

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.902/Bang/2019
Assessment year : 2014-15

M/s Tracxn Technologies Pvt. Ltd., 5 th Floor, Krimson Square, Annexure Building, Hosur Main Road, 31/9, Roopena Agrahara, Bengaluru-560 068. PAN – AAECT 3502 F	Vs.	The Income Tax Officer, Ward-7(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri Padamchand Khincha, C.A
Assessee by	:	Shri Priyadarshi Mishra, JCIT (DR)

Date of hearing	:	22.10.2020
Date of Pronouncement	:	23.10.2020

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 08-03-2019 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2014-15. The grounds urged by the assessee relate to the following two issues:-

(a) Addition made u/s 56(2)(viib) of the Act of share premium received by the assessee.

(b) Increasing of book profit computed u/s 115JB of the Act by the amount added u/s 56(2)(viib) of the Act.

2. The Ld A.R submitted that the assessee was incorporated on 11.08.2012. During the financial year relevant to the assessment

year under consideration, the assessee issued 107244 equity shares having face value of Re.1.00 each at a premium of Rs.82.92 per share. Accordingly it collected share premium of Rs.82,92,756/- in aggregate.

3. The AO noticed that the assessee has claimed itself as a “Start up” company. He noticed that the expression “Start up” is defined in the notification no.45/2016 F No.173/103/2016 – ITA-1 dated 14.06.2016 issued by CBDT. As per the said notification, “Start up” shall mean a company in which the public are not substantially interested and which fulfils the conditions specified in the Notification of Government of India, Ministry of Commerce and Industry, Dept of Industrial Policy and Promotion, number GSRI 80(E) dated 17-02-2016, published in the Gazette of India, Extraordinary, Part II. The AO noticed further that the above said notification dated 17.02.2016 of DIPP, that the start up, in order to avail tax benefits, shall be required to obtain a certificate of an eligible business from the “Inter-ministerial Board of Certification”.

4. The assessee did not furnish any such kind of certificate before the AO and hence the AO rejected the claim of “Start up”. The assessee had valued the shares under Discounted Cash Flow (DCF) method. The AO took the view that the assessee should have determined Fair market value of shares under “Net worth” method. Accordingly, the AO took the view that the entire share premium collected by the assessee is in excess of fair market value, which happened to be face value of shares under Net worth method. Accordingly, he assessed a sum of Rs.89,03,397/- u/s 56(2)(viib) of the Act. The Ld A.R stated that the AO passed a rectification order

dated 22.02.2017 later assessing the correct amount of Rs.88,92,756/-. The AO also added the above said addition to the book profit while computing book profit u/s 115JB of the Act.

5. Before Ld CIT(A), the assessee contested the addition made u/s 56(2)(viib) of the Act, but was not successful. We notice that the assessee has not contested the addition made to book profit computed u/s 115JB of the Act.

6. Before us, the assessee is contesting the addition made u/s 56(2)(viib) of the Act and also the addition made to book profit.

7. The Ld A.R submitted that the conditions for granting exemption from the provisions of sec 56(2)(viib) was relaxed further by subsequent notification dated 19-02-2019 in G S R 127(E), which superseded the notification issued on 11-04-2018 and 16-01-2019. Pursuant to the above said notification, the CBDT has issued following notifications/circulars: -

(a) Notification no.13/2019 dated 5th March, 2019

(b) Instruction dated 9th August 2019 in F No.173/354/2019-ITA-1

(c) Consolidated Circular no.22/2019 dated 30th August, 2019.

8. The Ld A.R submitted that the assessee has registered itself as "Start up" company, vide Certificate of Registration No. DIPPP36415 dated 10-04-2019 and the same is valid for ten years from the date of incorporation. He submitted that the assessee has also given intimation to CBDT in Form no.2 in terms of proviso to sec.56(2)(viib) of the Act and the same has also been acknowledged by CBDT, vide its e-mail dated 12th April, 2019.

9. The Ld A.R submitted that, as per consolidated circular no.22/2019 (referred above) the exemption given u/s 56(2)(viib) is applicable to the assessee company for the year under consideration also. The Ld A.R submitted that the assessee could not furnish all these documents before the AO, since all these registration, documents etc., were obtained subsequent to the order passed by Ld CIT(A). Accordingly, he submitted that the assessee has furnished these documents as “additional evidences” with a prayer to admit them. He submitted that these documents have bearing on the impugned addition and hence they be admitted and the matter may be restored to the file of the AO.

10. The Ld D.R did not object to the prayer of the assessee.

11. We notice that the assessee has obtained registration as Start up from Department of Promotion of Industry and Internal trade only on 10-04-2019. According to the assessee, it is eligible for exemption from the provisions of sec.56(2)(viib) for the year under consideration also, as per the consolidated circular issued by CBDT. We notice that the assessee obtained registration after passing of first appellate order. Hence the assessee could not have furnished this document before the tax authorities. Since this document shall have bearing on the impugned addition, we deem it fit to admit the additional evidences and accordingly admit them.

12. Since these documents require examination at the end of AO in accordance with law, we deem it proper to restore the issues contested before us to the file of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh by duly considering the

additional evidences furnished by the assessee. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

13. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 23rd Oct, 2020.

Sd/-

(Beena Pillai)
Judicial Member

Sd/-

(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 23rd Oct, 2020.
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed