

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE-PRESIDENT AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 1554/Bang/2018
Assessment Year : 2014-15

M/s. 21G Design Works Private Limited, #24, 3 rd Cross, Bikaspura, J.C. Industrial Area, ISRO Layout, Off Kanakapura road, Bangalore – 560 062. PAN: AAACZ4058N	Vs.	The Deputy Commissioner of Income Tax, Circle – 7 (1) (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri Sunil Kumar Agarwal, Addl. CIT (DR)

Date of hearing	:	05.11.2019
Date of Pronouncement	:	08.11.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-7, Bangalore dated 08.03.2018 for Assessment Year 2014-15.

2. The grounds raised by the assessee are as under.

“As per explanation (a) of clause Vibe of sub section (2) of Section 56 of income tax act 1961:-

(Vibe) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

“Explanation.-for the purposes of this clause,-

(a) The fair market value of the shares shall be the value.

(b) As may be determined in accordance with such method as may be prescribed”

As Per Sub Clause (c) of Clause (c) of Sub Rule (1) of Rule 11UA of income tax rules:

Determination of fair market value-

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation."

The Valuation of shares has been arrived after considering the below information at the time of valuation.

1. Leg guards and Pads (innovative product in Cricket)-

Existing leg guards do a good job of protection. It was limiting to define function as purely protection. The focus was on the function of the batsman as a whole as opposed to just the function of the leg guards. One had to protect, not at the cost of weighing the batsman down. Most importantly to aid in running between the wickets and stroke play.

To reduce the inherent bulk in existing leg guards was imminent. We started on a journey to slay the weight and bulk of the traditional cricket leg guards down. Our target A product 50% slimmer and lighter. This technology is revolutionary in cricket world.

2. The Main Director and Promoter Mr.Sanath Reddy is an Ex-Cricketer representing Karnataka State. He has won numerous awards and recognition when he was player. The promoter using experience and skill has developed this Innovation High Performance Cricket Gear for the betterment of the game and players. The director has spent almost 4 years only to design and develop this high performance cricket gear.

The above said design has won the award from Ministry of Science and technology and from President of India for the project proposal on innovation of high performance cricket leg gear. The Government has given Subsidy to the promoter for the continuous innovation in the field.

3. The above cricket gear has been tested by many International Players and was amazed by the performance of the cricket gear. "The wall of Indian Cricket Mr.Rahul Dravid has used the product and has given the testimonial about the product and he shared his views in Australian Indian Youth Programme and recommended to Sanspareils Greenland's, the largest cricket gear manufacturer in the world to take Sanath's innovation to global platform.

4. Moonwalker ("Brand of 21G Design Works Pvt Ltd ") wins the ISBA (Indian Science & Technology Entrepreneur Parks and Technology Business Incubators Association) promising start-up of the year award 2012." ISBA was started a decade ago (2004), under the umbrella of the Department of Science & Technology, Government of India.

5. Application Filed with Patent office for innovation "A Protecting Gear and A method of Fabricating There Of".

21G Design Works Pvt Ltd is not listed in any stock exchange in India,

valued the equity shares based on FMV (Fair Market Value). Company has valued equity shares based on FMV of the shares and above FMV has been Valued by the Accountant as defined in the explanation below sub-section (2) of section 288 of the Income Tax Act, 1961. By compiling above provision, as per valuation report given by Accountant as defined in the explanation below sub-section (2) of section 288 of the Income Tax Act, 1961 , Company has issued Shares and collected share premium of Rs.3490/-

We were asked to furnish the share application, share certificate, Form-2 vide questionnaire dated 02/08/2016. The necessary documents were field by us at tapal dated 12/08/2016. We were asked to provide the valuation details by 03/10/2016. Since the director was out of station, we field a letter on 03/10/2016 seeking an extension up to 03/11/2016. However, since the director had not come to Bangalore we were unable to submit the required details. The learned assessing officer without informing or giving another opportunity has passed the order on 22/11/2016.

We had also requested The Commissioner of Income Tax (Appeals)-7 Bangalore to kindly accept additional documents under Rule 46A of The Income Tax Rule, 1962 as the assessing officer has passed the order without giving sufficient opportunity of being heard. We would also bring notice to your good office that the additional document being submitted was existing even prior to the date of order (i.e. 22/11/2016). We were unable to submit the document only because the director was travelling.

And We also would like to refer case law of HIGH COURT OF PUNJAB AND HARYANA Principal Commissioner of Income-tax vs. Daljit Singh Sra' AJAY KUMAR MITTAL AND RAMENDRA JAIN, JJ. IT APPEALS NO. 98 OF 2017 dated MARCH 16, 2017 which states:-

We find that no doubt assessee did not cooperate with the Assessing Officer in completion of assessment proceedings but the fact remains that in the delivery of justice the real income of assessee has to be assessed and that too after hearing the assessee. The learned CIT(A) has not commented upon the nature of evidence filed under Rule 46A of the Act. Such evidence might have been relevant for the calculation of real income of the assessee, therefore, in view of the substantial justice, we direct the learned CIT(A) to admit additional evidence and decide the case afresh after affording a reasonable opportunity to the assessee of being heard.

The Commissioner of Income Tax (Appeals)-7 has not considered the above case law and has rejected the additional documents which was submitted under Rule 46A of The Income Tax Rule, 1962 and also has dismissed the order.

Hope above ground of appeal is valid for taking the matter in appeal.”

3. This appeal was fixed for hearing on 05.11.2019 and notice of hearing was sent to assessee by RPAD which is duly served on the assessee as per AD available on record. In spite of this, none appeared on behalf of the assessee on this date of hearing and there is no request for adjournment also and hence, this appeal of assessee was heard ex-parte qua the assessee. The Id. DR of revenue supported the order of Id. CIT(A).
4. At this juncture, it was pointed out by the bench that out of various grounds raised by the assessee before the Tribunal, this is one the grounds that Id. CIT(A) has erred in not accepting the additional documents filed by the assessee before Id. CIT(A) under Rule 46A of the Income Tax Rules, 1962. The bench also pointed out that in para 5.2 of his order, it is noted by Id. CIT(A) that admission of additional evidence cannot be claimed as a matter of right and it is the duty of the assessee to explain the circumstances which prevented it from submitting such documents before the lower authorities. The bench also pointed out that this is also the assertion of the assessee before the Tribunal that the AO has passed the order without giving sufficient opportunities of being heard. The bench pointed out that this is also the assertion of the assessee in the grounds raised before the Tribunal that the documents were available with the assessee even prior to the date of assessment order i.e. 22.11.2016 but the same could not be submitted because the Director was travelling. The bench observed that in view of the combined reading of these facts, the bench considers it appropriate that the additional evidence sought to be filed by assessee before Id. CIT(A) should be admitted and the matter should be restored back to the file of Id. CIT(A) for fresh decision on all issues after considering the additional evidences. In reply, the Id. DR of revenue had nothing to say.
5. We have considered the submissions of Id. DR of revenue and have gone through the materials available on record and in view of above discussion, we feel that the additional evidence sought to be filed by assessee before Id. CIT(A) under Rule 46A should be admitted. Hence, we admit the same and restore the entire matter back to the file of Id. CIT(A) for a fresh decision on all aspects after considering the additional evidence sought to be filed by

assessee before Id. CIT(A). In view of this decision, no adjudication on merit is called for at the present stage. We make no comment on merit.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Vice-President

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 08th November, 2019.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.