

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.7491/DEL/2019  
[Assessment Year: 2015-16]**

M/s Crayons Advertising (P) Ltd. NSIC Complex, Maa Anandmayee Marg, Okhla Phase-III, New Delhi-110020	Vs	Deputy Commissioner of Income Tax, Circle-6(2), C.R. Building, I.P. Estate, New Delhi
<b>PAN- AAACC1063C</b>		
Assessee		Revenue

Assessee by	Sh. Gautam Jain, Adv.
Revenue by	Sh. S.L. Anuragi, Sr. DR

<b>Date of Hearing</b>	<b>11.07.2022</b>
<b>Date of Pronouncement</b>	<b>09.09.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of the Ld. CIT(A)-10, New Delhi, dated 31.07.2019 pertaining to Assessment Year 2015-16.

2. Grounds of appeal raised by the assessee reads as under:-

*“1. That the learned Commissioner of Income Tax (Appeals)-2, New Delhi has erred both in law and on facts in upholding the denial of claim of exemption of Rs. 4,05,241/- under section 10(38) of the Act.*

*1.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd. vs. CIT. reported in 284 ITR 323 had no application to the facts of the assessee company and therefore, could not have been made a basis to deny the claim of exemption under section 10(38) of the Act.*

1.2. That even otherwise, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the claim not allowed in the assessment proceedings could be allowed during the appellate proceedings and in such circumstances, the judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd. vs. CIT reported in 284 ITR 323 have no application.

1.3. That the finding of the learned Commissioner of Income Tax (Appeals) that judgment of the Hon'ble Apex Court has no reference to CIT(A) and therefore, addition claim cannot be entertained by the Commissioner of Income Tax (Appeals) is based on fundamental misconception of facts and law and wholly unsustainable.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding addition of Rs.2,87,80,000/- by invoking section 56(2)(vii)(a) of the Act.

2.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that section 56(2)(vii)(a) of the Act had no application to the transactions of allotment of shares by write issue by JAM India Pvt. Ltd. and therefore, invocation of provisions to make the impugned addition is not in accordance with law and wholly untenable

2.2. That the learned Commissioner of Income Tax (Appeals) while upholding and sustaining the addition, has failed to appreciate that shares had been purchased by the assessee on the basis of book value of shares and therefore, since book value of shares was Rs. 37.56 per share, no addition could be made by adopting the figure between the valuation of shares as determined by Chartered Accountant and the actual consideration paid by the assessee.

2.3. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that section 56(2)(vii)(a) of the Act enables the assessee to acquire the shares at the book value of the shares and therefore, once the acquisition is in accordance with law as per the book value of shares then addition made by adopting the figures stated in the valuation report prepared by the Chartered Accountant on the basis of the discounted cash flow method could not be a basis to invoke section 56(2)(vii)(a) of the Act.

2.4. That the finding of the learned Commissioner of Income Tax (Appeals) that Rule 11UA(1)(c) of the Income Tax Rules is applicable to the facts of the assessee is wholly misconceived and untenable.

3. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining disallowance of Rs. 7,74,864/- representing the process fee for purchase of capital assets and allowable as revenue expenditure during the year.

3.1. *That the finding of the learned Commissioner of Income Tax (Appeals) that there is no material to prove that assets had been put to use during the instant year is wholly misconceived, misplaced and untenable.*

3.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that use of office premises was neither disputed nor denied and therefore, the denial of deduction was not in accordance with law and wholly untenable.*

4. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in making a disallowance of Rs. 3,40,313/- representing bed debt allowable under section 36(l)(vii) of the Act and alternatively as business loss under section 28 of the Act.*

5. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest under section 234B of the Act.*

**Apropos Ground No.1.**

3. On this issue, the Assessing Officer noted that vide letter dated 16.10.2017, it was submitted that the assessee has earned Long Term Capital Gain of Rs.4,05,241/-, which is exempt u/s 10(38) but due to oversight the assessee did not claim deduction and the same should be allowed. However, this plea of the assessee was rejected by the Assessing Officer by referring the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs CIT [2006] 157 Taxman 1 (SC).

4. Upon assessee's appeal, the Ld. CIT(A) upheld the order of the Assessing Officer.

5. Against this order, the assessee is in appeal before us.

6. We have heard both the parties and perused the records. We note that in the said order, Goetze (India) Ltd. (supra) the Hon'ble Apex Court has expounded that the said decision would not impinge upon the powers

of ITAT in dealing with the claim otherwise than by revised return. Accordingly, we direct the Assessing Officer to consider this issue and decide as per law.

**Apropos Ground No.2**

7. The assessee has made share investment of Rs. 8,04,00,000/- in M/s JAM India P. Ltd. Following is the detail of shares purchased:

<b>Purchase from</b>	<b>Amount</b>	<b>Rate</b>	<b>Dt. of purchase</b>
Mr. Kunal Lalany	Rs. 64,00,000/-	@ Rs. 32/-	13.04.2014
M/s Mega airways	Rs. 80,00,000/-	@ Rs. 40/-	16.04.2014
M/s JAM IndiaP Ltd	Rs. 5,65,00,000/-	@ Rs. 100/-	15.09.2014
M/s JAM India PLtd	Rs. 95.00.000/-	@ Rs. 100/-	05.02.2015

Valuation of shares for the purpose of calculation of FMV was done by CA u/r 11UA(1)(e) on 10.09.2014 @ Rs. 103/-.

8. The AO pointed out in the assessment order that Mr Kunal Lalany from whom shares were purchased, is MD of assessee company. Mega airways from whom shares were purchased, is managed by team management including Mr Kunal Lalany - MD of assessee company. Further, the AO was of the opinion that even though there was no valuation report on the date of purchase, the assessee being holding company was aware of the future prospects of its subsidiary company and the value of shares. He has considered the FMV as per valuation report for all the transactions of shares and treated the difference of share price and FMV as deemed income u/s 56(2)(viiia) by concluding as under:-

*“It is a matter of record that M/s JAM India Pvt. Ltd., the company whose shares have been purchased in April 2014, is a subsidiary of the assessee company. It is also a fact that both the parties from whom the shares have been purchased*

are related parties which is duly mentioned in the audit report. Perusal of the audited accounts of M/s JAM India Pvt, Ltd. filed during the course of the proceedings reveals that there is no change in the financial position of the company over the period - as a matter of fact, the company has not even begun operations. The value of the share as per the valuation report dated 10,09.2014 of Vipin Priyank Goyal & Company, Chartered Accountants, is solely on account of the immovable property at Noida which position has also remained unchanged between the date of purchase of the shares from the related parties and the rights issue of shares. The assessee being the holding company cannot claim that it was unaware of the prospects & valuation of the subsidiary company at the time of purchasing the shares in April, 2014 - in fact the rights issue on the basis of the valuation report was duly approved by its nominees. Thus there is no reasonable explanation which would justify the shares purchased from Mr. Kunal Lalani & M/s Mega Airways Limited being valued at Rs. 32/- and Rs. 40/- when the FMV of the shares as per the valuation report got done by M/s JAM India Pvt. Ltd, is Rs,103/-. The transaction of purchase of shares of M/s JAM India Pvt. Ltd. from Mr. Kunal Lalani & M/s Mega Airways Limited clearly attracts the provisions of Section 56(2)(viiia)(ii) of the I.T. Act, 1961 and will be chargeable to tax under the head 'Income from other sources'. The transaction of rights issue of shares at below the FMV also attracts the provisions of Section 56(2)(viiia)(ii) of the I.T. Act. 1961 and will be chargeable to tax under the head income from other sources'. The quantum of addition on this issue is calculated as under-

Date of transaction	Purchased from	Rate at which purchased (Rs.)	FMV	Difference	No of shares	Addition
13.04.14	M/s Mega Airways Limited	40	103	63	200000	12600000
16,04.14	Mr. Kunal Lalani	32	103	71	200000	14200000
15.09.14	Rights Issue by company	100	103	3	565000	1695000
05.02.2015	Rights issue by company	100	103	3	95000	285000
				TOTAL		28780000

A sum of Rs. 2,87,80,000/- is thus being added to the income of the assessee u/s 56(2)(vii)(ii) r.w.s. 2(24)(xv) of the Income Tax Act, 1961, I am satisfied that the assessee has concealed the particulars of its income and hence, penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is initiated on this point.”

9. Upon assessee's appeal, the Ld. CIT(A) noted that the assessee has submitted that when shares were purchased in April 2014 from the shareholders, there was no valuation certificate on the date as there was no requirement for certification at that time. And the assessee was free to opt for open market price of the shares as per rule 11UA(1)(c). As the valuation from the merchant banker/chartered accountant was not mandatory as per rule, the assessee contended to accept the price the shares have fetched in open market.

10. The ld. CIT(A) did not find it correct. He observed that as per rule 11UA (1)(c). FMV of shares and securities other than equity shares is determined. That this provision is not applicable to FMV of equity shares.

That the provisions are quoted below:

*“FMV of the unquoted shares and securities (other than equity shares) in a company which is not listed in a recognised stock exchange, shall be estimated to be price it would fetch if sold in open market on the valuation date and the assesses may obtain a report from a the merchant banker/ chartered accountant.”*

11. Therefore, he held that the provision does not apply to the instant case where equity shares have been purchased both from the shareholders and from the company.

12. He held that in the case of the assessee, the FMV of equity share can be calculated only according to Rule 11 UA(1)(b). That the Valuation report was prepared only five months later in September, 2014 and no significant event has happened in between April-September, the valuation in September is closest to the date of transfer of share from the shareholders. That, therefore, share value as per Valuation report in

September, 2014 may be rightly considered for determining the FMV of shares purchased before the valuation date.

13. He further held that rights issue of shares from the company M/s JAM India P. Ltd. will clearly attract provisions of this section. Hence, he sustained the addition.

14. Against the above order, the assessee is in appeal before us.

15. We have heard both the parties and perused the records. The Ld. Counsel of the assessee relied upon the decision of ITAT in CIT vs M/s. Kilitch Healthcare India Ltd. & Ors. in ITA No.7061/Mum/2019, vide order dated 22.03.2022 for the following proposition:-

*“30. We have heard both the parties and perused the records. Learned Counsel of the assessee pointed that application of valuation method adopted by the Assessing Officer is not applicable for A.Y. 2015-16 and the said method is applicable only from A.Y. 2018-19. That learned CIT(A) has rightly held that it cannot be applied retrospectively. We note that the Assessing Officer has invoked the provisions of section 56(2)(viiia) of the Act. The same read as under:*

*[(viiia) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—*

*(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*

*(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:*

*Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vie) or clause (vicb) or clause (vid) or clause (vii) of section 47.*

*Explanation.— For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (v/7);]*

*The fair market value which has been computed by the Assessing Officer is not as per the extant Rules. The Rules in this regard contained in section 11UA are already reproduced by us earlier. The same clearly provide for taking the book value of shares as in the balance sheet for the computation. The same was amended by the Income Tax Rules 2017 with effect from 1.4.2018 where instead of book value, fair market value of share is mentioned. The Act does not provide that this amendment is retrospective. It is clearly mentioned that this amendment is with effect from 1.4.2018. Hence, Assessing Officer's adoption of fair market value for making the computation which is not in accordance with the extant provisions has rightly been deleted by the learned CIT(A). It is not disputed that when the book value of the shares is adopted as per the extant rules the addition will not be justified. Hence, we do not find any infirmity in the same. We note that nothing has been brought before us by the revenue as to why the Assessing Officer has applied the same retrospectively. Hence, we do not find any infirmity in the order of learned CIT(A). Accordingly, we uphold the same."*

16. The Id. Counsel of the assessee submitted that this decision duly covers the assessee's case and agreed that the issue may be sent back to AO to follow the same. He further pleaded that there is no contrary decision on this issue.

17. Upon careful consideration, we agree with the submission of the Id. Counsel of the assessee and remit back the issue to the file of the AO to examine the issue on the basis of exposition in the case law pointed above. Needless to add, the assessee should be granted adequate opportunity of being heard.

**Apropos Ground No.3**

18. On this issue, the Assessing Officer noted that the assessee has debited processing fees of Rs.25,74,864/- under the head 'Interest & Finance Costs'. Upon Assessing Officer's enquiry, it was submitted that Rs.7,74,864/- was paid as processing fees for purchase of business assets and the same is allowable as the loan has been taken for assets used for the business of the assessee. The Assessing Officer was of the opinion that the same cannot be allowed, hence he disallowed the claim of processing fees.

19. Upon assessee's appeal, the Ld. CIT(A) upheld the action of the Assessing Officer.

20. Against this order, the assessee is in appeal before us.

21. We have heard both the parties and perused the records. The Ld. counsel for the assessee submitted that the revenue authorities have erred in disallowing the expenditure by holding that processing fee for purchase of capital asset is capital expenditure. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of India Cements Ltd. vs CIT (1966) 60 ITR 52(SC). We find that in the case of India Cements Ltd. (Supra), Hon'ble Apex Court has expounded that loan is neither an asset nor any business advantage and that nature of expenditure incurred in raising a loan is not dependent upon nature and purpose of loan. Accordingly, we set-aside the order of authorities below and decide the issue in favour of the assessee.

**Apropos Ground No.4**

22. On this issue, the Assessing Officer noted that a perusal of the Audit Accounts revealed that the assessed was is holding equity shares of M/s Crayons Advertising ( Nepal ) Pvt. Ltd. valued at Rs, 3,40,313/- as on 31.03.2014 and valued at Rs. Nil as on 31,03.2015. Vide questionnaires issued along with notice u/s 142(1) dated 12.10.2017 the assessee was asked to furnish full details of transactions in shares of M/s. Crayons Advertising Nepal Pvt. Ltd. along with justification of the rate at which sold and calculation of capital gains on this transaction, in response vide letter dated 16.10,2017 it has been submitted as under:

*“.....The Joint venture stopped its business activities 6-7years back and waiting for the opportune time to restart its business. However when a major earthquake struck Nepal in April, 2015 the premises where office of the joint venture was situated was destroyed and nothing was left for the joint venture to try to restart business. Due to earthquake the business of the Nepal was also ruined significantly. In view of above facts the value of investment made by the assessee in the joint venture become zero and on the advice of auditors the same has been written off, The above referred investment was made for the furtherance of the assessee’s business hence the loss suffered from above referred investment is revenue loss.”*

23. Vide questionnaire issued along with notice u/s 142(1) dated 20.10.2017 the assessee was asked to specify the head & sub-head under which this loss of investment in the above shares was claimed and also the allowability of the claim of these expenses, in response, vide letter dated 24.10.2017, it has been submitted as under:-

*“The assessee has been asked to inform under which head the loss from investment in Crayons Advertisement (Nepal) Pvt. Ltd. has been written off. In this regard we have to inform you that the assessee has written of above investment debiting the same to Bad Debts for the FY 2014-15, This is to further inform that all the amount*

*written off have been part of business revenue of the assesses and have formed part of business receipts of the assessee except a sum of Rs.3,40,313/- written off related to investment in shares of Crayons Advertising (Nepal) Pvt. Ltd. ”*

24. The AO did not accept the above explanation. He observed that it is a matter of record that the shares continue to be held as capital assets and have not been transferred during the year. That it is not understood as to how this loss which is nothing but diminution in the value of the investments can be claimed as revenue expenses. That the share of M/s. Crayons Advertising Nepal Pvt. Ltd. are reflected in the Audit Account under the head 'Non Current Investment - Equity Instruments - unquoted. That the assessee's justification regarding the allowability of this loss is without any basis whatsoever and is against the basic principles of accounting. That the sum of Rs. 3,40,313/- on this account claimed under the head Bad Debts written-off is accordingly disallowed.

25. Upon assessee's appeal, the Ld. CIT(A) uphold the order of the Assessing Officer.

26. Against the order of the Ld. CIT(A), the assessee is in appeal before us.

27. We have heard both the parties and perused the records. The ld. Counsel of the assessee could not point out mistake in the finding of AO.

28. Upon careful consideration, we find that authorities below are correct in holding that this claim of Bad Debts is not justified. Hence, we uphold the order of the ld. CIT(A).

29. In the result, this appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 09<sup>th</sup> September, 2022.

**Sd/-**  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

**Delhi;** .09.2022.

*Shekhar,*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi