

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**AND**

**SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.2478/M/2024  
Assessment Year: 2016-17**

<b>M/s. Raghvendra Construction Company Private Limited</b> 522, 5 <sup>th</sup> Floor, The Summit Business Bay, Andheri Kurla Road, Andheri (East), Mumbai- 400069. <b>PAN: AACCR7371Q</b>	Vs.	<b>Income Tax Officer- 11(1)(1)</b> Room No. 201, 2 <sup>nd</sup> Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai- 400020.
(Appellant)		(Respondent)

**Present for :**

**Assessee by** : Shri M. Subramanian, A.R.

**Revenue by** : Shri R. R. Makwana- SR. D.R.

**Date of Hearing** : 24 . 07 . 2024

**Date of Pronouncement** : 01 . 08 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the appellant against the Order of the Ld.

CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1061835176(1)

Dated 01/03/2024 for the Assessment Year 2016-17.

2. Following grounds of appeal have been raised by the appellant:

1. *“The National Faceless Appeal Centre has erred in law, facts and circumstances of the case by confirming the invoking of provisions of section 56(2)(viib) of the Act in respect of issue of shares in the FY 2011-12 i.e. prior to the enactment of the said provisions.*
2. *The National Faceless Appeal Centre has erred in law, facts and circumstances of the case by confirming the rejection of discounted free cash flow method as prescribed in Rule 11UA of the Income Tax Rules, 1962.*
3. *The National Faceless Appeal Centre has erred in law, facts and circumstances of the case by confirming the addition of Rs.60,65,255/- u/s 56(2)(viib) of the Income Tax Act, 1961 and rejecting the valuation report provided by the accountant inspite of the fact that there is no statutory provision for rejecting the report of the accountant.*
4. *The National Faceless Appeal Centre has erred in law, facts and circumstances of the case by confirming the addition of Rs.60,65,255/- u/s 56(2)(viib) of the Income Tax Act, 1961 by treating it as excess share premium received during the year under consideration.*
5. *The National Faceless Appeal Centre has erred in law, facts and circumstances of the case by confirming the addition of Rs.1,30,000/- u/s 43CA of the Income Tax Act, 1961 on the ground that the sale consideration is less than stamp duty value of the property and ignoring the fact that the variation between the sale consideration and stamp duty value of a property is allowed up to 10%.*
6. *The National Faceless Appeal Centre has erred in law, facts and circumstances of the case by confirming the addition of Rs.61,95,255/- u/s 56(2)(viib) of the Income Tax Act, 1961 on the*

*ground that the appellant did not pursued the appeal despite being granted several opportunities and ignoring the fact that the appellant did not received the notices and therefore the appellant was not aware about the notices and the same could not be attended.*

*7. Your Appellant craves leave to add to, alter, amend, delete and/or modify the above grounds of appeal on or before the final date of hearing.”*

3. The facts of the case, in brief, are that the assessee company is engaged in the business of construction and residential complex and has also showed interest income during the assessment proceedings. The Ld. AO noticed that in the profit and loss A/c. for the year ending 31/03/2016, the assessee company had incurred loss to the tune of Rs.21,96,995/- and its earnings per share (-) Rs.75.37 on perusal of the balance sheet. The Ld. AO noticed that the assessee company had allotted 10,000 partly paid up equity shares of Rs.10 each at a premium of Rs.5,110/- per share to M/s. Karmvir Avant Infra Chunabhatti LLP on 08/12/2011 and had received Rs.77,00,000/- as a part payment (Rs.80,000/- towards face value and Rs.76,20,000/- towards security premium) during the financial year 2011-12. Thereafter, during the financial year 2012-13, company had received Rs.18,49,714/-. Further, during the financial year 2013-14, company had received Rs.1,22,60,000/-. Further during the financial year 2014-15, company had received Rs.1,88,29,500/-. During the year under consideration, the company had received Rs.1,05,40,786/-. The assessee, therefore, was asked to submit the details of the valuation of fair market

value (FMV) of shares based on rules 11U & 11UA of the Income Tax Rules, 1962. In response to that, the assessee submitted its response dated 21/12/2018 submitted a copy of valuation of FMV of shares. Wherein, the FMV of unquoted equity shares was determined at Rs.2168.92/-. The Ld. AO considered the same but did not accept the working given by the assessee that the valuation was not as per rule 11U & 11UA and made the addition of Rs.60,65,255/- on account of share premium in excess of FMV. Further, the Ld. AO also disallowed the same of Rs.1,30,000/- on account of difference in sale consideration received by the assessee company and the market value of the same and added this same u/s. 43CA of the Act.

4. Aggrieved by the order of the Ld. AO, the appellant preferred the appeal before the Ld. CIT(A). However, during the course of appellate proceedings, several notices were issued to the appellant but none of the notices were complied by the appellant. The details of the notices issued are given in the body of the order of Ld. CIT(A) and upheld the addition made by the Ld. AO. During the appellate proceedings before us, the appellant submitted that appellant did not receive any notice and therefore appellant was not aware about the notices and therefore, the notices were not complied with.
5. We have considered the facts of the case and submissions made by the appellant and we find it proper in the interest of natural justice that

appellant should be given the opportunity of being heard before deciding the case on merit. We, therefore, remand the matter back to the file of the Ld. CIT (A) to explain its case before the Ld. CIT(A) which he could not do as he had not received the notices issued by the Ld. CIT(A) on various dates. We, therefore, find it proper to send it back to the file of the Ld. CIT (A) to give the assessee the adequate opportunity of being heard and decide the issue on merit of the case. The appellant is also directed to make necessary compliance before the Ld. CIT (A) to explain his case before him.

6. In the result, the appeal is allowed for statistical purpose.

**Order pronounced in the open court on 01.08.2024.**

**Sd/-  
MS KAVITHA RAJAGOPAL  
JUDICIAL MEMBER**

**Sd/-  
RATNESH NANDAN SAHAY  
ACCOUNTANT MEMBER**

Mumbai, Dated: 01.08.2024.

*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.