

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "G" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.960/Del./2020  
Assessment Year 2016-2017

The Income Tax Officer, Room No.234, 2 <sup>nd</sup> Floor, C.R. Building, I.P. Estate, New Delhi PIN 110 002.	vs.	M/s. Shardha MH One TV Network Pvt. Ltd., 6, SSI Industrial Area, GT Karnal Road, New Delhi-110 033. PAN AAOCS4566Q
(Appellant)		(Respondent)

For Assessee :	Sh Vinod Kumar Bindal, C.A. & Ms. Rinky Sharma, ITP
For Revenue :	Ms. Sunita Singh, CIT-DR

Date of Hearing :	13.07.2022
Date of Pronouncement :	19.07.2022

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This appeal has been filed by the Revenue against  
the order of the Ld. CIT(A)-8, New Delhi, dated 06.12.2019  
vide Appeal No.10274/18-19, for the A.Y. 2016-17.

2. Briefly stated facts of the case are that the assessee is a company stated to be engaged in the business of broadcasting and telecast of TV channel. The assessee filed its return of income for the A.Y. 2016-17 on 24.11.2016 declaring NIL income. The assessee thereafter revised the return of income on 25.11.2016 declaring NIL income. The case of the assessee was selected for scrutiny. Thereafter, assessment was framed under section 143(3) vide order dated 29.12.2018 and the total income of the assessee company was determined at Rs.11,74,52,800/-. Aggrieved by the order of the A.O. the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 06.12.2019 vide Appeal No.10274/18-19 granted substantial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following effective ground :

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.10,74,52,800/- on account of*

*share premium received in excess of fair market value under section 56(2)(vii)(b) of the I.T. Act, 1961.*

4. During the course of assessment proceedings, the A.O. on perusal of the Balance Sheet of the assessee company noted that during the year assessee had issued 4720 equity shares at Rs.22,775/- each. He noted that these share were issued out of the pending share application money as on 31.03.2014. Thus, according to A.O. assessee had introduced fresh capital of Rs.47,200/- [4720 shares x Rs.10 each] and share premium of Rs.10,74,50,800/- [4720 shares x Rs.22,765.42 each]. The A.O. was of the view that since the assessee had introduced share capital during the year under consideration, provisions of Section 56(2)(viib) is applicable to the issuance of shares. He thereafter rejected the valuation report wherein the shares were valued on the basis of DCF method and thereafter on the basis of the fair market value of the shares, determined the value of shares by using the Net Asset method [the details of calculation which are placed in

the assessment order from paras 7.11 to 7.12] worked-out the fair market value of all the shares at Rs.47,200/- i.e., @ Rs.10/- per each share under Rule 11UA read with Section 56(2)(viib) of the I.T. Act, 1961 and accordingly held the excess consideration of Rs.10,74,52,800/- to be taxable under section 56(2)(viib) of the I.T. Act, 1961 and made its addition.

4.1. Aggrieved by the order of the A.O. the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 06.12.2019 decided the issue in favour of the assessee by observing as under :

*“5. Decision :*

*I have perused the assessment order, submissions of the appellant and evidences placed on record and facts of the case. The facts of the case are that the appellant received share application money of Rs.15 Crores from SKF in the FY 2010-11 out of which Rs.4.25 crores was refunded and 4,720 equity shares*

were issued for @ Rs.22,775/- per share aggregating to Rs.10,75,00,000/-.The assessing officer computed the fair market value of the share at Rs. 10/- each as per 'net asset value' method. Since the shares were issued at a value more than the fair market value, the assessing officer made an addition of Rs.10,74,52,800/- u/s 56(2)(viib) of the Act.

5.1. The appellant submitted that that MH1 was operating three channels including a devotional channel namely MH1 Shraddha. SKF wanted to invest in the said channel. Therefore the appellant company was incorporated on 02/07/2010 as a special purpose vehicle by Bathla family, promoters of MH1, who held 10,000 shares of the appellant company. A tri-partite agreement dated 03/11/2010 was entered into between MH1, SKF and the appellant that SKF will buy 32,000 shares (i.e. 32% shareholding) out of 1,00,000 shares of the appellant company for Rs.15 Crores which came to Rs.4,687/- per share. MH1 will transfer all rights, title and interest in the assets of Shraddha

*Channel to the appellant for a sum of Rs.15 Crores. Thus SKF and Bathla family were to hold shares of the appellant company in the ratio of 32:68. It was further agreed that MH1 was to obtain the permission or no objection of the Ministry of Information and Broadcasting for irrevocable transfer and assignment of broadcasting license in respect of the Shraddha Channel to the appellant. Thus, effectively, the Shraddha Channel would belong to appellant company in which SKF would have 32% shareholding.*

*5.2. It was further decided by way of an addendum dated 01/12/2010 to the said tri-partite agreement that if the license could not be obtained till 31/03/2013 i.e. after two years then the appellant would refund certain amount of share application money to SKF. It was further agreed that shares would be allotted in the FY 2015-16 whether the license is obtained or not. Since the appellant could not obtain the license of broadcasting till 31/03/13, SKF was refunded share application money of Rs.4,25,00,000/- as per the*

*agreement and thereafter, shares of Rs.10,75,00,000/- were allotted in FY 2015-16 i.e. AY 2016-17. Since only 10,000 equity shares of the appellant were issued and paid up till FY 2015-16 and SKF was to be given 32% share in the appellant company, the appellant company decided to issue such number of equity shares to SKF which will make it share holding equal to 32% of the total paid up shares and thus SKF was issued 4,720 shares which was 32% of the total 14,720 shares of the appellant.*

*5.3 The appellant submitted that the total consideration for 32% share capital of the appellant company was pre-settled as per the agreement. Since the number of shares issued to SKF got reduced from 32,000 to 4,720 as the entire share capital could not be issued by the' appellant, total share application money received from SKF was divided by the number of shares which resulted into the price of Rs.22,775/-. Thus, in this case, the total amount receivable for 32% share holding of the appellant company was decided much*

*before in the FY 2010-11 when the full share application money was received by the appellant and the shares were allotted in the FY 2015-16 as per the joint venture agreement. The appellant also placed the balance sheet of the appellant where the shareholding of SKF was duly disclosed in the notes to account.*

*5.4. The appellant submitted that the section 56(2)(viib) of the Act is attracted when the issuance of shares and receipt of consideration for the same happen in the same financial year. This is a deeming provision which taxes the capital receipts only under certain defined situation and should be strictly interpreted and the appellant relied on number of authorities in this regard. Since in this case, the share application money was received in FY 2010-11 and shares were issued in FY2015-16, provisions of section56(2)(viib) of the Act are not attracted.*

*5.5. The appellant submitted that provisions of section 56(2)(viib) were not in the statute when the share application money was received by the appellant in FY*

*2010-11 and thus the provisions of section 56(2)(viib) cannot be attracted by relying on the ITAT decision in the case of ACIT Vs M/s Diach Chemical & Pigments (P) Ltd. ITA no.546/Kol/2017 for the AY 2013-14 pronounced on 19/06/2019 wherein it was held that since the shares were applied in the AY 2012-13 and the provision of section 56(2)(viib) was introduced from AY 2013-14, the said provision cannot be applied merely on the basis that the shares were allotted in the AY 2013-14.*

*5.6. The appellant further submitted that the valuation of shares made on the basis of discounted cash flow method prepared by experts cannot be disregarded or brushed aside by ignoring them. The same can only be disregarded by obtaining report from another expert as the AO is not an expert in this field. The appellant placed reliance on various authorities in this regard. The appellant further submitted that the discounted cash flow method is based on projected/estimated figures which may not be comparable with the actual figures.*

*The appellant also explained that since the license of broadcasting could not be obtained by the time of allotment of shares, the projected figures did not match with the actual figures. Therefore the appellant argued that the addition made u/s 56(2)(viib) should be deleted.*

5.7. *I have perused the assessment order, submissions of the appellant and evidences placed on record. On perusal of the same, it was observed that undisputedly the amount of Rs. 15 crores was received from SKF towards share application money by the appellant in the FY 2010-11 and shares were allotted in the FY 2015-16. The assessing officer made the addition u/s 56(2)(viib) by holding that the shares have been issued at a value in excess of its fair market value as per net asset value method.*

5.8. *The appellant explained in detail about the tri-partite agreement dated 03/1/2010 and its addendum dated 01/11/2010 entered between the appellant, SKF and MH1 and its terms and conditions.*

*On perusal of the said agreement, it was observed that SKF brought Rs. 15 crores in FY 2010-11 as share application money for 32% shareholding of the appellant company. The said money was paid as advance to MH1 for purchase of Shraddha Channel. Since there was a delay in obtaining the broadcasting license, share application of Rs. 4.25 Crores was refunded and shares of Rs. 10.75 crores were allotted in FY 2015-16 as per the terms of the agreement. This shows that the shares were allotted in the FY 2015-16 as per the terms agreed vide agreement executed in the FY 2010-11. Further, it was found that the allotment of shares was duly reflected in the balance sheet of the appellant.*

5.9. *I agree with the contention of the appellant that the value of 32% shareholding of the appellant company (32,000 shares out of total 1,00,000 shares) was computed to be Rs. 15 crores in the FY 2010-11 and the said amount was also received by the appellant in FY 2010-11. Undisputedly, the paid up share capital of the appellant remained 10,000 shares till FY 2015-*

16. Considering the same as 68% shares, 4,720 shares were issued to SKF to maintain its 32% shareholding in the total shareholding of 14,720 shares.

5.10 In view of the above facts, the percentage of shareholding and total sale consideration for the same was pre-determined by the agreement but the consideration per share changed only because the number of shares allotted to SKF got changed considering the total number of issued shares of the appellant.

5.11. I find force in the contention of the appellant that the provisions of section 56(2)(viib) of the Act were introduced in the Act w.e.f. AY 2013- 14 and therefore the same cannot be applied to the share application money received in the FY 2010-11 as has been held in the case of Diach Chemical & Pigments (supra) even if the shares have been allotted in the FY 2015-16. Further, I also find force in the contention of the appellant that section 56(2)(viib) can be applied only when the year of receipt of share application money and

*allotment of shares is same and after AY 2013-14 since when this section came into statute. Thus, the same cannot be applied to the share application money received in the FY 2010- 11.*

5.12. *I find force in the contention of the appellant that the value computed as per DCF method cannot be interfered with by the AO as such reports are prepared by the experts and the AO has not been recognized as expert under the law. Further, the AO has no authority to disregard such valuation report as no procedure for reference to valuation officer etc. has been prescribed under the Act. Thus, the report of the concerned valuer / any expert has to be followed without any further ifs and buts and cannot be dislodged / disregarded without bringing adequate evidence on record. Even the Courts have accepted this view in the following cases:*

- a) Cinestaan Entertainment (P.) Ltd. v. ITO [2019] 106 taxmann.com 300 (Delhi - Trib.)*
- b) ACIT v. Safe Decore (P.) Ltd. [2018] 90 taxmann.com 161 (Jaipur - Trib.)*

*c) Rameshwaram Strong Glass (2019) 96*

*Taxmann.com 542 (Jaipur - Trib.)*

*d) India Today Online Pvt. Ltd vs. ITO (ITAT Delhi)*

*March 15, 2019 (Date of pronouncement) ITA Nos.*

*6453 & 6454/Del/2018.*

*e) Apollo Tyres Ltd. 255 ITR 273 (SC)*

*f) CIT vs. Vibhu Talwar [2011] 242 CTR 262 (Delhi)*

*g) CIT v. Glaxo Smithkline Asia (P.) Ltd. [2010] 195*

*Taxman 35,*

*h) Ashwin Vanaspati Industries 255 ITR 26 (Gujarat)*

5.13. *Further, it has been held in the above mentioned cases that the DCF method is a recognised method though it can never be done with arithmetic precision. The fact that future projections of various factors made by applying hindsight view cannot be matched with actual performance does not mean that the DCF method is not correct. The 'DCF Method' is based on projections. The AO cannot fault the valuation on the basis that the real figures don't support the projections. Further, the AO has not brought any*

*adverse evidence or report of another expert on record and merely brushed aside the DCF report. However, as far as this case is concerned, the DCF valuation reports are not material for determining the ground of appeal as the same were required to be obtained u/r 11UA r.w. section 56(2)(viib) of the Act. Since in this case, the provisions of section 56(2)(viib) are not applicable as the share application money was received in the FY 2010-11, these reports obtained u/r 11UA are not at all required for deciding the issue at hand.*

5.14. *Since there was no provision of section 56(2)(viib) in statute at the time of receiving the share application money in FY 2010-11 when both the shareholding and consideration of shares was ascertained, the said provision cannot be applied in any manner and no addition can be made invoking the said provision.*

5.15. *In view of the above facts and position of law, I am of the view that section 56(2)(viib) of the Act cannot be applied on the share application money*

*received in the FY 2010-11 i.e. prior to the insertion of the said provision. In view of the above facts, section 56(2)(viib) could not be attracted in any manner and the addition is hereby deleted.”*

5. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before us. Before us the Ld. D.R. supported the order of the A.O.

6. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and supported the order of the Ld. CIT(A).

7. We have heard the Learned Representative of both the parties and perused the material available on record. The issue in the present appeal is with respect to the addition made by the A.O. under section 56(2)(viib) of the I.T. Act, 1961 and deleted by the Ld. CIT(A). In the instant case the A.O. made the addition by applying the provisions of Section 56(2)(viib) of the I.T. Act by rejecting the DCF method followed by the assessee and applied the fair market value for the share application money and made the

addition of Rs.10,74,52,800/-. On appeal, the Ld. CIT(A) noted that the DCF method is based on projections and is a recognised method though it can never be done with arithmetic precision. He noted that the A.O. cannot fault the valuation on the basis that the real figures don't support the projections. Further, the AO has not brought any adverse evidence or report of another expert on record and merely brushed aside the DCF method followed by the assessee. He has further given a finding that in this case the provisions of section 56(2)(viib) are not applicable as the share application money was received in the FY 2010-11. The Ld. CIT(A) further noted that since there was no provision of section 56(2)(viib) in statute at the time of receiving the share application money in FY 2010-11, the said provision cannot be applied in any manner and no addition can be made invoking the said provision. To arrive to such conclusion, the Ld. CIT(A) has taken support of various orders of Hon'ble Supreme Court, High Courts and Tribunal which have been reproduced in the preceding paragraph. The Ld. CIT(A), therefore, held that the provisions of Section

56(2)(viib) of the Act could not be attracted on the share application money received in the FY 2010-11 i.e. prior to the insertion of the said provision and deleted the impugned addition made by the A.O. Before us, no fallacy in the findings of Ld. CIT(A) has been pointed-out by the Revenue. In such a situation, we find no reason to interfere with the order of the Ld. CIT(A). We, therefore, confirm the order of the Ld. CIT(A) on this issue and **dismiss Ground of appeal No.1 of the appeal of the Revenue.**

**8. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 19.07.2022.

Sd/-  
(MS. ASTHA CHANDRA)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 19<sup>th</sup> July, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.