

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'A' NEW DELHI ]**

**BEFORE Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. No. 760/DEL/2019 (A.Y. 2015-16)**

ACIT, Circle : 2 (2) New Delhi.  <b>( APPELLANT )</b>	Vs.	M/s. Ansal Condominium Pvt. Ltd., 115, Ansal Bhawan, 16, K. G. Marg, New Delhi – 110 001.  <b>PAN No. AAFCA9687B</b>  <b>( RESPONDENT )</b>
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**Assessee by :**                      **Shri R. S. Singhvi, Advocate; &  
Shri Satyajit Goel, Advocate;**

**Department by :**                  **Shri P. Praveen Sidharth,  
[CIT] - D. R.;**

<b>Date of Hearing</b>	<b>07.06.2023</b>
<b>Date of Pronouncement</b>	<b>16.06.2023</b>

**ORDER**

**PER YOGESH KUMAR US, JM**

This appeal is filed by the Revenue against the order dated 30.11.2018 of the Id. Commissioner of Income Tax (Appeals)-I [(hereinafter referred to CIT (Appeals)] New Delhi, for assessment year 2015-16.

2. The Revenue has raised the following substantive ground of appeal :-

*“Whether on facts and circumstances of the case, the learned CIT (Appeals) has erred in deleting the addition of Rs.24,01,57,001/- under section 56(2)(viia) of the Income Tax Act, 1961 on account of difference in valuation of shares as per book value and the value adopted as per DCF Method.”*

3. Brief facts of the case are that, the assessee filed return declaring ‘Nil’ income for the Assessment Year 2015-16, the case of the assessee was selected for limited scrutiny and a notice u/s 143(2) of the Act was issued. Assessment order came to be passed on 29/12/2017 by making an addition of Rs. 24,01,57,001/- by invoking the provisions of Section 56(2)(viia) of the Act and further made addition of Rs.8,50,046/- u/s 14A of the Act read with Rule 8D of the Income Tax Rules 1962 in respect of shares and CCPS of Ansal Township Infrastructure Ltd.

4. Aggrieved by the assessment order dated 29/12/2107, the assessee had preferred an appeal before the CIT(A) and the CIT(A) vide order dated 30/11/2018 allowed the Appeal by deleting the additions made by the A.O.

5. Aggrieved by the order of the Ld.CIT (A), the Department preferred the present appeal on the grounds mentioned above. The sole ground of appeal of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 24,01,57,001/- u/s 56(2)(viia) of the Act on account of different in valuation of shares as per book value and the value adopted as per DCF Method.

6. The Ld. DR relying on the order of the assessment order submitted that any Company buying share/CCCPS from a foreign entity has to obtain permission from RBI and from an independent Chartered Valuation for valuation of shares confirming that purchased price of buy back security is

less than or equal to FMV of the security for the reason that no tax is due from foreign investor in case of purchase price paid more than the FMV of the security. Further submitted that the assessee company has purchased shares/CCCPS at Rs. 2777 each whereas FMV of the shares cannot be exceed more than Rs. 815.59 each hence assessee company taken a valuation report prepared by the independent auditor at their own projections which is not verified by the auditor giving a price of Rs. 2805 each shares, thereby violating the FEMA regulations and RBI guidelines. Since the price paid is more than the FMV of the shares/CCCP and the difference of Rs. 1961.41[2777-815.59] cannot be taxable in hands of the seller i.e. M/s IIRF India Realty II Ltd wholly owned subsidiary of IL&FS India Realty Fund II,LLC), Mauritius hence Rs. 24,01,57,001/- has been taxed in the hands of the assessee company. But the Ld. CIT(A) erroneously deleted the addition on the ground that the provision of Section 56(2)(viiia) are not applicable to the facts of the present case. Thus, the Ld. DR submitted that the CIT(A) has committed error in deleting the addition.

7. The Ld. AR vehemently contended that the Section 56(2)(viiia) of the Act is not applicable to the Assessee, since the Assessee has purchased shares of Ansal Township from IIRF India Realty II Ltd. and IFIN Reality Trust at a price higher than the alleged book value, in as much as, the allegation is that shares were purchased @Rs. 2777/- as against the book value/FMV of Rs. 815.59/-. Since Section 56(2)(viiia) of the Act is applicable in a converse situation, therefore, the provisions of the Section cannot be invoked for the simple reason that the precondition to invoke Section 56(2)(viiia) of the Act is that the consideration for transfer of share should be less than FMV by Rs.50,000/- or more. Further by relying on the order of the CIT(A) and taking us through the order of the CIT(A) and the paper book, submitted that the order of the CIT(A) requires no interference at the hands of the Tribunal accordingly prayed for dismissal of the appeal filed by the Revenue.

8. We have heard the parties perused the material available on record and gave our thoughtful consideration.

9. The assessee Company during the year under consideration purchased equity shares and Compulsory Convertible Cumulative Preference Shares (CCCPS) of Ansal Township Infrastructure Ltd. From foreign institutional investors i.e. M/s IIRF India Reality II Ltd. And IFIN Realty Trust for total consideration of Rs. 34,00,18,657/- the details are here under:-

<i>Seller</i>	<i>Equity Shares</i>	<i>CCC Preference Shares</i>
<i>M/s IIRF India Reality II Ltd.</i>	<i>5576 shares @Rs.2777each = 1,54,84,552</i>	<i>112908 shares @ Rs. 2777 each =Rs. 31,35,45,516/-</i>
<i>IFIM Realty Trust</i>	<i>190 shares @ Rs. 2777 each =Rs. 5,27,630/-</i>	<i>3767 shares @Rs. 2777 each= Rs. 1,04,60,959/-</i>
<b>Total</b>	<b>1,60,12,182/-</b>	<b>32,40,06,475/-</b>

10. The Assessing Officer made addition of Rs.24,01,57,001/- u/s 56(2)(vii) of the Act on the ground that the FMV of the shares so purchased is Rs. 815.59 per share as against Rs.2,777/- per share paid by the assessee in following manners:-

The provision of Section 56(2) (vii) Rs. as under:-

*“Income from other sources.*

*56. (1)..*

*(2) In -particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be*

chargeable to income-tax under the head "Income from other sources", namely

(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 but before the 1st day of April, 2017, 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 (vich) 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, have the meaning assigned to it in the Explanation to clause (vii);"

11. The Ld.CIT(A) while deleting the above addition held that provision of Section 56(2)(viiia) are not applicable to the transaction of purchase of shares by the assessee particularly when the purchase price is higher than FMV

shares. The CIT(A) has also approved the business expediency of the transaction as well. The relevant portion of the findings of the CIT(A) are as under:

*“6.4.1. I have carefully considered the assessment order and written submissions filed by the Ld. AR. The Ld. A.R. has submitted that the appellant company was incorporated on 6.11.2006 to carry on real estate business. It is a wholly owned subsidiary of Delhi Towers Ltd which is a wholly owned subsidiary of Ansal Properties & Infrastructure Ltd. (Ansal API), a company in which public are substantially interested. As such, Ansal API is the holding company of the appellant. The Ld. A.R. has stated that during F.Y. 2014-15, the appellant with the funds advanced by the holding company purchased shares of Ansal Township Infrastructure Ltd which was promoted by Ansal API for developing real estate projects/township in India.*

*6.4.2. The Ld. A.R. has further submitted that in terms of Investment cum Shareholder Agreement dated 2.4.2008, Foreign & Indian investors together acquired 9,80,000 Compulsory Convertible Cumulative Preference Shares (CCCPS) of Rs.10/- each at a premium of Rs.795.62. Thus, against CCCPS, investment of Rs.78,95,10,000/- was made. Besides CCCPS, Investors were allotted 49,000 equity shares at par for total consideration of Rs.4,90,000/-. Accordingly, total investment of Rs.79,00,00,000/- (78,95,10,000 + 4,90,000) was made by the Investors. Pursuant to the investment, shareholding of Ansal API (promoter) and Investors in Ansal Township stood at 51% and 49% respectively.*

*6.4.3. The Ld. A.R. has also submitted that clause 13 of Investment cum Shareholder Agreement dated 2.4.2008 provided for ‘exit to the*

*investor'. In terms of clause 13.1, Ansal API as Promoter and Ansal Township as the Company in which the investment was made undertook to provide exit to the investor at minimum cumulative annual return or IRR of SBMTLR (State Bank Medium Term Lending Rate) plus 875 basis points on the investment. The Ld. A.R. has stated that in the meantime pursuant to RBI's letter dated 5.4.2010 (No.FE.DEL. FID/11043/06.04.6165/2009-10), Foreign Investor invested Rs.33,97,117.72/- by way of security premium towards 47420 (43512 +3908) equity shares. As regards buyback of investment by the appellant, it is submitted that on 20.5.2010, the parties had entered into 'share purchase and sale agreement' in terms of which additional exit option was provided to the foreign Investor. Agreement dated 20.5.2010 was entered into between 'foreign investor', 'Ansal Township', 'Ansal API' i.e. the promoter and 'Mr. Sushil Ansal', Managing Director of Ansal API. Under the agreement, buy out option of foreign Investors in Ansal Township was agreed upon, as detailed in clause 1.1 of the agreement. In terms of this agreement, Investor was to be paid Rs.148,54,80,000/- in three installments of Rs.47,41,90,000/-, Rs.49,54,80,000/- and Rs.51,58,10,000/-. The Ld. A.R. has explained that Ansal API - the Promoter due to the reasons beyond its control could not buy out the investment made by the foreign investor and during F.Y. 2014-15 Ansal API through its subsidiary i.e. the appellant partially purchased the investment held by IIRF India Realty II Ltd and IFIN Realty Trust in Ansal Township. From IIRF India Realty II Ltd, 5576 equity shares & 1,12,908 CCCPS of Ansal Township Pvt. Ltd. were purchased and from IFIN Realty Trust, 190 equity shares & 3767 CCCPS were purchased. Entire purchase was made for total consideration of Rs.34,00,18,657/-. Addition of Rs.24,01,57,001/- was made by the Assessing Officer under section 56(2)(viiia) of the Act, for the reason*

*that book value of share / CCCPS was Rs.815.59, whereas the same were purchased @ Rs.2,777/- per share / CCCPS. It was held by the A.O. that since the difference (Rs.1961.41) cannot be added in the hands of the seller i.e. IIRF India Realty II Ltd, therefore, the addition has to be made in the hands of the appellant. In making the addition, reference was made to certain Circulars / Notifications issued by RBI. It was also observed that valuation at discounted cash flow method was without any basis.*

*6.4.4. In addition to the above, the Ld. A.R. has submitted that due to certain unavoidable reasons, the project in respect of which the Investor made the investment could not be developed and on completion of the project, the book value / FMV is bound to increase manifold. The Ld. A.R. has also submitted that by virtue of purchase of shares and CCCPS from the Investor, not only net worth of the promoter i.e. Ansal API but even Ansal Township would derive benefit inasmuch as, the price at which shares and CCCPS have been purchased are less than what was agreed by the agreement dated 2.4.2008 and 20.5.2010. The Ld. A.R. has further submitted that in the transaction of purchase of shares and CCCPS by the appellant company, the commercial expediency of the business cannot be doubted.*

*6.4.5. Section 56(2)(viiia) reads as under:—*

*"56(2)(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 but before the 1st day of April, 2017, 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 (vich) 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 (vii);"*

6.4.6. *The Memorandum explaining the insertion of provisions of section 56(2)(vii) and 56(2)(viiia) by the Finance Act, 2010 reads as under:*

*"Taxation of certain transactions without consideration or for inadequate consideration*

*Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000) by an individual or an HUF is chargeable to income-tax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or*

*under a will are outside the scope of this provision.*

*The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archaeological collection, drawings, paintings, sculpture or any work of art.*

*A. These are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision*

*In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). Section 2(18) provides the definition of a company in which the public are substantially interested.*

*It is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.*

*Consequential amendments are proposed in—*

- (i) section 2(24), to include the value of such shares in the definition of income;*

- (ii) *section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56(2).*

*These amendments are proposed to take effect from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.*

*From the Memorandum explaining the insertion of section 56(2)(viiia) and amendment of section 56(2)(vii) of the Act, it is evident that both the provisions are to counter evasion of tax - by way of transfer of property either without consideration or inadequate consideration. A combined reading of the provisions of section 56(2)(viiia) and the Memorandum explaining the provisions shows that the provision of section 56(2)(viiia) would be attracted in the case of a recipient firm or company which receives the shares of a company without any consideration or for a consideration which is less than the aggregate fair market value of the shares by an amount exceeding fifty thousand rupees. In the instant case, the appellant has purchased shares and CCCPS of Ansal Township from IIRF India Realty II Ltd and IFIN Realty Trust @Rs.2777/- as against the book value / FMV of Rs.815.59. It has been held by the A.O. that since the difference (Rs.1961.41) cannot be added in the hands of the seller i.e. IIRF India Realty II Ltd, therefore, the addition has to be made in the hands of the appellant. In making the addition, the AO has referred to certain Circulars / Notifications issued by RBI. The appellant has purchased the shares and CCCPS from IIRF India Realty II Limited, wholly owned subsidiary of IL&FS India Realty Fund II LLC ('the Foreign investor') and IL&FS Trust Company Ltd ('the Indian investor') at a price higher than the fair market value of the shares*

*and CCCPS. The Ld. A.R. has explained that the price at which shares and CCCPS have been purchased are less than what was agreed by the agreement dated 2.4.2008 and - 20.5.2010 and the commercial expediency of the business cannot be doubted in -e 32 3 transaction of purchase of shares and CCCPS by the appellant company. Considering the facts of the case, I am of the opinion that the provisions of section 56(2)(viia) are not attracted in the instant case. Accordingly, I hold that the AO is not justified in making the addition of Rs.24,01,57,001/- in the case of the appellant company and the addition of Rs.24,01,57,001/- is deleted. This ground of appeal is allowed.”*

12. On plain reading of the Memorandum explaining the insertion of section 56(2)(viia) and amendment of section 56(2)(vii) of the Act, it is evident that both the provisions are to counter evasion of tax - by way of transfer of property either without consideration or inadequate consideration. A combined reading of the provisions of section 56(2)(viia) of the Act and the Memorandum explaining the provisions shows that the provision of section 56(2)(viia) of the Act would be attracted in the case of a recipient firm or company which receives the shares of a company without any consideration or for a consideration which is less than the aggregate fair market value of the shares by an amount exceeding fifty thousand rupees.

13. In the case in hand the assessee has admittedly purchased shares and CCCPS of Ansal Township from IIRF India Realty II Ltd and IFIN Realty Trust @Rs.2777/- as against the book value / FMV of Rs.815.59. Further, the A.O. held that since the difference (Rs.1961.41) cannot be added in the hands of the seller i.e. IIRF India Realty II Ltd, therefore, the addition has to be made in the hands of the assessee. Considering the facts and circumstances of the case, we are of the opinion that the provisions of section 56(2)(viia) are not attracted

to the Assessee, therefore, we find no infirmity or error in the order of the Ld. CIT(A) and the observation and the conclusion of the CIT(A) requires no interference and we do not find any merit in the ground of the Revenue, accordingly the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on : **16/06/2023.**

**Sd/-**  
**( B.R.R. KUMAR )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated : 16/06/2023

*\*MEHTA/R.N, Sr. PS\**

Copy forwarded to :-

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

