

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5546/Del/2019  
Assessment Year: 2014-15

<b>Kumari Infin (P) Ltd. 13/34, WEA IV Floor, Main Arya Samaj road, Karol Bagh, New Delhi PAN No.AACCK241L</b>	<b>Vs</b>	<b>ITO Ward- 14 (4) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant</b>	None
<b>Respondent</b>	Sh. M. Baranwal, CIT DR

Date of hearing:	01/09/2022
Date of Pronouncement:	01/09/2022

**ORDER**

**PER N.K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-5, New Delhi dated 28.03.2019 for A.Y.2014-15.

2. The solitary grievance of the assessee is that the CIT(A)

erred in upholding the addition of Rs.1,81,91,344/- made by the Assessing Officer in terms of section 56 (2)(viia) of the Act.

3. None appeared on behalf of the assessee inspite of notice we decided to proceed exparte. The DR was heard at length. Case records carefully perused.

4. We find that the assessee has received 90,000 shares of Bhawani Portfolio Limited @ rate of Rs.1000/- per share which was found to be less than fair market value by the AO on the basis of NAV as per Audited Financial Filed. According to the AO as per Rule 11 UA it comes to Rs.1202/- per share basis this the AO proceeded to make the addition of difference of Rs.202.13 per share and made addition of Rs.1,81,91,344/-.

5. Assessee strongly agitated the matter before the CIT(A). It was strongly contended that if the FMV determined by the AO is considered as income then the value of share allotted will automatically have the same effect, therefore, no addition is called for.

6. After considering the facts and the submissions the CIT(A) held as under :-

7.10 In this regard it is seen that the appellant has taken this logic, after considering the enhanced value of shares. However, the value of share is to be taken as per FMV, **just before the transfer of shares**, where this comes to Rs. 1202/- against which the appellant has shown book value of shares at Rs. 1000/- for each share. The value of shares cannot be taken, after the transfer. Further, the FMV of shares at Rs. 1202/- as worked out, applying the Rule 11UA is as per the approved method and book value is as per the cost to the appellant. Both cannot be considered simultaneously. Further, the working of shares of BPPL cannot to be said to be incorrect and nothing has been brought on record by appellant to justify that the working is not as per Rules. Therefore, the AO has taken the FMV, correctly, as per Rules and this argument is not tenable.

7.11 It is further argued that with regard to the valuation of shares of BPPL, inventory shown in its books are a notional figure and there is no

real market value for the shares held by BPPL. Subsequently, BPPL has gone into winding up as all its assets were having nil market value. The report of CA is also filed. It is further stated that pursuant to application filed for winding up of the company before ROC, name of BPPL is also struck off from ROC. Accordingly it is contended that the real value of share is nil, thus the value cannot be taken at Rs. 1202/- per share on 31.03.2014.

7.12 It is seen that this is a subsequent development and for the period under consideration, the fact remains the same that value of BPPL is Rs. 1202/- as per 11UA which is FMV. Subsequent development that value of such shares become nil, cannot be considered nor this was stated in assessment proceedings. Further, if there was no real value of these shares, the receiving of 90,000 shares of BPPL against allotment of shares of other companies is not justified. Therefore, this argument of the appellant has no force and deserves to be rejected.

7.13 The appellant also contended that since the shares have been allotted at a premium, therefore the provisions of section 56(2)(viib) will be applicable and not the provisions of section 56(2)(viiia).

7.14 This argument of appellant is also not tenable due to the reason that the shares have been transferred for inadequate consideration and FMV, as worked out in accordance with Rule 11UA is higher than the consideration received. Therefore, the provisions of section 56(2)(viiia) is duly applicable in the case of appellant.

7.15 With regard to the various cases relied upon by appellant, it is observed that facts of the case in Vaani Estates Pvt. Ltd. vs. ITO (Supra) is different, where provisions of section 56(2)(viib) was challenged with unrealistic premium and in the case of appellant it was related to receiving of shares in lieu of allotment of shares. In the case of KP Vargese 131ITR 604, it is seen that the issue involved is not related to the matter herein and was delivered on different context and

distinguishable on facts and law. Similarly, the other cases are distinguishable either on facts or having different issues involved and not squarely applicable to the matter in the impugned order hence not to be considered.

7.16 Therefore, looking to the facts and circumstances in this case and in law, as well as considering the discussions made in the foregoing paragraphs, the contention of the appellant is not found acceptable and no interference is made in the decision by AO and addition amounting to Rs 1,81,91,344/- is confirmed herewith. These grounds of appeal are dismissed accordingly.

7. We have given a thoughtful consideration to the findings of the CIT(A) (supra) we do not find any error or infirmity in the above findings, therefore, no interference is called for. The appeal filed by the assessee is dismissed.

8. Decision announced in the open court on 01.09.2022.

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary\*

Date:- .09.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
 ITAT NEW DELHI

Date of dictation	01.09.2022
Date on which the typed draft is placed before the dictating Member	02.09.2022
Date on which the typed draft is placed before the Other member	02.09.2022
Date on which the approved draft comes to the Sr.PS/PS	02.09.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	02.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	02.09.2022
Date on which the final order is uploaded on the website of ITAT	02.09.2022
Date on which the file goes to the Bench Clerk	02.09.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	