

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'F' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7056/Del/2019
(Assessment Year : 2010-11)

M/s. Picture Time Digiplex Private Limited B-19, Defence Colony, South Delhi, New Delhi PAN: AAICP2250Q	Vs.	ACIT, Circle-19(2), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	None
Revenue by	Shri Vivek Vardhan, Sr. DR

Date of hearing:	17.10.2023
Date of Pronouncement:	31 .10.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against order dated 26.06.2019 for assessment year 2016-17 passed by Commissioner of Income Tax (Appeals)-7, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in appeal against assessment order dated

24.12.2018 u/s 143(3) of the Income Tax Act, 1961 passed by ACIT, Circle 19(2), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. As the case was called for hearing, non-appeared for the assessee while notices have been issued repeatedly and report is received on the speed post acknowledgement that "assessee has left the address". No further address is available. As even the e-mail address given appears to be invalid no further opportunity is justifiable. As written submissions of assessee are on record so arguments of Ld. DR were heard who supported the findings of Ld. Tax Authorities below.

3. The facts in brief are that the case of assessee was selected for scrutiny. It is the first year of incorporation of assessee company. Ld. AO was not satisfied with the allotment of 45785 shares issued to residents and non-residents. The AO, thus questioning them u/s 56(2)(viib) of the Act, discredited the valuation of DCF method adopted by the assessee. The Assessee had relied a CBDT notification no. 45/16 dated 14.06.2016, giving exemption to start ups, which was not accepted by the AO on the basis that notification is later dated whereas the assessee's case pertains to financial year 2015-16. The AO also questioned the claim of assessee that it was startup company. Consequently, the AO adopted the book value method and whole of the premium amount on 1780 shares amounting to Rs. 39,82,198/- was added u/s 56(2)(viib) of the Act which was sustained by the Ld. CIT(A).

4. Assessee has challenged same before this Tribunal primarily on the basis of the judgment of Hon'ble Tribunal of Delhi in the case of ***Cinestaan Entertainment P. Ltd. vs. ITO, Ward-6(2), New Delhi ITA No. 8113/Del/2018*** to submit that sub clause (ii) of explanation to section

56(2)(viib) is not applicable to the assessee's case and assessee was not required to satisfy the AO about the valuation done. In accordance with sub clause (i) of explanation, the assessee had an option to carry out a valuation and determine the FMV only on the discounted cash flow method (DCF), which was appropriately followed by the assessee.

4.1 Further, without prejudice to the challenge on the merits assessee has also raised one ground that the CBDT Circular dated 24.05.2019 is applicable upon the assessee and assessee is eligible for exemption from applicability of Section 56(2)(viib) of the Act.

5. As we take into consideration para 4.1 of the order of Ld. CIT(A) it comes up that as with regard to notifications issued by CBDT of exemption given from applicability of provisions of Section 56(2)(viib) of the Act, assessee had claimed that subsequent to the assessment order dated 24.12.2018 intimation is received on 24.05.2019 from CBDT exempting appellant company from applicability of provisions of Section 56(2)(viib) of the Act. However, Ld. CIT(A) has not shown any indulgence on this aspect and considering certain observations of the Chartered Accountant report of the valuation of shares sustained the order of the AO.

6. The bench is of considered view that Ld. CIT(A) has fallen in error in not taking into consideration the specific submissions of the assessee claiming exemption from the applicability of section 56(2)(viib) of the Act by virtue of exemption granted by Board as a start up and sustaining the additions attributing failure of assessee to produce evidence to substantiate the valuation report. In fact the order of ld. CIT(A) shows that assessee having relied on exemption clause and making submissions exclusively on

that aspect had not submitted anything on merit but ld. CIT(A) failed to give a finding upon the same.

7. Thus, we are inclined **to allow the appeal of assessee for statistical purposes** and restore the issue with regard to determination of plea of assessee of being startup, exempted from applicability of Section 56(2)(viib) of the Act. Needless to say an opportunity of hearing may be given to assessee to press the arguments and thereupon afresh order be passed on this issue.

Order pronounced in the open court on 31st October, 2023.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-31.10.2023

Binita, SR.P.S

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**