

**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

(through web-based video conferencing platform)

ITA No. 261/Rjt/2017

निर्धारणवर्ष/Assessment Year: 2013-14

M/s. Patel Copper Pvt. Ltd., A-76, Aashopalav Bunglows, Nr. Satya Sai Hospital, Rajkot-360005 PAN : AAGCP 6173 J	Vs.	Income-tax Officer, Ward 2(1)(4), Rajkot
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assesseeby :		Shri Rajendra Singhal, AR
Revenue by :		Shri Ashish Kumar Pandey, Sr DR

सुनवाई की तारीख/Date of Hearing : 18.09.2023

घोषणा की तारीख /Date of Pronouncement: 07.12.2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-tax (Appeals)-2, Rajkot [hereinafter referred to as "Id.CIT(A)"] dated 31.05.2017 passed under section u/s 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year (AY) 2013-14.

2. The grounds raised by the assessee are as under:

"1. The assessment order under Section 143(3) of the Act is bad in law as well as facts.

2. The order of the learned Commissioner of Income Tax (Appeals) is bad in law as well as facts.

3. The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law in confirming the addition of Rs.1,00,50,000/- made by the learned Assessing Officer under section 56(2)(viib) of the I.T. Act, 1961.

4. *The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law in enhancing the addition by Rs. 33,50,000/- thereby making total addition of Rs.1,34,00,000/- under section 56(2)(viib) of the I.T. Act, 1961.*

5. *The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law in confirming the charging of interest u/s. 234A, 234B, and 234C of the Act, when addition itself not sustainable."*

3. At the outset, it was pointed out that there is only one issue raised in the present appeal relating to addition made to the income of the assessee in terms of provisions of Section 56(2)(viib) of the Act. The addition being made on account of the Assessing Officer noting the fact that the assessee had issued shares at a value far exceeding its Fair Market Value and accordingly the difference in the fair market value of the shares, as estimated by the Assessing Officer and the premium at which the shares were issued to the assessee, was added to the income of the assessee - amounting in all to Rs.1,00,50,000/-.

4. However, this addition was enhanced by the Id. CIT(A) in appeal before him treating the difference in FMV of shares and their consideration as a whole, including face value of shares and premium, as liable to tax u/s 56(2)(viib) of the Act, amounting to Rs.1,34,00,000/- and hence the assessee is in appeal before us.

5. We have heard both the parties. We have also gone through the orders of the authorities below and also considered various documents and case-laws referred to by both the parties.

The facts relating to the issue are that the assessee had issued, during the impugned year, 3,35,000 shares of face value Rs.10/- each for a premium of Rs.30/- per share. The assessee justified the premium by furnishing a computation using Fair Market Value method, which is reproduced at paragraph No.4 of the AO's order, as under:-

Particulars	Amount Rs.
<i>Market value of land (As per distressed value)</i>	87,62,000
<i>Other Fixed Assets</i>	47,47,334
<i>Current Assets</i>	4,64,88,023
Total Assets :	5,99,97,357
<i>Less: Unsecured loans</i>	61,39,000
<i>Current liabilities</i>	4,60,29,728
Net Worth of Shareholders	(A) 78,28,629
<i>Existing No. of Equity shares of face value of Rs.10/- each</i>	(B) 10000
Fair Market Value per Share	(A/B) 782.86

6. The assessee, therefore, contended that the Fair Market Value per share was Rs.782.86 while it had issued shares for only Rs.40/- (Rs.10/- face value + Rs.30 premium), which consideration therefore stood justified as per him. The Assessing Officer noted that the assessee's Fair Market Valuation at a high value of Rs.782.86/- per share was solely attributable to the market value of land which it had taken at Rs.87,62,000/-; the cost of acquisition of which was only Rs.8,74,460/-. He noted that this land had been purchased by the assessee during the year itself and, therefore, there was no justification for taking its market value at 10 times higher than its purchase value. Accordingly, he rejected assessee's valuation and, computing fair market value taking the value of land as recorded in the books of accounts at Rs.8,74,460/-, the Assessing Officer arrived at a value of Rs. (-) 5.89 per share; working of the same as reproduced at paragraph No. 5 of the assessment order is as under:-

Particulars	Amount Rs.
<i>Market value of land (As per Audit Report)</i>	8,74,460
<i>Other Fixed Assets</i>	47,47,334
<i>Current Assets</i>	4,64,88,023
Total Assets :	5,21,09,817
<i>Less: Unsecured loans</i>	61,39,000
<i>Current liabilities</i>	4,60,29,728
Net Worth of Shareholders	(A) (-)58,911
<i>Existing No. of Equity shares of face value of Rs.10/- each</i>	(B) 10000
Fair Market Value per Share	(A/B) (-) 5.89

7. Noting, therefore, that the assessee had issued shares for Rs.40/- per share, he treated the consideration received in excess of premium of Rs.1,00,50,000/- for the issue of 3,35,000 shares issued as taxable under Section 56(2)(viib) of the Act. The Id.CIT(A) agreed with the dismissal of the Fair Market Valuation of the shares by the Assessing Officer noting certain pertinent fact that the land, which had been valued at 10 times more than its purchase price for the purpose of deriving Fair Market Value of the shares, was purchased during the current year itself. **He also noted the fact that the land was purchased for Rs.8,74,460/- and its jantri value was Rs.7,35,000/- @ Rs.642/- per square meter, while the valuer had valued it at Rs.87,62,000/- estimating the value of land at Rs.8,000/- per sq. yard without giving any basis of such valuation.** On this basis, he held the valuation report to be a self-serving valuation to which no credence could be given. His finding in this regard at paragraph No.6.2 of his order are as under:-

“6.2...

Having considered the facts and circumstances of the case and rival contentions, I find that the only substantial issue for decision in this ground is the computation of F.M.V. of the shares issued as per Rule 11UA and consequent income u/s 56(2)(viib). The A.O. has computed the F.M.V. of each share at Rs. (-) 5.89 as per Rule 11UA and has accordingly added an amount of Rs.1,00,50,000/- received by the assessee as share price and premium invoking provision of Section 56(2)(viib). In such computation the AO has taken the value of land (one of the assets) at Rs. 8,74,460/-. The assessee on the other hand has contended, that the market value of land was Rs.87,62,000/- as certified by the approved valuer.

A very peculiar and noteworthy relevant fact in this case is that the impugned lands have been purchased and introduced as asset in the company on 21/12/2012 during the current year itself at a value of Rs.8,74,460/-and the market value of the same lands during the same year is stated to be Rs.87,62,000/-. Further, the said valuation report states the jantri value of the property at Rs.7,35,000/- @ Rs.642/- per square metre whereas the valuer has estimated the value of the land at Rs.8,000/- per sq. yard without giving any basis of such valuation. Thus the land which has been acquired during the year itself at Rs.8,74,460/- and whose jantri value is only Rs.7,35,000/- is

claimed to be valued at Rs.87,62,000/- by the assessee for the purpose of F.M.V. of shares. Such self serving valuation cannot be given any credence. This is a clear case of misrepresentation of the facts and the assessee deserves no relief. The action of the A.O. as regards computation of F.M.V. calls for no interference.

.....
....."

8. Going forward, the Id. CIT(A) noted that as per the provisions of Section 56(2)(viib) of the Act, the difference in the consideration received on the issue of shares and the fair market value of shares was to be treated as income of the assessee, and since the fair market value was determined to be negative, the entire consideration received by the assessee on the issue of shares including the face value of shares and the premium thereon was to be treated as income of the assessee which amounting to Rs.1,34,00,000/-. Accordingly, he enhanced the addition made to the income of the assessee to this extent. Before doing so, he confronted the same to the assessee, dealt with objection to the same, and thereafter proceeded with the enhancement. His findings in this regard are at page Nos. 16 to 19 of the order as under:-

"

Having rejected the contentions of assessee as regards the quantum of FMV of shares issued and thus having affirmed in principle the action of AO in making the impugned addition u/s 56(2)(viib), I find that the quantification of deemed income needs some correction. While the AO has made addition of only the amount of premium as deemed income, in my considered opinion, it is the aggregate consideration of shares issued which is the deemed income as per provisions of this section as the FMV being negative is nil. Accordingly vide order sheet entry dated 30/5/2017 the AR of appellant was made aware of the provisions of section 56(2)(viib) and was asked to show cause why an enhancement be not made. On behalf of the appellant the AR of assessee vide his written submission dated 31/5/2017 submitted that:

"With reference to captioned subject we would like to state that vide above referred appeal and further submission made at personal hearing we have requested your authority to kindly delete the addition of Rs. 1,00,50,000/-made by the learned Assessing Officer under section

56(2)(viib) of the I. T. Act, 1961 since the same is not in accordance with the provisions of the law in this regard.

However, vide order sheet entry dated 30-05-2017 your honour authority has required us to show cause as to why addition should not be enhanced to Rs.1,34,00,000/- being aggregate consideration for issue of shares as against addition of Rs. 1,00,50,000/- made by the Assessing Officer, being share premium.

In this regard, without prejudice to our contention that no addition can be under section 56(2) (viib) of the I.T. Act, 1961, under any circumstances addition cannot exceed total amount of share premium. In this regard, we would like to draw your kind attention to provision section 56(2)(viib) of the I.T. Act, 1961. Relevant portion of the said section is narrated below.

"Where a company, not being a company in which 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."

From the wording of the above section it is clear this section talks about "consideration" which exceeds the face value of shares and hence the word "aggregate consideration" should be read and interpreted in line and in conjunction with the word "consideration". Further the whole section to be read in totality. Therefore, assuming but not admitting addition is warranted, no addition can be made in excess of Consideration for issue of shares that exceeds the face value of such shares i.e. Share Premium.

Further, this section is inserted by Finance Act, 2012. Explanatory Memorandum to Finance Bill 2012 explains this section as under.

"Share premium in excess of the fair market value to be treated as income Section 56(2) provides for the specific category of incomes that shall be chargeable to income-tax under the head "Income from other sources"

It is proposed to insert a new clause in section 56(2). The new clause will apply 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. In such a

case if the consideration received for issue of shares exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income- tax under the head "Income from other sources". However, this provision shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.

Further, it is also proposed to provide the company an opportunity to substantiate its claim regarding the fair market value.

Accordingly, it is proposed that the fair market value of the shares shall be the higher of the value-

- (i) as may be determined in accordance with the method as may be prescribed; or*
- (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets, including intangible assets, being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.*

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."

Hence, it is crystal clear that Memorandum Explaining the provisions of the Finance Bill also talks about taxing Share Premium which is in excess of Fair Market Value. Therefore, under no circumstances addition can be made in excess of amount of Share Premium.

We request your authority to kindly consider the above submission and oblige."

I have considered the contentions of assessee but do not find them tenable. The language of statute is very clear and unambiguous. It talks of aggregate consideration and not the consideration above the face value which is to be compared with FMV. If the legislature so intended it could very well have laid down that FMV is to be compared with the premium and not the aggregate consideration. The statute and the memorandum have been interpreted incorrectly by the assessee.

In the case of Orissa State Ware housing Corpn. Vs CIT (SC) 237 ITR 589, the hon'ble Supreme Court has laid down that:

A fiscal statute is to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The Court is to ascribe natural and ordinary meaning to the words used by the legislature and the court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions.

In view of the clear and unambiguous provisions of statute the addition of deemed income is enhanced to Rs. 1,34,00,000 which is the aggregate consideration. The ground of appeal 3 is rejected with enhancement."

9. In the above order, briefly put, he has stated that the plain reading of the Section 56(2)(vii) (b) of the Act states so and therefore, there is no scope for any other interpretation of the Section to the effect as pleaded by the assessee that only the premium component is to be considered for the purpose of Section 56(2)(viib) of the Act.

10. Before us, the Id. Counsel for the assessee has raised two fold contentions. The first is with respect to the invocation of Section 56(2)(viib) of the Act to the impugned transactions rejecting the fair market value computed by the assessee and his contention is that the valuation report submitted by the assessee could not have been rejected without giving any reasonable cause.

11. We do not find any merit in this contention of the Id. Counsel for the assessee. As noted above by us and as is evident from the orders of the authorities below, the primary objection to the valuation report submitted by the assessee was the unusually enhanced value given to the asset of the assessee i.e. the land, which was noted to be valued at 10 times more than its purchase price. The assessee submitted a valuation report of the valuer for

the valuation of piece of land at Rs.87,62,200/- as against its purchase price of Rs.8,74,460/-, but we have noted that the Id. CIT(A) found that while the asset was purchased in the same year at a fair lesser price and its jantri value was also fair less, the valuer had given no basis at all for valuing it at 10 times its actual cost at which it was acquired. The Id. Counsel for the assessee has not been able to controvert this finding of the Id. CIT(A); therefore, the contention of the assessee that there was no basis given for rejecting the valuation report is found to be incorrect on facts and is accordingly rejected.

12. No other arguments having been made by the assessee opposing or against the invocation of Section 56(2)(viib) of the Act in the present case, Ground No. 3 raised by the assessee challenging the invocation of Section 56(2)(viib) of the Act in the present case is, therefore, dismissed.

13. The next argument, which was raised by the assessee in Ground No.4, was with respect to the enhancement made by the Id. CIT(A) by making addition even of the face value of the shares to the tune of Rs.33,50,000/-. For the sake of clarity, we are reiterating the facts of the case that 335000 shares were issued by the assessee during the year of face value Rs.10/- at a premium of Rs.30/- per share. The consideration received on account of face value of the shares was Rs.33,50,000/- and that received on account of premium charged was Rs.1,00,50,000/-. The Assessing Officer, after invoking Section 56(2)(viib) of the Act to the impugned transaction, had made addition of only the share premium received by the assessee of Rs.1,00,50,000/- while the Id. CIT(A) added even the face value of shares amounting to Rs.33,50,000/- and it is this addition of the face value of shares which the assessee has challenged before us. The contention of the assessee being that as per the provisions of Section 56(2)(viib) of the Act, the only

component of share premium could be considered. The Id. CIT(A), however, has interpreted the provision otherwise stating that provisions of law in this section is very clear and it the entire consideration received which falls within the scope of consideration of Section 56(2)(viib) of the Act. For adjudicating the issue, it is relevant to reproduce Section 56(2)(viib) of the Act which reads as under:-

56. (1) 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 not 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 head "Income from other sources", namely : –

.....

.....

[(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:]

14. The bare perusal of the above reveals that the conditions specified in the said section which are necessary for invocation are that...

- (i) the assessee is a company which is not a company in which the public are substantially interested;
- (ii) it receives, in any previous year, consideration for issue of shares which exceeds the face value of the shares;
- (iii) the aggregate consideration received for such shares as exceeds the fair market value of shares is then subjected to tax.

15. In the present case, the condition No.1 is not in dispute and is also not an issue in consideration before us. It is only the condition No.2 & 3 which has to be considered by us for deciding the issue raised by the assessee that

scope of addition to be made under Section 56(2)(viib) of the Act is to be restricted only to the component of premium received by the assessee on issue of shares.

While the section specifies that it would be invoked only when the consideration received exceeds the face value of shares, i.e. the assessee receives premium on issue of shares, the addition is to be made of the difference between fair market value of shares and the aggregate consideration received. Therefore, a plain reading of the section would reveal that the premium on issue of shares is relevant only for the purpose of invocation of section; while for the purpose of making addition to the income of the assessee, the difference between the consideration and the fair market value is to be taken. We are, therefore, in complete agreement with the Id. CIT(A) that the entire amount of consideration received falls within the scope of consideration of Section 56(2)(viib) of the Act. The contention of the assessee is accordingly rejected. Ground No.4 of the appeal is rejected.

16. Ground Nos.1, 2 & 5 are general in nature and do not require any specific adjudication.

17. In effect, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 07/12/2023 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 07/12/2023

**sf/ab