

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4919/Del/2019 : Asstt. Year : 2014-15

M/s. Trojan Developers Pvt. Ltd. 41-A, Prithvi Raj Road New Delhi-1	Vs	PCIT, Delhi-9 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAC0146K		

Assessee by : Sh. Rakesh Joshi, Adv.

Revenue by : Sh.H.K.Choudhary, CIT DR

Date of Hearing: 18.10.2021

Date of Pronouncement: 10 .11.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. PCIT, Delhi-9 dated 31.03.2019.

2. Return of income, in this case, was filed on 20.09.2014 declaring an income of Rs. 11,43,240/- and processed at the same time income u/s 143(1) of the Income tax Act, 1961 on 01.01.2015. Later on, the case was selected through CASS for scrutiny. Accordingly, notice u/s 143(2) was issued on 28.08.2015 and the assessment has been completed on 29.12.2016 accepting the returned income.

3. Post assessment, the Ld. PCIT after examination of the assessment records, held that prima facie the AO had failed to enquire about the issuance of shares at very high premium to

its closely held company within the meaning 56(2)(viib) of the IT Act.

4. During the year under consideration the assessee allotted 28729 shares to its closely held two companies namely M/s. Experience Financial Consultants Pvt. Ltd. and M/s. Sankalp Advisory Services Pvt Ltd. on 16.12.2013. The details of sale is as under :-

Sr.No.	Name of Company	No. of Shares	Face Value	Premium	Total capital	Total Premium	Total Consideration
(a)	Experience Financial Consultants Pvt. Ltd.	11222	100	1236	1122200	13870392	1,49,92,592/-
(b)	Sankalp Advisory Services Pvt. Ltd.	17507	100	1236	1750700	21638652	2,33,89,352/-
	Total	28729	100	1236	2872900	35509044	3,83,81,944/-

5. Ld. PCIT held that the AO has failed to examine whether the shares were transferred at any consideration or without any consideration. The Ld. PCIT further held that the AO has failed to examine the applicability of section 56(2) (viib) of the Act with regards to the valuation of the shares under Rule 11UA of Income Tax Rules 1962. The Ld. PCIT held that when the consideration exceeds the face value of shares, the provisions contained u/s 56 (2) (viib) of the Act are attracted. In all such cases the Fair Market Value (FMV) is to be computed in respect of equity shares issued and aggregate consideration computed in excess to the FMV shall be chargeable to tax u/s 56 of the IT Act under the head "income from other sources". It was held that to examine the applicability of the provisions of section 56 (2) (viib), FMV of equity shares issued by the Assessee is

required to be computed as per the provisions contained under Rule 11UA of Income Tax Rules, 1962.

The computation is made by the Ld. PCIT is as under :-

$$\text{FMV} = (\text{A-L})/\text{PE} \times \text{PV} ; \text{Where}$$

$$\frac{(41794158-25400000)}{11400000} \times 100 = \text{Rs.}143.80 \text{ per share}$$

$$\text{Actual paid up value (PV)} = \text{Rs.} 1336/- \text{ each share}$$

$$\text{Excess PV to FMV of each share} = \text{Rs.} 1336- 143.80$$

$$\text{Rs.} 1192.20 \text{ each share}$$

Aggregate value of Shares in excess to FMV=

$$1192.20 \times 28729 = \text{Rs.} 3,42,50,714/-$$

6. Thus, the Ld. PCIT computed that an amount of Rs. 3,42,50,714/- is required to be taxed under section 56 of the IT Act under the head "Income From other Sources".

7. Aggrieved the assessee filed before before us.

8. Heard the arguments of both the parties and perused the material available on record.

9. We find the issue of sale of shares has been a reason of selection of the case for scrutiny under section 143(3). Accordingly the AO has issued notice on 9.11.2016 & on 28.11.2016. Vide notice dated 19.12.2016 the assessee was asked by the ACIT Central Circle 5 to furnish complete details with evidence of share allotted by your company during the previous year relevant to assessment year under consideration alongwith name, address and PAN of the persons who were allotted the shares, copy of shares certificate issued with date of issue and method and calculation of valuation made for fixing

the issue price of shares. The assessee was also asked to furnish the mode of transactions with date for receipt of the share value and premium with copy of bank account through which the transaction was effected.

10. For the queries raised by the AO, the assessee replied submitting the P&L account and the details of sale of shares and premium appearing in the audited balance sheet. Further the confirmations from both the parties who have purchased the shares have been filed along with bank account. The issue of valuation of shares has also been examined by the AO with regard to the fair market value along with the valuation report of the property situated at 41A, Prithvi Raj Road, New Delhi-1. The detailed substantiation and changes of share holding in the assessee company has also been examined by the Assessing Officer. Vide letter dated 28.11.2016, the assessee has also submitted the explanation with regard to applicability of Section 56 (2) (viib) which has been duly examined by the Assessing Officer. The value of the property has been determined at the rate of 17.5 crores by the registered valuer which the assessee has explained to justify the premium received on allotment of shares.

10. Thus, on going through the entire proceedings before the Assessing Officer, we find that the issue of sale of shares has been duly examined. Hence the contention of the Ld. PCIT that the Assessing Officer has failed to inquire about the issuance of the shares at very high premium cannot be held to be correct on facts on record. Further, we also find that the Ld. PCIT has

not determined or has given any guidelines as to how the order of the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue. Hence, the revisionary order passed by the Ld. PCIT u/s 263 cannot be held to be legally valid.

In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 10/11/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 10/11/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR