



\$~40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision : 02.05.2025

+ **W.P.(C) 5768/2025 & CM APPLs. 26341-42/2025**

IDEMIA IDENTITY AND SECURITY INDIA PRIVATE
LIMITED

.....Petitioner

Through: Mr. Shankey Agrawal, Mr. Saurabh
Nandy, Mr. Siddharth Agrawal,
Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE - 25 DELHI

.....Respondent

Through: Mr. Shlok Chandra, Sr. Standing
Counsel with Ms. Naincy Jain, JSC;
Ms. Madhavi Shukla, JSC and Mr.
Ujjwal Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. Issue notice.
2. The learned counsel appearing for the Revenue accepts notice.
3. The petitioner has filed the present petition, *inter alia*, impugning a notice dated 21.03.2024 [**impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] as well as the consequential proceedings under Section 147 of the Act in respect of Assessment Year [**AY**] 2019-20.
4. It is the petitioner's case that the impugned notice was issued beyond the period of limitation as prescribed under Section 149(1)(a) of the Act. Therefore, the impugned notice and further proceedings pursuant thereto are



liable to be set aside.

5. The impugned notice was issued pursuant to a search conducted on 21.03.2023 in the premises of the petitioner and other connected entities.

6. The petitioner had filed its return for the relevant assessment year [AY 2019-20] on 30.11.2019 declaring an income of ₹2,09,00,156/-. The reasons furnished by the Assessing Officer [AO] for issuing the impugned notice under Section 148 and reopening of the assessment noted that there was a huge amount of management fee paid by the petitioner to Idemia France and other associated enterprises during the Financial Years [FYs] 2016-17 to 2022-23, which according to the AO was higher than what ought to have been paid by the petitioner for the services rendered by its associated enterprises [AEs].

7. The relevant extract of the information furnished to the petitioner are set out below:

“2.1 Information:-

In the case, the search proceedings and post-search investigations of Idemia Identity and Security India Private Limited (IISIPL) revealed that these entities are engaged in massive profit shifting outside India. It has been unearthed that IISIPL has deployed various mechanisms through which it is shifting profits to their Associated Enterprises (AEs) especially Idemia France SAS and Idemia Germany. One such profit shifting arrangement employed by IISIPL was through payment of management and related expenses to Idemia France SAS and Idemia I&S France.

A. Excess Payment of management fees and other Intra-Group service fees to AE's without receipt of any actual benefit:

On perusal of the financial statements and Form 3CEB of IISPL, it was seen that it has paid huge amount of management fee to Idemia France and other AES during the period FY 2016-17 to 2022-23. The management and IT services availed were primarily in context



of management support services (executive management, strategic development, finance control, accounting, purchasing etc.) and Information Technology services (maintenance of IT infrastructure etc.). The quantum of management fees paid by IISPL are tabulated below:

(In ₹ Cr.)

FY/Name	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	Grand Total
Idemia France SAS			0.09	0.13	0.15	0.32	0.21	0.89
Idemia Identity & Security France SAS	1.00	0.42			0.06			1.49
Grand Total	1.00	0.42	0.09	0.13	0.21	0.32	0.21	2.38

On perusal of the above it can be noted that the company had paid total management and IT Cost aggregating to Rs. 2.38 Crores from the FY. 2016-17 to FY 2022-23.

In this regard, total revenue and gross profit of IISIPL for FY 2016-17 to 2021-22 was seen and the same was compared against the intra-group cost paid. The comparison of the aforesaid is tabulated as under:

(In ₹ Cr.)

F.Y.	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Total Revenue	20.90	7.81	4.76	5.28	6.37	9.07
Total Gross Profit	14.87	0.95	-	-	-	-
Intra-group service	1.00	0.42	0.09	0.13	0.21	0.32



charges paid						
IGS/total revenue(%)	4.79%	5.41%	1.96%	2.48%	3.35%	3.48%

On perusal of the above, it could be seen that IISIPL is incurring around 2-6 % of its total revenue on intra group services. It is pertinent to note that IISIPL is a service concern which is mainly in providing biometric based identity management solutions to domestic market. Thus, huge payment of intra-group charges appeared to be suspicious that such huge payment may not commensurate with the actual benefit received. It was also astonishing to note that Idemia France also charged mark-up of 3.5% to 5% on such management services of which there was no basis.

It is noticed that during the course of search, various incriminating evidences have been found and statements have been recorded which revealed that IISIPL is making substantial payments to AEs as "Management and IT Cost" and such payments are being made without any justification and proper calculation. Some of the instances of incriminating emails found which shows that management fee was merely used as conduit to shift profits outside India are discussed as under:

Email dated 02.12.2021 sent by Cecile Daburon Duong (Director of Idemia India) to Mr. Akhil Bansal (Tax-Head) and Mr. Rajeev Kachhal (CFO) having 'subject: True up on management fees'. In the said email, it was discussed that management fees charged on previous year estimate and not on actual basis; parent entity was expecting to repatriate the TDS withheld in form of credit note or mitigating the cost through tax evading means;

On perusal of the above, it can be noted that management fees in 2021 had been charged on the basis of previous year 2020. The calculation was not based on any actual services provided. This shows the arbitrary practice of the Group for charging management fees. Further, perusal of the email also shows that the parent entity was expecting to repatriate the TDS withheld in form of credit note or mitigating the cost through tax evading means.



Another email dated 03.09.2021 sent by Ms. Cecile to Mr. Akhil Bansal and Mr. Rajeev Kachhal wherein it was discussed to remove management fees in order to avoid scrutiny by tax authorities. It was discussed that since management fees is being challenged in India, therefore, it is better to remove them;

A perusal of the mail shows a well thought of narrative being prepared by Idemia India on the markup implementation and re-routing of direct flow from Shenzhen through the HUB in garb of its profit shifting mechanisms. It was being discussed to remove intercompany purchases from the segmental P&L which will be presented before the tax authorities and mis-represent the facts that Idemia India does not do any manufacturing step on the chip or modules it receives. Further, the perusal of the email also shows that no actual management services were being received by Idemia India. That is why it was discussed by Cecile (Director, Idemia India) to remove management fees in order to avoid scrutiny by tax authorities. Further, it has been discussed to increase markup on purchases to 15% in lieu of management fees removed (as evident from 'My feeling is that we should be able to reach 15% and remove 150M of management fees in the first year'). Hence, it can be inferred that margin on purchases were mere tools to shift profits outside India and limit payment of taxes in India.

In the case of IISPL also, no management services have actually been received by IISPL. No actual benefit qua the management services was being provided by Idemia France. The payment of management fees was merely used as a conduit to transfer money. Further, even the basis of allocation and keys/parameters used were not known to the Indian entity. Further, it was also not evident that whether the allocated cost actually corroborates to the services received by IISPL or the cost have merely been allocated on some hypothetical and arbitrary basis.

Email dated 29.06.2021 found to be written by Rajeev Kachhal wherein it was stated that Idemia France was merely used as a mail box (depending on the % of the sales) and no rationale for charging management fees;

Various incriminating digital evidences gathered during the search



proceedings demonstrates that the management fee was merely used as a medium to shift profits outside India and suppress the income liable for taxation. Another important aspect noticed was that the Idemia India was already paying huge sum of money to avail several other operational support services and technical support from various parties (including third parties as well as AEs) in various FYs.

Further, it is pertinent to mention here that no management service agreement was found during the course of search nor filed by the assessee-company, during the course of post search proceedings.

Hence, in view of the above, it could be noted that the management fees was imposed on the IISPL without any justification. No methodology or parameters were followed by IISPL nor by Idemia France/Idemia I&S France on the basis of which management fees was being charged. Even the top management was not able to justify the huge management cost and the same do not commensurate with the operations in India. Thus, the management and operational cost is nothing but just a conduit to shift the profits out of India.

As discussed above, it is established that management, IT and other intra-group expenses amounting to ₹0.09 Crore during the period FY 2018-19 relevant to AY 2019-20 were merely used as a manipulative tool to shift profits outside India and no actual services were being received by Idemia India.”

8. There is no cavil that the amount alleged to have escaped assessment during the relevant assessment year is less than ₹50,00,000/- (Rupees fifty lacs) and therefore, the conditions, as stipulated under Section 149(1)(b) of the Act, are not satisfied. Notwithstanding the same, the AO is of the view that the case fell within the exception of Sub-section (1A) of Section 149 of the Act as the income alleged to have escaped assessment during the FYs 2016-17 to 2022-23 relevant to AYs 2017-18 to 2023-24 are relatable to a singular event or an occasion. Therefore, the cumulative value of the total income that escaped assessment during the aforesaid period was required to be taken into account for determining whether the value exceeded



₹50,00,000/-, as stipulated in Section 149(1)(b) of the Act.

9. Mr. Chandra, the learned counsel appearing for the Revenue submitted that the entire object was to move funds out of this country and therefore, the entire quantum of funds was required to be taken into account for determining whether the aggregate amount exceeded the value as specified under Section 149(1)(b) of the Act, that is, was ₹50,00,000/- or more.

10. We find no merit in the aforesaid contention as it is apparent from the information enclosed with the impugned notice that the amounts that have been remitted – which the AO alleges have escaped assessment – were paid by the petitioner to its AEs for rendering of services. The question whether the services have been rendered and whether the same were at Arm's Length Price [ALP] is a contentious issue. However, it is apparent that the income alleged to have escaped assessment is not based on a single occasion or an event spanning over the period in question. It is an amount that is being regularly paid by the petitioner to its AEs overseas, on account of the services which the petitioner claims to have received. It is also not disputed that the payments made by the petitioner were subject matter of the assessments during various previous assessment years and reference for determining the ALP had also been made to the Transfer Pricing Officer [TPO].

11. In view of the above, the present case does not fall within the exception to Sub-section (1A) of Section 149 of the Act. The issue involved is squarely covered by the decision of this court in *M/s. L-1 Identity Solutions Operating Company Private Limited v. Assistant Commissioner of Income Tax, Central Circle-25: Neutral Citation No.: 2025:DHC:2690-*



DB.

12. The petition is, accordingly, allowed. The impugned notice as well as all the proceedings pursuant thereto, including an assessment order, that may have been passed, are set aside. The pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 02, 2025/sms

Click here to check corrigendum, if any