IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

I.T.A. No. 3215/Del/2016
(Assessment Year 2010-11)

Meenu Satija Unit No. 5D, 5th Floor, Assets Area – 4, Delhi Aerocity Hosp. Distt. New Delhi **GIR/PAN : AATPS6641L** **(Appellant)**	Vs.	Pr. CIT (Central, Gurgaon. **(Respondent)**

Appellant by : Sh. R. S. Ahuja, CA
Respondent by : Smt. Rachna Singh, CIT DR

Date of hearing : 11.01.2017
Date of Pronouncement: 27.01.2017

ORDER

PER BEENA A. PILLAI, JM:

1. The present appeal has been filed by the assessee against order dated 28.03.2016 passed by Ld. CIT (Central) Gurgaon, under section 263 of the Act for assessment year 2010-11 on the following grounds of appeal:

GROUNDS OF APPEAL

(A) That on the facts & circumstances of the case the learned CIT erred in:

1) Passing an order u/s 263 directing the AO to make an addition u/s 56(2)(vii)(c) of Rs.1,61,05,704.

2) Passing the said order which is bad in law as there is no error in the order of the AO which needs to be corrected u/s 263.

(B) The Assessee craves leave to add, Alter or amend the grounds of appeal at & before the hearing.

2. Brief facts of the case are as under:

A search and seizure under section 132(1) and survey under section 133(A) of the Act was carried out in the business premises of the group companies. Subsequently, notice under section 153A(1)(a) of the Act was issued to assessee requiring her to file return of income in respect of assessment year under consideration for the six preceding assessment years. Assessee filed her return of income pursuant to this notice on 22.08.2013 for the year under consideration declaring an income of Rs. 5, 56, 010/-. Notices under section 143(2) and 142(1) alongwith questionnaire was issued to assessee. In response to the said notice, representative of the assessee appeared and attended the assessment proceedings and submitted relevant details as called for. Assessing Officer accepted the returned income

filed by assessee and completed the assessment on 31.03.2014.

3. From the assessment records Ld. CIT observed that during the year under consideration M/s Bestech India Pvt. Ltd., had allotted 10,000 equity shares at Rs. 400/- on 18.03.2010 to the assessee. Further 6,29,428 bonus shares were issued to assessee on 31.03.2010 without any consideration. The bonus shares were issued by way of capitalization of share premium account and reserve account. Ld. CIT was thus, of the opinion that benefit given to assessee was clearly chargeable as income from other sources under section 56(2)(vii)(c) of the Act.

4. Ld. CIT in exercise of his powers under section 263, issued show cause notice on 27.11.2015 in which it was alleged that assessee was allotted rights shares, and as per rule 11UA, there is an increase in the net wealth and section 56(2)(vii) of the Act is attracted, which is reproduced hereunder:

To
Smt. Meenu Satija
1/2873, Ram Nagar, Loni Road, Shahdra
Delhi-110032.

Subject: Notice u/s 263 of IT Act, 1961 for A.Y. 2010-11 - regarding.

The assessment order u/s 153A(1)(b) of' IT Act, 1961 dated 31.03.2014 for A.Y. 2010-11, passed by Dy. Commissioner of Income Tax, Central Circle-1, Faridabad in your case was reviewed. On examination of assessment records, the following prima facie deficiency has been noticed-

You are a share holder of M/s Bestech India Pvt. Ltd. During the year under consideration the company had allotted 10,000 equity shares @ Rs. 400/- on 18.03.2010. Further, 6,29,428 bonus shares were issued to you on 31.0.3.2010 without any consideration. The bonus shares were issued by way of capitalization of the Share Premium Account and Reserve account. In other words, shares premium received from outsiders was converted into share capital of Directors/Promoters of the company on NIL payment. Moreover, 1,47,357 right share were also allotted to you on 23.03.2010 for a consideration of Rs. 10/- per share. It is also noticed that shares were allotted to you as well as other Directors/Promoters of the company on 18.03.2010 @ of Rs. 400/- per share within the same period of time. By applying Rule 11UA of IT Rule 1962, there is an increase in your net wealth on account of allotment of bonus/right shares and, as such, the provisions of Sec. 56(2)(vii)(c) of IT Act, 1961 are clearly attracted. Thus, the difference in the value at which the shares have been allotted to you

and the fair market value computed as per Rule 11UA has to be taxed as your income from other sources u/s 56(2)(vii)(c) of IT Act, 1961. The failure on the part of the Assessing Officer to draw adverse inference in the matter has rendered the assessment order erroneous as well as prejudicial to the interest of revenue.

In view of the above facts, I intend to initiate proceedings u/s 263 of the Income Tax Act, 1961 for reframing the assessment order for A.Y. 2010-11, dated 31.03.2014. You are hereby required to show cause as to why the impugned assessment should not be revised u/s 263(1) of the IT Act, 1961.

You may attend my office on or before 08.12.2015 either personally or through an authorized representative for making your submission.

Sd/-

(Ajay Singh)
Principal Commissioner Income Tax Officer
(Central] Gurgaon

5. Before Ld. CIT assessee vide letters dated 18.01.2016 and 21.03.2016 submitted that 1,47,357 right shares and 6,29,428 bonus shares, allotted to assessee does not fall within the ambit of section 56 (2) (vii) and is not liable to be taxed. However, Ld. CIT held the order passed by Ld. AO to

be erroneous and prejudicial to the interest of the revenue as the amount of Rs.1,61,05,074/- need to be added under section 56 (2)(vii) (c) of the Act as under:

> *06. 6,29,428 bonus shares were allotted by M/s Bestech India Pvt. Ltd., to the assessee for NIL consideration and 1,47,357 right shares were allotted for Rs. 14,73,5707-. However, the fair market value of these shares, as computed under Rule 11U & 11 UA of the I.T. Rules, comes to Rs. l,75,78,644/-(Rs. 22.63 x 7,76,785). Accordingly, the difference of fair market value of the bonus/ right equity shares and the value at which these shares were allotted to the assessee by M/s Bestech India Pvt. Ltd., comes to Rs. 1,61,05,074/- (Rs. 1,75,78,644 -Rs.14,73,570). Therefore, amount of Rs. 1,61,05,0747- needs to be added u/s 56(2)(vii)(c) of the I. T. Act, 1961 as assessee's income from other sources. The order of the AO is, therefore, erroneous and prejudicial to the interest of the revenue.*
>
> *07. The AO is directed to recompute the income by making the addition of Rs. 1,61,05,0747- (Rs.1,75,78,644 - Rs. 14,73,5707-) u/s 56(2)(vii)(c) of the I. T. Act, 1961.*

6. Aggrieved by the order passed by Ld. CIT assessee is in appeal before us now.

Ground No. 1:

7. Ld. AR submitted that Ld. CIT has wrongly invoked section 56 (2) (vii) of the Act, as the receipt of bonus and right shares by assessee does not fall within the ambit of the said section. He submitted that it was never the intention of legislature to bring the receipt of bonus/right shares, within the purview of section 56 (2) (vii) of the Act. He placed reliance upon the decision of Mumbai Tribunal in the case of *Sudhir Menon (HUF) vs. ACIT* reported in (2014) 148 ITD 260, and decision of Bangalore Tribunal in the case of *DCIT vs. Dr Rajan Pie* reported in 2016 48 ITR (TRIB) 170.

8. He submitted that Provisions of Section 56 (2)(vii) could not be applied as it was introduced as an anti-abuse provision, whereas in the present case, assessee transactions were bona fide, without there being any adverse remarks on behalf of the revenue authorities. He submitted that property contemplated under section 56(2)(vii) of the Act means, property that should be in existence before it can be received. Ld. AR submitted that in the case of issue of shares by a company, comes into existence only at the time of allotment. Ld. AR further submitted that if the legislature really intended to bring allotment of bonus/rights shares within the ambit of Section 56(2)(vii), it would have deleted/amended Section 55(2)(aa) (iiia) simultaneously. He thus, submitted that on account joint reading of Section 55(2)(aa)(iiia) and Section 56(2)(vii), if made applicable to the allotment of

shares, would lead to absurdity as the said provisions would be contradictory to each other.

9. He thus, submitted that keeping in mind the legislative history one must have a close look at section 56 (2)(vii) for ascertaining whether it could be applied to bonus/right shares. He also submitted that prior to the introduction of these clauses, and during the period when gift tax act was applicable, issue of bonus/right shares were never considered as gift by company to its shareholder, and was never subjected to gift tax in the hands of the company, considering it to be a donor.

10. On the contrary Ld. DR supported the order passed by Ld. CIT. She submitted that allotment of shares was without adequate consideration and therefore, there was an attempt that has been made to evade tax. It has been submitted by Ld. DR that as per working under rule 11UA, the value of shares allotted to assessee as on 18.03.2010 was Rs. 400/- each and there is an increase in the assessee's net wealth on account of the allotment of bonus/right shares. She further submitted that right shares issued to assessee was at a face value of Rs. 10/- and bonus shares issued to the assessee were without any consideration. She submitted that there is a difference in the market value of the shares and Ld. CIT was right in making addition in the hands of assessee being the difference in the value of shares at Rs.1,61,05,074/-.

11. She placed reliance upon the decision of *Hon'ble Supreme Court, in the case of M/s Khoday Distilleries Ltd. vs. CIT in Civil Appeal No. 6654 of 2008 vide order dated 14.11.2008.*

12. We have perused the submissions advanced by both parties in light of the records placed before us and decisions relied upon by them.

13. It is an undisputed fact that assessee has invested in shares of M/s Bestech India Pvt. Ltd., during the financial year relevant to the assessment year under consideration. She was allotted 10,000 equity shares at Rs. 400/- on 18th March, 2010 and 6,29,428 bonus shares were allotted on 31st March, 2010 without any consideration. The assessee was also allotted 1,47,357 right shares on 23.03.2010 for a consideration of Rs. 10/- per share. As per the books the fair market value of shares of M/s Bestech India Pvt. Ltd., as on 31.03.2012 came to Rs. 22.63/-. Ld. CIT was of the opinion that there is increase in accretion of wealth as per book value in the hands of the assessee due to the receipt of bonus shares of Rs. 1.61 crores. Ld. CIT treated the difference in the value of shares, being inadequate consideration in terms of section 56 (2) (vii)(c) read with rule 11UA of the Act.

14. Ld. AR submits that Provisions of Section 56(2)(vii) would not be applicable to a transaction as the one under consideration whereas Ld. DR submits that section 56 (2) get

attracted when an individual or HUF receives without any consideration property, the FMV of which is in excess of Rs. 50,000/-, or where the consideration, paid is less/more than FMV. The issue that needs to be addressed is in respect of applicability of section 56 (2) (vii) of the Act to the facts of the case before us.

15. Reference was made by Ld. AR of the legislative intent towards background and insertion of section 56 (2) (vii) of the Act which is as under:

" History of section 56 (2)

After the abolition of Gift Tax, Finance (No. 2) Act 2005 brought gifts into income tax by introduction of clause (v) to section 56(2) whereby receipt of any sum of money exceeding Rs.25,000/- without consideration by Individual and HUF was made taxable in the hands of recipient.

Finance Act 2006 introduced clause (vi) to section 56(2) which almost replicate clause (v) however, the minimum limit has been increased from Rs. 25,000/- to Rs. 50,000/-. Thus, any sum of money exceeding Rs. 50,OOO/- without consideration by and Individual and HUF was made taxable in the hands of recipient.

Finance (No.2) Act 2009 w.e.f., 01,10.2009 introduced clause (vii) to section 56(2) which enhanced the scope of existing provision in clause (vi) and covered the receipt of *'properties'* including *'immovable properties'* in addition to *'sum of money'*. Thus, receipt of any immovable property or property other than an immovable property either without consideration or at a consideration less than its Fair Market Value by an

Individual and HUF became taxable in the their hand, in case, consideration is less than FMV for a sum not less than 50,000/-. However, some exception to this provision is also given in the proviso. It is relevant to mention here that these provisions remained to be effective only on individual and HUF.

Finance Act 2010 w.e.f. 01.06.2010 introduced clause (viia) to section 56(2) which enhanced the scope of existing provision in clause (vii) to Firm or Company.

Finance Act 2012 w.e.f. 01.04.2013 introduced clause, (viib) to section 56(2) whereby in case of allotment of shares by any company, any amount, received by the company in excess of its fair market value of shares or its face value was made taxable in the hands of the such company. Provision of section 56(2)(vii) are applicable on Individual and HUF whereas Provisions of 56(2)(viia) are applicable on firm and company.

As the assessee before us is an Individual we are concerned with Sex. 56(2)(vii).

Finance (No.2) Act 2009 w.e.f. 01.10.2009 introduced clause (vii) as follows:

"(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of 'October, 2009,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

The legislative intent behind introduction of this provision was to curb laundering of unaccounted income under the pretext of gifts by preventing practice of transferring shares of an unlisted company without consideration or at a price lower than the Fair Market Value (FMV) and to bring it under the tax net. Hence, these provisions are in the nature of anti-abuse provisions.

Legislator has also opened up its intention at page no. 7 of Explanatory Memorandum to Finance Bill 2010 which is being re produced below.

"Taxation of certain transactions without consideration orfor inadequate consideration":

Under the existing provisions of section 56(2}(vii), any sum of money or any property in kind which, is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income fax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archaeological collection, drawings, paintings, sculpture or any work of art.

These are anti-abuse provisions which are currently applicable, only, if an individual or an HUF is the recipient Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision.

In order to prevent the practice of transferring unlisted shares at prices much below (their) fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interest) either for inadequate, consideration or without consideration where the recipient is a firm of a company (not being a company in which public are substantially interested}. Section 2(18) des the definition of a company in which the public are substantially interested".

From the above discussion, it is amply clear that Legislator intended to tax the transfer of shares at a value lesser than its fair market value under Provisions of Section 56(2)(vii), and 56(2)(viia).

17. On a careful reading of the provisions and the legislative intent, we agree with the submissions of Ld.AR that the provision would not be applicable to bonus/right shares as there is no increase or decrease in the wealth of shareholder assessee on account of bonus/right shares. Further, there is

no element of "gift" in issuing of bonus/right shares to the assessee by the company.

18. Hon'ble Supreme Court in the case of *Khoday Distilleries Ltd. vs CIT* reported in (2008) 307 ITR 312 has referred to the manner in which bonus shares are issued as under:

> *"When the company is prosperous and accumulate a large surplus, it converts is surplus into capital and divided the capital amongst the members in proportion to their rights. This is done by issuing fully paid-up shares representing the increased capital. The shareholders to whom the shares are allotted have to pay nothing. The purpose is to capitalise profits which may be available for division. Bonus shares go by the modern name of "capitalisation shares". If the articles of a company empowers the company, it can capitalise profits or reserves and issue fully paid-up shares of nominal value, equal to the amount capitalised to its shareholders. The idea behind issue of bonus shares is to bring the nominal share capital into line with the excess of assets over liabilities. A company would like to have more working capital but it need not go into the market for obtaining fresh capital by issuing fresh shares. The necessary money is available with it and this money is converted into shares which really means that the undisturbed profit, have been ploughed back into the business and converted into share capital. Therefore fully*

paid-up bonus shares are merely a distribution of capitalised undivided profit. It would be a misnomer to call the recipients of bonus shares as donees of the shares from the company."

Hon'ble Supreme Court further held as under:

"when a shareholder gets a bonus shares the value of the original share held by him goes down. In effect, the shareholder gets to shares instead of one held by him in and the market value as well as the intrinsic value of the 2 shares put together will be same so nearly the same as the value of the original share before the bonus issue..

It appears from various decisions cited hereinabove, the issuance of bonus shares does not amount to distribution of accumulated profit of a company. The shareholder derives some benefit by the process of capitalising of their cumulative profit but at the same time the value of his original shareholding does not go down."

19. In view of the above observations by Hon'ble Supreme Court, we do not find this decision being of any help to the revenue.

20. We agree with submission advanced by Ld. AR that in case section 56(2)(vii)/56 (2) (viia) is made applicable on issue of bonus/right shares, various other sections of the Act would become contradictory. This is because if for the sake of

discussion it is presumed that the provisions of section 56 (2) (vii) are made applicable to the allotment of bonus/Right shares, then for the purpose of calculating capital gains under section 48 and 49 on the sale of such shares, the cost of acquisition shall be taken as per section 49 (4) which means the value of bonus/right shares considered while applying the provisions of section 52 (2) (vii), which is clearly contradicting the provisions of section 55 (2) (aa) (iiiia). If the legislature really intended to bring allotment of bonus/right shares within the ambit of section 56 (2) (vii), it would have amended section 55 (2) (aa) (iiia) simultaneously.

21. Ld. AR placed his reliance upon the decision of Mumbai Tribunal in the case of *Sudhir Menon (HUF) (supra)*. The observation of this Tribunal in respect of applicability of section 56(2)(vii) in case of bonus/right shares are as follows:

> *"Issue of bonus shares is by definition capitalization of its profit by the issuing company. There is neither any increase nor decrease in the wealth of the shareholder (or of the issuing company) on account of a bonus issue, and his percentage holding therein remains constant. What in effect transpires is that a share gets split (in the same proportion for all the shareholders), as for example by a factor of two in case of a 1:1 bonus issue."*

"In other words, there is no receipt of any propertly by the shareholder, and what stand received by him is the split shares out of his own holding. It would be akin to somebody exchanging the a one thousand rupee note for two five hundred or ten hundred rupee notes."

"There is, accordingly, no question of any gift of or accretion to property; the shareholder getting only the value of his existing shares, which stands reduced to the same extent. The same has the effect of reducing the value per share, increasing its mobility and, thus liquidity, in the sense that the shares become more accessible for transactions and, thus, trading."

22. The issue in hand stands covered by this order of the co-ordinate bench. The sum and substance of the decision of Hon'ble Supreme Court in the case of *Khoday Distilleries Ltd., (supra)* is that, no properties being conveyed to a shareholder by issue of bonus/right shares inasmuch as the property therein is comprised in the existing shareholding of the allottee. Similarly no property however is being passed on to the assessee in the instant case before us on allotment of bonus/right shares and the no addition could be made by applying provisions of section 56 (2) (vii) as the case may be.

In the result ground No. 1 filed by the assessee stands allowed.

Ground No. 2:

23. This ground has been raised by the assessee against the initiation of proceedings under section 263.

24. Ld. AR has submitted that show cause notice issued to the assessee dated 27/11/2015 is bad in law as there was no error in the order passed by Ld. AO. He submitted that even during the search and survey there has been no material that was unearthed which could form basis of the proceedings initiated under section 263.

25. On the contrary Ld. DR submitted that assessment order passed by Ld. AO is erroneous, in so far as prejudicial to the interests of the revenue, as Assessing Officer has not verified regarding issue of bonus/right shares to assesse. She submitted that during the assessment proceedings Assessing Officer has not raised any query regarding the same, which establishes non application of mind by Ld.AO.

26. We have perused the submissions advanced by both sides in the light of the records placed before us.

27. On the specific query raised by this bench to Ld. AR regarding consideration of this issue by Assessing Officer during the assessment proceedings, it has been submitted that Ld. AO has not called for any details regarding shares being allotted to assessee. Even from the assessment order passed it

could not be discerned that Assessing Officer has conducted any enquiry regarding issue.

28. Ld. AR has raised and argument regarding the proceedings under section 263 being initiated wrongly as there was no material before Ld. CIT that was unearthed during the search. We reject this argument as the assessing officer has not dealt with share standing in the name of assessee at the time of assessment proceedings and that Assessing Officer has not investigated/inquired about the same by raising any query. It is a settled law that there need not be any incriminating material for making addition in assessment made u/s 153A when assessment has not abated. The Assessing Officer being an Investigating Officer should have conducted enquiry assessment proceedings. We, therefore, dismiss this ground of the assessee.

Accordingly this ground raised by the assessee stands dismissed.

In the result appeal filed by the assessee stands allowed.

Order pronounced in the open court on 27th January, 2017.

Sd/-	Sd/-
(J. S.REDDY)	**(BEENA A. PILLAI)**
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Date: 27.01.2017
@m!t