

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 7450/DEL/2019
[Assessment Year: 2015-16]

SNG Metals Private Limited, Plot No. 44, Sector-6, Faridabad-121006. PAN- AALCS7981C	<u>Vs</u>	Income-tax Officer, Ward-2(4), Faridabad.
APPELLANT		RESPONDENT
Assessee represented by	Ms. Pranjali Arora, CA & Shri Narinder Kumar Arora, CA	
Department represented by	Ms. Maimum Alam, Sr. DR	
Date of hearing	31.01.2023	
Date of pronouncement	08.02.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Faridabad, dated 18.07.2019, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

“1. That the Learned CIT(A) and the Learned ITO grossly erred in making addition of Rs. 3507000/ by applying the provisions of section 56(2) (viib) of the Act without appreciating the fact that all the shares are issued to the family members and since it is a closely held company with only family members and sister concerns as shareholders, the price at which the shares are issued is not relevant.

2. *That the learned CIT(A) and Ld ITO failed to appreciate the fact that no funds were actually brought in by the company and shares were allotted merely by book entry through the credit balances of directors under unsecured loans already existing in the books of accounts.*
 3. *That the Learned CIT(A) and the Learned ITO ought to have appreciated that Section 56 of the Act intends to Tax only Income and not capital receipts the share premium received is a capital receipt and cannot be taxed under Section 56 (2) (viib) of the Act.*
 4. *That provisions of Section 56(2)(viib) of the Act creates a deeming fiction and while giving effect to such legal fictions all facts and circumstances incidental thereto and inevitable corollaries thereof have to be assumed*
 5. *That legal fictions are created only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond the legitimate field. But the legal fiction has to be carried to its logical conclusion within the framework of the purpose for which it is created.*
 6. *That where there are transactions involving family arrangement with respect to transfer of shares, the corporate veil of the company has to be lifted and inferred that there is no transfer of shares*
 7. *That the Learned CIT(A) and the Learned Assessing Officer erred in making an addition of amount of Rs 3507000/- u/s 56(2) (viib) of the Act*
 8. *That the addition of Rs 38697/ on account of non deduction of TDS from interest paid to two NBFC could not have been made in law in view of the fact that the case was selected under limited scrutiny on an issue not connected with non deduction of TDS.*
 9. *That in any view of the matter and in any case, addition of Rs 38697/ on account of non deduction of TDS is beyond the scope of the present assessment order passed pursuant to limited scrutiny*
 10. *That the Appellant/ Company craves to leave to add, alter, modify, amend substitute or delete all or any of the above Grounds of Appeal.”*
2. Facts giving rise to the present appeal are that in this case the assessee filed its return of income on 30.09.2015 declaring income at Rs. 4,07,780/-. The case

was selected for scrutiny assessment and the assessment u/s 143(3) of the income-tax Act, 1961, hereinafter referred to as the “Act” was completed vide order dated 13.08.2017. The Assessing Officer during the course of assessment examined the issue relating to the issuance of 1,00,000 equity shares for a consideration of Rs. 50,00,000/-, claiming premium of Rs. 40,00,000/-. However, the Assessing officer assessed the fair market value under Rule 11UA of the Income-tax Rules, 1962, hereinafter referred to as the “Rules”, @ 14.93 per share and the balance amount was treated as unexplained and made addition u/s 56(2)(viib) of the Act. The Assessing Officer further made addition of Rs. 38,697/- in respect of payment of interest to non banking financial companies and thus assessed income at Rs. 39,53,480/- against declared income of Rs. 4,07,780/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal the learned counsel for the assessee argued that the authorities below failed to appreciate the facts in right perspective. The assessee is in the business for a quite long time. Learned counsel submitted that the authorities below have not even considered the valuation report. She drew our attention to the finding of the learned CIT(Appeals) in paras 9 & 10 of the

impugned order. Learned counsel submitted that the authorities below have not considered the facts in right perspective.

4. On the other hand, learned DR supported the orders of the authorities below. He submitted that the law is clear. The AO has correctly adopted the value as per the Rules and the provisions of Section 56(2)(viib) of the Act and there is no infirmity in the same.

5. I have heard rival submissions and perused the material available on record. Learned counsel for the assessee during the course of hearing had drawn our attention to Memorandum explaining the Finance Bill 2012, by which provisions of Section 56(2)(viib) were introduced, wherein it has been stated that the company would be provided with an opportunity to substantiate its claim regarding the fair market value, based on the value of its assets, including intangible assets, being goodwill, know-how etc. it is contended that the company besides other investments in fixed assets and current assets owned 50 equity shares of one company Neo Poly pack Pvt. Ltd. which is 10% of the total share capital of that company. Neo Poly pack Pvt. Ltd. owns a factory industrial building at Plot no. 44, Sector 6, Faridabad measuring 7516 sq. yards. The market value of this factory building was Rs. 20.30 crore as per valuation report. Learned counsel also submitted that adopting the above method, the fair market value of one shares comes to Rs. 51.32. It was rounded off to Rs. 50/- per share. Therefore,

considering the totality of the facts and submissions made by the assessee, I am of the view that the authorities below failed to appreciate the facts in right perspective. Therefore, considering the totality of the facts the impugned order is hereby set aside and the issue of determining the fair market value of shares is restored to the file of the Assessing Officer to decide it afresh in accordance with law and after giving due opportunity to the assessee of being heard to explain its case. Grounds of appeal are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 8th February, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**