IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.5681/0Del./2016
Assessment Year 2010-2011

DCIT, Central Circle-1, Faridabad	vs.,	Smt. Mamta Bhandari, 1/2873, Ram Nagar Extension, Loni Road, Shahadra, Delhi – 110 032. PAN AAGPB3440H
(Appellant)		(Respondent)

For Revenue :	Shri Sanjay Shivam, CIT-D.R.
For Assessee :	Shri R.S. Ahuja, C.A.

Date of Hearing :	09.07.2019
Date of Pronouncement :	10.07.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-3, Gurgaon, Dated 31.08.2016, for the A.Y. 2010-2011, on the following ground :

"That on the facts and in the circumstances of the case and as per provisions of law, the Ld. CIT(A)

has erred in deleting the addition made by the A.O. u/s 56(2)(vii)(c) without appreciating the proper interpretation of the section."

2. Briefly the facts of the case are that search was conducted under section 132 of the I.T. Act in the case of the assessee, the residential as well as business premises of Bestech Group of Cases. Survey was also conducted simultaneously. A.O. issued notice under section 153A, in response to which, assessee filed return of income. On perusal of the seized material and submissions filed by he assessee, it was noticed that assessee had invested in the shares of M/s. Bestech India Pvt. Ltd. During the assessment year under appeal, she was allotted 10,000 equity shares @ Rs.400/- on 18.03.2010 and further 6,29,428 bonus shares were allotted to the assessee on 31.03.2010 without taking any consideration for these shares and 1,47,357 right shares were allotted to the assessee on 23.03.2010 at the face value of RS.10/- by M/s. Bestech India Pvt. Ltd. The details are notedin the assessment order. For arriving out of fair market value of

the shares of M/s. Bestech India Pvt. Ltd., as on 31.03.2012 Rule 11UA of the I.T. Rule was applied and book value of equity share was calculated which comes to Rs.22.63/-. Detailed working is noted in the order. M/s. Bestech India Pvt. Ltd., have allotted bonus shares at Nil consideration to its share holders when the book value as per Rule 11UA is Rs. 22.63/- and Rs. 31.50/- respectively as on 31.03.2010. The A.O. therefore, noted that there is net accretion of wealth as per book value in the hands of the assessee due to receipt of bonus shares. Thus the provisions of section 56(2)(vii)(c) are attracted in the case of the assessee. The A.O. accordingly proposed to make addition of Rs.1,61,05,074/-. Explanation of assessee was called for in which the assessee submitted that bonus share does not come under the ambit of Section 56(2)(vii)(c) of the I.T. Act and relied upon Explanatory Memorandum to the Finance Bill 2010 and decision of ITAT, Mumbai Bench in the case of Sudhir Menon (HUF) vs. ACIT in ITA.No.4487/Mum/2013. The A.O. however, did not accept the contention of assessee and held that provisions of Section 56(2)(vii)(c) apply to the

case and accordingly, made the addition of Rs.1,61,05,074/-.

3. The addition was challenged before the Ld. CIT(A). The assessee reiterated the submissions made before the A.O. It was contended that the above provisions are not applicable to allotment of bonus shares and relied upon the same judgment and Explanatory Memorandum to the Finance Bill 2010. It was also contended that the above provisions would apply in the case of transfer of shares which is not the case of the assessee and that no property have been transferred. The Ld. CIT(A) considering the explanation of assessee in the light of decision in the case of Sudhir Menon (HUF) vs. ACIT (supra), deleted the addition. The findings of the Ld. CIT(A) in paras 5 and 6 of the Order are reproduced as under :

> "*5. Decision :*
>
> *I have perused the assessment order passed by the AO and submissions of the appellant.*

During the year, the appellant has received bonus shares from M/s Bestech India Pvt. Ltd. The AO has applied provisions of section 56(2)(vii) of the Act and made an addition of Rs. 1,61,05,074/- on account of the difference between the fair market value of the bonus shares received by the appellant and the actual consideration at which they have been allotted to her as 'Income from other sources'.

Before, discussing the merits of the case, it will be necessary to go through the explanatory memorandum of Financial Bill 2010 w.r.t. amendment in section 56(2)(vii) which is reproduced as under:-

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 ofRs. 50,000/-) by an individual or an HUF is chargeable to Income Tax 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, archeological collection, drawings, paintings, sculpture or any work of art.

A. *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 interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). Section 2(18) provides the definition of a company in which the public are substantially interested. It is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vie), (vicb), (vid) and (vii) of section 47 of the Act

Consequential amendments are proposed in-

(i) Section 2(24) to include the value of such shares in the definition of income.

(ii) Section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the tax under the provisions of section 56(2).

B. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

Thereafter, this issue was discussed in detail by Hon'ble ITAT Mumbai Bench in the case of Sudhir Menon HUF vs Astt. CIT- 21(2), Bandra Mumbai For AY 2010-11 in ITANo. 87/Mum/2013 and the relevant observations are reproduced as below :-

(i) The provisions of section 56(2)(vii) of the Act would not apply to bonus shares, and the argument alluding thereto arises only on account of mis -conception in respect thereof.

(ii) 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 shareholder (or of the issuing company) on account of a bonus issue and his percentage holding therein remains constant.

(iii) What in effect transpires is that a share gets spilt (in the same proposition for all the shareholders), as for example by a factor of two in case of a 1:1 bonus issue.

(iv) Reference in this regard may be to the decision in CIT vs Dalmia Investment Co. Ltd. [1964] 52 ITR 567 (SC) as well as in Khoday Distilleries Ltd. (Supra), wherein reference stands made to the former, also quoting there from besides inter alia to Hunsur Plywood Works Ltd vs CIT[1998] 229 ITR 112 (SC), where the

same were referred to as 'capitalization shares'.

(v) In other words, there is no receipt of any property by the shareholder, and what stands received by him is the split shares out of his own holding. It would be akin to somebody exchanging 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 share holder getting only the value of his existing value per share, increasing its mobility and, thus, liquidity, in the sense that the shares become more accessible for transactions and, thus, trading, i.e. considered from the holders' point of view. We may though add a note of caution. There could be a case of bonus issue coupled with the release of assets (of the issuing company) in favour of the shareholders. The same would fall to be considered as dividend u/s 2 (22) (a) of the Act.

(vi) In the case of issue of bonus shares (as also demerger), no property is being conveyed to the

shareholder in as much as the property therein is comprised in the existing shareholding of the allotee. There is as such no case of a gift, the shareholder only receiving his own property.

(vii) No property however being passed on to the assessee in the instant case, i.e. on the allotment of the additional shares, no addition in terms of the provision itself shall arise in the facts of the case.

Thus from the above discussion, it is clear that issue of Bonus Shares was never envisaged to be taxed under the provisions of section 56(2)(vii) introduced in Finance Bill 2010. Further, the judgment discussed above further elaborates as to how the provisions of section 56(2) (vii) of the Act would not apply to bonus shares.

Thus, it is clear, that the addition made by the AO is not in accordance with law and hence deleted.

6. As a result, the appeal of the appellant is allowed."

4. Learned Counsel for the Assessee at the outset submitted that the issue is covered by the Order of ITAT, Delhi B-Bench in the case of Meenu Satija, New Delhi vs. Pr. CIT (Central), Gurgaon in ITA.No.3215/Del./2016, Dated 27.01.2017 in which in paras 12 to 22 held as under :

> *"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. 50fOOO/- 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 Sec. 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."

4.1. He has submitted that same order have been followed by ITAT, Delhi Bench subsequently in the case of Sunil Satija, New Delhi vs. DCIT, Central Circle-I, Faridabad in ITA.Nos.2486 & 2487/Del./2017, Dated 27.07.2017. copies of the Orders are placed on record and provided to Ld. D.R. who has submitted that though the issue is same, but the decisions relied upon by the Learned Counsel for the Assessee are in respect of proceedings under section 263 of the I.T. Act, 1961.

5. We have considered the rival submissions and do not find any justification to interfere with the Orders of the Ld. CIT(A) in deleting the addition. The Ld. CIT(A) deleted the addition following the relevant provisions of Law in the light of Order of ITAT, Mumbai Bench in the case of Sudhir Menon (HUF) vs. ACIT (supra), in which it was held that provisions of Section 56(2)(vii)(c) of the I.T. Act, would not apply to bonus shares. The ITAT, Delhi Bench in the case of Meenu Satija, New Delhi vs. Pr. CIT (Central), Gurgaon (supra), on identical facts quashed the proceedings under section 263 of the I.T. Act. Therefore, ratio of the decision of the Tribunal in the case of Meenu Satija, New Delhi vs. Pr. CIT (Central), Gurgaon (supra), squarely apply to the facts and circumstances of the case. Whether this order have been passed under section 263 or merit would not make any difference. The principle of law have been clearly decided in favour of the assessee on the identical facts. The Tribunal has also relied upon the decision of Mumbai Bench in the case of Sudhir Menon (HUF) vs. ACIT (supra), which is relied upon by the Ld. CIT(A) as well. No infirmity have

been pointed out in the Order of Ld. CIT(A). The issue is, therefore, covered by the Order of ITAT, Delhi Bench in the case of Meenu Satija, New Delhi vs. Pr. CIT (Central), Gurgaon (supra). The Departmental Appeal has no merit and the same is accordingly dismissed.

6. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-	Sd/-
(Dr. B.R.R. KUMAR)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 10th July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT “E” Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.