

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT  
AND  
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.1998/Del/2022  
Assessment Year: 2016-17

<b>Ajay Kumar Sharma</b> <b>84, Mandakini Enclave,</b> <b>Alaknanda, Delhi-110019</b> <b>PAN No.AOAPS6261D</b>	<b>Vs.</b>	<b>ITO</b> <b>Ward- 19 (2)</b> <b>New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. VP Gupta, Advocate Sh. Ajay Kumar Sharma, Assessee in person
Respondent by	Sh. Kanv Bali, SR DR

Date of hearing:	20/12/2023
Date of Pronouncement:	22/12/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dated 30.06.2022 by NFAC, Delhi pertaining to A.Y. 2016-17.

2. The grievance of the assessee read as under :-

*“1. The Assessment Order was passed without asking the Valuation Report from either Merchant Bankers or Accountant as specifically mentioned in Rule 11UA(1)(c).*

2. *That, the Appellate order was passed by the Hon'ble CIT (Appeals) without knowing the fact that the Appellant had resigned from the post of director of the company with effect from 10.04.2015 and rejected the application submitted under Rule 46A of Income Tax Rules, as described in Point No.11 of the Appellate Order."*

3. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of rule 18 (6) of the ITAT Rules.

4. Briefly stated the facts of the case are that the assessee filed his return electronically on 28.02.2017 declaring income of Rs.1268070/- . The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

5. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has sold 12800 shares of M/s. Procon India Private Limited for an amount of Rs.3,00,03,200/-.

6. To verify the FMV of the shares notice u/s. 133(6) of the Act was issued to the company and its directors requiring them to furnish the method of valuation for sale of the impugned shares. On perusal of the details the AO was of the opinion that an amount of Rs.15666432/- has been received by the assessee in excess of the FMV of shares of M/s. Procon India Private Limited

which the AO treated as income from other sources and re-computed the long term capital gains.

7. Aggrieved by the addition of Rs.15666432/- assessee agitated the matter before the CIT(A). Before the CIT(A) it was contended that the AO has passed the assessment order in haste and no proper time was given and, therefore, valuation report regarding valuation of shares could not be obtained from a Merchant Banker. The assessee provided the report to the CIT(A). However, the report was not accepted by the CIT(A) who was of the opinion that the assessee had sufficient time during the course of the assessment proceedings itself and he could have obtained the valuation report and submitted to the AO. The CIT(A) also observed that the assessee did not sought any permission under Rule 46 A to furnish any additional evidences. The CIT(A) confirmed the addition.

8. Before us the Counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the Counsel that pursuant to the agreement dated 05.02.2015 with Sanjay Laturkar jointly with Mrs. Rashmi Laturkar it was agreed that the assessee would sell the shares for a consideration of Rs. 3 crores. The Counsel stated that the assessee sold the shares at this consideration and filed the return of income. The Counsel pointed out that the said value was determined by following the DCF method though the report could not be submitted because it

was never asked by the AO. The Counsel vehemently stated that the FMV of the shares is duly supported by the valuation report by a Merchant Banker.

9. Per contra the DR strongly supported the findings of the lower authorities.

10. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has sold 12800 shares as per the agreement mentioned here in above though the Counsel has stated that the FMV is determined as per DCF method but failed to substantiate his claim. The valuation report by a Merchant Banker heavily relied upon by the Counsel has never been examined by any of the authority below. In the interest of justice and fair play we deem it fit to restore the quarrel to the files of the AO. The assessee is directed to once again justify the FMV of the shares sold for Rs. 3 crores by a valuation report and the AO is directed to examine the same and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the open court on 22.12.2023.**

**Sd/-  
(SAKTIJIT DEY)  
VICE PRESIDENT**

\*NEHA\*

Date:- .12.2023

Copy forwarded to:

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

**Sd/-  
(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI