

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.2528/Del./2019  
Assessment Year 2014-15

The DCIT, Circle-13(2), New Delhi 110002	vs.	M/s. Jovees Herbal Care (I) Ltd., No.404, Roots Towers, Disst. Centre, Laxmi Nagar, Delhi 110092 PAN AAACB6393A
(Appellant)		(Respondent)

For Revenue :	Shri Anuj Garg, Sr. DR
For Assessee :	Shri Vinay Kumar, CA

Date of Hearing :	07.11.2022
Date of Pronouncement :	16.01.2023

**ORDER**

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

This appeal filed by the Revenue has been directed against the order of the Ld. CIT(A)-5, New Delhi in Appeal No. Del/CIT(A)-5/0487/2016-17 dated 19.12.2018 relating to the A.Y. 2014-15.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is a company stated to be engaged in the business of manufacturing cum-trading in herbal cosmetics products under the brand name of "JOVEES". The assessee electronically filed its return of income for A.Y 2014-15 on 29.11.2014 declaring total of income at Rs. NIL, after set off of brought forwarded loses of Rs. 66,31,819/- under the normal provisions and book profit of Rs. 32,59,762/-. The case was selected for scrutiny and thereafter assessment was framed u/s. 143(3) vide order dated 16.12.2016, and the total income under the normal provisions of Income Tax Act was determined at Rs. 1,68,82,680/- and book profit of Rs. 32,59,762/-.

2.2. Aggrieved by the order of the A.O. assessee carried the matter before the Ld. CIT(A) who vide order dated 19.12.2018 granted substantial relief granted of the assessee.

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

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in law and in facts in deleting the addition made u/s. 56(2) (viib) of the Act when the Assessing Officer had rejected the valuation of shares as per discounted cash flow method applied by the assessee on the grounds of being unfounded and not supported by any substantive facts.*

4. During the course of assessment proceedings AO noticed that assessee had allotted 1,05,200 equity shares of Rs. 10/- each at a premium of Rs. 490/- each to various allottees listed at page 2 of the assessment order. According to AO since the assessee had received share premium which far exceeded the book value of the shares on the date of issue, assessee was asked to justify the premium charged on allotment of shares. Assessee *inter alia* submitted that assessee had not received any share application money during the year under consideration and the share

application money was received in earlier years. It was further submitted that though the chartered accountants had recommended the FMV of Rs. 500.06 per share based on discounted cash flow statement but the shares were allotted at much higher price than fair market value (FMV). It was further stated that the valuation of share premium was based on discounted cash flow method which is an accepted method by CBDT for determining fair market value of the unquoted shares. The contentions of the assessee was not found acceptable to AO. AO was of the view that the valuation of shares as per discounted cash flow method is unfounded and not supported by any cogent facts more so as assessee had made projections of turnover and profit which were far away of reality. AO was further of the view that provisions of section 56(2) (viib) states about the receipt of money in any previous year and thus according to him the year of receipt of consideration was not a criteria. AO thereafter rejected the working of premium as made by assessee and he thereafter at para 4.6 of the order worked out the fair market value of each share at Rs. 340.22 and

accordingly worked the excess premium at Rs. 159.78 per share and treated aggregate sum of Rs. 1,68,08,856/-(Rs 159.78 x 1,05,200 shares) to be the income u/s. 56(2) (viib) of the Act, and accordingly made its addition.

5. Aggrieved by the order of AO assessee carried the matter before Ld. CIT(A). CIT(A) after considering the submissions of the assessee deleted the addition made by AO by observing as under:

*7.3 The further reply by the appellant was not considered and fair market value as given by the appellant has been rejected which was based on the DCF valuation without any cogent material on record. The AO has taken the book value as fair market value.*

*7.4 On going through the contentions of the appellant, it is seen that the working has been made submitting the valuation of share as per discount cash flow method and also taking into consideration the market value of its assets such as land, building and other intangible assets such as copy right, brand value and its standing in the market. Further, as per the provisions of law the higher of the amount between the working as consideration the market value of assets and intangible assets, can be taken by the appellant.*

7.5 In the present case, the working given by the AO has been based on the value of the shares taking into account the market value of its assets, including intangible assets. It is clearly mentioned in the provisions of section 56(2)(viib) of the Act that the amount exceeding the fair market value of shares has to be treated as income. As per explanation, the fair market value shall be as per the value determined in accordance with the method prescribed or as substantiated by the company based on the value of shares, goodwill etc., whichever is higher.

7.6 The working provided as per Rule 11UA(2) has 2 limbs either at FMV of unquoted equity share as per formula  $(A-L) \cdot (PV) / (PE)$  or as per the FMV worked out for the unquoted shares determined by merchant banker as per discount free cash flow method. It is at the option of assessee to choose between two. In the present case, the appellant has opted for the second option for working out the fair market value of shares duly supported by report of a Chartered Accountant / Valuer.

7.7 On the other hand, AO has not provided any sound reasoning or not brought on record any material to counter the argument or to negate the submissions of the appellant. She has only taken the book value for the fair market value, though it is at the option of the

*appellant. Since appellant has adopted the higher value, therefore, it cannot be denied of the working without any reasoning.*

*7.8 Looking into the facts and circumstances of the case and in law, considering the factual position in this case and valuation report etc. it is held that there is no case by the AO to take the FMV @ 340.22 per share, on the basis of book value, disregarding the market value, especially when it is provided in the Act that fair market value can be taken by the assessee to its option and at a higher amount. Therefore, the contention of the appellant with regard to this issue, which is also reproduced earlier, i.e. found acceptable and the addition / disallowance of Rs. 1,68,08,856/- is directed to be deleted.*

*7.9 The appellant has also taken a plea that this amount so converted into share application money has been received earlier and not in the year under consideration, therefore, the provisions of section 56(2) (viib) are not applicable because the funds has been received before insertion of such provision in the statute. However, AO has not considered the same on the reason that the year in which it is converted into shares has to be taken. However, the credence of such depositors has not been doubted by the AO. Be it as it may, since, the addition has been deleted on the merits*

*as discussed above, this has only academic discussion value and not relevant now. Accordingly, the appeal is decided in favour of appellant on this issue.*

6. Aggrieved by the Ld. CIT(A), Revenue is now before us.

7. Before us Ld. DR supported the order of A.O. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of Ld. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. The issue in present ground of Revenue is with respect to the addition made by AO u/s. 56(2) (viib) of the Act, which was deleted by Ld. CIT(A). We find that Ld. CIT(A) while deleting the addition made by AO has given a finding that the reply of the assessee and the fair market value based on DCF valuation given by the assessee was rejected without any cogent material on record. He has further noted that as per the provision of section 56(2) (viib) the fair market value shall be

as per value determined in accordance with the method prescribed or as substantiated by the company based on the value of share goodwill etc. whichever is higher. He has further noted that it is at the option of the assessee to choose between the value determined on the basis of formula prescribed for determining the fair market value of the unquoted share as per rule 11UA or the Fair Market Value worked out by the merchant banker as per discounted free cash flow method. He has given a finding that the assessee has opted for working of fair market value of the shares which was duly supported by the report of Chartered Accountant/valuer. He has further given a finding that AO has not brought on record any material on record to counter the submissions made by the assessee. He thus held that the working of fair market value by AO at Rs. 340.22 per share on the basis of the book value disregarding the market value, to be not in accordance with law.

10. Before us no fallacy in the findings of the Ld. CIT(A) has been pointed out by Revenue. In such a

situation, we find no reason interfere with the order of Ld. CIT(A), and thus **the ground of Revenue dismissed.**

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

Order pronounced in the open Court on 16.01.2023.

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 16<sup>th</sup> January, 2023

NV/-

Copy to

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

*// By Order //*

Assistant Registrar : ITAT Delhi Benches :  
Delhi.