

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ‘ B ‘ Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Shri S.S. Godara, Judicial Member**  
**AND**  
**Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.2079/Hyd/2018		
Assessment Year: 2015-16		
ATGC Biotech Private Limited, Plot No.1, Sy.No.87, Par Maalaxmi Residency, Kompally, Hyderabad. PAN No.AAJCA5865H.	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Sunil Kumar Jain - AR	
Revenue by:	Sri Rohit Mujumdar - DR	
Date of hearing:	25/05/2021	
Date of pronouncement:	20/09/2021	

**ORDER**

**Per S. S. Godara, J.M.**

This assessee's appeal for A.Y 2015-16 arises from the CIT(A)-1, Hyderabad's order dated 17.07.2018 passed in case no.0286/CIT(A)-1,Hyd/2017-18/2018-19, involving proceedings under section 143(3) of Income Tax Act, 1961 (in short, "the Act").

Heard both sides. Case files perused.

2. The captioned appeal filed by the assessee is barred by limitation by 7 days. The assessee has moved a petition requesting the bench to condone the delay. We heard the party on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

3. Coming to the assessee's sole substantive issue of sec 56(2)(viib) of the Act amounting to Rs.69,62,518/-; we note that the CIT(A)'s detailed discussion to this effect reads as under :

*"5.3 The submissions of the appellant have been carefully considered. The contention of the appellant is not accepted for the following reasons :*

a) *During the year, the subscribed capital was 50655 equity shares, during the year, the company has increased his subscribed capital by issuing 791 equity shares of Rs.100/- each with premium. The shareholding pattern given as per audited annual account is as follows :*

S.No.	Name of shareholder	As at 31 March 2015		As at 31 March 2015	
		No. of shares held	% of Holding	No. of shares held	% of Holding
1.	Prashanth Shrimal	5,852	9.99%	5,000	9.87%
2.	Sowmya S	5,000	8.54%	5,000	9.87%
3.	Vijay Bhaskar Reddy	4,686	8.00%	4,000	7.90%
4.	Grignard Chemicals LLP	10,148	17.33%	9,000	17.77%

*The share premium amount collected during the year is Rs.83,79,300/- as against Rs.1,60,10,250/- of previous year. As per audited balance sheet, share pending for allotment is Nil.*

b) *The appellant was asked to produce confirmation letter and bank details of the share premium received from the 16 parties and why all the 16 parties do not appear in the shareholders list in the audited annual accounts. However, the appellant has not submitted bank account details or confirmation of the premium payments.*

c) *The share premium collected are as follows :*

S. No	Name of the allottee	No of shares allotted	Face value in Rs.	Total amount paid including share premium	Share premium	Premium per share
1.	Sri Arjula Reddy	85	100	98,810	90,310	1060.35
2.	Sri B.Ananth Reddy	373	100	4,33,667	3,96,367	1062.65
3.	Sri Markandeya Gorantla	849	100	9,85,342	9,00,442	1060.59
4.	Smt.Jhansi S	93	100	1,08,650	99,350	1068.28
5.	Sri Krishnam Raju	319	100	3,70,151	3,38,251	1060.35
6.	Prasanth Shrimal	852	100	9,89,330	9,04,130	1061.19
7.	Praveen P Reddy	627	100	7,28,030	6,65,330	1061.13
8.	Sri P.R.K.Reddy	337	100	3,91,070	3,57,370	1060.45
9.	P.Vijaya Lakshmi	93	100	1,08,400	99,100	1065.59
10.	Smt.Shirley D Silva	255	100	2,96,840	2,71,340	1064.08
11.	Soujanya Lekkhala	255	100	2,96,121	2,70,621	1061.26
12.	Sri Vijay Bhaskar Reddy	686	100	7,96,114	7,27,514	1060.52

13	Sri Vijay Shanker Madhi	102	100	1,18,900	1,08,700	1065.69
14	Sri Metram Rao Julapally	377	100	4,38,069	4,00,369	1061.99
15	M/s. Grignard Chemicals LLP	1248	100	13,32,554	12,17,754	1060.76
16	Sri Sunder Olli	1263	100	14,65,545	13,39,245	1060.37
	Total	7905	100	91,79,396	8086193	1022.92

*In the present case, the appellant has allotted shares to 16 parties with different premium amounts. Before me, the appellant has not justified for differential amount of the premium.*

- d) *The justification given before the Assessing Officer is based on the calculation of probable income. The justification cannot be accepted, as this does not qualifies the huge premium amount received from the parties. That is to say, the justification given before the Assessing Officer regarding the calculation of premium holds no ground as it is based on non-accountant methods. Mere certification by a valuer does not justify the differentials share premium amount. The valuer himself stated that "the projections are based on assumptions developed by the Management." That is to say, the value of premium is on whimsical ground. As no due diligence was done in this case by the appellant to value the actual value of the company is not accepted.*
- e) *The appellant has not submitted whether the actual premium were paid by the listed parties. No addresses and financial capability to purchase a share of Rs.100j- of a Private Limited companies who has not listed company. Hence, there is no strength in the appellant's submissions. The confirmation letters submitted by the appellant, all the parties did not make payment by cheque. All are stereo type of letter)n a piece of white sheet. It is not known whether the share applicators are having funds to invest. The creditworthiness is very much doubted in absence of bank account of the appellant as well as the invested parties.*

*In absence of audited due diligence report by the authorized auditors and basing on imaginary figures cannot be ground to claim such a huge share premium amount. Also, appellant has not enable to confirm as to whether the share premium was actually received by a genuine transaction. In this background, the stand taken by the Assessing Officer stands is correct and the addition made on the excess share premium is upheld."*

4. We have given our thoughtful consideration to rival pleadings and find no reason to express our agreement with either one of them in its entirety. This is primarily for the reason that the learned CIT(A) appears to have proceeded on assumption(s) that the assessee had failed to file confirmations of premium

payment amount despite the fact that this is an instance of sec 56(2)(viib) not requiring it to prove identity, genuineness and creditworthiness of the investing parties which is a mandatory condition qua unexplained cash credits' addition only. Coupled with this, we find that the assessee has also not been able to prove the share premium issue @ Rs.1,160/- per unit since the corresponding registered valuer had allegedly failed to justify the same by quoting the cogent supportive material. Faced with this situation, we deem it appropriate to restore the instant sole issue back to the Assessing Officer for his afresh adjudication as per law within three effective opportunities of hearing. Ordered accordingly.

5. We next wish to observe here that although the learned counsel has quoted rules 11U and 11UA of Income Tax Rules in order to support the assessee's valuation report herein as supported by the prescribed method therein, we find no force in the same at this stage in view of our foregoing detailed observation.

6. We lastly acknowledge that although the instant appeal is being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for extension of limitation' making it clear that in such cases where the limitation period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 20<sup>th</sup> September, 2021.

<b>Sd/-</b> <b>(LAXMI PRASAD SAHU)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 20<sup>th</sup> September, 2021.

*TYNM/sps*

Copy to:

S.No	Addresses
1	ATGC Biotech Private Limited, Plot No.1, Sy.No.87, Par Maalaxmi Residency, Kompally, Hyderabad.
2	The Dy. Commissioner of Income Tax, Circle 1(1), Hyderabad.
3	CIT (A)-1, Hyderabad
4	Pr. CIT -1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*