

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1450/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2015-16)

Just Medicine Info Services Pvt. Ltd. Shop No. 21, Anuradha Society, S. V. Road, Irla Bridge, Andheri (west) Mumbai 400 058.	बनाम/ Vs.	ITO – 12(3)(1), R. No. 147-A, Aayakar Bhavan, M. K. Road, Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN No. AACCCJ2133N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Madhur Agrawal, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Mrs. Samatha Mullamudi, DR

सुनवाईकीतारीख/ Date of Hearing	:	20.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	17.03.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-20, Mumbai, in short ‘Ld. CIT(A)’ dated 31.12.18 for AY 2015-16.

2. The brief facts of the case are that assessee filed its return of income for the year under consideration on 29.09.15 declaring a total income of Rs. 2,64,260/- and return was processed u/s 143(1) of the I.T. Act. Thereafter the case was selected for scrutiny under CASS with reasons to verify the interest expenses relating to exempt income. Accordingly, notices u/s 143(2) and 142(1) were served upon the assessee. In response, AR of the assessee attended and furnished the details as called from time to time.

3. During the assessment proceeding, AO observed that assessee has received shares through right issue from M/s Brihans Technologies Pvt. Ltd, 4,84,822 equity shares of face value of Rs. 10/- for a consideration of Rs. 48,48,220/- and assessee was asked to furnish the details in respect of in M/s Brihans Technologies Pvt. Ltd. during this assessment year vide notices issued u/s 142(1) dated 04.12.17. In response, assessee vide letter dated 11.12.17 submitted that these shares of M/s Brihans Technologies Pvt. Ltd. were bought through right issue and enclosed copy of Form PAS-3 filed by M/s Brihans Technologies Pvt. Ltd. with ROC for allotment of right issue.

Assessee submitted that these shares are not acquired through transfer of shares and the same was acquired through right issued by the company. Therefore, provisions of section 56(2)(viiia) of the Act is not applicable.

4. Subsequently, another notice u/s 142(1) dated 22.12.17 was issued asking the assessee to furnish the details as per the enclosure. Since assessee has not submitted any reply in response to the notice issued dated 22.12.17 till the date of completion of assessment dated 29.12.17, AO completed the assessment with the observation that assessee company as well as M/s Brihans Technologies Pvt. Ltd. in which public are not substantially interested. The fair market value of the equity shares of M/s Brihans Technologies Pvt. Ltd. is Rs. 188.94 per share, whereas the assessee company acquired those shares at the face value of Rs. 10 each. Since the market value of those shares were valued at Rs. 9.16 crores and the same shares were acquired by the assessee at Rs. 48.48 lakhs, accordingly he invoked the provision of section 56(2)(viiia) of the Act, after valuing these shares as per rule 11UA(1)(c) of the I.T. rules. Further, AO also made disallowance u/s 14A and other deductions.

5. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and made submissions alongwith additional evidences before him. Ld. CIT(A) after considering the submission and additional evidences, dismissed the grounds raised by the assessee and also rejected the additional evidences as these are against the Rule 46A of the I.T. Rules and on other issues, he partly allowed the appeal of the assessee.

6. Now before us, the assessee has preferred the appeal against the order of Ld. CIT(A) on the grounds mentioned below:-

1. *The Hon. CIT(A) erred in confirming the addition of Rs. 8,67,54,049/-, as deemed income u/s 56(2)(viiia) of the IT. Act 1961, by holding the appellant to have acquired equity shares of M/s Brihans Technologies Pvt. Ltd. for consideration which was lower than the fair market value of the said shares. The addition of Rs.8,67,54,049/- being not justified by facts and in law may kindly be deleted.*

2. *The Hon. CIT(A) erred in confirming addition of Rs. 8,67,54,049/-, as deemed income u/s 56(2)(viiia) of the I.T. Act 1961, on account of acquisition of equity shares of M/s Brihans Technologies Pvt. Ltd., when in*

reality the appellant had not acquired the said shares but only financed one Mr. Mandar Agashe, existing shareholder, to subscribe to the shares in a right issue and the name of the appellant was incorporated in the share certificate only as joint holder, as a matter of security for funds advanced to Mr. Mandar Agashe.

3. *The Hon. CIT(A) erred in not admitting the additional evidences produced u/r 46A of the I.T. Rules, 1962, with regards to the ownership of the concerned equity shares of M/s Brihans Technologies Pvt. Ltd., thereby denying the appellant a fair chance to establish the fact that the appellant was not the real and beneficial owner of the said equity shares of M/s Brihans Technologies Pvt. Ltd.*

4. *The appellant craves leave to add, alter, amend and/or vary any of the grounds at any time before the decision of the appeal.*

7. At the time of hearing, Ld. AR made submission in relation to Ground No. 3 that assessee has not been given proper opportunities and assessee has submitted the relevant information /documents before the tax authorities. He brought to our notice that AO has issued notice u/s 142(1) on 22.12.17 asking the assessee to file various documents relating to the share

transaction as per the enclosure to the said notice. However, AO completed the assessment within a week time i.e. the assessment order was passed on 29.12.17 without giving proper opportunity. The time given to assessee to comply with the notice u/s 142(1) dated 22.12.17 was not sufficient. Aggrieved with above order, assessee preferred appeal before Ld. CIT(A) and assessee submitted the relevant documents in support of the contention that assessee is not the owner of the shares which was considered to make addition under deeming provision of section 56(2)(viiia) of the Act. He submitted that Ld. CIT(A) rejected the additional evidences and also the notice issued by him were not received by the assessee and these notices were served in the old address. He brought to our notice, the other notice issued u/s 142(1) of the Act for the subsequent assessment year which was in the new address. He brought to our notice at para no. 5.4.1 and 5.4.2 of the order of Ld. CIT(A) as per which Ld. CIT(A) rejected the evidences produced before him as the claim of the assessee is not arising from the interpretation of law, but the claim relating to facts and the claim made by the assessee is totally new and conflict with earlier submission. He prayed that this issue may be

remitted back to the AO, so that assessee can bring on record all the relevant information before AO.

8. On the other hand, Ld. DR supported the orders passed by the revenue authorities and brought to our notice para 4.6, 4.7 and 4.9 of the assessment order in which she brought to our notice merits of the case and submitted that assessee has acquired these right shares at the face value whereas the market value of the shares are at Rs. 188.94 per share. She further submitted that AO brought on record the proper facts as per which assessee has acquired these shares and it is deemed to be an income which falls u/s 56(2)(viii) of the Act. Therefore, she vehemently argued that assessee has enriched by means of these transactions.

9. Considered the rival submission and material placed on record, we notice from the record that assessee has acquired some shares of M/s Brihans Technologies Pvt. Ltd. through right issue of equity shares. From the record, we notice that assessee was asked to submit various documents and submissions as per the questionnaire issued to it vide notice u/s 142(1) dated 22.12.17, whereas AO completed the assessment on 29.12.17

without giving opportunity to the assessee to submit the relevant information. Further we notice that assessee submitted information before Ld. CIT(A) in the form of additional evidences contesting that assessee is a joint owner and not a beneficial owner in the shares acquired by it through right issue. Ld. CIT(A) rejected the additional evidences with the observation that it is new as well as totally conflicting submission against the submission made earlier and also the additional evidences are not in the nature of interpretation of law, but new claim relating to the facts. Accordingly, he rejected the additional evidences submitted by the assessee.

10. Considering the overall facts of the case, we are of the considered view that AO has not given sufficient opportunity to the assessee to adduce the evidence relating to the main issue of investment in right equity shares. We notice that assessment was completed within 7 days from the issue of notice dated 22.12.17. We do not know when assessee actually received the said notice. However, the assessment was completed on 29.12.17 and after careful reading of Rule 46A, assessee is allowed to produce additional evidences when the AO has not given sufficient

opportunity to the assessee. As per rule 46A(1)(d), we are of the considered view that the additional evidence submitted by the assessee before Ld. CIT(A) is proper and accordingly, this issue has to be remitted back to the AO, so that AO can verify the relevant information and documents and complete the assessment as per law. Therefore, we are directing the AO to accept the additional evidence submitted before Ld. CIT(A) and complete the assessment after giving proper opportunity of being heard. Hence, the ground no. 3 raised by the assessee is **allowed for statistical purposes**. The other grounds raised by the assessee are not argued by Ld. AR, therefore these grounds are **dismissed**.

11. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes**.

Order pronounced in the open court on 17th March 2020.

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 17.03.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai