

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

BEFORE,

**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.574/Del/2019
(ASSESSMENT YEAR 2015-16)**

M/s Kanti Commercial Pvt. Ltd. 1, Zamrudpur Community Centre Kailash Colony New Delhi-110 048 PAN-AACCK 1191P (Appellant)	Vs.	ACIT Central Circle-13 New Delhi (Respondent)
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Appellant by	None
Respondent by	Mr. Waseem Arshad, CIT-DR

Date of Hearing	04/09/2023
Date of Pronouncement	14/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-XXVI, New Delhi ["Ld. CIT(A)", for short], dated 19/11/2018 for Assessment Year 2015-16. Grounds taken in this appeal are as under:

- “1. That on the facts and in the circumstances of the case the action of the Ld CIT(A) to confirm the addition of Rs.4,45, 68,174/- made by the AO u/s Seal of the Act on account of investment of shares of M/s. Miller Traders Ltd against the provisions of law and the addition made a arbitrary excessive and illegal.*

- 2. That on the facts and in the circumstances of the case the action of the id CA to confirm the addition made by the AO. of Rs.4,45,68,174/- u/s 56(2)(viiia) on account of investment of shares of M/s Miller Traders (P) Ltd. ignoring the chartered valuation adopted by the assessee and instead adopting its own valuation is against the provisions of law and the addition made a arbitrary, excessive and illegal.*

- 3. That on the facts and in the circumstances of the case the action of the L to confirm the addition made by the A.O. of Rs. 10.15.07.000/- as unexplained investments on the reason that the Sundry Debtors are fictitious is contrary to the settled principles of law and the addition is arbitrary, excessive and illegal.*

- 4. That on the facts and in the circumstances of the case the action of the id.CIT(A) to confirm the addition made by the A.O of Rs. 10.15.07.000/- as unexplained investments by party treating the bogus Sundry Debtors of A.Y. 2014-15 is against the settled principles of law and the addition is arbitrary, excessive and illegal.*

- 5. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to hold that the sales for AY 2014-15 & 2015-16 were not genuine where as no sales in AY 2015-16 on the basis of expenses debited in the Profit & Loss Account is contrary to the material evidences on record and contrary to be expenses claimed and debited in the Profit & Loss Account and therefore, the addition confirmed by the Ld CITA) of Rs. 10.15.07,000/-is legal and bad in law.*

- 6. That on the facts and in the circumstances of the case the action Ld CIT(A) to confirm the assessment made by the AO by rejecting the scope of limited scrutiny having being expanded by the AO without prior permission is in violation of the provisions u/s 119 of the Act and the assessments is illegal and bad in law.*

- 7. That the assessment framed by the AO and confirmed by the Ld. CIT(A) is unjust, illegal, arbitrary and excessive.*

8. That the above grounds of appeal will be argued in detail at the time of hearing and the appellant crave leave to submit additional grounds of appeal, if any, and/or alter, verify, modify or rectify any grounds of appeal at or before the time of hearing.”

2. The brief facts of the case are that the assessee filed return showing total income of Rs.10,797/-. The assessment came to be passed u/s 143(3) of the Income Tax Act by making addition of difference of the total fair market value and the total purchase consideration of Rs.4,45,68,174/- of Rs.4,45,68,174/- in light of provision of section 56(2)(viia) of the Act, further made addition of Rs.10,15,07,000/- on the ground that investment has been purchased from opening debtors and sundry debtors which has been concluded as fictitious, accordingly, such investment made during the year by the assessee to the extent of Rs.10,15,07,000/- has been treated as not genuine and added to return of income of the assessee.

3. Aggrieved by the assessment order dated 29/12/2017, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), vide order dated 19/11/2018 dismissed the appeal filed by the assessee. As against the order of the Ld. CIT(A), the assessee preferred the present appeal on the ground mentioned above.

4. None appeared for the assessee. The assessee did not appear before the Tribunal right from filing of the present appeal. The assessee on earlier occasion filed an adjournment application but failed to appear and make any submissions in support of the grounds of appeal, therefore, we are compelled to decide the appeal after hearing the Ld. DR and verifying the material on record.

5. The grounds 1 & 2 are regarding addition of Rs.4,45,68,175/- made by the AO u/s 56(2)(vii) of the Act, on account of investment of shares of M/s Miller Traders (P) Ltd. It is the case of the assessee as per the said grounds of appeal that the Authorities have ignored the Chartered Valuation adopted by the assessee and adopted its own valuation which is against the provisions of law and the addition made is arbitrary, excessive and illegal.

6. The Ld. DR submitted that the assessee has not followed any of the methods contemplated under the Rules for the purposes of valuation and no such valuation report has been furnished before the A.O. therefore, the Ld. A.O. rightly disbelieved/disputed the valuation report submitted by the assessee and made addition.

7. We have heard the Ld. DR and perused the material available on record. The AO while making the above addition, was of the opinion that shares which have been routed at Rs.10 per share was in violation of provisions of section 56(2)(viiia) of the Act. The relevant portion of the assessment order are as under:-

“7. As per the assessee submission, it may be noted that assessee has made investment in shares of M/s India Finance Ltd. and M/s Miller Traders Private Limited. Further, assessee has claimed that India Finance Ltd. is a company in which public are substantially interested and shares of M/s Miller Traders Private Limited has been purchased from a widely held company and as such provisions of section 56(2)(viiia) of the IT. Act, 1961 is not applicable in his case. In support of his claim assessee has submitted bills in respect of share purchase.

8. To verify the claim of assessee, analysis of provisions of section 56(2)(viiia) of the I.T. Act, 1961 is necessary. Provisions of section 56(2)(viiia) of the I.T. Act, 1961 is as under:

"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 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"

From the perusal of the provisions of section 56(2)(viia) of the I.T. Act, 1961 it may be said that in the following cases provisions of section 56(2)(viia) will not apply:-

- i) Purchaser / receiver of shares is a company in which public are substantially interested;*
- ii) If shares involved in the transaction is of a company in which public are substantially interested, and*
- iii) Difference between the consideration and fair market value of share is less than fifty thousands.*

In light of the above provisions, the first claim of the assessee that the shares has been purchased of a company in which public are substantially interested being M/s India Finance Ltd. found covered in point no. (ii) listed above and as such holds true. However, the second claim of the assessee, that the assessee has purchased

shares of M/s Miller Traders Private Limited from a company widely held company in which public are substantially interested, found no place in the above listed first and second points. And as such to find out whether the transaction is covered in point in (iii) above or not, fair market value of shares of M/s Miller Traders Private Limited is required. Fair market Value of shares of M/s Miller Traders Private Limited as on 31st March 2014, the immediate preceding year, comes to Rs.214.11/- per share on the basis of balance sheet available at the MCA website. Assessee has purchased 218350 shares of Miller Traders Private Limited @Rs.10/- per share which comes to Rs.21,83,500/- however the total fair market value of 218350 share@ Rs. 214.11/- per share comes to Rs.4,67,50,918/- and difference of the total fair market value and total purchase consideration comes to Rs.4,45,68,174/- which is far excess than rupees fifty thousand and as such claim of assessee that transaction of purchase of shares of M/s Miller Traders Private Limited is not covered u/s 56(2)(viii) has no ground.”

8. The Ld. CIT(A) in the Appeal filed by the Assessee while dealing with the issue held as under:

“a. The A.O. held that section 56 (2)(viii) was applicable as act of allotment of shares resulted in receiving the shares. The A.O. worked out the book value of the shares in respect of M/s Miller Traders Pvt. Ltd.

During the year the assessee had purchased 2,18,350 shares of M/s Miller Traders (P) Ltd. Rs. 10% per share for total consideration of Rs.21,83,500/- Therefore in the books of the assessee company there was increase in investments to the tune of Rs.21,83,500/- for purchase of shares of M/s Miller Traders (P) Ltd.

The A.O. was of the view that the shares which have been purchased were below the market value and therefore was in violation of the provisions of Section 56(2)(viiia) of the Act.

The AO and on the basis of the balance sheet as on 31.3.2014 derived the market value per share of M/s Miller Traders (P) Ltd. at Rs 214.11 per share. On this basis the A.O. made addition of Rs4,45,68,174/- on account of 218350 shares purchased of M/s Miller Traders (P) Ltd considering the market value as on 31.03.2014 at Rs.214.11 per share as against Rs.10/- per share which the assessee paid to purchase the shares The addition was made u/s 56(2)(viiia) of the Act. The AO adopted the market value without informing the assessee.

The valuation of the shares of Miller Trades (P) Ltd has been made by the assessee and as per the Rule IIUA under discounting method the price of share as on 31.3.2014 of Miller Traders (P) Ltd Is 9.10 per share as the assessee has purchased the shares at Rs 10 per share which is more than the market value the provisions of section 56(2)(viiia) does not apply.

b. *The appellant has submitted that the provisions of Section 56(2)(viiia) shall not apply to the facts of the case of the assessee and no addition shall be made on this account. It is proper to refer here to clause viib of section 56(2) which reads as under.”*

c. *It is clear from the language of clause viib that it is totally inapplicable on the facts of the case. The same is applicable only in circumstances where the receipt of consideration for issue of shares is involved. The case here is of appellant receiving shares for a consideration reported to be sub-par I am in agreement with the AO that only clause viia is applicable. The same has to come into play with rule 11 LA to examine the value of such shares obtained by the appellant.*

d. *The Ld AR has confounded the aes by submitting that the shares were allotted to the appellant Section 56(2) via deals with the scenario wherein the entity as the appellant in this case, receives certain shares at inadequate consideration Whereas clause viib is in respect of receipt of inadequate consideration for issues of shares. In this context we may be benefitted by the ruling of Hon'ble SC in case of Khoday Distilleries reported in [2009] 176 Taxman 142 (SC) dated 14/11/2008, where the*

Hon'ble Supreme Court had the occasion to deal with the aspects of allotment of shares. Though in a different context, this ruling clearly points out that the allotment of shares in similar circumstances is similar to receipt of shares. Section 56(2) viia has come into effect wef 01/06/2010 and it clearly deals with such scenarios wherein the appellant receives shares for inadequate consideration by way of purported allotment, thus implicitly receiving undue benefit in such structured transaction. The section does not distinguish the allotment or transfer of shares. Both the transactions fall within scope and domain of RECEIVING OF SUCH PROPERTY ie SHARES as envisaged in section referred above. In view of the transaction structures in this case as seen from the assessment order, there is accrual of income in layered form in non cash format. This is a clear case which falls in the scope of the clause viia as per the scheme so laid down. In the present case, it is also pertinent to refer to section 56 as far its genesis is concerned as follows:

"56 Income from other sources

(h) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources" if it is no chargeable to income tax under any of the heads specified in section 14 items A to E.

(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 heat "Income from other sources"

.....
.....

e. *It is seen that as per section 56(1), income from any source that is not exempted, shall be chargeable to income tax, if the same is not chargeable to Income Tax under the specified heads of the IT Act. This is clearly a deeming provision, specifically creating a fiction that the following income as detailed in (section Section 21) shall is chargeable to tax. The section then names in details as to what is deemed to be income as per clause viia of 56 (2) and so forth Therefore, the differential between the fair market value so componed and the cost of acquisition eventually constitutes income. The appellant has also taken a plea that there was a dispute and the conditions for allotment of the shares were not fulfilled and therefore there was breach of comact the share application allotment of shares were not legally valid. This is not acceptable as the transaction has not been called off. It seems to be a collusive device to hoodwink correct income determination. The issue of the assets remaining under hypothecation with financial institutions is also not tenable, as the avets remain in the name*

and custody of the appellant entity. There is no loss yet of the assets. Hence these are bound to be considered for the purposes of valuation

Accordingly, I uphold invoking of section 56(2) via as a correct measure on the facts and as in law.”

9. It is found that the Assessee did not furnish any reliable and robust basis of valuation of such equity as per the Rules before the A.O. In the absence of any valuation as per Rule submitted by the Assessee, the A.O. carried out valuation on NAV method. It is the duty of the assessee to furnish reliable valuation determining such share premium from a qualified valuer. Further, the Assessee had not entered into a distress transaction also though the same is not recognized in the extent scheme of Section 56(2) read with Rule 11UA. Thus, the A.O. was well within his rights to question the valuation reports as they were not in line with the method of valuation adopted basis the assets valuation owned by the concerned entity, as detailed above. Considering the fact that the assessee had not furnished any valuation as per Rules either before the AO or before the Ld. CIT(A) or before us, we find no error or infirmity in the order of the CIT(A) sustaining the addition made by the AO. Accordingly, we find no merit in the Grounds of appeal No.

1 and 2 of the assessee and we dismiss the Ground No.1 & 2 of the assessee.

10. Grounds No.3 to 5 are regarding addition of Rs.10,15,07,000/- made as unexplained investment. While framing the Assessment for the Assessment Year 2014-15, A.O. concluded that the assessee was not doing any actual purchase or sale and are mere name lender. The A.O. sought to follow the same in the year under consideration and the assessee in reply stated as under:-

“All the purchases and sale were gene I was submitted that the sale was end of the opening stock and there was no fresh purchase during the year Therefore the entire Transaction was genuine.”

The A.O. rejected the above explanation of the assessee and found to be a case of collusive transactions for following reasons:-

- the sale and purchase involved only a select set of selected parties
- the expenses did not commensurate with the business and
- there was no transportation cost despite sales during the year

The Ld. A.O. concluded that since Sundry Debtors of AY 2014- 15 had already been found to be fictitious and the current year's sale are also not genuine as the very basic features of commercial activities are absent. Therefore the Sundry Debtors for of the

current year were also treated as non- genuine. Thus, the AO made addition of Rs.10,15,07,000/- under the head of investments made during the year on account of bogus Sundry Debtors for AY 2014-15 & 2015-16. The said action of AO has been upheld by the Ld. CIT(A), which has been relied by the Ld. DR.

11. The sundry debtors of Rs.10,15,07,000/- created from fictitious sale made during the AY 2014-15 has no worth and only book entry, and the fact that the assessee has not carried any business during the current year, which is corroborated by the AO from the Profit and Loss account. Apart from the same, the assessee had purchased huge investments through book entry from its opening sundry debtors without any actually receipts payment transaction routed through bank. Thus, we find no error in the orders of the authorities in making the above addition and we dismiss Ground No. 3 to 5 of the Assessee.

12. In the Ground No.6 the assessee contended that 'the action Ld. CIT(A) to confirm the assessment made by the A.O. by rejecting the scope of limited scrutiny having being expanded by the A.O.

without prior permission is in violation of the provisions u/s 119 of the Act and the assessment is illegal and bad in law’.

13. The Assessee contended before the CIT(A) that the case of the Assessee was selected for limited scrutiny and its scope is well defined in the departmental notification and circulars. The A.O. cannot travel beyond the reasons of the limited scrutiny unless prior approval of the Commissioner of Income Tax is obtained. The order passed by the A.O. being in violation of the instructions by the CBDT it should be treated as bad in law.

14. The Ld. CIT(A) while deciding the above issue held as under:

“This, matter has been examined. The AO has put the reasons for picking up the case for scrutiny. The AO has sought all the replied pertaining only to the issues as per criteria for scrutiny selection. This ground is not tenable. This ground is dismissed. It must be understood that in matter involving a corporate entity having engaged in complex transactions, it is but required to raise and seek replied to some queries in order to reach a reasonable and lawful conclusion. This ground is therefore, dismissed.”

15. Considering the fact that the AO has put the reasons for picking of the case for scrutiny and had sought all the replies pertaining only to the issue as per criteria for scrutiny selection, we find no merit in the ground No.6 of the assessee. Accordingly, we dismiss the ground No.6 of the assessee.

16. Grounds No.7 & 8 are general in nature require no adjudication.

17. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in open Court on 14th September, 2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 14/09/2023

Pk/R.N, Sr Ps

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI