

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.2376/Del/2023
(Assessment Year :2016-17)**

Seed Edu Corp (India) Private Ltd., vs. DCIT, Circle 22 (2),
8-2-269/S/52, Plot No.52, Delhi.
Sagar Society, Road No.2, Banjara Hills,
Hyderabad – 500 034 (Telangana)

(PAN : AATCS1312B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Maneesh Upneja, CA
Shri Baldev Raj, Advocate
REVENUE BY : Shri Anuj Garg, Sr. DR

Date of Hearing : 14.12.2023
Date of Order : 19.12.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated
21.06.2023 for the Assessment Year 2016-17.

2. Grounds of appeal taken by the assessee are as under :-

“1. The assessment order dated 19th, December, 2018, passed by Ld
DCIT, circle 23(2), New Delhi u/s 144 is without proper jurisdiction and
determination of Total Income of Rs.63,47,470 is bad in law.

Further, Ld CIT(AL National Faceless Appeal Centre upholding the
exparte order of Ld A.O- U/s 250 is in gross violation of principles of

Natural Justice and Ld CIT(A) Jacks jurisdiction to pass the appeal order dated 21.06.2023.

2. Ld A.O and Ld CIT(A) erred in passing the orders despite not having the jurisdiction over the assessee.

3. Ld A.O failed to appreciate that the assessee shifted its registered office after following the due procedure as stipulated in the Companies Act, 2013 from New Delhi to Hyderabad.

4. Ld A.O failed to appreciate that the Registrar of Companies, Hyderabad permitted the assessee to shift its registered office with effect from 8th September, 2015. Thus, for A.Y 2016-17, the Ld DCIT, circle 23(2), Delhi, had no Jurisdiction over the assessee as by the due date of filing of return, the Registered office of the assessee was shifted from New Delhi to Hyderabad.

5. Ld CIT(A) failed to appreciate the communication of shifting of the Registered office by the assessee to Hyderabad on 6th June, 2019 despite this fact, Ld CIT(A) passed the order U/s 250 on 21st June, 2023.

6. Ld A.O and Ld CIT(A) failed to appreciate that the PAN of the assessee was migrated to Ld DCOT, Circle - 3(1), Hyderabad.

7. Ld A.O failed to appreciate that a letter was addressed on 20.12.2018 to the ITO, circle 23(2), C.R. Building, New Delhi informing him that office of the assessee was shifted to Hyderabad on 26.11.2015. Despite this information with the department the assessment order was passed on 31st December 2018.

8. Ld A.O ought not have passed on exparte order U/s 144, as the assessee filed all the details on 17th, December, 2018 and the findings in the assessment order are not factually correct.

9. Ld A.O failed to appreciate that the provisions of section 56(2)(viib) are not applicable to assessee as the equity shares were issued to a non-resident. CIT(A) erred in ignoring this information on record of the A.O.

10. Ld A.O erred in invoking the Rule 11UA(2)(a) where as the assessee valued the equity shares by following the rule 11UA(2)(b) and obtained a valuation report dated 27.02.2015 from a Chartered Accountant.

11. Ld A.O failed to appreciate that the selection of method of valuation vests with the assessee and the A.O cannot change the method. The Action of the A.O is not in accordance with the Rule 11UA(2)(b).

12. Ld A.O failed to appreciate that equity shares were valued by following the Foreign exchange management rules.

13. The entire addition of Rs.2,19,04,362 by the Ld A.O and upholding of such action by Ld CIT(A) is not in accordance with the provisions of section 56(2)(viib) of the Act. Both authorities have violated the principles of natural justice and lacked jurisdiction.

14. Ld CIT(A) failed to appreciate the letter filed before the A.O on 6th June, 2019.”

3. Before us, ld. Counsel of the assessee only argued on the merits of the case. He submitted that in this case, both the orders of the AO as well as ld. CIT (A) are ex-parte.

4. In this case, AO examined the issue of increased share premium reserve. He noted that assessee has not submitted any supporting evidence. So, he proceeded to make his own computation on the basis of net asset value. AO held as under :-

“From the above, Net Annual value of the Security Premium Reserve is Rs.4,00,84,270/-. Continued non-compliance by the assessee reflects that the assessee is not interested to pursue the assessment proceedings and has nothing further to counter for finalization of assessment. Therefore, in absence of requisite details required to justify the large premium under section 56(2)(viib) of the Act received during the year remained unverified. Therefore, the Security Premium Reserve received by the assessee company during the period under consideration is treated as assessee's own income from undisclosed sources introduced in the shape of Security Premium Reserve and therefore Security Premium Reserve of Rs.2,19,04,352/- is added to the income of the assessee company u/s 56(2)(viib) of the I.T. Act 1961.”

5. Against the above order, assessee is in appeal before the ld. CIT(A). Ld. CIT (A) dismissed the appeal for non-prosecution.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee submitted that the issue of share premium has been received from the NRI and the same is not liable to be added under section 56(2)(viib) of the Income-tax Act, 1961 (for short 'the Act'). For this purpose, he quoted the order of ITAT in the case of APCA Power Pvt. Ltd. in ITA No.8184/Del/2019 for AY 2015-16 dated 18.07.2023. In the said order, it was held that provisions of section 56(2)(viib) of the Act is not applicable to the share premium received from the non-resident person.

8. In the present case, we find that the relevant details were not available with the AO as well as ld. CIT (A). Hence, we remit the issue to the file of AO. AO shall decide the issue afresh as per law. Needless to add, assessee should be provided with an opportunity of being heard.

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

Order pronounced in the open court on this 19th day of December, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 19th day of December, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.