

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT.MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1846/Ahd/2018
Assessment Year : 2015-16

Jayshri Propack P. Ltd. Plot No.487/A88 B/h. Sushma Namkeen Tajpur Road, Changodar Taluka : Sanand, Ahmedabad. PAN : AACCCJ 159 J	Vs.	ACIT, Cir.2(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assessee by :	Shri Sanjay R. Shah, CA
Revenue by :	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **05/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **27/07/2022**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-Tax (Appeals)-2, Ahmedabad [hereinafter referred to as "CIT(A)"] dated 13.7.2018 passed under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2015-16.

2. Sole issue in the present appeal relates to addition made to the income of the assessee on account of share premium received on issue of shares which were not justified to be at fair market value as per the provisions of section 56(2)(viib) of the Act, and the addition made in this regard amounted to Rs.45,48,583/- ,which after

adjusting brought-forward business loss and unabsorbed depreciation resulted in NIL assessed income. The assessee was accordingly subjected to tax on its book profits as per the provision of section 115JB of the Act and adjustment to the book profit was also made on account of addition made as above under 56(2)(viib) of the Act. It was contended that this was solitary issue arising in the present appeal and the grounds raised in this regard by the assessee are as under:

“1. The Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad has erred law and on facts of the case by confirming the addition of Rs.45,48,583/- made by the Assessing Officer u/s.56(2)(viib) of the I.T. Act, 1961.

2. The Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad has erred in law and on facts of the case by confirming the computation of book profit u/s.115JB by the Assessing Officer, wherein book profit has been increased by an addition of Rs.45,48,583/- made by the Assessing Officer.”

3. During the course of hearing before us, the ld.counsel for the assessee drew our attention to the facts relating to the issue of shares at premium during the years on two dates i.e. on 8.9.2014 and 31.3.2015 being 44,47,807 shares issued at premium as under:

<i>Date of allotment</i>	<i>No. of shares issued</i>	<i>Premium per share</i>	<i>Total share premium</i>
<i>08.09.2014</i>	<i>2519393</i>	<i>Rs.6</i>	<i>Rs. 1,521,7,134</i>
<i>31.03.2015</i>	<i>1928414</i>	<i>Rs. 9</i>	<i>Rs. 1,73,55,726</i>
	<i>4447807</i>		<i>Rs. 3,25,72,860</i>

4. The ld.counsel for the assessee contended that consideration for the issue of shares at premium was justified by the assessee by filing valuation report of M/s.Dudhatra Joshi & Associates for the shares issued on both the dates as above. Our attention was drawn to the copy of the said report placed before us in paper book at page

no.49 to 55 and 56 to 62 respectively for two different lots of shares issued. The ld.counsel for the assessee contended that Revenue authorities rejected this valuation by simply stating that it was not as per the Rule 11U and 11UA of the IT Rules and in this regard he drew our attention to the finding of the ld.CIT(A) at para 2.3 of his order as under:

“2.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The AO has made the addition of Rs.45,48,583/- invoking the provisions of section 56(2)(viib). Appellant company has issued 25,19,393 equity share at a face value of Rs.10/- with a premium of Rs.6/- on 08/09/2014 and 19,28,414 equity share at a premium of Rs.9/- on 31/03/2015. The appellant was asked to justify the share premium in view of section 56(2) (viib) of the I. T. Act, 1961. Appellant in support of the fair market value of the share has submitted a valuation by Company Secretary. As per Rule 11U & 11 UA valuation is to be taken even on the basis of book value or on the basis of certificate of Chartered Accountant. As the appellant has not given certificate of Chartered Accountant, the AO has computed the fair market value of the share as per book value and added the aggregate consideration received for issue of shares exceeding the fair market value in the form of share premium for the issue of share exceeding the face value of the shares. The appellant in the written submission has submitted that the AO has rejected the certificate obtained by the appellant from the Company Secretary which was a bonafide mistake, and merely because of this bonafide mistake valuation cannot be rejected. The contention of the appellant cannot be accepted as Rule 11U and 11UA has provided the methods for computing the fair market value. The appellant has not computed the fair market value as required under the above rule. The appellant has submitted a certificate of Company Secretary for the fair market value of the share which cannot be accepted as per the rule. The AO has computed the fair market value as per the data available with him, therefore, no fault can be attributed in computing the fair market value. In view of the above, the AO was justified to make the addition u/s. 56(2)(viib) of the I. T. Act 1961. The relevant ground of appeal is accordingly dismissed.”

5. The ld.counsel for the assessee contended that the AO calculated fair market value of the shares as prescribed under Rule 11UA and determined allowable share premium at Rs.5/- and Rs.8/- for two blocks of shares allotted by the assessee on 8.9.2014

and 31.3.2015 respectively as against premium of Rs.6/- and Rs.9/- respectively charged by the assessee. Accordingly, excess premium as per the AO charged by the assessee at Rs.1/- per share in the case of both set of allotments was treated as not allowable, to be added to the income of the assessee under section 56(2)(viib) of the Act amounting to Rs.45,48,583/-. The relevant details with respect to the above are reproduced at page no1.2 of the CIT(A)'s order as under:

<i>Date of allotment</i>	<i>No. of shares issued</i>	<i>FMV as per assessee (Rs.)</i>	<i>per share (Rs.)</i>	<i>Total share premium as per assessee (Rs.)</i>	<i>FMV as determined above (Rs.)</i>	<i>Premium as per Department (Rs.)</i>	<i>Allowable share premium (Rs.)</i>	<i>Excess premium (Rs.)</i>
08.09.201	2519393	16	6	15217134	15	5	12596965	2620169 1928414
31.03.201	1928414	19	9	17355726	18	8	15427312	
	4447807			32572860			28024277	4548583

6. The ld.counsel for the assessee's arguments before us was that provision of section 56(2)(viib) of the Act did not restrict the calculation of valuation of consideration for the issue of shares at fair market value only as per the method prescribed under Rule 11U and 11UA of the Income Tax Rules, 1962; that it also allows the assessee to substantiate the consideration based on the value on the date of issue of shares of its assets including intangible asset. In this regard, he drew our attention to provision of section 56(2)(viib) of the Act as under:

Section 56

(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:

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Explanation.—For the purposes of this clause,—

(a) the fair market value of the shares shall be the value—

(i) as may be determined in accordance with such method as may be prescribed⁶⁸; or

(ii) 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, whichever is higher;

7. The ld.counsel for the assessee drew our attention to various decisions of the ITAT to the effect that the Revenue authorities could not force the assessee to adopt one particular method of valuation of shares when the Act itself provides two methods:

- i) Unnati Inorganics P.Ltd. Vs. ITO (2019) 109 taxmann.com 165 (Ahd-Trib)
- ii) Lalithaa Jewellery Mart P.Ltd. ACIT, (2019) 108 taxmann.com 490 (Chennai-Trib)
- iii) ITO Vs. Ashoka Industries Ltd., (2020) 120 taxmann.com 214 (Cuttack-Trib)
- iv) ASG Leather P.ltd. Vs. ITO, (2018) 95 taxmann.com 151 (Kol-Trib).

8. The ld.DR was unable to controvert the above contentions of the assessee though he relied on the finding of the ld.CIT(A).

9. We have heard rival contentions and have also gone through orders of the authorities below. From a perusal of the orders of the ld.CIT(A)/AO we have noted that though the assessee has submitted valuation of fair market value of its shares, the authorities below have dismissed the same simply for the reason that it was not as per

the Rule prescribed under 11UA of IT Rules or not as per any certificate furnished by the Chartered Accountant or Merchant Banker as prescribed under Rule 11U of the IT Rules.

Admittedly, provision of section 56(2)(viib) of the Act do not prescribe only one method for valuation of fair market value of share which is evident from the perusal of the section itself, as reproduced above. The assessee can also justify the fair market value of the shares based on the valuation of its asset as on the date of issue of shares including both tangible and intangible assets. Therefore the finding of the Revenue authorities in the present case that valuation of FMV as per the Rule 11UA is not justified, we hold is not in accordance with law. For this we draw support from various decisions of Coordinate Benches of the ITAT, as cited by the ld.counsel for the assessee before us, and reproduced in earlier part of the order above, wherein on interpreting the provision of the section, it was categorically held that the valuation report of FMV of the shares cannot be based on one method only.

In view of the above, we consider it fit case to restore the issue back to the AO to consider the valuation report submitted by the assessee in the light of and as prescribed under the provision of the law after giving due opportunity of hearing to the assessee, and thereafter decide the issue afresh in accordance with law. Ground No.1 is allowed for statistical purpose.

10. Since we have restored the issue of determination of fair market value of shares to the AO for reconsideration as held in ground no.1, the issue of adjustment to the book profit of the assessee under section 115JB of the Act being interlinked, the same

is also restored to the AO to adjudicate the issue along with issue of addition to be made under section 56(2)(viib) of the Act.

11. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 27th July, 2022 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 27/07/2022