

आयकर अपीलिय अधिकरण

चंडीगढ़ पीठ " ऐ" , चंडीगढ़

श्री एन.के सैनी, उपाध्यक्ष एवं

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH "A", CHANDIGARH
BEFORE SHRI N.K. SAINI, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 222/चंडीगढ़/2021(नि.व. 2016-17)

ITA NO.222/Chd./2021 (A.Y.2016-17)

Electra Paper and Board Pvt. Ltd.

Village Batauli, P.O. Lalru,

The- Derabassi, SAS Nagar,

(Mohali)-140501.

PAN: **AAECR6405M**

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer

ACIT Circle-4(1), Bassi Bilding-1,

Sec. 45-46-47, Sector-17,

Chandigarh-160017.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Rohit Goel, CA

प्रतिवादी द्वारा/Respondent by : Smt. Priyanka Dhar, JCIT-DR

सुनवाई की तिथि/ Date of hearing : 25/10/2021

घोषणा की तिथि/ Date of pronouncement : 20/01/2022

आदेश/ ORDER

Per Vikas Awasthy, Judicial Member

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) dated 28/7/2021 for the Assessment Year (AY) 2016-17.

2. The solitary ground raised by the assessee in appeal is against the addition of Rs.8,55,590/- made under section 56(2)(viib) of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'].

3. The facts of the case germane to the controversy in appeal are: The assessee is a private limited company. During the period relevant to assessment year under appeal, the assessee had allotted 31950 shares of Rs. 10/- each at premium of Rs.10/- i.e. aggregating to Rs.20/- per share to the family members and related group companies on 31.03.2016. In scrutiny assessment proceedings, the Assessing Officer (AO) issued show cause as to why Fair Market Value (FMV) of shares at Rs.17.32 per share based on audited Balance Sheet as on 31/3/2015 be not adopted under section 56(2)(viib) of the Act. The assessee explained that the shares were allotted on 31.03.2016 and hence, the FMV as on 31.03.2016 would be applicable. The AO rejected the FMV of shares determined by the assessee on the basis of Average NAV as on 31.3.2015 and 31.03.2016. The AO determined the FMV of shares based on audited Balance Sheet as on 31.3.2015 at Rs.17.32. Consequently, the AO made addition of the difference between the FMV of shares at which shares were allotted by the assessee and FMV determined by him i.e. Rs.2.68 (Rs.20 - 17.32) per share thereby making aggregate addition of Rs.8,55,590/-(Rs.2.68 x 319250) under section 56(2)(viib) of the Act. In first appeal, the assessee remained unsuccessful, hence, the present appeal by the assessee.

4. Sh. Rohit Goel appearing on behalf of the assessee made three fold submissions. The first contention of the Id. Authorized Representative (AR) of the assessee is that admittedly the FMV of shares was determined on the basis of unaudited Balance-sheet drawn on the date of allotment i.e. 31.03.2016. It was not possible to get the balance-sheet audited on the same date. The

accounts of the assessee for Financial Year 2015-16 were audited on 24.08.2016. There is no change in the financials in the tentative Balance-Sheet drawn on 31.03.2016 and the audited Balance-Sheet. Thus, reliance can be placed on tentative balance sheet drawn on 31-3-2016. Further, there is no requirement in the Rules that audit should have been completed on the same date.

4.1. The second contention of the Id. AR is that in Rule 11U(b)(i) the second part of sub-clause (i), i.e. *where the balance-sheet on the valuation date is not drawn up, the balance-sheet drawn up as on date immediately preceding the valuation date which has been approved and adopted in AGM*, would not apply. As on the date of allotment of shares in the instant case, balance-sheet was available. The Id. AR pointed that the combined reading of Explanation 56(2)(viib) refers only to the value on the date of issue of share irrespective of audit of such figures and even the provisions of section 11UA(b) gives more emphasis on drawing of balance-sheet on the date of allotment of fresh shares. There is no requirement that the same should be audited on the same date. Thus, FMV on the basis of balance-sheet drawn on the date of allotment should be considered.

4.2. The third contention of the Id. AR is that as per the provisions of Rule 11UA(c)(b), value of shares as on 31.03.2015 comes to Rs.19.78 and value of per share as on 31.03.2016 comes to Rs.24.63. During assessment proceedings the Assessing Officer has not computed FMV of shares strictly as per the provisions of Rules. The value of shares during the assessment proceedings was calculated simply by dividing shareholder's fund to total outstanding shares. This has resulted in wrong valuation of shares as on 31.03.2015 at Rs.17.32 per share. The FMV of shares if calculated under Rule 11UA would be Rs.19.78 per share. The Id. AR referred to the computation of FMV of unquoted equity share as per

the Rule 11UA at page 18 of the Paper Book. The Id. AR further pointed that the FMV of shares as on 31-3-2016 calculated as per Rule11UA is Rs.24.63. The assessee has issued shares at a price lower than the FMV as on 31-3-2016.

4.3. The Id. AR in order to buttress his contentions that balance sheet that gives the realistic picture of the financials should be considered and not necessarily the audited balance sheet for determining FMV of shares on the date of allotment, placed reliance on the following decisions:

- (i) *S.Viji vs. Commissioner of Gift Tax, 229 ITR 421 (SC); and*
- (ii) *Vardhman Entertainment and Hospitality Pvt. Ltd. vs. ACIT in ITA No. 6940/Mum/2018 decided on 01.07.2021.*

5. *Au contraire*, Ms. Priyanka Dhar, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee. The Id. DR submitted that 'Balance-sheet' has been defined in Rule 11U(b). As per aforesaid definition, balance-sheet should have been duly audited by the Auditor of the Company appointed under section 224 of the Companies Act, 1956. Thus, on the date of allotment of shares i.e. 31.03.2016, the only audited balance-sheet available was as on 31.03.2015, therefore, the AO has determined the FMV of share on the basis of audited balance-sheet available on the date of allotment of shares in accordance with the provisions of Rule 11UA. The Id. DR vehemently supported the assessment order and the order of CIT(A) and prayed for dismissing the appeal of the assessee. In support of her contentions, placed reliance on the decisions referred by the CIT(A) in the impugned order i.e. (i) *Sadhavi Securities Pvt. Ltd. 109 taxmann.com 245 (Del.Trib.); and (ii) Y.Venkanna Choudhary 112 taxmann.com 71 (Vizag).*

The Id. DR further pointed that the judgment rendered in the case of *S.Viji vs. Commissioner of Gift Tax (supra)* is not relevant to the facts of present case

as the said judgment was rendered prior to insertion of Rule 11U in the year 2012.

6. We have heard the submissions made by rival sides and have examined the orders of the authorities below. The issue before us in the present appeal is in narrow compass i.e. Whether FMV of shares for the purpose of section 56(2)(viiia) r.w.r. 11UA determined on the basis of 'Balance-Sheet' drawn on the date of allotment and audited subsequently, can be accepted? Before proceeding further, it would be relevant to refer to the definition of 'Balance-Sheet' as defined in Rule 11U(b). The relevant extract of the definition of 'balance-sheet' is reproduced here-in-below:

"11U. For the purpose of this rule and rule 11UA.-

(b) 'balance sheet', in relation to any company, means,-

- (i) for the purposes of sub-rule (2) of rule 11UA, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance sheet on the valuation date is not drawn up, the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and*
- (ii) in other cases,-*
 - (A) in relation"*

A bare perusal of the definition of 'balance-sheet' above would show that for the purpose of determination of FMV under rule 11UA, the balance-sheet should be drawn on the date of valuation and the same should also be audited by the Auditor of the company and in case the balance-sheet on the date of valuation is not drawn, the balance-sheet drawn on a date immediately

preceding the valuation date and audited by the auditors of the company should be considered.

7. The two mandatory requirements of Rule 11U(b) are: (i) the Balance Sheet should be drawn on the date of valuation; and (ii) the said Balance Sheet should be duly audited by the Auditor appointed under the provisions of section 224 of the Companies Act 1956 (now under section 139 & 142 of the Companies Act 2013). Where the Balance Sheet is not drawn on the date of valuation, the Balance Sheet drawn on a date preceding the date of valuation which has been approved and adopted in the Annual General Meeting of the shareholders should be considered. The definition has two limbs: The first limb applies in a situation where the Balance sheet is drawn on the date of valuation and the second limb of definition applies in a situation where no Balance Sheet is drawn on the date of valuation.

8. In the instant case undisputedly on the date of allotment of shares i.e. 31.3.2016, a balance-sheet was drawn by the assessee albeit the said balance sheet was unaudited on that date. The FMV of the shares was determined on the basis of said balance-sheet. The said Balance-sheet was subsequently audited by the Auditors of the company and ostensibly, there was no difference in the financials of tentative balance-sheet drawn on 31.03.2016 after audit by the Auditors. Since, the balance sheet was drawn on the date of valuation the case of assessee is covered by first limb of the definition of 'Balance Sheet'. In so far as the condition that the Balance Sheet should be audited by the Auditor of the company, the said condition is also satisfied as the Balance sheet drawn on 31.3.2016 was subsequently audited with purportedly no change in financials. In

other words, the twin conditions mandated under Rule 11U(b) for a balance sheet on the basis of which valuation is to be made i.e.

- (i) The Balance Sheet should be drawn of the date of valuation; and
- (ii) The Balance Sheet should be audited by the Auditors of the Company appointed under the provisions of the Companies Act;

are satisfied in present case. In our considered opinion, the emphasis is on drawing of balance sheet on the date of valuation. The rule does not mandate that the balance sheet should also be audited on the date of valuation. Even if the balance sheet is audited subsequently, it would be sufficient compliance of the provisions of Rule 11U(b). However, in spirit and purpose of the provisions of rule defining 'balance sheet', there should not be material change in the financials of the Balance Sheet after audit so that it may not lose the tenacity and relevance of 'balance sheet on the date of valuation'.

9. In light of the facts discussed above, we hold that the balance sheet on the basis of which FMV of shares allotted on 31.3.2016 was determined by the assessee falls within the meaning of 'Balance Sheet' as envisaged under Rule 11U. Hence, we find no error in the FMV of shares determined by the assessee on the basis of balance sheet drawn on 31.3.2016.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on **Thursday**, the **20th** day of January, 2022.

Sd/-
(N.K. SAINI)

उपाध्यक्ष / VICE-PRESIDENT

Sd/-
(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

चंडीगढ़/Chandigarh, दिनांक/Dated: 20/01/2022

SK, Sr. PS

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., चंडीगढ़/DR, ITAT,
Chandigarh
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Chandigarh