

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

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

ITA No.6860/Del/2019
Assessment Year: 2016-17

Brand Bazooka Advertising Pvt. Ltd., Vs ITO,
Flat No.V-33/7, 4th Floor, Ward-1(3),
DLF City-3, Gurgaon, Gurgaon.

PAN: AAFCB6318L

(Appellant)

(Respondent)

Assessee by : Shri D.C. Garg, CA
Revenue by : Shri R.K. Meena, Sr. DR
Date of Hearing : 06.12.2023
Date of Pronouncement : 14.12.2023

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Assessee against the order dated 20.06.2019 of the Commissioner of Income Tax (Appeals)-1, Gurgaon, (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.530/18-19 arising out of the appeal before it against the order dated 13.12.2018 passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred

as ‘the Act’) by the ITO, Ward 1(3), Gurgaon (hereinafter referred to as the Ld. AO).

2. Brief facts are that return declaring loss of Rs.26,32,741/- was filed on 16/10/2016 by the assessee. During the course of assessment proceedings, the Assessing Officer noted that the appellant had issued 30000 shares of face value of Rs.10/- at a premium of Rs. 140/- per share. The details of these shares issued by the appellant are tabulated in the assessment order as under:-

<i>S.No.</i>	<i>Name of the shareholder</i>	<i>Residential status</i>	<i>No. of shares issued</i>	<i>Face value per share (Rs.)</i>	<i>Share premium per share (Rs.)</i>	<i>Total share premium (Rs.)</i>
1.	Vivek Aggarwal	Resident	28,000	10	140	39,20,000
2.	Anand Jain	Resident	1,000	10	140	1,40,000
3.	Kamal Aggarwal	Resident	1,000	10	140	1,40,000
	<i>Total</i>		30,000			42,00,000

3. The appellant submitted that the shares were issued at a premium on the basis of valuation report of the valuer. The Assessing Officer examined the various issues pertaining to valuation of report and pointed out number of discrepancies and deficiencies. The Assessing Officer held that the valuation done by the valuer was not correct and accordingly rejected the DCF method of valuation adopted by the appellant. The Assessing Officer valued the shares by adopting the NAV method as per which the valuation of each share worked out to Rs. 29.05/-. The difference of Rs.36,28,500/- received as share premium by

the appellant was added to the total income of the appellant u/s 56(2)(viib) of the Act.

4. The Assessing Officer further noted that the appellant had shown gross receipts of Rs.63,84,654/- whereas as per the Form-26AS, the total receipts worked out to Rs.70,62,863/-. The appellant could not satisfactorily explain the difference of Rs.6,78,209/-. The Assessing Officer accordingly added this amount to the total income of the appellant.

5. Notice for hearing of appeal by Ld. CIT(A) was issued upon the assessee on 20/05/2019 and thereafter notices were again issued and the case was fixed for hearing on 30/05/2019. On 30/05/2019 the case was fixed for hearing on 12/06/2019. On 12/06/2019 none attended. Further, another notice was issued on 12/06/2019 through email and the case was fixed for hearing on 19/06/2019. None attended. In the absence of any reply from the appellant the Ld.CIT(A) proceeded ex-parte.

6. The assessee is in appeal before this Tribunal and has raised various grounds of which ground No.4 is with regard to the alleged error committed by the ld.CIT(A) in not giving opportunity of hearing as notices were not served and an *ex parte* order was passed. The appeal of assessee here in Tribunal was dismissed *ex parte* which stands recalled by order dated 06.10.2023 in MA No.26/Del/2023.

7. On hearing the Authorised Representatives of both the parties, it comes up from the impugned order of the Id. FAA that it mentions of the notices issued and that they were unserved. There is no specific report of service. Further, notice was also said to be sent through e-mail. However, there are no particulars of the same on record. The Id. AR has pointed out that there was a change of address which may have led to non-service of the notices of the Id.CIT(A). In this regard, we observe that the Id.CIT(A) has mentioned in the first appellate order the address of the assessee as 206, Golf Course Road, New Delhi. The affidavit filed along with the Miscellaneous Application seeking recall of the order passed earlier mentions that this address was the registered office and the same was 206, Golf Course Road, Gurgaon and not Delhi. Further, it was mentioned that as per business requirements, office of the company got changed to Plot No.880, Back Ground Floor, Udyog Vihar Phase 5, Gurgaon with effect from 18th of January, 2019 which got again changed on 7th of October, 2020 to Property No.1, Sector 23, Gurgaon, Haryana – 122017. Due to Covid-19 situation, the company was once again forced to change its office to Flat No.V-33/7, 4th Floor, DLF City-3, Gurgaon, w.e.f. 10th of January, 2022.

8. In the light of the aforesaid, we are of the view that the ends of justice would be met by giving the assessee an opportunity to contest on merits and for that the issue on merits is restored to the file of Id.CIT(A). The Id.CIT(A) shall

give adequate opportunity of hearing to the assessee by serving notices on the aforesaid address at Flat No.V-33/7, 4th Floor, DLF City-3, Gurgaon,.

9. In the result, the appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 14.12.2023.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 14th December, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi