

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.6250/Del/2019
Assessment Year: 2016-17

Tripoto Travel Pvt. Ltd.,
D-58, Basement,
Kalkaji,
New Delhi.

Vs ACIT,
Circle-25(2),
New Delhi.

PAN: AAECT7280J

(Appellant)

(Respondent)

Assessee by : Shri Brij Mohan Barwal, CA
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 15.07.2024
Date of Pronouncement : 23.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 24.05.2019 of the Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.10328/18-19 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 ACIT, Circle 25(2), Delhi, (hereinafter referred to as the Ld. AO).

2. The assessee's return of loss was selected for limited scrutiny and the AO has examined the issue of equity and preferential shares by the assessee to the residents of India for the purpose of application of section 56(2)(viib) of the Act. The assessee has justified the share application money received from M/s Pandra Trust Scheme and M/s Advantage Incubators on the basis of valuation report from the Chartered Accountant who had used DCF Method to determine the fair market value of the shares of the company. As per the valuation report, the fair market value was Rs.29,010/- per share. The AO, however, has made addition of Rs.1,06,36,402/- under the head 'Other sources' on the ground that the valuation report for valuation of unquoted shares for the purpose of section 56(2)(viib) of the Act by an independent Chartered Accountant is not accurate and is not acceptable for the reasons that firstly, the provision used for determination of the fair market value of shares are outlandish due to huge difference between the projected and the actual revenue. Secondly, the AO considered the net asset value approach to arrive at the fair market value of the shares and the difference between the fair market value as per net assets method and the issue price was considered to quantify the addition.

3. In appeal before the CIT(A), the assessee claimed that the assessee is registered under DIPP vide Notification No. DIPP10923 and, therefore, was exempted for the purpose of clause 56(2)(viib) being a start up. The assessee

claimed that this DIPP recognition certificate was produced before the AO, but, was not considered.

3.1 The assessee, then, claimed that there was no justification of comparison of provision with actual results and its deviation cannot be the ground for setting aside the projections. It was submitted that Discounted Cash Flow Method was rightly invoked. It was also submitted to the CIT(A) that for the purpose of section 56(2)(viib), of the Act, the fair market value of unquoted equity shares can be substantiated by the company on the basis of intangible assets which in case of the assessee was in the form of its own developed software for which international patent was also applied. It was also submitted to the CIT(A) that the discretion is with the assessee to choose between the net asset method or DCF Method as per sub-rule (2) of Rule 11 UA of the Act and the AO cannot substitute his choice. It was also submitted that the assessee had issued shares to the non-resident investors on the same price on which shares were issued to Indian investors and M/s Pandra Trust Scheme and M/s Advantage Incubators were issued shares as seed funding. In this context, the assessee had provided the list of six non-residents to whom shares were allotted on 21.11.2015 i.e., after 2 months of seed funding. It was submitted that why any non-resident investment company would make investment in any unrelated entity at inflated share valuation. These submissions of the assessee did not appeal to the CIT(A) and for the following reasons recorded in para 5.2 onwards till para 5.8, the

appeal of the assessee was dismissed. Accordingly, the assessee is in appeal before the Tribunal raising the following grounds:-

- “1. *The order is bad in law being the assessee is registered under DIPP.*
2. *The impugned order passed by Ld. Asst. Commissioner on the basis of set aside the projections used for valuation purpose is bad in law.*
3. *In the impugned assessment order, the Ld. Asst. Commissioner sets aside the method of valuation used by the Independent Valuer in its valuation report and used a different method on his wish and whims.*
4. *The Ld. A.O has made error in discarding the valuation report without verifying the base or real facts of the data.*
5. *Addition made by the Ld. A.O. based on his valuation method is bad in law and not sustainable.*
6. *The assessee company issued the shares to non-resident, investors on the same price the price at which the shares are issued to the Indian investors”*

4. Heard and perused the record. The ld. AR has primarily relied the submissions which were raised before the CIT(A). Further, reliance was placed on the judgement of the coordinate Bench in the case of ***Cinestaan Entertainment P. Ltd. vs. ITO, ITA No.8113/Del/2018, order dated 23.05.2019.*** The ld. AR has also relied the Notification of M/o Commerce & Industries, Department of Industrial Policy and Promotion dated 11.04.2018 with regard to the benefits extended to start ups including for the purpose of section 56(2)(viib) of the Act. We consider it convenient here itself to reproduce the relevant part:-

“Approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act

4. (1) A Startup being a private limited company and in conformity with the definition as per definition stipulated at Para 1(a) shall be eligible to apply for approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act, if the following conditions are fulfilled: —

- (i) the aggregate amount of paid up share capital and share premium of the startup after the proposed issue of shares does not exceed ten crore rupees,
- (ii) the investor/ proposed investor, who proposed to subscribe to the issue of shares of the startup (hereinafter in this notification referred to as “investor”) has, —

(a) the average returned income of twenty five lakh rupees or more for the preceding three financial years; or

(b) the net worth of two crore rupees or more as on the last date of the preceding financial year, and

- (iii) the startup has obtained a report from a merchant banker specifying the fair market value of shares in accordance with Rule 11UA of the Income-tax Rules, 1962.

(2) the application for approval under this para shall be made in Form-2 to the Board and shall be accompanied by the documents specified therein.

(3) The Board may, after calling for such documents or information and making such enquiries, as it may deem fit, —

- (i) grant approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act, specifying the relevant details, including details of investor, amount of premium on which shares are to be issued, and the latest date by which the shares are to be issued; or
- (ii) decline to grant the said approval after providing reasons.”

5. The Id. AR has also referred to a Notification dated 14.06.2016 which is also reproduced hereinbelow for convenience:-

“New Delhi, the 14th June, 2016

S.O.1160 - In exercise of the powers conferred by the clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Income-tax Act 1961 (43 of 1961), the Central Government, hereby notifies the 'classes of persons' for the purposes of the said clause as being the 'person' defined under sub-section (31) of section 2 of the said Act, being resident, who

make any consideration exceeding the face value for issues of shares of a 'startup' company.

Explanation - For the purposes of this notification, "startup" shall mean a company in which the public are not substantially interested and which fulfills the conditions specified in the notification of the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, number G.S.R.I 80(E), dated, the 17th February, 2016, published in the Gazette of India, Extraordinary, part II, section 3, sub-section (i), dated the 18th February, 2016.

(Notification No.45/2016, F. No. 173/103/2016-ITA-II)"

6. At page 46 of the paper book, the ld. AR has placed copy of certificate of recognition bearing No.DIPP10923 which is issued in the name of the assessee on 27.10.2017, as a certificate of recognition of the assessee as a start up. The certificate mentions that it is issued for a period of 10 years from the date of its incorporation/registration.

7. The ld. DR, on the other hand, has relied the orders of the ld. tax authorities below.

8. After taking into consideration the order of the CIT(A), it comes up that in spite of the assessee taking a specific plea of being exempted as a start up from the application of clause (viib) of sub-clause (2) of section 56 of the Act, no findings was given to reject this claim. The CIT(A) has only endorsed the reasoning of the AO for not accepting the valuation report. Thus, we consider it an appropriate case to allow the ground No.5 of the assessee for statistical purposes and restore the issue with regard to the claim of the assessee to be

exempt from applicability of section 56(2)(viib) of the Act, as a start up to the files of the AO. The AO shall take into consideration the aforesaid findings and evidences filed and further give opportunity of hearing on this issue, to the assessee. Accordingly, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 23.07.2024.

Sd/-

Sd/-

(G.S. PANNU)
VICE PRESIDENT

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 23rd July, 2024.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi