

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.291/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Vaishvik Foods Pvt. Ltd.,
S. No. 166, Sinhgad Road,
Nanded Phata,
Pune - 411041

PAN : AACCV6303Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 13(5), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 22-12-2021

घोषणा की तारीख / Date of Pronouncement : 10-01-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 13-10-2017 passed by the Commissioner of Income Tax (Appeals)-5, Pune [‘CIT(A)’] for assessment year 2013-14.

2. The assessee raised three grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in holding the addition made u/s. 56(2)(viib) of the Act partially to an extent of Rs.36,00,000/- as against Rs.51,60,000/- in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee is a company and conducts its business under the name and style as "M/s. Vaishvik Foods Pvt. Ltd." The assessee is engaged in the business of processing and manufacturing of foods and food products, frozen food products, fresh fruits and vegetables. It is also in the activities of trading in vegetables and manufactures the instant mixes products, such as idli, dosa, gulabjamun dhokla etc. The assessee also exports the foods products to the gulf market.

4. We note that the assessee issued shares being face value at Rs.10/- at premium of Rs.6/- per share and at effective price being at Rs.16/- per share. The AO asked the assessee to produce the details of the valuation of shares and also asked why addition should not be made u/s. 56 of the Act in the respect of issue of shares in excess of fair market value. The assessee submitted valuation report along with calculation of the share price and on verification of the same, the AO determined the fair market value of each share at Rs.14.71, thereby made addition to an extent of Rs.51,60,000/- (Rs.16/- - Rs.14.71 X 4000000 shares) and added the said amount to the total income of the assessee. We find the calculation made by the AO regarding determination of fair market value of each share at Para No. 3.2 of its order.

5. Before the CIT(A), the assessee contended that the action of AO in determining the fair market value at Rs.14.71 on various aspects. The CIT(A) discussed all those aspects in its order from Para Nos. 5.6 to 5.8, considering the same the CIT(A) determined the fair market value at Rs.15.10 and restricted the addition to an extent of Rs.36,00,000/- (Rs.16/- - Rs.15.10 X 4000000 shares). As aggrieved by the order of CIT(A), the assessee is before us by raising above said grounds of appeal.

6. The ld. AR, Shri Kishor Phadke drew our attention to the chart placed on record at Page No. 71 of the paper book, wherein, we note that the assessee analyzed the determination of fair market value under direct method and indirect method. The facts remains admitted that the assessee submitted value of the cost of shares to show the fair market value under indirect method and the AO and CIT(A) proceeded to determine taking into consideration the valuation report submitted by the assessee under the same indirect method. The provisions u/s. 56 of the Act explains computation of income from other sources. Sub-section (2) of section 56 of the Act provides the various incomes chargeable under the head income from other sources. Clause (vii)(b) to sub-section (2) of section 56 explains any consideration for issue of shares which exceeds the face value of such shares in respect to a money receives from any person being a resident in any previous year, the aggregate consideration received for such shares as exceeds the fair market value of the shares is chargeable to tax under the head Income from other Sources. Fair market value is to be determined in accordance with the explanation provided therein. The ld. AR agreed that the Clause (a)(i) of explanation is to be considered as a method prescribed under Rule 11U and 11UA of Income

Tax Rules. On perusal of the Rule 11UA which provides the determination of fair market value for the purposes of section 56 of the Act Sub-Rule (2) of Rule 11UA provides the manner of determination of fair market value of the unquoted equity shares. Clause (a) of Sub-Rule (2) provides the equal method for the same.

7. The ld. DR, Shri S.P. Walimbe submits that there is no direct or indirect method is provided within statute for determination of fair market value of unquoted equity shares. The fair market value is to be determined as per the Rules provided under Income Tax Rules, 1962. He supported the orders of AO and CIT(A) and argued both the authorities below followed the method provided under Rule 11UA.

8. Admittedly, both the ld. AR and ld. DR conceded that the assessee as well as AO and CIT(A) not followed the method of manner provided therein under Clause (a) of Sub-Rule (2) of Rule 11UA was followed. On perusal of the orders of AO and CIT(A), we note that both the authorities below followed and analyzed the valuation report submitted by the assessee but nowhere it is seen followed strictly procedure contemplated under Rule 11UA.

9. The ld. DR initially opposed in remanding the issue to the file of AO for conducting de-novo exercise for determination of fair market value but however on noticing non-consideration of clause on some items provided in Clause (a) of Sub-Rule (2) of Rule 11UA, he fairly agreed for the remand of issue to the file of AO. Therefore, we deem it proper to remand the issue to the file of AO for its fresh consideration and the assessee is directed to file

evidences, if any, in support of its claim. The AO shall consider the same and pass order, in accordance with law by giving reasonable opportunity to the assessee. Thus, the grounds raised by the assessee are allowed for statistical purpose.

10. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 10th January, 2022.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th January, 2022.

रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune
4. The Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune