

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1904/Bang/2019 : Asst.Year 2016-2017

M/s.Sirena Technologies Pvt.Ltd. 4 th Floor, Tower D, Diamond District, Kodihalli, Domlur Bangalore - 560 008. PAN : AAUCS7458R.	v.	The Dy.Commissioner of Income-tax, Circle 6(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.N.J.Suresh, CA

Respondent by : Sri.Priyadarshi Mishra, JCIT-DR

Date of Hearing : 02.11.2020	Date of Pronouncement : 02.11.2020
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 10.07.2019. The relevant assessment year is 2016-2017.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the addition made by the Assessing Officer u/s 56(2)(viib) of the I.T.Act amounting to Rs.69,98,110.

3. The brief facts of the case are as follow:

The assessee is a company. For the assessment year 2016-2017, the return of income was filed on 30.08.2016 by declaring loss of Rs.2,02,19,832. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. During the course of assessment proceedings, the Assessing Officer proposed to make addition u/s 56(2)(viib) of the I.T.Act in respect of share premium received from Mr.Hariharan

Bojan, the promoter director, by rejecting the Discounted Cash Flow (DCF) method of valuation adopted by the assessee and substituting it with Net Assets Value (NAV) method of valuation. The assessee filed detailed submissions dated 06.12.2018 by contending that DCF is the only suitable method in the present case which is a start up company and NAV method is of no application due to inherent limitations imposed in the NAV method formula under Rule 11UA of the Income-tax Rules. However, the assessment was completed u/s 143(3) of the I.T.Act vide order dated 10.12.2018, wherein NAV method was applied and Fair Market Value (FMV) was determined at (-)376.41 per share. Since the FMV determined under the NAV method was below face value per share, the A.O. valued the share at face value per share at Rs.10 each. Accordingly, the A.O. made addition u/s 56(2)(viib) of the I.T.Act amounting to Rs.69,98,110 in respect of the entire share premium received from Mr.Hariharan Bojan (in respect of 389 equity shares).

4. Aggrieved by the addition made u/s 56(2)(viib) of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned AR submitted that the assessee-company falls under the category of "Start-up company" and the Government has issued Notification No.13/2019 F.No.370142/5/2018-TPL (Pt.) dated

05th March, 2019, exempting the start up companies from the application of provisions of sec.56(2)(viib) of the I.T.Act. It has also been clarified by CBDT in its Circular No.173/354/2019-ITA-1 dated 09.08.2019 that the relaxation so provided is applicable to the assessments completed before 19.02.2019 also, if a recognized start-up had filed declaration in Form No.2. Accordingly, the learned AR submitted that the assessee is eligible to avail the benefit given under the above said Notification /Circular. The learned AR contended that the case may be restored to the file of the A.O. for *de novo* consideration in the light of the Notification / Circular, referred above.

6. The learned Departmental Representative supported the orders of the Income Tax Authorities.

7. We have heard the rival submissions and perused the material on record. It is contended by the assessee that the start-up companies have been exempted from the provisions of section 56(2)(viib) of the I.T.Act by the Government, as per the Notification / Circular referred above. It was submitted that the same would apply to assessments completed prior to 19.02.2019 also. In our view, in the interest of justice, this claim of the assessee that it is eligible to claim benefit of the Notification / Circular issued by the CBDT needs to be examined by the tax authorities. Accordingly, we restore the case to the files of the A.O. to examine the above said claim of the assessee on merits. The A.O. shall afford adequate opportunity to the assessee and shall take appropriate decision in accordance with law. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 02nd day of November, 2020.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 02nd November, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bengaluru.
4. The Pr.CIT-6, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore