

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.25/Nag./2020
(Assessment Year : 2014-15)

Asstt. Commissioner of Income Tax
Central Circle-1(3), Nagpur Appellant

v/s

M/s. Vedsidha Products Pvt. Ltd.
731A, Serenity, Near Annapurna
Kirana Khare Town, Dharampeth Respondent
Nagpur 440 001 PAN – AADCA0414E

Assessee by : Shri Mahavir Atal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/06/2024

Date of Order – 12/06/2024

ORDER

PER K.M. ROY, A.M.

The instant appeal has been preferred by the Revenue challenging the impugned order dated 25/10/2017, passed by the learned Commissioner of Income Tax (Appeals)-1, Nagpur, [*learned CIT(A)*], for the assessment year 2014-15.

2. The Revenue has raised following grounds of appeal:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,57,50,000/- relying on the valuation report in respect of the immovable property held by the assessee company which is Rs.5,64,00,000/- wherein the value of the property as per the books is only Rs.90,80,400/-.

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the certificate under Rule 11UA has been issued by the Chartered Accountant who is the statutory auditor of the assessee company, and for the purpose of 11UA (2), the accountant certifying the FMV cannot be an auditor appointed by the company for the purpose of sec. 44AB of the I.T. Act.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that in clause (ii) of Explanation (a) to section 56(2)(viib) provides for the Assessing Officer to adopt the FMV as may be determined under Rule 11UA or as may substantiated by the company to the satisfaction of the Assessing Officer.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the Assessing Officer has rejected the value furnished by the company as the difference between the FMV computed by the company based on the current value of fixed assets and as per 11UA was very high. Further, the company has been incurring only losses consistently and hence the Assessing officer was not satisfied with the DCF valuation report furnished by the assessee.*

5. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the company was incurring heavy losses and had allotted shares at par during the same year to the promoters but shares were allotted to private investors at a premium of Rs. 450 which is 4.5 times the face value.*

6. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the company cannot engage any valuer to make available a report valuing the assets far beyond its real value for commercial purposes which would aid in tax avoidance.*

7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the company had not restated the value of the assets in the balance sheet for the year ending 31.03.2014 or even later.*

8. *Any other question of law and fact to be raised at the time of appeal.*

9. *It is humbly prayed to set aside the order of the CIT(A) and restore the order of the assessing officer."*

3. Facts in Brief:- The assessee is a private limited company engaged in the business of manufacturing of autoclaved aerated concrete bricks. The assessee company filed e-return of income on 23/09/2014. declaring loss of ₹ 65,049. During the year on 25/05/2013 and 31/03/2014, the assessee company had allotted 3,47,980 shares. Out of these shares, 3,12,980 shares of face value ₹ 100, each were issued at par to the promoters and the

remaining 35,000 shares of ₹ 100, each were issued at premium of ₹ 450. The Assessing Officer invoked provisions of section 56(2)(viib) of the Income Tax Act, 1961 ("*the Act*"). As required by Explanation to section 56(2)(viib), the mode of computing fair market value is prescribed under Rule 11U & 11UA of the I.T. Rules, 1962. The assessee submitted a valuation, wherein fair market value per share was computed at ₹ 23,530. The certificate was not in accordance with the requirements of Rule 11U & 11UA. Further, the assessee has neither submitted copy of balance sheet of the company nor the valuation report under Rule 11UA of I.T Rules for the year under consideration but only submitted notes/annexure of the Balance Sheet. Therefore, on the basis balance of ITR-6 submitted by assessee, the value of the share as per Rule 11AU is computed. The assessee furnished certificate of FMV as per rule 11UA, the mode of determination of FMV has to be either as per clause (a) or as per clause (b) to Rule 11UA(2). The assessee has opted for valuation as per clause (b). FMV as per clause (b) has to be determined by the merchant banker or an accountant who is not appointed by the company as an auditor under section 44AB of the Act under section 224 of the Companies Act, 1956 (1 of 1956). In the instant case, the valuation is done by the company's statutory auditor/Chartered Accountant who is appointed for the purpose of 44AB. The fair market value per share of the assessee company computed as per net asset value method by the Assessing Officer is negative [-38.13/share]. Accordingly, the Assessing Officer made addition at ₹ 35,000, shares 450 amounting to ₹ 1,57,50,000, as disallowance under section 56(2)(viib) of the Act.

<i>Share issued</i>	<i>Face Value</i>	<i>Premium Per Share</i>	<i>Total Capital</i>	<i>Share Premium</i>
3,12,980	100	-	3,12,98,000	-
35,000	100	450	35,00,000	1,57,50,000
3,47,980			3,47,98,000	1,57,50,000

Aggrieved by the assessment order of the Assessing Officer, the assessee filed appeal before CIT(A).

4. The learned CIT(A) held that assessee company holds 7 Acres of industrial land in the MIDC area of Nagpur. The impugned land was allotted in the year 2009 and it is recorded in the books of accounts of the assessee at a historical price of ₹ 90,80,400, and since then, the market value of the underlying asset has increased substantially. The assessee also submitted a report of approved Registered Valuer, dated 04/10/2012, who has estimated value of land at ₹ 5,64,00,000, as on 01/10/2021. The impugned shares were allotted in 2013 on the basis of this valuation. The learned CIT(A) was further of the considered view that the Assessing Officer erred in rejecting the valuation methodology opted by the assessee. On perusing the Valuation Certificate given by the appellant, the learned CIT(A) noticed that it is apparent that the assessee has computed the fair market value of the share on the basis of Net Asset value method, albeit he has simply altered the historic cost of the industrial land with that of the Valuation estimated by the Registered Valuer as in 2012, which was used for the valuation of shares in 2013. Therefore, the learned CIT(A) was of the view that the assessee has correctly adopted the fair market value of the asset, and hence the valuation of shares based on this factor, has been adequately determined. As per the valuation report total area of land is ₹ 28,200 per sq.mt and the fair market

value rate adopted by the valuer is ₹ 2,000 per sq.mt. Therefore, according to the learned CIT(A), if one considers the valuation of the property on the basis of MIDC rate, the valuation of land comes to ₹ 1,12,80,000 and if one considers the valuation report of Valuer, the same is ₹ 5,64,00,000, which is the fair market price. The assessee has considered ₹ 5,64,00,000, as valuation of the land and accordingly worked out a share price of ₹ 23,530, per share as per NAV method. If the valuation of the impugned land is considered as per MIDC rates, the FMV per share equated to ₹ 1193.80, per share as per NAV method. This is still much more than the ₹ 550, per share, issue price of the appellant. Accordingly, the learned CIT(A) held that the entire addition deserves to be deleted as the assessee company has not received consideration which exceeds the fair market value of the shares of the company. The addition of ₹ 1,57,50,000, was therefore, directed to be deleted. Aggrieved, the Revenue is in appeal before the Tribunal.

5. The learned Departmental Representative had vehemently submitted that the first appellate authorities had fallen into a grave error while relying upon the registered valuer's report.

6. The learned Authorised Representative had relied upon the order passed by the learned CIT(A) and pleaded that no interference is called for.

7. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. As could be seen from the above facts and circumstances of the case, it is now necessary to refer to the certificate for computing fair market value per share

as per assessee's a copy of which is placed at Paper Book Pate no.22, which is reproduced below:-

*"Certificate
To Whomsoever it may Concern*

I have verified the books of accounts and relevant records of Vedsidha Products Pvt Ltd, Nagpur upto 04/10/2012. On the basis of said verification I hereby certify that the fair market value of per shares of said company as on 01/04/2012 is Rs. 23530/- (Twenty three thousand five hundred and thirty only). The basis of said valuation is as under:-

<i>Assets</i>	<i>At Market Value</i>
<i>Land (As Certified by Registered Valuer)</i>	<i>56400000/-</i>
<i>Cash in Hand</i>	<i>28507/-</i>
<i>Deposits</i>	<i>8779/-</i>
<i>Bank Balances</i>	<i>47206/-</i>
<i>Total (A)</i>	<i>56484492/-</i>
<i>Liabilities</i>	
<i>Unsecured Loans</i>	<i>8950000/-</i>
<i>Provisions</i>	<i>3000/-</i>
<i>Total (B)</i>	<i>8953000/-</i>
<i>Net (A-Ba)</i>	<i>47531492/-</i>
<i>Issued Capital in Nos.</i>	<i>2020</i>
<i>Face Value Per Share</i>	<i>100/-</i>
<i>Fair Value Per Share</i>	<i>23530/-</i>

The said certificate is issued at the request of Management of company for the purpose of determining the fair value of share of company.

*For Tarun Sawal
Chartered Accountant*

*05/10/2012
Nagpur*

*Sd/-
Proprietor
M.no.107357"*

8. It is difficult to comprehend as to how valuation can be done on 01/04/2012, when the date of valuation is on 01/10/2012, by registered valuer. We also deem it expedient to reproduce the report of the Government Registered Valuer which is placed at assessee's Paper Book at Page-23 to 28, to have a clear understanding of the issue. It appears that the Valuer has

adopted a rate of valuation of 2,000 per sq.mtrs. as per the market rate. However, there is not absolutely any piece of evidence to substantiate the adoption of such value. Page-26 of the Paper Book is reproduced below:-

"The said property even though situated in Bunoori Industrial Area (MIDC), due to lack of land for the industries in this M.I.D.C. the properties are always sold as per the market rates and not as per the MIDC rates. Rates adopted for valuation is in Between Rs.2000/- per Sqmt to Rs.2200/- Sqmt.

9. No comparable instance has been brought on record to buttress the rate so adopted. It is surprising to note that during the year under consideration on 25/05/2013 & 31/03/2014, the appellant company had allotted 3,47,980 shares. Out of these shares, 3,12,980 shares of face value ₹ 100, each were issued at par to the promoters and the remaining 35,000 shares of ₹ 100, each were issued at a premium of ₹ 450, (shares were @ ₹ 550 per share) to three investors in lieu of 10% share in the company. The valuation report was obtained much before the date of allotment. We are unable to reconcile the fact as to why the no premium was taken from the promoters of the company when shares were issued within some financial year. At this juncture, we make a reference to the provisions of section 56(2)(viib) of the Act, reproduced below:-

"[(viib) where a company, not being a company in which the public are substantially ally i 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:

Provided that this clause shall not apply where the consideration for issue of shares is received-

(1) by a venture capital undertaking from a venture capital company or a venture capital fund 75[or a specified fund]; or

(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf:

[Provided further that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (ii) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.]

(a) the fair market value of the shares shall be the value-

(1) as may be determined in accordance with such 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, on the date of issue of shares, 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, whichever is higher;”

10. It is a prime requirement that the fair market value of the shares shall be the value as on the date of issue of shares. This has not been done here because valuation report is antedated on 01/04/2012. The learned A.R. did not have any satisfactory reply to these factual infirmities being glaringly manifest. He finally pleaded that the matter may be set aside to the DVO for fresh valuation. Unlike section 50C and 56(2)(x) of the Act, there is no reference in this sub-clause to get the valuation done by the DVO. Further, he also could not throw any light about how the valuation done by the registered valuer can be corroborated as to the justifiability of the rate. We have numerous decisions of the Co-ordinate Bench of the Tribunal, where the valuation in accordance with rule 11UA, has been remanded back to the Assessing Officer for fresh determination. But since in this case, valuation as per rule 11UA has not been adopted, we do not consider it fit to remand the

matter for re-determination. The facts clearly highlighted that the Registered Valuer's report was made to suit the interest of company and is not based on any corroborative evidence. Accordingly, we deem it fit and proper to hold that no cognizance shall be taken of the valuation report which is full of infirmities. The Assessing Officer has correctly calculated the networth of the company to be negative because of incurring of continuous loss as per the Balance Sheet. Hence, the entire premium is taxable under the head "*Income From Other Sources*". Accordingly, we set aside the impugned order passed by the learned CIT(A) and uphold the order passed by the Assessing Officer. Thus, the grounds of appeal raised by the Revenue are allowed.

11. In the result, appeal filed by the Revenue is allowed.

Order pronounced in the open Court on 12/06/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 12/06/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur