

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI VIKRAM SINGH YADAV, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

**ITA No. 1880/Mum/2025
(Assessment Year: 2017-18)**

ITO, Ward-19(2)(4), Mumbai Room No. 507, 5 th Floor, Income Tax Office, Piramal Chambers, Parel, Mumbai – 400012.	Vs.	NICAF LLP 11/12, Laxmi Mahal, Bombanji Petit Road, A. K. Marg, Kemps Corner, Mumbai – 400036.
PAN/GIR No. AANFN5731A		
(Appellant)	:	(Respondent)

**C.O. No. 86/Mum/2025; (Assessment Year: 2017-18)
(Arising out of ITA No. 1880/Mum/2025)**

NICAF LLP 11/12, Laxmi Mahal, Bombanji Petit Road, A. K. Marg, Kemps Corner, Mumbai – 400036.	Vs.	ITO, Ward-19(2)(4), Mumbai Room No. 507, 5 th Floor, Income Tax Office, Piramal Chambers, Parel, Mumbai – 400012.
PAN/GIR No. AANFN5731A		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Nishit Gandhi, Adv.
Respondent by	:	Shri Leyaqt Ali Aafaqui, SR AR.

Date of Hearing	:	16.06.2025
Date of Pronouncement	:	18.06.2025

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the revenue and cross objection filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) Delhi ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short)

passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The solitary ground of appeal raised by the revenue challenges the order of Id. CIT(A) on deletion of addition of Rs. 2,71,66,500/- made by the learned Assessing Officer ('Id. A.O.' for short) u/s. 68 r.w.s. 115BBE of the Act as unexplained credit as being without considering the provisions of Section 47(xiii)(f) of the Act.
3. Brief facts of the case are that the assessee firm is engaged in the business of trading and installation of carpets and floor coverings dealing in variety of tufted carpets, rugs, wooden floorings. The assessee also undertakes installation, reinstallation and cleaning of carpets and floorings. The assessee had filed its return of income dated 29.09.2017 declaring total income at Rs. (-38,274) and the same was processed u/s. 143(1) of the Act. The assessee's case was selected under CASS for limited scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The Id. AO observed that NICAF Private Limited is converted to NICAF LLP w.e.f. 2.12.2016, where in the balance sheet of NICAF, it was observed that the assessee company had Rs.11,95,410/- as share capital and Rs.2,71,66,498/- as Reserves & Surplus before conversion. Further, it was observed that the assessee has taken both the balance as capital of the partners of M/s. NICAF LLP as per the financials of the company post conversion to LLP. The Id. AO held that as the assessee has violated the conditions of Section 47(xiii)(f) of the Act, where it cannot take any amount directly or indirectly to any partner, out of accumulated profit for a period of 3 years from the date of conversion. The Id. AO treated the same as unexplained credit in the hands of

the assessee and made an addition of Rs. 2,71,66,498/- to the total income of the assessee u/s. 68 r.w.s. 115BBE of the Act, thereby determining total income at Rs. 2,71,66,500/-, vide assessment order dated 30.12.2019, u/s. 143(3) of the Act.

4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 18.12.2024, deleted the impugned addition on the ground that on perusal of the documentary evidences, it is observed that there has been no direct or indirect payment made to the partners' account from the LLP towards the accumulated profit for a period of 3 years and therefore held that Section 47(xiiib)(f) of the Act is not attracted as the transfer of the capital asset by private limited company to LLP has been tax neutral and as per the conditions specified in proviso (a) to (f) of the Section 47(xiiib)(f) of the Act.
5. The revenue is in appeal before us, challenging the impugned order of the Id. CIT(A).
6. The learned Departmental Representative ('Id. DR' for short) for the revenue contended that the assessee has credited the entire reserves and surplus to the capital accounts of the partners in the LLP which violates the conditions prescribed u/s. 47(xiiib)(f) of the Act. Further, the Id. DR contended that the said provisions prohibit any payment to the partners' account towards accumulated profit for 3 years from the date of conversion and that the same was to evade Dividend Distribution Tax (DDT) which was liable to be paid by the assessee on profit distribution as dividend. The Id. DR relied on the decision of the coordinate bench in the case of *ACIT vs. Celerity Power LLP [2019] 174 ITD 433 (Mum. Trib.)*. The Id. DR further relied on the order of the Id. AO and prayed that the addition u/s. 68 r.w.s. 115BBE be upheld.

7. The learned Authorised Representative ('ld. AR' for short) for the assessee on the other hand controverted the said fact and contended that the assessee has not paid any amount to its partners directly or indirectly from REC bonds out of the accumulated profits as per the financials of the company as on date of conversion for a period of 3 years. The ld. AR further stated that the same is corroborated from the bank statement of the partners. The ld. AR iterated that Section 68 was wrongly invoked by ld. AO, where there has been no unexplained credit found in the account of the assessee firm and even otherwise, assuming that there was transfer the same has to be taxed in the hands of the partners and not the assessee firm. The ld. AR relied on the order of ld. CIT(A).
8. We have heard the rival submissions and perused the materials available on record. The moot issue that requires adjudication is whether the addition made u/s. 68 r.w.s. 115BBE by the ld. AO has to be upheld or whether the ld. CIT(A) was right in deleting the impugned addition. It is observed that in the balance sheet of NICALF, the share capital and the reserves and surplus was Rs.11,95,410/- and Rs.2,71,66,498/-, respectively, as on date of conversion and post conversion, the same was owned up in the hands of the partners which according to the ld. AO was utilization of accumulated profits reflecting in the accounts of the company which were not distributed to the shareholders for evading payment of dividend distribution tax by directly crediting the same to the capital account of the partners. The revenue contends that it is in violation of the provisions of Section 47(xiii b)(f) of the Act, for which it is trite to reproduce the provision\ as herein under:

47. Transactions not regarded as transfer.

.....

(xiiib) *any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):*

Provided that—

- (a) *all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;*
- (b) *all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;*
- (c) *the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;*
- (d) *the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;*
- (e) *the total sales, turnover or gross receipts in the business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees;*
- (ea) *the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed five crore rupees; and*
- (f) *no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.*

9. On a bare perusal of the said provision, it is evident that Section 47 provides for a certain situation which does not amount to transfer for the purpose of determining the capital gain as per Section 45 of the Act. Further, clause (xiiib) states that when there is a transfer of capital or intangible asset by a private company or unlisted public company to a limited liability partnership or were there is a transfer of shares held in

the company by a shareholder, as a result of conversion of the company into limited liability partnership as per Section 56 or 57 or Limited Liability Partnership Act, 2008, then the same again would not amount to a transfer as per Section 45 of the Act, provided the conditions specified in sub clause (a) to (f) are not violated by the assessee. The said clause (f) specifically states that there can be no payment directly or indirectly to any partner out of the accumulated profit standing in the accounts of the company as on the date of conversion which is prohibited for a period of 3 years from the date of conversion.

10. From the above, it is evident that Section 47 pertain only to transfer for the purpose of Section 45 which is for determining the capital gain on profits or gains arising from such transfer of a capital asset. In the present case in hand, though the Id. AO has specifically mentioned that the assessee has violated the conditions u/s. 47(xiiib)(f) of the Act, he has proceeded to make addition u/s. 68 of the Act, which is specifically for credits in the books of the assessee for which the assessee offers no explanation as to the nature and source to the satisfaction of the Id. AO.
11. In the present case in hand, it is not the issue of credits found in the assessee's books of accounts rather it is the allegation that the assessee firm upon conversion to LLP has transferred the share capital and reserves and surplus to the partners' accounts, which is quite evident that the nature and source of the credit is not unexplained. Further, the Id. AO has also erred in making addition in the hands of the assessee, when even assuming that there was transfer, it is the credit in the partners' account and not in the assessee's account. We are not justified in upholding the addition made by the Id. AO



u/s. 68 of the Act, were none of the ingredients of the said provision is attracted in present case in hand. The violation of condition prescribed u/s. 47(xiiib)(f) of the Act is only with regard to the computation of capital gain u/s. 45 on certain transfers of a capital asset. The Id. AO has failed to give a finding on the issue of whether the alleged transfer would be liable for capital gain and that to the same has to be in the hands of the transferor. As this issue is not before us and it is also not the case of neither the revenue nor the assessee, we are refraining from giving our view on the same. The limited scope of the present appeal is pertaining to Section 68 addition which we have given a categorical finding that the same is not attracted in the present case in hand on the abovementioned observation. We therefore find no infirmity in the order of Id. CIT(A) in deleting the impugned addition and hence, dismiss the grounds of appeal raised by the revenue. As we have upheld the order of Id. CIT(A), the grounds raised by the assessee in the cross objection is hereby allowed.

12. 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 18.06.2025

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 18.06.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent



ITA No. 1880/Mum/2025 & C.O. No. 86/Mum/2025(A.Y. 2017-18)
NICAF LLP

3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai