

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.161/Ind/2023
Assessment Year: 2017-18

M/s. Jajoo Hygiene Pvt. Ltd., 304-A, Subhlabh Residency, Khajrana Chouraha, Indore. (Assessee / Appellant)	<u>बनाम/</u> Vs.	ACIT/DCIT, 2(1), Indore. (Revenue / Respondent)
PAN: AADCJ 0657 Q		
Assessee by	Shri Prakash Gupta, CA and Shri Shashank Sharma, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.10.2023	
Date of Pronouncement	25.10.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 20.02.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 28.11.2019 passed by learned DCIT/ACIT, 2(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following effective grounds:

- 1. That the Ld. CIT(A) erred in not considering the fact that shares are issued in compliance with the provisions of Section 56(2)(viib) of the Income-tax Act, 1961, and the issue price does not vary from FMV materially.*
- 2. That the Ld. CIT(A) erred in not considering the fact that the valuation is an estimation and provisions of section 56(2)(viib) are not violated only because of rounding off done for practical purposes."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The assessee is a company which issued 1,96,308 equity shares @ Rs. 20 per share (face value of Rs. 10 + premium of Rs. 10) during the relevant previous year although the 'fair market value' as per certificate of Chartered Accountant filed by assessee to AO was Rs. 19.23 per share. Accordingly, the AO invoked provisions of section 56(2)(viib) and treated the excess amount received by assessee i.e. rupees 0.77 per share as income of assessee. The AO arrived at taxable income of Rs. 1,51,157/- [Rs. 0.77 per share X 1,96,308 number of shares issued]. When the AO show-caused assessee as to why the addition to total income may not be made, the assessee did not file any explanation. Ultimately, the AO made addition while framing assessment.

4. Aggrieved, the assessee carried matter in first-appeal and submitted to CIT(A) that it had charged Rs. 20/- per share after rounding off of Rs. 19.23 per share for simplicity; that the difference of Rs. 0.77 per share was immaterial and nominal when compared in totality either with the total value involved in the issue of shares or the size of Balance-Sheet of assessee. The assessee also submitted that the concept of materiality is well known in practical life as well as accounting practices. The assessee also submitted that materiality aspect is also recognized and accepted in several provisions of Income-tax Act, 1961. To illustrate, the assessee submitted that section 50C/56(2)(vii) allowed 5% variation as acceptable; section 288B prescribes rounding of the amount of tax payable or refundable in the multiple of 10 rupees. However, the CIT(A) rejected assessee's submissions

and held that the section 56(2)(viib) concerning with the issue of shares does not have any provision or scope for rounding off; accordingly, he upheld the addition made by AO and did not grant any relief.

5. Still aggrieved, the assessee has come in next appeal before us.

6. Ld. AR for assessee argued on the same line of reasoning as made by assessee in first appeal before CIT(A), namely (i) the assessee collected Rs. 20/- per share instead of Rs. 19.23 per share for simplicity; (ii) the difference of Rs. 0.77 is very nominal, negligible and immaterial which should not be viewed otherwise, more particularly when the provisions of section 50C and 56(2)(vii) of Income-tax Act also recognize the concept of materiality; (iii) Section 288B of Income-tax Act prescribes for rounding off and similar benefit of rounding off, even if not prescribed in section 56(viib) should be allowed.

7. Ld. AR also referred to an old decision dated 17.11.1992 of Hon'ble Supreme Court in C.B. Gauttam Vs. Union of India and Others wherein, while interpreting the provisions of Chapter XX-C of Income-tax Act, 1961 relating to pre-emptive purchase of property by Income-tax Department, the apex court held that the department should resort to purchase of property only when there is a significant undervaluation to evade tax and the apex court further accepted a difference upto 15% as insignificant. Ld. AR submitted that the spirit of this decision must be applied in present case of assessee.

8. Per contra, Ld. DR for revenue supported the orders of lower-authorities. He submitted that section 56(2)(viib) is very clear and unambiguous which requires a straightforward comparison of issue price (which is Rs. 20/- per share in present case) and fair value (which is Rs. 19.23 per share) and prescribes for taxation of difference which is Rs. 0.77 per share in present case, whether or not such difference is material, immaterial, significant or insignificant. Ld. DR submitted that wherever the

Parliament wanted to prescribe the materiality or rounding off, they have prescribed, for example in section 50C, 56(2)(vii), 288B, etc. He submitted that materiality or rounding off cannot be accepted where the Parliament has not prescribed. He submitted that if materiality or rounding off is allowed on emotional basis, it can lead to anywhere, even a situation where the department would have to suffer huge tax loss in a case where issue size is high. Therefore, the claim of assessee should not be allowed.

9. Ld. DR also relied upon two direct decisions, one of ITAT, Mumbai and other of ITAT, Kolkata. **He submitted that ITAT "SMC" Bench in Royal Accord Realtors (P) Ltd. Vs. DCIT (2022) 195 ITD 287** has rejected assessee's claim of rounding off even in rupee terms. The relevant paragraphs of the decision to which our attention had been drawn, are reproduced:

*"6. Au Contraire, Shri T. Shankar representing the Department vehemently defended the impugned order. **The Id. Departmental Representative submitted that under section 56(2)(viib) of the Act, there is no provision for rounding off of fair market value to the nearest rupee or multiple of ten or hundred.** The provisions of section have to be read as they are and no further interpretation or explanation can be added if on plain reading of the provisions of section, the intent of the legislature is clear. The Id. Departmental Representative further submitted that wherever rounding off is required, the section itself makes provision for that. To support his contention the Id. Departmental Representative placed reliance on the decision of Hon'ble Supreme Court of India in the case of H.H. Laxmibai vs. Commissioner of Wealth Tax, 206 ITR 688. The Id. Departmental Representative further submitted that identical issue was considered by Kolkata Bench of the Tribunal in the case of Shresth Dealers Pvt. Ltd. vs. ITO in ITA No.2517/Kol/2018 for assessment year 2013-14 decided on 07/06/2019, wherein under similar facts the Tribunal upheld the addition made on account of rounding off fair market value of the shares to the nearest multiple of hundred.*

9. Before proceeding further it would be relevant to refer to the provisions of section 56(2)(viib) of the Act. The relevant extract of the same is reproduced herein below:

"56(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",

XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX

(viib): where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such

shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares”

On a plain reading of the section it emanates that addition u/s. 56(2)(viib) is made where the consideration for issue of shares exceeds fair market value of the shares. There is no ambiguity in understanding the provisions on bare perusal. The Id. Representative for the assessee has referred to the provisions of section 288A, 288B and section 115VG(5) of the Act to support the action of assessee in rounding off the fair market value. We do not find favour with the arguments of the Id. Authorized Representative of the assessee. The aforesaid sections specifically provide for rounding off. The provisions of these sections cannot be stretched so far as to take the benefit under other sections of the Act. The provisions of sections 288A, 288B and 115VG(5) of the Act have specific application at the time of final assessment/for specific tax scheme mentioned in the respective sections. They do not lay down general principle of rounding off to nearest rupee or multiple of ten or hundred under other sections of the Act. If the Legislatures indented to provide rounding off, they would have made specific provision in section 56(2)(viib) of the Act as well.

10. The assessee has placed reliance on the decision of ACIT vs. Subodh Menon (supra). After having examined aforesaid decision I find that the issue in the said case was different, hence, the said case is distinguishable on the facts itself. Moreover, the Co-ordinate Bench of the Tribunal while adjudicating the issue therein under section 56(2)(viib) has held that provisions cannot be applied as the transaction under dispute was prior to the amendment. Therefore, the ratio of the aforesaid decision does not support the case of the assessee.

11. On the contrary the decision of Kolkata Bench in the case of **Shresth Dealers Pvt. Ltd. Vs. ITO (supra)** deals with exactly the same issue as in the instant appeal. The Co-ordinate Bench after considering the facts and the provisions of section 56(2)(viib) of the Act held as under:

“4. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the fair market value of the unquoted equity shares sold by the assessee was Rs. 98.61 per share and the same was rounded off by the assessee to Rs. 100/-. **He has contended that even if the valuation so rounded off at Rs. 100/- may not be acceptable, the value as rounded off of to next rupee that is Rs. 99 should be adopted for the purpose of computing the addition to be made u/s 56(2)(viib).** The learned DR, on the other hand, has submitted that there is no such provision either in the Act or even in the relevant Rules to round off the valuation of shares at the next rupee. Even the learned counsel for the assessee has not been able to point out any provision in the Act or in the Rules which permits such rounding off of the valuation to the next rupee. **This makes it clear that the valuation taken by the AO at Rs. 98/- instead of Rs. 98.61 while computing the amount to be added u/s 56(2)(viib) is also not correct.** I, therefore, direct the AO to recompute the addition u/s 56(2)(viib) by taking the of valuation at Rs. 98.61 after necessary verification.”

12. The Hon'ble Apex Court has time and again held that, in a taxing statute one has to look merely at what is clearly said in the section. There is no room for any intendment. There is no concept of equity in tax law. Nothing is to be read in, nothing is to be implied. One has to look at plain language of the provisions of the section. For the purpose of construction of a taxing statute, the context, scheme of the relevant provision as a whole and its purpose is relevant. Where the statute is absolutely clear and unambiguous, recourse to

*beneficial/purposive interpretation cannot be taken. The Rule of literal interpretation would apply. Departure from literal rule while interpreting section is an exception, that too where literal rule would result in absurd construction of provision. **In the instant case the provisions of section 56(2)(viib) of the Act or Rule 11UA nowhere provides for rounding off to nearest rupee or multiple of ten or hundred.** The provisions are plain, clear and unambiguous. Thus, in the light of above observation, the impugned order is upheld and the appeal by assessee is dismissed."*

10. Ld. DR submitted that the aforesaid decision of ITAT, Mumbai "SMC" has, in Para No. 11, followed another decision of **Hon'ble ITAT, Kolkata "SMC" in Shresth Dealers Pvt. Ltd. Vs. ITO, ITA No.2517/Kol/2018** wherein also the rounding off was very much rejected in the matter of section 56(2)(viib).

11. We have considered rival submissions of both sides and carefully perused the order of lower-authorities as also the judicial rulings cited before us. We find that the assessee has not cited any decision of any court where rounding off has been accepted in the matter of section 56(2)(viib). On the other hand, Ld. DR from revenue side has relied upon two decisions of ITAT where it is clearly held that rounding off of even one rupee is not allowed. Ld. DR is also very justified in pleading that if the rounding off is allowed in present case on seeing the low quantum of addition, one day it may lead to a huge tax loss to department in a big sized issue of shares. We also take note that the assessee has himself filed a valuation certificate before AO and accepted fair market value at Rs. 19.23 per share, hence the assessee does not have any dispute, quarrel or grievance qua the fair market value. Therefore, in the circumstances, the AO has rightly arrived at the difference of Rs. 1,51,157/- by finding difference of issue price and fair market value and thereby made addition. We have no reason to upset the

addition made by AO which is in terms of section 56(2)(viib); the same is hereby upheld. The assessee fails in this appeal.

12. Resultantly, this appeal of assessee is dismissed.

Order pronounced in the open court on 25.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25.10.2023.

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*