

IN THE INCOME TAX APPELLATE TRIBUNAL “C (SMC)” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 488/Kol/2021
Assessment Year : 2013-14

Planet Exim Pvt. Ltd. (PAN: AAECF 7716 M)	Vs.	ITO, Ward-5(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	24.02.2022
Date of Pronouncement	07.03.2022
For the Appellant	Shri Siddharth Agarwal, Advocate
For the Respondent	Shri Manas Mondal, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as ‘CIT(A)’] dated 18.08.2021 for the assessment year 2013-14.

2. The only issue raised by the assessee in the grounds of appeal is against the confirmation of addition of Rs. 40,70,400/- by the Ld. CIT(A) by upholding the order of AO wherein the addition was made by invoking the provision of Section 56(2)(viib) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in respect of share premium received by the assessee on subscription of its share capital.

3. The facts in brief are that the assessee filed its return of income on 07.08.2013 on e-portal declaring Nil income which was processed u/s 143(1) of the Act. Thereafter the case of the assessee was selected under scrutiny and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings the AO has found that 80,000 equity shares of Rs. 10 each at a premium of Rs. 90 per share were issued by the assessee. According to AO, the fair value of share comes to Rs. 49.12 per share in terms of section 56(2)(viib) read with Rule 11U

and Rule 11UA of the Income Tax Rules, 1962 (hereinafter referred to as the Rules) and accordingly the AO came to the conclusion that money received upon issue of shares in excess of fair market value is taxable in the hands of the assessee. The AO also rejected the valuation furnished by the assessee to justify the issue of shares at such premium. Accordingly an addition of Rs. 40,70,400/- was made to the income of the assessee u/s 56(2)(viib) in assessment proceedings u/s 143(3) dated 10.03.20216.

4. In the appellate proceedings also, the Ld. CIT(A) dismissed the ground raised by the assessee by holding that calculation of fair market value made by the AO is pursuant to section 56 of the Act read with Rule 11U and Rule 11UA of the Rules.

5. Having heard the rival parties and perusing the records carefully, we note that the assessee has issued 80,000 equity shares of face value of Rs. 10/- each at a premium of Rs. 90/- per share. We note that the assessee was incorporated a long back and over a period of time its market value has certainly increased and therefore the shares value has to be calculated at FMV and not at book value. The Ld. Counsel of the assessee has demonstrated on the basis of balance sheet of different years that market value of shares have incurred and should not be taken at book value which is not the realistic value of shares. We note that the assessee has also filed valuation report from Chartered Accountant valuing the share at Rs. 291.23 per share which was rejected by the AO. As against the price of 291.23 per share as per valuation report, the shares were issued at price of 100 per share consisting of Rs. 10 as face value and Rs. 90 per share premium per share. Considering these facts, we are not concurring with the view taken by the lower authorities who has simply brushed aside the valuation report. In our considered opinion the value of shares has to be at market value. Therefore we deem it proper to restore the matter to the file of the AO with the direction to decide the issue fresh after valuing the shares at fair market value and not on the book value after affording a reasonable opportunity of hearing to the assessee. The issue is accordingly restored to the file of the AO.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 7th March, 2022.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 7th March, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Planet Exim Pvt. Ltd., now merged with Techno Commercial Pvt. Ltd., C/o Subhash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd floor, Kolkata-700069.
2. Respondent – ITO, Ward-5(2), Kolkata
3. The CIT(A)-National Faceless Appeal Centre (NFAC)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of Dictation.....
2. Date on which the typed order is placed before the dictating Member and other Member.....
3. Date of which the order came back to Sr. PS.....
4. Date of which the file goes to the O.S.....
5. Date of dispatch of the order.....