

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.623/Bang/2020 : Asst.Year 2016-2017

M/s.IB Communications Network Private Limited, 1, 2 nd and 3 rd Floor, Indian Express Building Queens Road Bengaluru - 560 001. PAN : AACCI3536N.	v.	The Income Tax Officer Ward 3(1)(4) Bangalore.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Sri.Nischal B, Addl.CIT-DR

Date of Hearing : 06.01.2022	Date of Pronouncement : 07.01.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 27.02.2020. The relevant assessment year is 2016-2017.

2. The grounds raised read as follows:-

"1. That that the order of the Commissioner of Income Tax (Appeals) [CIT(A)] is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.

2. That the Ld. CIT(A) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. a) That on the facts of the case and circumstances and in law, the Ld. CIT(A) has erred in confirming the addition of INR 1,54,54,792 made by the Assessing Officer (AO) considering share premium received as income from other sources under section 56(2)(viib) of the Income-tax Act, 1961 ('Act');

b) That on the facts of the case and circumstances and in law, the Ld. CIT(A) has failed to appreciate that the provisions of

section 56(2)(viib) of the Act are effective only from AY 2013-14 and would not apply in the current case of shares issued in AY 2011-12;

c) That on the facts of the case and circumstances and in law, the Ld. CIT(A) has failed to appreciate that at the time of allotment of shares, the assessee was not required to obtain a share valuation report under the relevant provisions of the Act;

d) That on the facts of the case and circumstances and in law, the Ld. CIT(A) has failed to appreciate that the Ld. AO has considered the entire share premium received by the Company as income from other sources without carrying out a specific valuation as required under section 56(2)(viib) of the Act;

e) That on the facts of the case and circumstances and in law, the CIT(A) has failed to appreciate that addition of income under other sources on account of share premium is not warranted as the appellant was able to provide requisite explanations, information and confirmations in order to prove the genuineness of the transaction.

4. That on the facts of the case and circumstances and in law, the Ld CIT(A) erred in upholding the levy of interest under section 234B of the Act.”

3. The brief facts of the case are as follows:

The assessee is a company. For the assessment year 2016-2017, the return of income was filed on 16.10.2016 declaring total income of Rs.20,61,700. The assessment was selected for scrutiny under CASS to verify the authenticity of the funds received in the form of share premium. During the course of assessment proceedings, it was noticed that the assessee had authorized share capital of Rs.5 lakh and subscribed and paid up capital of Rs.3,84,620. The assessee during the relevant assessment year received a sum of Rs.1,54,54,792 as share premium. The assessee submitted that the company had in the earlier assessment year issued shares to ACT Digital Home Enterprises Private Limited (ACT

Digital) with a face value of Rs.10 per share and a share premium of Rs.912. It was stated that for 17042 shares, an amount of Rs.4 per share was outstanding towards face value and Rs.908 per share was outstanding towards share premium as on 01.04.2015. Accordingly, the assessee claimed total share capital and share premium received during the year amounted to Rs.1,55,42,304 cannot be taxed u/s 56(2)(viib) of the I.T.Act since shares were issued in assessment year 2011-2012. However, the assessee did not produce any documentary evidence to support these were outstanding payments and the issue of shares were in the earlier years. Further, nowhere in the assessee's financial the said transaction has been taken into consideration in the earlier years. Therefore, the claim of the assessee that an amount of Rs.1,55,42,304 received during the year under consideration is the outstanding amount towards share capital and share premium was rejected by the Assessing Officer. During the course of assessment proceedings, the assessee sought to justify the share premium by submitting some figures on a plain paper which is reproduced at para 1.2 of the impugned assessment order. However, since the valuation was not as per the prescribed method and did not have scientific analysis, the justification of claim of share premium received was rejected by the A.O. and assessed by invoking the provisions of section 56(2)(viib) of the I.T.Act (A.O. accepted the face value of Rs.10 as genuine). The relevant finding of the A.O. reads as follows:-

“The submission made by the company and the facts discussed above are contrary to each other. When the face value of share is only Rs.10/-, the share premium of Rs.1,54,54,792/- received from ACT Digital wherein the share was valued at Rs.922/- needs all kina of examination including identity, credit worthiness and genuineness of the share application as well as the method of valuation adopted by the assessee company. There is no valuation report submitted by the assessee. The assessee company has given all sorts of artificial figures on a plain paper to arrive at the value per share. Prima facie, it can be said that there was no valuation done by the assessee company for valuation of shares and the "determination of value of share" submitted during the course of assessment proceedings to arrive at the desired value per share appears to be an afterthought of the assessee.

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Under these circumstances, by invoking section 56(2)(viib) of the I.T.Act, 1961 the face value of Rs.10/- is considered as genuine. The value of Rs.922/- per share adopted by the company is treated as incorrect on account of the detailed discussion made above. Accordingly, the share premium of Rs.1,54,54,79/- is treated as income from other sources.”

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority it was submitted that the assessee has not issued any shares during the relevant assessment year and the provisions of section 56(2)(viib) of the I.T.Act introduced by the Finance Act, 2012 are effective from only assessment year 2013-2014 and will not be applicable in the case of the assessee, since the shares were issued in assessment year 2011-2012. It was further submitted that there was no requirement for the assessee to obtain the valuation report. It was further stated that the A.O. was required to undertake a valuation as per the provisions of the Act and the A.O. cannot make an addition u/s 56(2)(viib) of the I.T.Act without making such an exercise. The CIT(A) by

extracting the provisions of section 56(2)(viib) of the I.T.Act, explained the salient features of the said provision. The CIT(A) held that since the share premium is received during the relevant assessment year, the same is taxable u/s 56(2)(viib) of the I.T.Act (irrespective whether the shares were issued in the earlier assessment year). In this context, the CIT(A) relied on the Calcutta Tribunal order in the case of Diach Chemicals & Pigments Pvt. Ltd. dated 19.06.2019. Thereafter, the CIT(A) after explaining the need for introduction of section 56(2)(viib) of the I.T.Act and the amendment to section 68 of the I.T.Act by Finance Act, 2012, held that such amendment is to control bogus / unjustified subscription of share premium and to prevent circulation of black money. The CIT(A), after examining the valuation given by the assessee, held that it is not as per the prescribed method nor does it have any scientific basis. Accordingly, the CIT(A) confirmed the view of the Assessing Officer and held that the share premium is to be assessed u/s 56(2)(viib) of the I.T.Act.

5. Aggrieved, the assessee has raised this issue before the Tribunal. None was present on behalf of the assessee, though notice was served on the assessee several times intimating the date of hearing (inspite of the same, the assessee has not even engaged a Authorised Representative).

6. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

7. We have heard the learned Departmental Representative and perused the material on record. Section 56(2)(viib) of the I.T.Act, 1961 was introduced in the Finance Act, 2012 which requires a company (issuer), not being a company in which the public are substantially interested, to issue shares at Fair Market Value (FMV). Any consideration received by such issuing company in excess of the FMV, to the extent it exceeds the face value of such shall be liable to tax. For the purpose of this section FMV shall be the value, higher of the following –

(a) as may be determined in accordance with such methods as may be prescribed (Methods prescribed under Rule 11UA are Book value Method (NAV) and Discounted Cash flow method); or

(b) 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.

7.1 In the instant case, neither the A.O. nor the CIT(A) has determined the fair market value of the shares issued by the assessee-company to ACT Digital in accordance with Rule 11UA. The A.O. has merely taken face value of the shares as the deemed fair market value and the share premium was assessed as income from other sources u/s 56(2)(viib) of the

I.T.Act. The provisions of section 56(2)(viib) of the I.T.Act to be invoked, necessarily the FMV has to be established as per one of the prescribed methods. Therefore, in order to determine the fair market value of the shares, the matter is referred to the CIT(A). The CIT(A) shall call for a remand report from the AO, who shall determine the FMV of shares by following any of the prescribed methods. After confronting the remand report with assessee, the CIT(A) may take appropriate decision as per law. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 07th day of January, 2022.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 07th January, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-3, Bengaluru.
4. The Pr.CIT-3, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore