

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'SMC-A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER**

ITA No. 825/Hyd/2019  
Assessment Year: 2015-16

Murali Krishna Yarla, vs. Income-tax Officer,  
Hyderabad. Ward – 12(4), Hyderabad.

PAN – ABJPY 0190 K

Appellant

Respondent

Assessee by: Shri K.V.S.R. Krishna  
Revenue by: Shri R. Mohan Reddy

Date of hearing: 06/01/2020  
Date of pronouncement: 08/01/2020

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A) – 1, Hyderabad dated 27/03/2019 for AY 2015-16.

2. Brief facts of the case are that the assessee, an individual, filed his return of income on 31/08/2015 declaring total income of Rs. 18,93,730/- for the AY 2015-2016. Since the case was selected for scrutiny through CASS, assessment proceedings u/s 143(3) were taken up. During the course of assessment proceedings, the AO received information from Dy. CIT, Circle – 6(2), New Delhi that M/s Connect India E-Commerce Services Pvt. Ltd. had allotted 14500 shares at face value of Rs. 10 on 05/03/2015, out of which, assessee was allotted 3000 shares at Rs. 10 per share. It was also

informed that the company had further allotted 45000 equity shares of face value at Rs. 10 at premium of Rs. 290/- per share on 31/03/2015 to two entities, namely, M/s Azzil Trading FZE and M/s Basics Ltd. and that these shares were at Rs. 300/- per share (which includes premium of Rs. 290/- per share) and that it is duly supported by a valuation report dated 05/03/2015 prepared by M/s V. Nagranjan & Co. AO observed that the valuation report was prepared using discounted cash flow method, as per which the fair value of an equity share of the said company as on 05/03/2015 was worked out to Rs. 300/-. Therefore, the assessee was asked to explain as to why the difference amount should not be brought to tax u/s 56(2)(vii) in the hands of the individual investors, who have been allotted shares on 05/03/2015. Since no reply was submitted by the assessee, the AO brought to tax the difference in the value of the 300 shares i.e. an amount of Rs. 8,70,000/-.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the AO and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

*"1. The Id. CIT(A) has erred in confirming the addition of Rs.8,70,000/-made by the AO as undisclosed investment u/s 56(2)(vii) the addition is wrong and bad in law and should be deleted.*

2. *The CIT(A) has failed to appreciate that under the provisions, of section 56(2)(vii) read with Rule 11 UA(1)(c)(b), the fair market valuation of unquoted equity shares at NAV is the prescribed method. Accordingly, the fair market value of the shares at Rs.10 per share based on NAV subscribed by the appellant should be accepted.*

3. *The Id. CIT(A) has failed to appreciate that the appellant is an individual subscribing to share capital at Rs.10/- being the NAV. The value @ 300 per share adopted by AO is based on discounted cash flow method. Such method is applicable to a company in which public are not substantially interested in terms of provisions of section 56(2)(viib) read with rule 11 UA(2) of the Income Tax Rules. Hence, the addition made in the case of assessee individual is wrong and bad in law and should be deleted.*

5. *The above grounds are independent and without prejudice to one another.*

6. *The appellant seeks leave, to add, amend, alter, forgo or substitute any of the above grounds during the hearing of the appeal.”*

4. The Id. counsel for the assessee submitted that, though, the assessee did not appear before the AO and explain the valuation of the unquoted equity shares allotted to him on 05/03/2015, the assessee had appeared before the CIT(A) and submitted detailed written submissions, but, the CIT(A) without considering the same, has confirmed the order of the AO by way of a non-speaking order. Therefore, according to the Id. counsel for the assessee, the order of the CIT(A) is not sustainable. Further, he submitted that the assessee is an employee of M/s Connect India E-Commerce Services Pvt. Ltd., which had initially allotted shares to its known people,

i.e. employees and others at the face value of Rs. 10/- only on 05/03/2015. He submitted that further shares were allotted on 31/03/2015 with a premium of Rs. 290/- per share. He submitted that since shares allotted to the assessee were unquoted equity shares, the provisions of section 56(2)(viib) of the Act and Explanation (a)(i) thereto would apply and not the section 56(2)(vii) applied by the AO. He further submitted that as per the provisions of section 56(2)(viib) and the Explanation (a)(i) thereto, the prescribed is method under rule 11 UA of IT Rules. He submitted that the as per the fair market value prescribed under rule 11 UA, sub-clause (b) of the clause (a) of Sub-rule (1) would apply according to the formula given thereunder which would be a negative figure in the assessee's case and not as per the discounted cash flow method adopted by the AO. He, therefore, submitted that the method adopted by the AO is not correct and the addition is not warranted.

5. The Id. DR, on the other hand, submitted that shares were allotted to the assessee on 05/03/2015 at the face value of Rs. 10/- per share and within 25 days thereafter, i.e. on 31/03/2015, further shares were allotted to two other entities with a premium of Rs. 290/- on the basis of a valuation report and, therefore, the market value of the shares as on the date of allotment of shares to the assessee on 05/03/2015 was very

much available and the AO has accordingly adopted the said market value to make addition u/s 56(2)(vii) of the Act. He submitted that rule 11 UA would come into picture only when the market value was not available in the public domain.

6. Having regard to the rival contentions and material on record, the undisputed facts are that the assessee was allotted equity shares at the face value of Rs. 10/- per share, while the same company has allotted further equity shares at a premium of Rs. 290/- to other entities 31/03/2015. The AO, therefore, has adopted the value of Rs. 300/- per share for making addition u/s 56(2)(vii). The question before this Tribunal is whether the fair market value of the shares should be determined under rule 11 UA of the Act, where the market value of the shares was already available and is determined on the basis of a valuation report. The assessee had neither appeared before the AO to explain the nature of the transaction and the rule to be applied for valuation of the shares while the CIT(A) has passed a non-speaking order confirming the order of AO. Since there is no finding by the AO or CIT(A) in their orders on the relevant provisions of the Act, which are to be applied to the case, I deem it fit and proper to remand the issue to the file of AO with a direction to re-examine the issue and decide the same in accordance with law after giving fair opportunity of hearing to the assessee.

The assessee also shall cooperate with the AO by giving relevant details. Accordingly, grounds raised by the assessee are treated as allowed for statistical purposes.

7. In the result, appeal of the assessee is considered as allowed for statistical purposes.

Pronounced in the open court on 8<sup>th</sup> January, 2020

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Hyderabad, dated 8<sup>th</sup> January, 2020

*kv*

Copy forwarded to:

1. *Shri Murali Krishna Yarla, Plot No. 101, Lakshmi Nagar, Phase – II, Dammaiguda, Hyderabad – 500 083.*
2. *ITO, Ward – 12(4), 7<sup>th</sup> Floor, A Block, Income-tax Towers, AC Guards, Hyderabad.*
3. *CIT(A) - 1, Hyderabad.*
4. *Pr. CIT – 1, Hyderabad.*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

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9.	Date of Dispatch of order			

