

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "Friday/A": NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 6454/Del/2019  
Asstt. Year: 2016-17

Medhavi Professional Services P. Ltd., D-25, C1, Basement, South Extension, Part-II, New Delhi – 110 049	Vs.	ACIT Circle-16(2) New Delhi. PAN AAICM9944J
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Gaurav Jain, Advocate
Department by :	Ms. Nidhi Sharma, Sr. DR
Date of Hearing	27/09/2019
Date of pronouncement	30/09/2019

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against the order dated 22.5.2019 passed by Ld. CIT (Appeals)- 6, Delhi for the assessment year 2016-17.

2.0 The brief facts of the case are that the return of income was filed declaring total loss of Rs. 1,01,29,628/-. The case was selected for limited scrutiny in view of large share premium received during the year for verification of applicability of section

56(2)(viib) of the Income Tax Act, 1961. Subsequently, the assessment was completed at a taxable income of Rs. 3,57,770/- after making addition of Rs. 1,04,87,398/- being share premium received in excess of the premium to the tune of Rs. 18,77,805/- as per the balance sheet of the assessee. The assessment was completed by invoking the provisions of Section 56(2)(viib) of the Act. The assessee's appeal against the said assessment was dismissed by the Ld. CIT (Appeals) and now the assessee has approached the Tribunal seeking deletion of the addition.

3.0 The Ld. AR submitted that the assessee is a start-up company duly approved by the Department of Industrial Policy and Promotion (DIPP) vide certificate dated 7.1.2019. It was further submitted that the required declaration in Form 2 dated 9.3.2019 and the required certificate dated 20.3.2019 issued by the CBDT to claim exemption from the applicability of provisions of section 56(2)(viib) of the Act was in possession of the assessee and was duly communicated to the Department. The Ld. AR further submitted that the issue involved in the present appeal is covered in favour of the assessee by notification GSR 127E dated 19.2.2019 issued by DIPP under clause (ii) of the proviso to section 56(2)(viib) which exempts a start-up company duly

notified by the Central Government from the applicability of the said provision. It was submitted that as per the said notification, a start-up was eligible to claim exemption if the declaration in Form No. 2 indicates that the start-up fulfils the conditions mentioned in the notification dated 19.2.2019 and secondly the assessment order has not been passed in the case prior to 19.2.2019. It was further submitted that the Ld. First appellate authority, vide order dated 22.5.2019, upheld the assessment order by holding that the provisions of the said notification were not applicable since the assessment order was dated 24.12.2018 which was prior to 19.2.2019. The Ld. AR further submitted that the CBDT vide circular order F. 173/354/2019-ITA-1 dated 9<sup>th</sup> August 2019 has settled the issue by categorically providing that notwithstanding the date of assessment order, the provisions of section 56(2)(viib) of the Act would not apply to any start up registered with DIPP which had submitted to the authorities the declaration in Form 2 that it fulfils the conditions mentioned in the Notification dated 19.2.2019. It was submitted that Circular No. 22/2019 dated 30.08.2019, which is a consolidated Circular for assessment of start-ups, provides that where a case pertaining to addition u/s 56(2)(viib) of the Act in case of the

start-up is pending before the ITAT then the tax department shall not press the ground relating to addition u/s 56(2)(viib). The Ld. AR submitted that in view of these two Circulars the assessee's case should be decided in favour of the assessee.

4.0 Ld. Sr. DR supported the order of the lower authorities but could not negate the facts that the assessee's case stood covered by the aforesaid two circulars.

5.0 Having heard both the parties and after having gone through the two Circulars as relied upon by the Ld. AR it is our considered opinion that in view of the aforementioned two Circulars the addition made in respect of share premium u/s 56(2)(viib) of the Act does not survive. Accordingly, we set aside the order of the Ld. CIT (Appeals) and direct the AO to delete the impugned addition.

6.0 In the final result the appeal of the assessee stands allowed.

**Order pronounced in the Open Court on 30<sup>th</sup> September, 2019.**

sd/-

**(G.S. PANNU)  
VICE PRESIDENT**

sd/-

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 30/09/2019

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi