital of USD 321 Million and that EGFL is the 100% shareholder of ECHL.

22. The bank statements of ECHL and EGFL and their financial statements clearly goes to prove the source of share application money from ECHL to assessee and this is further substantiated by the confirmation received by the MRA on 18/03/2013 and 28/06/2016 wherein the Mauritius Tax authorities have

confirmed that the amount of USD 185 million was given by ECHL as share application money to the assessee. Apart from that, it is further seen that the bank statements of EGFL and financial statement of EGFL further prove that the source of ECHL was EGFL and USD 185 million which was given by the EGFL to ECHL for investment in the assessee as share application money.

23. Further, to prove the creditworthiness of ECHL showing that the net worth of the company far exceeded the share application money invested during the year under consideration the assessee has submitted following documents:-

- a. Communication dated 18.03.2013 from MRA confirming source of investment by ECHL is the infusion of capital by EGFL
- b. Financial statements of ECHL for year ended 31.03.2008 show total share capital and reserves as on 1.4.2007 of USD 1.14 Billion and increase in share capital of USD 321 Million during FY 2007-08.
- c. The Profit & Loss Account for the year ended 31.03.2008 show the net profit of USD 1.08 billion.
- d. ECHL's communication stating source of investment in ATC is the infusion of capital by EGFL
- e. MRA's communication dated 28.06.2016 forwarding ECHL's communication as to the source of funds of ECHL.

24. Thus, the net worth of ECHL at the start of the year was USD 1.14 billion and during the year itself the company had

earned net profit of USD 1.08 billion which is nearly 80 times more than the share application money. Thus, the net worth and profit of the company for the year ending 31/03/2008 was far more than USD 185 million. Further, the creditworthiness is also confirmed by the letters issued by MRA.

25. At the stage of 1d. CIT (A), the creditworthiness of EGFL was also submitted with the following documents:-

a. Financial statements of EGFL for year ended 31.03.2008 show total share capital and reserves of USD 2.14 Billion at the start of the year.

b. The Profit & Loss Account for the year ended 31.03.2008 show the net profit of USD 2.94 billion.

c. Financial statements of EGFL for year ended 31.3.2008 show total share capital and reserves of USD 5.05 Billion at the end of the year.

d. The cash flow statement for the year ended 31.03.2008 show net cash flows from operating activities of USD 355 million and increase in cash/cash equivalents from 1.4 million at the start of the year to USD 821 million as on 31.03.2008.

e. Communication dated 18.03.2013 from MRA confirming source of investment by ECHL is the infusion of capital by EGFL.

f. MRA's communication dated 28.06.2016 forwarding ECHL's communication as to the source of funds of ECHL.

26. The aforesaid documents show the financial creditworthiness of EGFL and all these substantiate the source of share application money of USD 185 million which was a small portion of the net worth and the profit earned for the year ended 31/03/2008 of the EGFL. The financial net worth of EGFL was 20 times more than the share application money and, the profit and funds available were far more in excess of the amount of share application money infused in the assessee. Accordingly, we find that the creditworthiness of EGFL has been proved by the assessee beyond any reasonable doubt. As noted above, the ld. CIT(A) in his detailed order has analysed the identity, creditworthiness and genuineness of the transaction but also the fund flow which has been summarized by him in para 6.2.16 (supra). All these fund flow although was not required once assessee has proved the source of the source before the ld. AO, however, the ld. CIT(A) did enquire further about the trail of funds and also gave opportunity to the ld. AO to examine the same which ld. AO has not given any adverse finding. Instead of verifying the trail of USD 100 million and USD 85 million and source of funds, instead has raised questions without any basis on the internal transfer of funds from EGFL of different bank account to MS bank account amounting to USD 85 million. Nowhere, the ld. AO has found any infirmity in the fund flow from Standard Chartered bank loan account of USD 2.18 billion given to EGFL by the ECML. Once EGFL has received USD 2.18 billion to its bank account which is more than 20 times of sums received from the MS account, then where is the question of any

doubt about the source of funds. The ld. CIT (A) has categorically appreciated all these aspects as incorporated above and we find that his findings are based of proper appreciation of various documents and evidences and accordingly, his observation and finding for deleting the addition of Rs. 7,26,13,35,000 is upheld. Thus, the addition deleted by the ld. CIT (A) is upheld.

27. In so far as other grounds which have been raised vide ground No.1 & 2, first of all what was given before the ld. CIT(A) was fund flow from ECML to EGFL which was out of source taken from loan taken from Standard Chartered Bank. Ld. CIT(A) had forwarded this fund flow to the Assessing Officer and was there before the ld. AO. Thus, ground raised by the Revenue in ground No.1 is liable to be rejected and is without any basis. Nowhere the ld.AO in the assessment order had even asked for the fund flow from ECML. In this case what was required to be proved was the source of the investment in the share application money received by the assessee and also at the most of the source of the source which assessee had duly discharged even before the ld. AO. Thus, if the ld. CIT(A) had asked the assessee to give further trail of funds which assessee had provided and ld. AO was also confronted, then we do not find any infirmity in such action. Accordingly, ground No.1 is wholly misconceived.

28. The so called objections made by the AO, same has been dealt in detail by the ld. CIT(A) and therefore, without pointing out at which pertinent objection has not been dealt with which

changes the colour of the facts or outcome of the case while reaching to the conclusion by the ld. CIT(A) cannot be entertained. Accordingly, ground No.2 is also misconceived.

29. Accordingly, all the grounds raised by the Revenue are dismissed.

30. In the result, appeal of the Revenue is dismissed.

31. In so far as the cross objection is concerned, it had been admitted by the Id. Counsel that same will become infructuous if the Revenue's appeal is dismissed. Accordingly, cross objection raised by the assessee is dismissed as infructuous.

32. In the result, appeal of the Revenue is dismissed and Cross Objection of the assessee is dismissed.

Order pronounced on 20th November, 2024.

Sd/-

(RENU JAUHRI)

ACCOUNTANT MEMBER

Mumbai; Dated 20/11/2024
KARUNA, sr.ps

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai