

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT (KZ)]
[THROUGH VIRTUAL COURT]**

I.T.A. No. 2646/Kol/2019
Assessment Year: 2013-14

M/s. Bharat Elevators & Engineers Private Limited.....Appellant
22, Strand Road, 1st Floor,
Kolkata - 700 001.
[PAN: AACCB 4329 C]

Vs

ITO, Ward - 5(3), Kolkata.....Respondent

Appearances by:

Shri Giridhar Dhelia, AR appearing on behalf of the Assessee.

Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : December 16, 2020

Date of pronouncing the order : January 28, 2021

ORDER

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-2, Kolkata dated 25.11.2019 and the solitary issue involved therein relates to the addition of Rs. 8,25,000/- made by the AO and confirmed by the Ld. CIT(A) u/s 56(2)(vii)(b) of the Income Tax Act, 1961.

2. The assessee in the present case is a company which is engaged in the business of manufacturing of all kinds of elevators, hoists and other material handling equipments. The return of income for the year under consideration was filed by it on 27.09.2013 declaring a total income of Rs. 9,54,154/-. During the year under consideration, the assessee had issued 4 lack shares at Rs. 26.08 per share including premium. The Fair Market Value of the said

shares as on the date of issue i.e. 30.03.2013 was duly supported by the valuation report of the auditor. During the course of assessment proceedings, the AO calculated the value of each share as on 31.03.2012 at Rs. 24.44 each on the basis of balance sheet of the assessee company as on that date and the surplus amount received by the assessee on account of premium amounting to Rs. 8,24,000/- was added by him to the total income of the assessee u/s 56(2)(vii)(b) of the Act in the assessment completed u/s 143(3) vide an order dated 11.03.2016. On appeal, the Ld. CIT(A) confirmed the said addition made by the AO. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the similar issue relating to the addition made u/s 56(2)(vii)(b) was involved in the case of M/s. Lalithaa Jewellery Mart Pvt. Ltd. vs ACIT (ITA Nos. 663 to 665/Chny/2019) cited by the learned counsel for the assessee and the same was deleted by the Tribunal for the following reasons given in paragraph no. 15 & 16 of its order dated 14.06.2019:

"15. Now coming to valuation of shares, as rightly submitted by the Ld. counsel for the assessee, there are two limbs in Section 56(2)(viib) of the Act. As per explanation to Section 56(2)(viib) of the Act, the first limb is valuation to be made as per the prescribed method. In fact, the method for valuation of shares is prescribed under Rule 11UA of the Income-tax Rules, 1962. The second limb is the valuation of the company based on value on the date of issue including its assets. Assets include intangible assets such as goodwill, knowhow, patents, copyrights, trademarks, licences, franchises, etc. The Assessing Officer has not

taken into consideration the second limb in explanation to Section 56(2)(viib) of the Act. The second limb provides that when valuation was made by the company, if the Assessing Officer is not satisfied about the valuation, he has to call for material from the assessee how the valuation was made by the assessee-company. Satisfaction of the Assessing Officer as referred in explanation to Section 56(2)(viib) of the Act would be judicial satisfaction of the Assessing Officer. Judicial satisfaction means the Assessing Officer has to take into consideration the well established method of valuation of shares including the assets as explained in Explanation 2 to Section 56(2)(viib) of the Act. It cannot be arbitrary. The Assessing Officer has to take note of the judicial and established principles in arriving at his satisfaction. In this case, the Assessing Officer has not found any specific fault in rejecting or not satisfying with the valuation made by the assessee. When the Assessing Officer has not found any defect or error in the valuation of shares by the assessee company, it may not be necessary to apply the method of valuation prescribed under Rule 11UA of the I.T. Rules. Therefore, this Tribunal is unable to uphold the valuation made by the Assessing Officer under Rule 11UA of the Income-tax Rules, 1962.

16. In view of the above discussion, orders of both the authorities below are set aside and the addition made both under Section 68 of the Act and under Section 56(2)(viib) of the Act is deleted."

4. Since the decision rendered by the Division Bench of this Tribunal in the case of M/s. Lalithaa Jewellery Mart Pvt. Ltd. (Supra) is squarely applicable to the issue involved in the present case, I respectfully follow the same and delete the addition made by the AO u/s 56(2)(vii)(b) of the Act and confirmed by the Ld. CIT(A).

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 28th January, 2021.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 28/01/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Bharat Elevators & Engineers Pvt. Ltd., 22, Strand Road, 1st Floor,
Kolkata – 700 001.

2. ITO, Ward – 5(23), Kolkata.

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata