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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA No:- 1921/Del/2021
(Assessment Year: 2015-16)

DCIT, Circle 16(1), New Delhi.	Vs.	Sh.Kul Prakash Chandhok, H-30, Sainik Farms, New Delhi-110062.
PAN No: AAEPC7860Q		
APPELLANT		**RESPONDENT**

Assessee by : Shri Pradeep Dinodia, CA &
Shri R K Kapoor, Adv.
Revenue by : Shri Waseem Arshad, CIT(DR)

Date of Hearing **:** 04.01.2024
Date of Pronouncement **:** 08.01.2024

ORDER

PER N.K. BILLAIYA, AM

This appeal by the Revenue is preferred against the order of the CIT(A)-37, New Delhi, dated 22.09.2020 pertaining to A.Y. 2015-16.

2. The short grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 36,10,63,656/- made u/s 56(2)(vii)(c) of the Act for bonus shares received.

3. Briefly stated the facts of the case are that the assessee filed his return of income electronically on 30.09.2015 declaring total income of Rs. 8,83,90,720/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. The gross total income of the assessee comprised of following income:

"The assessee has shown the following income which is reproduced below:

Income from salary	*:*	*Rs. 13,67,742/-*
Income from House property	*:*	*Rs. 20,72,106/-*
Income from Business	*:*	*Rs. 1,38,05,530/-*
Income from Capital gain	*:*	*Rs. 5,08,88,378/-*
Income from other sources	*:*	*Rs. 2,02,66,967/-*

4. The assessee has earned long term capital gain on sale of shares of M/s Micro Precision Products Pvt. Ltd., amounting to Rs. 46,73,21,001/- and has shown long term capital loss on sale of mutual funds at Rs. 2,33,024/- and also short term capital loss on sale of shares of M/s Tech Mahindra Ltd. at Rs. 12,98,89,810/- and short term capital loss on sale of JM Arbitrage Advantage Fund bonus option of Rs. 20,57,12,795/-.

5. On scrutinizing the return, the AO noticed that the assessee has purchased and sold shares and units of M/s Tech Mahindra Ltd. and JM Arbitrage Fund bonus option.

6. On examining the details, the AO was of the opinion that, though, the assessee has earned long term capital gain of Rs. 46,73,21,001/- but has set off the capital gain by sale of shares and mutual fund, thereby claiming losses of Rs. 12,98,89,810/- and Rs. 20,57,12,795/-. The AO found that the assessee has sold only the original shares and not the bonus shares received by him. Invoking the provision of section 56(2)(vii)(c) of the Act . The AO computed the addition by taking FMV as under:

	Date	***Record date***	***Qty.***	***Rate***	***Value (Rs.)***	***Market Price per Share taken as FMV***	***Total***
Bonus	*-*	*20.03.015*	*165500*	*-*	*-*	*658.93 (VWAP as on 23.03.2015 as per NSE security-wise Archives)*	*10,90,52,915*
JM Arbitrage Advantage Fund-Bonus Options							
Bonus		*27.11.2014*	*1,02,37,396.026*	*-*	*-*	*13.39 (Sale price as on 28.11.2014) as per historical NAV)*	*13,70,78,732*
Bonus		*18.12.2014*	*32,04,304,956*	*-*	*-*	*10.248 (sale price as on 19.12.2014 as per historical NAV)*	*3,28,37,717*
Bonus		*18.12.2014*	*80,10,762,391*	*-*	*-*	*10.248 (Sale price as on 19.12.2014 as per historical NAV)*	*8,20,94,292*
Total							*36,10,63,656*

6.1 The addition was challenged before the CIT(A). It was vehemently contended that the provision of section 56(2)(vii)(c) of the Act not applied

on bonus shares. The strong reliance was placed on various judicial decisions. After considering the facts and the submissions, the CIT(A) was convinced with the contention of the assessee and deleted the impugned addition. The relevant finding of the CIT(A) read as under:

> *9.11 Hence, the addition made by the AO is not sustainable in view of the judicial opinion as discussed above. This decision has covered and refuted all the arguments taken by AO in its assessment order. The Hon'ble TAT Delhi has also followed its own decision in the case of Meenu Satija vs Pr.CIT, Gurgaon dated 27.01.2017. The Hon'ble ITAT has also discussed those decisions referred to by AO. There is no scope of not following the Hon'ble jurisdictional ITAT's decision.*
>
> *9.12 Further, the argument of the appellant has considerable merit and is an accepted fact that the market price of any share after the bonus issue gets reduced almost in proportion to the bonus issue. In fact, bonus shares are in the nature of Capitalization Shares. In case where 1:1 bonus is declared by a company; the market price would also become almost half. Therefore, on the sale of original shares held by an assessee, the assessee would undisputedly incur a loss. However, such loss is likely to be compensated on sale of bonus shares as and when it happens because cost of acquisition of bonus shares is nil as per the provisions of section 55(2)(aa)(i) of the Income Tax Act.*
>
> *9.13 The AO also erred in concluding that the provisions of section 55(2)(aa)(i) are not applicable in case of ascertaining the cost of acquisition of bonus shares. The AO failed to recognize the fact that had the legislature intended so, the exclusion would have been provided for non applicability of the provisions of section 55(2)(aa)(i) with respect to Issuance of bonus shares to the transactions referred in section 56(2) of the Act. The AO himself accepted on page 35 of the Assessment Order that the overall wealth of a person post bonus or pre-bonus remains the same. The AO incorrectly ignored the fact that an assessee "receives" no additional benefit or income on allotment of bonus shares because it is only a case of split of his total rights in the wealth of a company which remains the same even after bonus issue. In fact, such bonus sharen are capitalization of profits or reserves of the company which ever prior to such issue vested with him through his original holding. The Assessing Officer misread the judgment of Hon'ble ITAT, Bangalore in the case of Dr. Rajanpai in this regard as discussed supra.*

9.14 It is also settled law that arranging one's own affairs in a particular manner is the absolute discretion of the taxpayer. It cannot be dictated or suggested by the tax department that an assessee should sell his total holding immediately on allotment of bonus shares. Therefore, the assumption of the Assessing Officer that the appellant will get double benefit as per page 37 of his Assessment Order is not acceptable and is hereby rejected.

9.15 Further, the observation of the AO that the appellant has incurred loss on sale of shares on which the appellant got bonus shares and set off against the gain does not have any legal basis. The appellant can take advantage of legal provisions and arrange its affairs within the four corners of law. I am in agreement with the submissions made by appellant on this aspect."

7. Before us, the DR strongly supported the finding of the AO and read the operative part. The DR has also submitted a 7 page written note. We have given a thoughtful consideration to the submission of the DR. We are of the considered view, that the DR was trying to do what neither the AO nor the CIT(A) has done, which means that the DR was trying to improve the assessment order, as if he was the Assessing Officer and guiding that how the assessment should have been done by the AO. In our considered opinion, this is not acceptable, the Bench cannot go beyond the plaint and the issue before the Bench is very simple whether the provision of section 56(2)(vii)(c) of the Act applied on the facts of the case. The answer lies in the order of the Tribunal in the case of the wife of the assessee Smt. Aruna Chandhok whose assessment was also done by the same Assessing Officer, Mr. Rohit Anand, and in whose case also, the addition has been made on

identical set of facts on the sale of shares of the same company. This Tribunal in ITA No. 387/Del/2021 order dated 05.09.2023 held as under:

6. We hold that the bonus shares are issued only out of capitalization of existing reserves in the company. In the instant case, the Id. AO had not disputed the fact that the overall wealth of a shareholder post bonus or pre bonus remains the same. Having held so, it is wrong on his part to invoke the provisions of section 56(2)(vii)(c) of the Act on the ground that there is an double benefit derived by the assessee due to bonus shares. We find that the issue in question is also covered by the decision of Hon'ble Karnataka High Court in the case of Principal Commissioner of Income Tax vs Dr Ranjan Pai in ITA No. 501 of 2016 dated 15.12.2020. The question raised before the Hon'ble Karnataka High Court is as under:-

> *"Whether under the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessing authority is not correct in determining the fair market value as per Rule 11UA of the IT Rules at Rs 12,49,00,000/-on 1,00,00,000 bonus shares received by assessee and bring the same to tax under the head income from other sources by holding that section 56(2)(v) and (vii) cannot be invoked by assessing authority even when the assessing authority has rightly invoked the said provision as all the ingredients are satisfied to invoke said provision?*

6.1. This question was answered by the Hon'ble Court in favour of the assessee by observing as under:-

> *"6. We have considered the submissions made by learned counsel for the parties and have perused the record. The issue which arises for consideration in this appeal is 'as to whether the fair market value of bonus shares computed as per Rule 11U and Rule 11UA of the Income Tax Rules can be considered as income from other sources as per Section 56(2)(vii) of the Act. A careful scrutiny of Section 56(2)(vii) of the Act contemplates two contingencies firstly, where the property is received without consideration and secondly, where it is received for consideration less than the fair market value. The issue of bonus shares by capitalization of reserves is merely a reallocation of the companies funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. The total funds available with the company remains the same and issue of bonus shares does not result in any change in respect of capital*

structure of the company. [See: 'GENERAL INSURANCE CORPORATION supra). Thus, there is no addition or alteration to the profit making apparatus and the total funds available with the company remain the same. In substance, when a shareholder gets a bonus shares, the value of the original share held by him goes down and the market value as well as intrinsic value of two shares put together will be the same or nearly the same as per the value of original share before the issue of bonus shares. Thus, any profit derived by the assessee on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares held by him. In the instant case, there is no material on record to infer that bonus shares have been transferred with an intention to evade tax, which is the object of the provision in question. Therefore, the Commissioner of Income Tax (Appeals) as well as the tribunal have rightly held that when there is an issue of bonus shares, the money remains with the company and nothing comes to the shareholders as there is no transfer of the property and the provisions of Section under Section 56(2)(vii)(c) of the Act are not attracted to the fact situation of the case.

In view of preceding analysis, the substantial question of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."

7. We find that the Id. CIT(A) had rightly appreciated the contentions of the assessee and its related legal position in the instant case as is evident from above. Hence we do not find any infirmity in the order of the ld. CIT(A) granting relief to the assessee. Accordingly, the revised grounds raised by the revenue are dismissed."

7.1 On finding parity of facts, respectfully following the decision of the Co-ordinate Bench (supra), we decline to interfere. Appeal of the Revenue is accordingly dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 08 .01.2024

Sd/-	**Sd/-**
(YOGESH KUMAR US)	**(N.K. BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 08/01/2024.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.01.24
Date on which the typed draft is placed before the dictating Member	05 .01.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	