

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 2428/Ahd/2018  
Assessment Year 2013-14**

Bharat Harilal Valia, 901, Rupani House, Plot No. 32, 9 <sup>th</sup> JVPD Scheme Juhu, Vile Parele W. Mumbai, Maharashtra-400056 PAN: AACPV0603J (Appellant)	Vs	ACIT, Circle-2, Bhavnagar (Respondent)
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**Assessee by: Shri Parin Shah, A.R.  
Revenue by: Shri Shramdeep Sinha, Sr. D.R.**

Date of hearing : 08-08-2022  
Date of pronouncement : 07-11-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-6, Ahmedabad in Appeal no. CIT(A)-9/89/16-17 vide order dated 22/10/2018 passed for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

***“Ground No. 1***

*On the facts and circumstances of the case and in law the learned CIT (A) erred in Confirming the addition an account of investment in share API INDUSTRIES PVT LTD. Of Rs 5000000/- A U/S 69 of the Income tax Act without appreciating the fact that.*

*a. The Appellant has Transferred Rs 50 lakhs in the assessment year 2012-13 from his account*

***Ground No. 2***

*On the facts and circumstances of the case and in law the learned CIT (A) erred in on share investment of API Industries Pvt Ltd. Confirming the addition of Rs. 8195000/- u/s 56(2)(VII)(C)(II) as per rule 11UA of IT rules without appreciating the facts That*

*a. Due to losses and closure of business the valuation of share @ 26.39 per share is unjustified, b. As per valuation report- The value of share is only Rs 2.13 per share*

***Ground No. 3***

*The learned CIT (A) Erred in upholding the passing of assessment order u/s 144 of the Income tax Act.*

*The appellant craves leave to add, amend alter the above grounds of appeal.”*

3. The brief facts of the case are that during the course of assessment proceedings, the AO observed that the assessee had been allotted 5 lakh equity shares of ₹ 10 each by M/s API industries Private Ltd. However, on scrutiny of return of income filed by the assessee, no such investments in shares in API Industries Private Ltd was found. During the course of assessment, none appeared on behalf of the assessee, despite issuance of several notices by the AO. Accordingly, in the absence of any information forthcoming from the assessee, the AO passed ex parte order and added a sum of ₹ 50 lakhs on account of investment made in equity shares of API Private Ltd. as unexplained investment under section 69 of the Act, in the hands of the assessee.

3.1 Further, the AO observed that M/s API Industries Private Ltd. allotted 5 lakh equity shares at face value of ₹ 10/- to the assessee, however, said shares should have been issued at fair market value (FMV) arrived at in accordance with Rule 11UA of the Income Tax Rules r.w.s. 56 of the Act. In this regard, since the necessary details were not furnished by the assessee regarding valuation of shares, accordingly, the AO computed the FMV of equity shares at ₹ 26.39/- per share, and added the difference of ₹ 16.39/- per equity share between the FMV of shares at ₹ 26.39 per equity share and face value of equity share of ₹ 10/- in the hands of the assessee under section 56(2)(vii)(c)(2) of the Act. Accordingly, a sum of ₹ 81,95,000/- was added in the hands of the assessee under section 56 of the Act.

4. In appeal, Ld. CIT(Appeals) confirmed the additions made by the AO with the following:

*“It is seen that the AO noted that in Balance Sheet of API Industries Ltd, it was shown that the appellant had been allotted 5,00,000 equity shares of face value of Rs. 10/- each for full consideration of Rs. 50,00,000/-. The AO further noted that however, no such investment was shown by the appellant in his return of income. The appellant did not appear before AO nor any explanation was filed regarding source of investment in equity shares of API Industries. Hence, the AO added Rs. 50 lacs u/s 69 of the Act.*

*During appeal proceedings also, the appellant did not file much explanation. The appellant submitted that he had deposit lying with API Industries and he asked the company to debit his Deposit A/c. for issue of shares. He further submitted that the above transaction is clear from Balance sheet of API Industries. The appellant in support of his contentions also relied on various judgments.*

*After considering all facts and circumstances of the case, I am not inclined to agree with the contention of the appellant. From the submissions of the appellant and documents filed, source of investment of Rs. 50,00,000/- in equity shares of API Industries is not coming out clearly. The appellant has failed to establish with clarity the source of investment of Rs. 50 lacs. Case laws relied on by the appellant are not applicable as the facts are different. In view of*



*After considering all facts and circumstances of the case, I am not inclined to agree with contention of the appellant. As can be seen from submission of the appellant, the appellant has given so many different values of share value. As per appellant himself, as per CA Shyam Agarwal & CO, share value is Rs. 13/-. As per certificate of CA Piyush V Doshi, value of share is Rs. 2.13 per share. The appellant has also mentioned the value at Rs. 11.85 per share after taking into account share application money. All the above shows that there is no substance in the contention of the appellant. The AO has rightly worked out the value of share at Rs. 26.39 per share as per valuation method under Rule 11UA of the Rules. Accordingly, addition of Rs. 81,95,000/- is upheld. This ground of appeal is rejected.”*

5. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(Appeals) in the appellate order.

**Ground number 1: addition on account of investment in shares of API industries Ltd of ₹ 50 lakhs under section 69 of the Act:**

6. With respect to this ground of appeal, the counsel for the assessee drew our attention to page 8 of the paper book (Ledger account of API industries Private Ltd) and submitted that the said Ledger account clearly demonstrates that the assessee had transferred a sum of ₹ 50 lakhs as share application money towards allotment of shares in the immediately previous

financial year i.e. financial year 2011-2 relevant assessment year 2012-13. The Ld. Counsel for the assessee submitted that perusal of the Ledger account of API industries Private Limited demonstrates that the sum of ₹ 50 lakhs was transferred by way of account payee cheque by the assessee to “API industries Ltd share application money account on” 31-03-2012. The counsel for the assessee further drew our attention to the Ledger account of the assessee with API industries Private Limited and submitted that there is also a corresponding debit entry of ₹ 50 lakhs as on 31-03-2012, with the closing credit balance of ₹ 13,84,447/- appearing in the name of the assessee. Thus, the assessee had credit balance by way of deposit with API Industries Private Limited and such credit balance was more than ₹ 50 lakhs as on 31-03-2012. Therefore, the above documents clearly substantiate that the investment of ₹ 50 lakhs by way of share application money is out of deposits by the assessee in API Industries Private Limited made in earlier year (i.e. financial year 2011-12) by way of account payee cheque, and therefore addition, if any, can be only made in financial year 2011-12. Further, it was only out of this deposit made by the assessee in the immediately previous financial year (financial year 2011-12), that the shares were issued by API industries Private Limited to the assessee. Accordingly, the source of ₹ 50 lakhs has been fully explained by the assessee. The counsel for the assessee submitted that all these facts were submitted before Ld. CIT(Appeals), however, the same omitted to be considered in the appellate order.

7. In response, the Ld. DR drew our attention to page 10 of the paper book and submitted that the cheque was “received” by API industries Ltd,

however, whether the same was credited/encashed in financial year 2011-12 is yet to be verified. Therefore, it cannot be concluded that a transaction in question pertains to financial year 2011-12, and not the impugned assessment year under consideration.

**Ground No.2: addition of ₹ 81,95,000/- under section 56 of the Act as per Rule 11UA of the Income Tax Rules:**

8. The counsel for the assessee submitted firstly that there is an arithmetical error committed by the AO while computing the market value of shares of API industries Private Limited at ₹ 26.39 per share. The said error was brought to the notice of Ld. CIT(Appeals), who completely ignored the assessee's submission in this regard in the appellate order. The counsel for the assessee also submitted that the AO erred in facts and in law in computing FMV of API Industries Private Limited at such an excessive value. The value of ₹ 26.39 per share computed by the AO does not reflect the correct market value of shares of API industries Private Limited since the company was in financial distress and further, in the later years the said company had also gone into liquidation. Accordingly, no addition was called for under section 56 of the Act, in the hands of the assessee, in the instant set of facts.

9. In response, the Ld. DR submitted that the assessee itself has given multiple methods of valuation of shares of API industries Private Limited on different occasions, and accordingly, the assessee itself is not clear as to what is the correct valuation of the said company in whose shares the

assessee has made investment. Accordingly, the valuation prepared by the assessee cannot be relied upon. Accordingly there is no infirmity in the order of Ld. CIT(Appeals) in holding that the AO has correctly valued the shares at ₹ 26.39 per share.

10. We have heard the rival contentions and perused the material on record. In our considered view, the assessee has submitted that the source of investment of ₹ 50 lakhs in the shares of API industries Ltd stands fully explained since such allotment was made out of deposits held with the said company from the previous year. Further, all transactions were made by way of account payee cheques, and hence there is no doubt about the genuineness of the same. Further, we also observe that the assessee had submitted that the Ld. CIT(Appeals) has not considered the submission of the assessee to the effect that firstly there was an arithmetical error committed by the AO while computing the value of shares of API industries Private Ltd and secondly, Ld. CIT(Appeals) has erred in facts and in law in not considering the fact that the company has gone into liquidation, and accordingly, the valuation of ₹ 26.39 per share of a company which is in financial distress, is clearly excessive and unreasonable. In view of the above observations, in the interest of justice, we are restoring the matter to the file of Ld. CIT(Appeals) so that he may consider the above submissions made by the assessee and verify whether the shares were allotted to the assessee out of deposits held by the assessee in API industries Private Limited from previous financial year. Further, Ld. CIT(Appeals) may also verify the correct valuation of shares as per Income Tax Rules, taking into consideration the fact that the company was in financial distress and in the subsequent year it had also

gone into liquidation. The assessee may furnish any supporting documents in support of the same, during the course of appellate proceedings.

11. In the result, the matter is being set aside to the file of Ld. CIT(Appeals) with the above directions.

Order pronounced in the open court on 07-11-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**(True Copy)**  
**Ahmedabad : Dated 07/11/2022**