

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.6796/Mum/2019  
(Assessment Year :2013-14)**

M/s. Osianama Learning Experience Pvt. Ltd. G-2B, Nariman Bhavan Nariman Point Mumbai – 21	Vs.	Dy. Commissioner of Income Tax-3(2)(2) Mumbai
<b>PAN/GIR No.AABCO2116K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Shekhar Gupta
Revenue by	Shri H M Bhatt
<b>Date of Hearing</b>	<b>10/10/2023</b>
<b>Date of Pronouncement</b>	<b>16/10/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 12/09/2019, passed by Ld. CIT (Appeals)-9, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2013-14. In the grounds of appeal assessee has raised the following grounds:-

*“The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the addition of Rs. 25,96,000/- u/s. 56(2)(viib) of the Income Tax Act.*

*The learned CIT (Appeals) has erred in law and on the facts of the case in enhancing the income of the company by Rs. 59,14,750/- u/s. 56(2)(viib) of the Income Tax Act.”*

2. The brief facts qua the issue raised are that, during the year under consideration assessee has allotted 1,06,911 shares @400/- per share which included premium of Rs.390/- per share to the Indian shareholders. In support of its valuation the assessee company filed a valuation report dated 15/09/2012 by an authorised valuer who had calculated the market value of the shares as per DCF method and determined the market value of the share @341/- per share. The details of the persons to whom shares were allotted as under:-

Sr. no.	Name	No. of shares
1	Deepak Gupta	12,500
2	Aliff Fazelbhoy	250
3	Mark Anthony De Boer	6,661
4	Kamal Morarka	31,250
5	Neville Tuli	56,250
	Total	1 ,06,911

3. Since out of the above allottees, Mr. Mark Anthony De Boer was a foreign national in whose case Section 56(viib) was not applicable, therefore, the AO invoked provisions of Section 56(viib) on allotment of 1,00,250 shares.

4. The ld. AO accepted the fair market value of the shares as per the valuation report which was arrived at Rs.341/- per share and difference of Rs.59/- per share which was in excess was added u/s.59(viib) of the Act and the difference worked out at Rs.25,95,000/-. However while calculating the difference he did not made disallowance in the case of Mr. Neville Tuli.

5. The ld. CIT(A) noted that ld. AO while calculating the addition on the basis of difference between Rs.341/- per share and Rs.400/- per share on which it was allotted, has excluded the share allotment of Mr. Neville Tuli while making the addition and accordingly, he proposed enhancement by including the shares allotted to said person. Accordingly, he calculated the difference of Rs.59,14,750/- by taking excess premium @59/- per share allotted to four individuals by the assessee company.

6. Before us, ld. Counsel submitted that these provisions were inserted for taxing unexplained money credit, investments, etc. Here in this case assessee required funds for its business and it was for this reason the shares were allotted @premium of Rs.390/- per share from the promoters. Further, there was restriction in accepting the deposit from the public and therefore, assessee allotted these shares at a higher premium. There is no presence of any unexplained money involved in this transaction.

In support of his contention he has also relied upon ITAT Mumbai Bench order in the case of ITO vs. Shri Rajeev Ratanlal Tulshyan in ITA No.5748/Mum/2017. He further submitted that Mr. Neville Tuli is a Promoter Director of the assessee company who has subscribed to 56,250 shares at a premium of Rs.390/- per share and he also got the funds from his known circles, who were high net worth individuals and were ready to invest in the company at a premium of Rs.390/- per share.

7. Alternatively, he submitted that the addition of Rs.59,14,750/- has been made by taking the difference amount of Rs.59/- per share being excess premium i.e. the difference between the share allotted @Rs.400/- per share and the value of premium determined by the valuer at Rs.341/-. However, Rs.10/- per share was the face value and if at all there is any addition which is required to be made on account of excess premium, the same should be of Rs.49/- (i.e. Rs.390 - Rs. 341). Thus, the total addition would be Rs.49,12,250/- as against the addition of Rs.59,14,750/-.

8. On the other hand, ld. DR submitted that there is no scope of giving any interpretation to Section 56(2)(viib) by looking from the angle whether there is any tax evasion or not? The language of the Section is very clear and once the fair market value of the share is less than what is allotted then, the deeming provision gets triggered and addition has to be made.

9. We have heard both the parties and also perused the relevant finding during the impugned orders. Undisputedly as per the valuation report submitted by the assessee, the value of the premium was determined at Rs.341/- per share which was worked out as per the DCF method and the working of which was as under:-

	<b>INR IN MILLION</b>
8. 1) Total present value of company operations	4305.0
2) Plus Assets	28.5
3) Total 'Market value of great expectations Assets	4333.5
4) Less: Market value Debt	-
5) Value of operating equity	4333.5
6) No. of equity shares(mn)	12.7
7) Fair market value of share price in INR	341

Thus, the difference between the value at which shares were allotted and the value which was determined by the valuer as per the valuation report has been added by the Id. AO and also confirmed by the Id. CIT (A). In so far as the enhancement made by the Id. CIT (A), it appears to be correct, because even if the shares have been allotted to the Promoter Director, Mr. Neville Tuli, then also it cannot be more than the fair market value. Thus, to this extent the enhancement made by the Id. CIT (A) is

correct. In so far as the contention of the Id. Counsel is that even though the value of share price was determined at Rs.341/- but due to shortage of funds and assessee was not getting funds from outside, the Promoter Director had brought investors to allot the shares at a higher premium of Rs.390/- only for funding the company. There was no intention of any tax evasion or any unexplained money which has been brought by way of allotment of shares at a higher premium. He strongly relied upon the intention behind introduction of Section 56(2)(viib) and the Hon'ble Finance Minister speech that it was anti-tax avoidance measure and to take unexplained money on investment and therefore purposive interpretation should be given. However, even though there might not be any intention of tax evasion or anti tax avoidance, but we are unable to agree with the contention raised by the Id. Counsel.

10. From a plain reading of the Section, it is seen that the language of the statute is absolutely clear and there is no ambiguity in such provision. No exception has been carved out that it shall not be applicable on certain kind of transaction looking to the hardships or there was no intention of any evasion of taxes in such kind of transfers or receiving of shares. It is trite and well settled law that the construction of the statute must be taken from the bare words of the Act. One should not look what could have been the intention of the legislature behind the legislating section and if a legislature did intend in this way, then it has to be expressed clearly in the language of the Section. The Courts cannot invent something which is not there in the statute

nor should try to gauge the intention of the Legislature. It is only where the language of the statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, then a construction may be given which modifies the meaning of the words and even the structure of the sentence. In such circumstances, the Courts while interpreting the provision probable can go what was the purpose of bringing that legislation. Otherwise a literal construction has to be given and the deeming provision has to be given strict interpretation, especially where words of the statute are clear and unambiguous then recourse cannot be taken to principles of purposive interpretation, even if the literal interpretation results in hardship and inconvenience to the tax payer. The purposive construction can only be resorted to when there is ambiguity or the contradiction in two provisions for the same statute. Here, no such ambiguity or contradiction is there nor has been pointed out before us. A Court of law has nothing to do with reasonable or unreasonableness of a provision of a statute except as it may hold in interpreting what the legislature has clearly stated. If the language of the statute envisages only one meaning then it must be continued to mean and intended what it has been clearly expressed. Accordingly, the contention raised by the ld. counsel is rejected.

11. However, we agree with the alternate contention that the difference amount for the purpose of addition would be Rs.49/- per share, because what has been valued by the valuer is the value of the premium which was determined at Rs.341/- per share instead of Rs.390/- and Rs.10/- per share was the face value and therefore, face value cannot be taken into consideration for making the addition on the basis of difference between the premium charged and premium determined by the valuer. Accordingly, the difference would be added at Rs.49/- per share and thus, the addition would work out to Rs.49,12,250/- instead of Rs.59,14,750/-. Accordingly, the grounds raised by the assessee are partly allowed.

**12. In the result, appeal of the assessee is partly allowed.**

Order pronounced on 16<sup>th</sup> October, 2023.

**Sd/-**  
**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 16/10/2023  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**