

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.173/Ind/2020

Assessment Years: 2014-15

DCIT-3(1)

Indore

: Appellant

V/s

Kasliwal Trucking P. Ltd.

Indore

: Respondent

PAN:AABCD8489J

Revenue by	Shri Harshit Bari, Sr. DR
Respondent by	S/Shri Mahesh Agrawal & Kunal Agrawal CAs, ARs
Date of Hearing	06.08.2021
Date of Pronouncement	04.10.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2014-15 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld.

CIT], Indore dated 21.01.2020 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 25.10.2016 framed by ACIT-3(1), Indore.

The Revenue has raised following grounds of appeal in ITANo.173 /Ind/2020:

1. *The ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,72,22,105/- made by the AO by invoking the provisions of section 56(2)(vii)(b) of the Income Tax Act 1961.*
2. *The Ld. CIT(A) erred in law and on the facts the assessee has not disputed the valuation of shares as on 31.03.2013 which was in accordance with Rule 11UA of the Income Tax Rules, 1962 and works out of Rs.3.70 per share.*
3. *The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal."*

2. Brief facts as culled out from the records are that the assessee is a Private Limited Company engaged in the business of the Trading of Automobiles. The assessee has filed e-return of income on 30.11.2014 declaring total loss of Rs. 1,30,87,324/-.

Case was selected for limited scrutiny through CASS for following two reasons:

1. Large share premium received during the year
2. Mismatch in sales turnover reported in Audit Report and ITR

Notices u/s 143(2) and 142(1) of the Act were duly served upon the assessee on 01.09.2015. Further notice u/s 142(1) of the Act along with questionnaires was duly served upon the assessee on

26.04.2016. In response to above Ld. counsel for the assessee appeared on different dates and filed written submission and produced the books of account, ledger and requisite documents etc. which were test checked. The assessee company has introduced share capital and share premium amounting to Rs.2,10,000/- and Rs.2,70,90,000/- respectively. The assessee was asked to furnish complete details of this transaction with explanation to source of funds, proof of identity and credit worthiness and asked to justify the share premium with reference to provision contained in section 56(2)(vii)(b) r.w. Rule 11UA. The AO noted that the assessee company has issued 21,000 shares at value of Rs.1300 each for a total amount of Rs. 2,73,00,000/- but the fair market value of these shares as on date of allotment was Rs.77,895/- and there is a clear difference of Rs.2,72,22,105/- in the market value and issued value. Ld. AO was of the view that the assessee has not offered any explanation for this difference amount and thus it falls within the ambit of provision of section 56(2)(vii)(v) of the Act and is liable to be taxed in the hands of assessee under the head "income from other sources". Ld. Assessing officer assessed the income at Rs. 1,14,29,143/- and made the addition of Rs.2,72,22,105/-.

3. Aggrieved assessee preferred an appeal before the ld. CIT(A) and succeeded.

4. Now revenue is in appeal before this Tribunal.

5. Per contra Ld. Departmental Representative (DR) supported the orders of both lower authorities but could not controvert the contention made by the assessee.

6. Ld. counsel for the assessee vehemently argued to the written submissions and also referred to the paper book running from page 1 to 144 and submitted that fair market value of shares is higher than the consideration received, therefore section 56(2)(viib) of the is not applicable in the present case and accordingly Ld. counsel for the assessee submitted that the addition is unjustified. Ld. counsel for the assessee also filed written submission in support of the claim:-

➤ *Assessee is a Private Limited Company engaged in the business of trading of trucks. During the relevant assessment year, the assessee had issued 21,000/- Shares at Rs. 1300/- Per Share (Face value of Rs. 10/- at a premium of Rs. 1290/-) on 25th March 2014. Assessee had received total consideration of Rs. 2,73,00,000/- on such account.*

➤ *The Ld. AO grossly erred in law by determining the fair market value of shares amounting to Rs. 77,895/- (3.709 per share) & making an addition of Rs. 2,72,22,105/- on account of difference between Share issue consideration received (Rs. 2,73,00,000/-) & Fair market value of Shares (Rs.77,895/-) u/s 56(2)(viib) of the IT Act.*

➤ The Ld. CIT(A) vide its order dated 21.01.2020 deleted said addition made, accepting the submissions put forth by the assessee during the appeal proceedings.

➤ Section 56(2)(viib) applies when FMV of share is less than total consideration received. For determining FMV of share, the section provides an Explanation which stipulates the following methods -

EXPLANATION a (i) of Section 56(2)(viib) -Prescribed Method Under Rule 11UA (AT THE OPTION OF THE ASSESSEE)

- Net asset Method (As per the Formula) or
- Discounted Cash Flow Method

OR

• EXPLANATION a (ii) of Section 56(2)(viib) - Value of assets on the date of issue of share as may be substantiated to the satisfaction of Assessing Officer

➤ Whichever is Higher

➤ During the assessment proceedings, the assessee submitted that Fair market value of shares is higher than the consideration received & thereby section 56(2)(viib) is not applicable. Kindly refer Page no. 32 of the paper book where valuation sheet was given by the assessee.

➤ This valuation sheet was based on Net asset Value as per balance sheet of 31.03.2013 & adjusted with market value of land situated at 309/4, 310/4, Gram Khajrana, Bypass Road, Indore having area of 60,040 sq. fts and having book value of Rs. 19,74,547. In support of market value of the said land, the assessee submitted report of Government approved registered valuer M/s Mittal Consultants dtd. 28/01/2012 in which valuation of Rs. 4,15,44,360/- was stated. (Kindly refer Page no. 33-34 of the paper book.)

➤ The Ld. AO Rejected the said contention in the assessment order on following basis -

• Market value of land not adjusted/revised in the books of accounts.

• Valuation rate of Rs. 1100/- Per Sq. Feet considered by the valuer in the valuation report is too high in comparison to the Guideline value of Rs. 418/- Per Sq. Feet.

➤ It is submitted that Ld. AO grossly misapplied the provisions of section 56(2)(viib) by only considering Rule 11UA (book value of Net asset option) to determine FMV of the shares while the Explanation (a)(ii) also gives an option to the assessee to substantiate the value of shares based on market value of its tangible and intangible assets. The

Ld. AO failed to consider Explanation (a) (ii) while making alleged addition in the case.

➤ *Legal interpretation of the words in Explanation (a) (ii) of section 56(2)(viib) including Substantiate, Satisfaction & value Etc. (Kindly refer Page 71 & 72 of the Paper book) leads to a conclusion that any competent evidence that proves the market value of the assets is sufficient to satisfy the requirements of the section. Thus, the said valuation report submitted during the assessment proceedings was a relevant evidence which was ignored by the Ld. AO in the valuation of shares.*

➤ *Assessee Contention on Ld. AO views made in assessment order-*

1. Revision of market value in Books of Accounts –

A. Firstly, no requirement in Income Tax Act, 1961 to revise the value in the books of accounts and there would be no need to substantiate the value of assets if it is incorporated in the books of accounts.

B. Books of accounts are required to maintained on Historical cost basis. Fixed assets are recorded at acquisition cost including directly related cost in its such acquisition as per accounting standards.

C. One of the prescribed methods already considers the valuation on the basis of book value of assets under Rule 11UA. Thus, the second option cannot be again based on the same book value method.

D. The Ld. AO stand is contradictory in nature. It considered to include the hidden assets irrespective of the fact that they are not included in the books of accounts but ignored the market valuation of land as not revised in the books of accounts.

2. Difference in Plot value on comparison of Guideline value and Valuer Report -

A. The assessee had relied on the valuation report of the land in Gram Khajrana to substantiate the value of shares. The valuer is an expert and Property valuation depends upon many factors which an expert considers and then come to his conclusion. Also, the valuation was conducted by bank empaneled valuer for the purpose of granting loan to assessee due to which it has high credibility. (Kindly refer Page no. 102-106 of the Paper book)

B. Without prejudice to the above contention and in alternate, the assessee had established through various evidences submitted during appeal proceedings that even if

Guideline value of land is considered than also the valuation of land is very high.

C. Even the Ld. AO in its remand report, admitted the same fact of high market valuation of land but further mentioned that the same is not a relevant evidence which is against the provisions of section 56(2)(viib). (Kindly refer to page no. 110, Para 2 & 3)

D. The following is the valuation of land based on the Guideline value -

PARTICULARS	AMOUNT
Guideline value of land (Kindly refer Page no. 99 of the PB)	Rs. 650.56/- Per Sq. Feet
Add: 100 % of normal guideline value as land located on the sides of National Highway (as per rule) (Kindly refer Page no. 101 of the PB)	Rs. 650.56/- Per Sq. Feet
Applicable Guideline value	Rs. 1300/- Per sq. Feet (APPROX.)
Multiply: Area of Plot of Land	60,040 sq. Feet
Total value of land at Gram Khajrana, Indore	Rs. 7,80,52,000/-
Total consideration received	Rs. 2,73,00,000/-

➤ Further, we place reliance on the following judgements which are based on similar facts and squarely covers the issue –

A. *Unnati Inorganics (P.) Ltd. v. Income Tax Officer, Ward-1(5), Bhavnagar [2019] 109 taxmann.com 165 (Ahmedabad - Trib.) (Copy of order Enclosed)*

B. *ASG Leather (P.) Ltd. v. Income Tax Officer, Ward-15(1), Kolkata [2018] 95 taxmann.com 151 (Kolkata - Trib.) (Copy of order Enclosed)*

1. In view of above – mentioned facts, circumstances and Judicial pronouncements, it is submitted that addition made of Rs. 2,72,22,105/- on account of section 56(2)(viib) is based on wrong interpretation of the provisions of law and ignoring the evidences which are directly relevant to the facts of the case. Hence, we humbly pray to the Hon'ble Bench to kindly sustain the order of Ld. CIT (A) dated 21/01/2020 in the interest of justice.

7. We have heard rival contentions and perused the records placed before us. We find that the Ld. AO determined the fair market value of 21,000 shares amounting to Rs. 77,895/- i.e. Rs.3.709 per share as against Rs.1300/- per share shown by assessee & making an addition of Rs. 2,72,22,105/- on account of difference between consideration received towards shares issued (Rs. 2,73,00,000/-) & Fair market value of Shares (Rs.77,895/-) u/s 56(2)(viib) of the IT Act. We find that the Ld. CIT(A) decided the issue as under:

5.6 *It is undisputed fact that the company is the one where public is not substantially interested. It is also an admitted fact that the company had issued shares at very high premium. The explanation a(i) and a(ii) specify the methods by which the FMV of shares is determined as on the date of issue of shares. The expl.(a)(ii) of u/s 56(2)(viib) as reproduced above, clearly specifies that FMV of the shares shall be the value as may be substantiated by the company to the satisfaction of the AO based on the value on the date of issue of shares of its assets, including tangible assets being goodwill, know-how, patents, copyrights, trademarks, licenses, franchise or any other business or commercial rights of similar value. In accordance with the above, the appellant has valued the shares on the basis of valuation of land at the time of issue of shares. The existence of plot measuring 60040 sq.ft. has not been disputed. The location of plot on bypass road (NH-3) and diverted for commercial purpose has also not been denied by the AO. It has also not been disputed by the AO that impugned land was of very high value. Rather, in his report dated 01/07/2019, at para no. 2, the AO has reported that on the basis of additional documents so filed, it appeared that the impugned land was having very high market valuation. The AO has also not disputed the guideline value of the area being Rs.7000/- per sq. mtr. or Rs.650.56 per sq. ft. It is also not disputed by the AO that the plot is situated on NH-3, bypass road as such the guideline value as per the notification for F.Y. 2013-*

14 was supposed to be 100% more than the above mentioned guideline value. If we go by the guideline value of property situated at national highway, the FMV of the plot under consideration shall be RS.1301.12 per sq. ft. and total FMV shall be Rs.7.81 Crores (Approx) which is much higher than the FMV determined by the registered value and the bankers while providing credits. In view of the above discussion, in my considered opinion, the valuation of shares has been in accordance with the provision of section u/s 56 (2)(viib) - (Exp (a) ii) of Income Tax Act, 1961. There is no condition specified in the act that the appellant was required to revise the value of its assets in the books before issue of shares as has been impressed upon by the AO in assessment order and remand reports. The FMV of shares is required to be the higher of the one determined u/s 11UA of the Income Tax Rule in accordance with Exp.(a)(i) or the one determined on the basis of valuation of assets on the date of issue of shares as per Explanation (a) ii of section u/s 56(2)(viib) of the Income Tax Act, 1961. Undisputedly, the much higher value has been worked out in later situation. Therefore, the AO was not justified in adopting total FMV of shares at Rs.77,895/- @ 3.70% as calculated under Rule 11UA. The reliance is placed on the decision of Hon'ble B Bench of Kolkata I.T.A.T. (SMC) in the case of ASG Leather Pvt. Ltd. vs. ITO-Ward-15(1) (2018) 95 Taxman.com 151(Kolkata-Trib.). In view of above discussion, the AO has not been found justified in making addition of Rs.2,72,22,105/- which directed to be deleted. The grounds of appeal are accordingly allowed.

8. On consideration of above we find that during the assessment proceedings, the assessee submitted that Fair market value of shares is higher than the consideration received & thereby section 56(2)(viib) is not applicable as is evident from Page no. 32 of the paper book where valuation sheet was given by the assessee which was based on Net asset Value as per balance sheet of 31.03.2013 adjusted with market value of land situated

at 309/4, 310/4, Gram Khajrana, Bypass Road, Indore having area of 60,040 sq. fts and having book value of Rs. 19,74,547. In support of market value of the said land, the assessee submitted report of Government approved registered valuer M/s Mittal Consultants dtd. 28/01/2012 in which valuation of Rs. 4,15,44,360/- was stated as is evident from Page no. 33-34 of the paper book. It seems that the Ld. AO misapplied the provisions of section 56(2)(viib) by only considering Rule 11UA (book value of Net asset option) to determine FMV of the shares while the Explanation (a)(ii) also gives an option to the assessee to substantiate the value of shares based on market value of its tangible and intangible assets. Section 56(2)(viib) and Explanation thereof reads as under:

Section 56(2)(viib)- any immovable property-

- (i) *Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*
- (ii) *For a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration.*

Explanation – For the purpose of this clause –

- (i) *As may be determined in accordance with such method as may be prescribed or*

- (ii) *As may be substantiated by the company to the satisfaction of the Assessing officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, Which is higher ,*

9. From perusal of the above, we find that Explanation (a) (ii) of section 56(2)(viib) leads to a conclusion that any competent evidence that proves the market value of the assets is sufficient to satisfy the requirements of the section. Thus, the said valuation report submitted during the assessment proceedings was a relevant evidence which was ignored by the Ld. AO in the valuation of shares.

10. We further find that the assessee had relied on the valuation report of the land in Gram Khajrana to substantiate the value of shares. The valuer is Government approved valued and an expert and Property valuation depends upon many factors which an expert after considers and then come to his conclusion. Also, the valuation was conducted by bank empaneled valuer for the purpose of granting loan to assessee due to which it has high credibility. Further we find that the assessee

had established through various evidences submitted during appeal proceedings that even if Guideline value of land is considered than also the valuation of land is very high. Even the Ld. AO in its remand report, admitted the same fact of high market valuation of land but further mentioned that the same is not a relevant evidence which is against the provisions of section 56(2)(viib). Our view is supported by the following judicial pronouncements:-

1. Unnati Inorganics (P.) Ltd. v. Income Tax Officer, Ward-1(5), Bhavnagar [2019] 109 taxmann.com 165 (Ahmedabad - Trib.) (Copy of order Enclosed)

2. ASG Leather (P.) Ltd. v. Income Tax Officer, Ward-15(1), Kolkata [2018] 95 taxmann.com 151 (Kolkata - Trib.) (Copy of order Enclosed)

11. On consideration of above facts in the light of the aforesaid judicial pronouncements, we are of the view that the addition of Rs.2,72,22,105/- on account of section 56(2)(viib) of the Act was based on wrong interpretation of the provisions of law ignoring the evidences directly relevant to the facts of the present case. Therefore, we do not find any infirmity in the findings of Ld. CIT(A) and as such confirm the order of the Ld. CIT(A).

12. In the result, Revenue's appeal in ITANo.173/Ind/2020 is dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 04.10.2021.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 04.10. 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore