IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D', NEW DELHI

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.1716/Del/2016
Assessment Year: 2012-13

DCIT, Central Circle-1, Faridabad	**Vs.**	Smt. Mamta Bhandari, 1/2873, Ram Nagar, Loni Road, Shahdra, Delhi
		PAN :AAGPB3440H
(Appellant)		**(Respondent)**

Appellant by	Smt. Deepali Chandra, Sr.DR
Respondent by	Shri R.S. Ahuja, CA

Date of hearing	26.11.2019
Date of pronouncement	29.11.2019

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 29/01/2016, passed by the Ld. Commissioner of Income-tax (Appeals)-3, Gurgaon [in short the 'learned CIT(A)] for assessment year 2012-13, raising following ground:

1. *In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,31,34,701/- made on account of the*

difference between the fair market value of the shares and consideration received by the company from the assessee to whom bonus shares issued ignoring the fact that the provisions of section 56(2)(vii)(c) are squarely applicable to the case of the assessee. The Ld. CIT(A) has failed to appreciate that on contrary, the market value of shares has increased to Rs. 1250/- per share on 29.03.2014, just two days after issue of Bonus shares.

2. Briefly stated facts of the case are that the assessee, an individual, is director in some companies of "Bestech Group", including the company M/s Bestech India Private Limited. A search and seizure action under section 132 of the Income Tax Act, 1961 (in short 'the Act') was carried out on 04/07/2012 at the premises of the "Bestech Group" of the companies along with assessee. Consequent to the search action, notice under section 153A of the Act was issued to the assessee on 05/05/2014, requiring him to file return of income for the year under consideration. In response, the assessee filed return of income for the year under consideration on 26/05/2014, declaring income of ₹18,00,610/-. The case was selected for scrutiny and statutory notices were issued and complied with. During the course of the search action, it was observed that company M/s Bestech India Private Limited had allotted bonus shares to its shareholders including the assessee. The assessee was holding 7,86,785 shares of "Bestech India Private Limited" as on 01/04/2011. As per page 28 of annexure A-1 seized during the course of the search, it was seen that 11,01,499 number of shares were allotted to the assessee as bonus shares as on 27/03/2012 at the face value of ₹ 10 by way of capitalizing an amount of ₹ 1,10,14,990/- through conversion of reserve and surplus into share capital. According to the Assessing Officer, receipt of bonus shares by the assessee

without paying any consideration, attracted provisions of section 56(2)(vii) of the Act, which, inter alia, prescribe that if any property other than immovable property is received by an individual or HUF without consideration, the aggregate fair market value of such property shall be chargeable to Income-tax under the head 'Income from other sources' in the hands of such individual or HUF in the relevant assessment year. The Assessing Officer accordingly, computed the fair market value of the bonus shares under Rule 11U and 11UA of the Income Tax Rules at ₹4,31,34,701/- and made addition accordingly. On further appeal, the Ld. CIT(A) deleted the addition following the decision of the Tribunal in the case of Sudhir Menon, HUF Vs ACIT, Mumbai in ITA No. 4887/Mum/2013 for assessment year 2010-11, observing as under:

> *"**6. 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. 4,31,34,701/- 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 of Rs. 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

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).

These amendments are proposed to take effect from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

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 1IUF vs Astt. CIT-21(2), Bandra Mumbai For AY 2010-11 in ITANo. 4887/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 spilit (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 therefrom besides inter alia to Hunsur Plywood Works Ltd vs C1T[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. cn 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."

3. At the outset, the Ld. counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the order of the Tribunal in the case of the assessee itself for assessment year 2010-11 in ITA No. 5681/Del/2016.

4. The Ld. DR though relied on the order of the Assessing Officer, could not controvert submission of the Ld. counsel of the assessee.

5. We have heard rival submissions and perused the relevant material on record. In the case, the assessee has received bonus shares without paying any consideration, and fair market of which, has been held by the Assessing Officer as income in the hands of the assessee. We find that the Ld. CIT(A) has deleted the addition following the precedent in the case of Sudhir Menon

(HUF) (supra). In the case of the assessee, bonus shares were also received in financial year corresponding to assessment year 2010-11 from the same company and the AO made addition u/s 56(2)(vii) of the Act. The Tribunal in ITA No. 5681/Del/2016 has deleted the said addition following the decision in the case of Sudhir Menon (HUF)(Supra) as under:

> ***"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 l.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 the 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 view of the identical issue of receipt of bonus share without consideration is involved in the year under consideration, respectfully, following the finding of the Tribunal in the case of Sudhir Menon (HUF) (supra) and Tribunal (supra) in the case of the assessee itself, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground of appeal of the Revenue is accordingly dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 29th November, 2019.

Sd/-	***Sd/-***
(SUSHMA CHOWLA)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29th November, 2019.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi