

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2113/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Indiasoft Technologies Pvt. Ltd.  
Nirvana, 2<sup>nd</sup> Floor, Commercial-3,  
Plot No.18, Survey No.213, 214, 215  
Kalyani Nagar, Yerawada,  
Pune-411 006  
PAN : AABCI0540H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-11(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni  
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 14.11.2019  
घोषणा की तारीख / Date of Pronouncement : 15.11.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeal), Pune-1 dated 20.07.2017 for the assessment year 2014-15  
as per the grounds of appeal on record.

2. The crux of the grievance of the assessee is that provisions of Section 56(2)(vii-b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') are not applicable to the facts of the case of the assessee and additions have been confirmed by the Ld. CIT(Appeal) without properly appreciating the provisions of that Section.

2.1 That further, the assessee has also raised grounds in the appeal memo that the addition was made by the Assessing Officer u/s.56(2)(vii-b) of the Act without appreciating the submissions made by the assessee before him that the provisions of Section 56(2)(vii-b) of the Act were not attracted to the transaction.

3. The brief facts in this case are that the assessee company had received Rs.1.78 Crores from Roshun Consultants Pvt. Ltd. as share application money in the month of September, 2008. This share application money was shown as such till 31<sup>st</sup> March, 2013. During the year under consideration, the assessee company issued 22,250 Equity shares of Rs.100 each fully paid up and the remaining amount of Rs.1,55,75,000/- was shown as share premium. The assessee after applying Rule 11UA has found that fair market value of the share of the assessee company was Rs.64.64 and therefore, the assessee was asked to explain why the provisions of Section 56(2)(vii-b) read with Rule 11UA should not be applied in this case. Before doing so, the Assessing Officer also referred the matter to Joint Commissioner of Income Tax, Range-11 under section 144A of the Act and directions were received vide letter dated 23.12.2016. The assessee submitted before the Department that there was vital difference in the transaction in the sense that directors of both the companies were common and therefore, investment of capital was in

their own company. It was further argued that for applying the provisions of Section 56(2)(vii-b) of the Act, it was necessary that there should be two different entities, a payer and a payee. However, in this case, since payer and payee were the same, the provisions of Section 56(2)(vii-b) of the Act cannot be applied. This argument did not find favour with the Assessing Officer and he made addition of Rs.1,41,36,760/- u/s.56(2)(vii-b) of the Act.

4. Before the Ld. CIT(Appeal), the assessee filed detailed submissions which are on record. The Ld. CIT(Appeal) after considering the submissions of the assessee, facts of the case summarily disposed of the appeal of the assessee holding that the assessee and M/s. Roshan Consultants Pvt. Ltd. are two different entities irrespective of the facts that directors of both the companies were common and therefore, the assessee's claim that provisions of Section 56(2)(vii-b) of the Act cannot be invoked as own funds were invested in the assessee company, cannot be accepted.

5. That further we have also perused Form-35 filed before us and in **ground No.1** of the appeal memo, the assessee has challenged that the provisions of Section 56(2)(vii-b) of the Act are not applicable to the facts of the case of the assessee and in this respect, the Ld. CIT(Appeal) has not passed a speaking order nor any reasons or findings is given to that effect. That further, in **ground No.2** in the said appeal memo of Form-35, the assessee has stated that the Assessing Officer has not appreciated properly as to why provisions of Section 56(2)(vii-b) of the Act were not applicable and thereafter, on these issues, the Ld. CIT(A) has not given any speaking order.

In view of the foregoing facts and circumstances of the case and in the interest of justice, we set aside the order of the Ld. CIT(Appeal) and remit the

matter back to him for adjudication while passing a speaking order after giving reasons regarding applicability or non-applicability of provisions of Section 56(2)(vii-b) of the Act in compliance with the principles of natural justice.

6. In the result, **appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 15<sup>th</sup> day of November, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 15<sup>th</sup> November, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-1
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	14.11.2019	Sr.PS/PS
2	Draft placed before author	15.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		