

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI**

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

ITA No.25/Del/2018
Assessment Year: 2013-14

M/s. Radiant Multi Advisory Services Pvt. Ltd. 5/31, W. E. A. Karol Bagh, New Delhi-110005 (APPELLANT)	Vs	ITO Ward – 20 (4) C. R. Building New Delhi - 110002 (RESPONDENT)
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Appellant by	Sh. Salil Aggarwal, Advocate Sh. Shailesh Gupta, Advocate
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	14/01/2019
Date of Pronouncement:	18/01/2019

ORDER

PER N. S. SAINI AM:

1. This appeal filed by the assessee against the order CIT(A)-25, Delhi dated 29.09.2017 for the A. Y.2013-14.
2. The assessee has taken following grounds of appeal of the assessee as under :-

That the impugned order dated 22/09/2017 received on 03/11/2017 is being challenged on the following grounds, which may be taken into consideration while adjudicating the said appeal:-

1. *That the Learned CIT (A) has grossly erred both on facts and law in passing the impugned order without providing the sufficient opportunity of being heard to the assessee thus passing the order violating the principles of natural justice.*
2. *That the Learned CIT (A) has grossly erred both on facts and law in the impugned order without appreciating the fact that there were no reasons/circumstances that assessee would have given the wrong address deliberately to avoid the service of the notice. The address of the assessee given in the appeal is same as registered in the ROC records of the company.*

3. *That the Learned CIT (A) has grossly erred both on facts and law in the impugned order without appreciating the fact that the assessee itself is an appellant and filed the appeal before the learned CIT (A) aggrieved by the order of the assessing officer. There was no reason to avoid the notice or to give the wrong address, which would be detrimental to the interest of the Appellant.*
4. *That the notice issued on 19/07/2017 fixing the date of hearing for 16.08.2017 & notice issued on 18/09/2017 fixing the date of hearing for 28.09.2017 was in fact never served upon the assessee, hence there was not any non-compliance to the notices issued and further resulted in non-filing of any submission/evidence before the learned CIT (A).*
5. *Without prejudice to the above grounds, the learned CIT(A) has grossly erred in confirming the additions made by the Assessing Officer under section 56(2)(viib) of the Income Tax Act, 1961 aggregating Rs.19,60,000/- on account of share premium received, ignoring the various submission and satisfactory explanation given by the Appellant with documentary evidences and bank statements before the Assessing Officer. The Assessing officer has made bald additions devoid of any reasoning and further without giving sufficient opportunity to the appellant.*
6. *That the learned CIT(A) has grossly erred in not appreciating the fact that assessing officer has grossly erred in reading and understanding the provisions of section 56(2)(viib) of the Income Tax Act, 1961 to the extent that the recordings of satisfaction that the explanation given by the assessee is not satisfactory and such recording of satisfaction is missing in the case of the Appellant nor any steps were taken during the assessment proceedings by the Learned Assessing Officer and invoke the provisions of section 56(2)(viib) of the Income Tax Act, 1961.*

That the learned CIT(A) has grossly erred in not appreciating the fact that the learned Assessing Officer has grossly erred in not accepting the valuation of per share value, done by an independent agency namely M/s AVS & Co. Chartered Accountants, without recording any reasons in spite of the fact that valuation was done by the independent agency in accordance with the Rule 11UA of the Income Tax Rules, 1962.
8. *That the learned CIT(A) has grossly erred in not appreciating the fact that learned Assessing Officer has grossly erred in ignoring the management representation report of the Appellant company wherein the financials projection were made by the promoters of the company, which has been blatantly ignored without recording any reasons/satisfaction for rejecting the same. The various factors on which projections were based by the Appellant company were also submitted, which has been totally ignored by the learned AO.*
9. *That the learned CIT(A) has grossly erred in not appreciating the fact that the learned Assessing Officer has grossly erred in not appreciating the facts that the shareholder i.e., M/s Lakshya Traxim Pvt. Ltd to whom the shares has been issued, also confirmed the payment made by it of the 40000*

shares allotted @ Rs.50 per share (including share premium of Rs.49 per share), which was duly supported by the bank statement, Income Tax Return of the shareholder, in response to the notice issued by the learned AO under section 133(6) of the Income Tax Act, 1961. The payments were made by the shareholder through RTGS from Deutsche Bank.

That the learned CIT(A) has grossly erred in not appreciating the fact that the learned AO in whimsical and biased manner adopted the provisions of section 56(2)(viib) of the Income Tax Act, 1961, which is not applicable to the Appellant Company and further ignored various judicial pronouncements by superior courts.

The Appellant may add, alter and amend any of the above grounds if so required.

3. The assessee is a private limited company carrying on business as financial advisors and to advice and assist in all financial, costing accounting, internal control and other similar matters; as management consultancy on strategic planning, corporate strategy, corporate restructuring, technical and financial collaboration etc. The Assessing Officer observed that during the year the assessee has shown no income and that the business is yet to commence. The company filed the return of income showing loss of Rs.43,736/-. The assessee during the year allotted 40,000 shares of face value of Rs.1/- at a premium of Rs.49/- to M/s. Lakshya Taxmim Pvt. Ltd. the company received Rs.20 lacs on account of allotment of shares which includes Rs.40,000/- towards face value of shares and Rs.19,60,000/- towards share premium. The income of the assessee company was assessed at Rs.19,60,000/- after making addition u/s 56 (2) (viib) of Rs.19,60,000/- on account of share premium treating as income from other sources of assessee company.

4. The assessee filed appeal before the CIT(A). The CIT(A) observed that the assessee did not attend any hearing and nothing was filed no compliance at all was made by the appellant to the notice issued from the office of Commissioner (Appeals).

5. The CIT(A) therefore observed that the assessee deliberately ensured by giving wrong address or avoiding of services of notice of appeal before CIT(A) and an encyclopedic view of all the materials in the case clearly

shows that reasonable opportunity was given to the assessee and there was no justification for further postponement of decision in appeal.

7. The CIT(A) held that the assessee company allotted shares of book value of Rs. 1/- at Rs. 50/- therefore, provisions of sections 56 (2) (viib) are attracted in this case. In accordance with the provisions of section 56 (2) (viib) addition of Rs.19,16,260/- as income of the appellant company under the head from other sources by the Assessing Officer has to be confirmed. The assessee could not rebut the findings of the Assessing Officer despite being allowed sufficient opportunities in appellant proceedings no further details of evidences and justification for the valuation claimed by the appellant were filed. Hence, the value as per share shall be taken at Rs. 1/- an amount of Rs.19,60,00/- shall be added to the income and confirmed the order of the Assessing Officer.

8. Before me the AR of the assessee submitted that in support of the value of share of assessee company at Rs.50/- the assessee filed before the Assessing Officer valuation report of M/s. AVS & CO. Chartered Accountants which was based on discounted cash flow method as per rule 11 UA of the IT Rules, 1962. Hence, the Assessing Officer as well as CIT (A) were not justified in not accepting the value of shares of the assessee company at Rs.50/- per share based on the valuation report of the Chartered Accountant.

9. On the other hand the Ld. DR submitted that the Assessing Officer required the assessee to furnish calculation of per share value as per rule 11UA of Income Tax Act 1962 and no reply was filed. Again on 11.02.2016 another opportunity allowed to furnish the detail. The assessee failed to comply with the same. Therefore, the Assessing Officer rejected the valuation report of the Chartered Accountant and treated the share premium of Rs.19,60,000/- as income of the assessee under the head income from other sources. He submitted that even before the Tribunal the assessee has not filed the calculation of per share value of the assessee

company as per rule 11UA of Income Tax Rules 1962. Hence, he submitted that the appeal of the assessee should be dismissed.

10. In the rejoinder of the AR of the assessee submitted that rule 11 UA of the Income Tax Act 1962 (2) (b) provides that the fair market value of the owned unquoted equity shares shall be the value determined by a merchant banker or accounted as per the discounted free cash flow method. The assessee filed the report of the Chartered Accountant valuing the shares of the assessee as per discounted cash flow method and therefore the Assessing Officer should have accepted the same.

11. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case the assessee issued 40,000 shares at a value of Rs.50 per share thereby charging premium of Rs.49/- on face value of share of Rs.1/-. The assessee in support of the value of share at Rs.50/-filed report of Chartered Accountant valuing the shares on the basis of discounted free cash flow method as per 11 UA. The Assessing Officer required the assessee to file the calculation of per share value as per rule 11 UA of the IT Rules 1962 which was not filed before him and therefore he treated share premium of Rs.19,60,000/-as income of the assessee under the head from other sources.

12. On appeal before the CIT(A) the assessee did not appear and therefore the CIT(A) dismissed the appeal of the assessee on the ground that the assessee has not filed any details or submissions before him.

13. Before me the AR of the assessee reiterated submissions made before the Assessing Officer and submitted that in support of the per value of share of the company at Rs.50/- was supported by the report of Chartered Accountant as required under rule 11 UA of the income Tax Rules. Before me also the details of valuation of share under rule 11 UA of the Rules 1962 has not been filed.

14. In the above background of the case I am of the considered opinion that the matter should be restored back to the file of the CIT(A) by granting one more opportunity to the assessee to produce before him the calculation of per share value as per rule 11 UA of the IT Rules 1962 before the CIT(A). The CIT(A) shall re-adjudicate the issue as per law after considering the details of valuation to be filed by the assessee before him after allowing reasonable and proper opportunity of hearing to the assessee. I order accordingly.

15. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 18.01.2019

Sd/-
(N. S. SAINI)
ACCOUNTANT MEMBER

Dated: 18.01.2019.

Neha

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

Assistant Registrar
ITAT, New Delhi

Date of dictation	18.01.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	21.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	