

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6739/मुं/2019 (नि.व 2014-15)
ITA NO.6739/MUM/2019(A.Y 2014-15)

Royal Accord Realtors Pvt. Ltd.
26, Onlooker Building, Sir P.M.Road,
Fort, Mumbai 400 001
PAN: AADCR-1352-G

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT, CIRCLE -2(1)(1)
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

आअसं. 6740/मुं/2019 (नि.व 2014-15)
ITA NO.6740/MUM/2019(A.Y 2014-15)

Rockdale Realtors Pvt.Ltd.
9, Datrutwa, MMG Marg,
Dadar East, Mumbai 400 014.
PAN: AADCR-1353-H

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT, CIRCLE -2(1)(1)
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Subodh Ratnaparkhi

प्रतिवादी द्वारा/Respondent by : Shri T.Shankar

सुनवाई की तिथि/ Date of hearing : 10/12/2021

घोषणा की तिथि/ Date of pronouncement : 04/03/2022

आदेश/ ORDER

These two appeals are by two different assessees for the assessment year 2014-15. Since, the issue involved in both these appeals are identical and the ground of appeal raised by the assessees in their respective appeals are also identical, these

appeals are taken up together for adjudication and are decided by this common order.

2. The facts are narrated from the appeal in ITA No.6739/Mum/2019 for the sake of convenience, hence, the said appeal is taken as the lead case.

ITA NO.6739/MUM/2019- A.Y. 2014-15:

3. This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-4, Mumbai [in short ' the CIT(A)'] dated 09/09/2019 for the Assessment Year 2014-15.

4. The assessee in appeal has raised solitary ground, the same is reproduced hereunder:

"1. The Hon. CIT(A) erred in confirming the addition of Rs.48,75,000/- made u/s 56(2)(viib) of the I. T. Act 1961, on account of difference between the fair market value and actual consideration received by the appellant on issue of shares, not appreciating that the marginal difference of 1.1% was on account of rounding off the value per share to the nearest hundred and therefore the provisions of section 56(2)(viib) were not attracted and the addition of Rs. 48,75,000/- was required to be deleted."

5. Shri Subodh Ratnaparkhi appearing on behalf of the assessee narrating the facts of the case submitted that the assessee is a private limited company engaged in real estate business. During the period relevant to assessment year under appeal, the assessee allotted 1,25,000 equity shares to M/s.Weeko Real Estate Pvt. Ltd. The shares were issued at premium. The fair market value of the equity shares were determined in accordance with the method prescribed under Rule 11UA(c) of the Income Tax Rules,1962. As per the method prescribed the fair market value of the share was Rs.3560.77 per share. While allotting the shares, the assessee rounded off value to the nearest multiple of 100 and allotted the shares at Rs.3600/- per share. In the course of assessment proceedings the Assessing Officer treated the difference of Rs.39/- (i.e. Rs.3600 - Rs.3560.77) as income under the

provisions of section 56(2)(viib) of the Income Tax Act, 1961 (in short 'the Act'). The Id.Authorized Representative of the assessee contended that the assessee had determined the fair market value of share as per the method prescribed u/r.11UA(c). However, for the purpose of convenience at the time of allotment of shares the value was rounded off to the nearest multiple of 100, hence, there was a difference of Rs.39/- per share. The rounding off of fair market value to the nearest multiple of 100 was done with a bona-fide intention and not to take any unfair benefit. There is a marginal difference of 1.10% in the value of shares allotted and their fair market value in accordance with Rule 11UA. The Id.Authorized Representative of the assessee placing reliance on the decision of Tribunal in the case of DCIT vs. Jain Housing, 109 taxmann.com 428(Chennai) submitted that marginal difference of 1% should be ignored and the addition made may be deleted.

5.1 The Id.Authorized Representative of the assessee further to justify rounding off of fair market value of shares submitted that fair market value determined u/r.11UA(c) is akin to the provisions of section 288A and 288B of the Act, wherein the total income computed as well as the tax payable or refund/deduction is rounded off as per respective provisions. The Id.Authorized Representative of the assessee further draws support from the provisions of section 115VG(5) of the Act dealing with tonnage tax, wherein the provision provided for rounding off to nearest multiple of hundred. To further strengthen his submissions the Id.Authorized Representative of the assessee referred to section 79 of the Black Money (undisclosed foreign income and assets) and Imposition of Tax Act, 2015 wherein again there is provision of rounding off to the nearest multiple of hundred. The Id.Authorized Representative of the assessee asserted that the concept of rounding off to the multiple of nearest ten or hundred can be found in several fiscal laws. The idea behind this is to ignore marginal difference which has no significant impact. The Id.Authorized Representative of the assessee in support of his submissions placed

reliance on the decision rendered in the case of ACIT vs. Subodh Menon, 198 TTJ(Mum) 79.

6. *Au Contraire*, Shri T.Shankar representing the Department vehemently defended the impugned order. The Id.Departmental Representative submitted that under section 56(2)(viib) of the Act, there is no provision for rounding off of fair market value to the nearest rupee or multiple of ten or hundred. The provisions of section have to be read as they are and no further interpretation or explanation can be added if on plain reading of the provisions of section, the intent of the legislature is clear. The Id.Departmental Representative further submitted that wherever rounding off is required, the section itself makes provision for that. To support his contention the Id.Departmental Representative placed reliance on the decision of Hon'ble Supreme Court of India in the case of H.H.Laxmibai vs. Commissioner of Wealth Tax, 206 ITR 688. The Id.Departmental Representative further submitted that identical issue was considered by Kolkata Bench of the Tribunal in the case of Shresth Dealers Pvt. Ltd. vs. ITO in ITA No.2517/Kol/2018 for assessment year 2013-14 decided on 07/06/2019, wherein under similar facts the Tribunal upheld the addition made on account of rounding off fair market value of the shares to the nearest multiple of hundred.

7. Controverting the submissions made on behalf of the Department, the Id.Authorized Representative of the assessee submitted that the decision on which Id.Departmental Representative has placed reliance is by SMC Bench, whereas the decision on which reliance has been placed by him is a Division Bench order. The decision by Division Bench will prevail over the decision of SMC Bench.

8. Both sides heard, orders of authorities below examined and the decisions on which reliance has been placed by the respective sides considered. The issue before us is in narrow compass i.e. whether round off of fair market value determined under section. 11UA IT Rules is permitted. It is an admitted fact that as per Rule 11UA(c), the fair market value of equity shares is Rs.3560.77 per share. The assessee

has allotted 1,25,000 equity shares @ Rs.3600/- per share, purportedly, by rounding off to the nearest multiple of hundred the Assessing Officer made addition of the difference in the fair market value and the value of which shares were allotted. Since, the assessee had issued 1,25,000 equity shares an addition of Rs.48,75,000/- (i.e. 1,25,00x 39) was made under section. 56(2)(viib) of the Act

9. Before proceeding further it would be relevant to refer to the provisions of section 56(2)(viib) of the Act. The relevant extract of the same is reproduced herein below:

“56(2) In particular and without prejudice to the generality of the provisions of sub-section(1), the following incomes, shall be chargeable to income-tax under the head “Income from Other Sources”,

Xxxxxxxxxxxxxx

Xxxxxxxxxxxxxx

xxxxxxxxxxxxxx

***(viib):**where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares”*

On a plain reading of the section it emanates that addition u/s. 56(2)(viib) is made where the consideration for issue of shares exceeds fair market value of the shares. There is no ambiguity in understanding the provisions on bare perusal. The Id. Representative for the assessee has referred to the provisions of section 288A, 288B and section 115VG(5) of the Act to support the action of assessee in rounding off the fair market value. We do not find favour with the arguments of the Id. Authorized Representative of the assessee. The aforesaid sections specifically provide for rounding off. The provisions of these sections cannot be stretched so far as to take the benefit under other sections of the Act.

The provisions of sections 288A, 288B and 115VG(5) of the Act have specific application at the time of final assessment/for specific tax scheme mentioned in the respective sections. They do not lay down general principle of rounding off to nearest rupee or multiple of ten or hundred under other sections of the Act. If the Legislatures indented to provide rounding off, they would have made specific provision in section 56(2)(viib) of the Act as well.

10. The assessee has placed reliance on the decision of ACIT vs. Subodh Menon (supra). After having examined aforesaid decision I find that the issue in the said case was different, hence, the said case is distinguishable on the facts itself. Moreover, the Co-ordinate Bench of the Tribunal while adjudicating the issue therein under section 56(2)(viib) has held that provisions cannot be applied as the transaction under dispute was prior to the amendment. Therefore, the ratio of the aforesaid decision does not support the case of the assessee.

11. On the contrary the decision of Kolkata Bench in the case of Shresth Dealers Pvt. Ltd. Vs. ITO (supra) deals with exactly the same issue as in the instant appeal. The Co-ordinate Bench after considering the facts and the provisions of section 56(2)(viib) of the Act held as under:

“4. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the fair market value of the unquoted equity shares sold by the assessee was Rs. 98.61 per share and the same was rounded off by the assessee to Rs. 100/-. He has contended that even if the valuation so rounded off at Rs. 100/- may not be acceptable, the value as rounded off of to next rupee that is Rs. 99 should be adopted for the purpose of computing the addition to be made u/s 56(2)(viib). The learned DR, on the other hand, has submitted that there is no such provision either in the Act or even in the relevant Rules to round off the valuation of shares at the next rupee. Even the learned counsel for the assessee has not been able to point out any provision in the Act or in the Rules which permits such rounding off of the valuation to the next rupee. This makes it clear that the valuation taken by the AO at Rs. 98/- instead of Rs. 98.61 while computing the amount to be added u/s 56(2)(viib) is also not correct. 1,

therefore, direct the AO to recompute the addition u/s 56(2)(viib) by taking the of valuation at Rs. 98.61 after necessary verification.”

12. The Hon'ble Apex Court has time and again held that, in a taxing statute one has to look merely at what is clearly said in the section . There is no room for any intendment. There is no concept of equity in tax law. Nothing is to be read in, nothing is to be implied. One has to look at plain language of the provisions of the section. For the purpose of construction of a taxing statute, the context, scheme of the relevant provision as a whole and its purpose is relevant. Where the statute is absolutely clear and unambiguous, recourse to beneficial/purposive interpretation cannot be taken. The Rule of literal interpretation would apply. Departure from literal rule while interpreting section is an exception, that too where literal rule would result in absurd construction of provision. In the instant case the provisions of section 56(2)(viib) of the Act or Rule 11UA no where provides for rounding off to nearest rupee or multiple of ten or hundred. The provisions are plain, clear and unambiguous. Thus, in the light of above observation, the impugned order is upheld and the appeal by assessee is dismissed.

ITA NO.6740/MUM/2019 – A.Y. 2014-15.

13. This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-4, Mumbai [in short ' the CIT(A)'] dated 09/09/2019 for the Assessment Year 2014-15.

14. Both sides are unanimous in stating that the facts in the present appeal are similar to the facts in ITA No.6739/Mum/2019, except for the amount of valuation of shares. Therefore, the submissions made in the aforesaid appeal would equally apply to the present appeal.

15. A perusal of the impugned order shows that in the instant case 1,25,000 equity shares were allotted @ Rs.3600/- per share to M/s. Silverline Real Estate Pvt. Ltd. The fair market value of shares determined u/r.11UA(c) was Rs. 3572/- per share Thus, the Assessing Officer made addition of the difference i.e. Rs.28/- per share (Rs.3600 – Rs.3572). Since, the facts in both the appeals are similar and the ground of appeal raised in the present appeal is similar to the one adjudicated in ITA NO.6739/Mum/2019(supra), therefore, the findings given in ITA No.6737/Mum/2019 would *mutatis mutandis* apply to the present appeal as well. The present appeal is dismissed for parity of reasons.

16. In the result, appeals by the respective assesseees are dismissed.

Order pronounced in the open Court on Friday the 04th day of March, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/03/2022

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy 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., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai