

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष
Before

DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 715/KOL/2022
Assessment Year: 2017-18

M/s. Vishal Victory Oiltech Pvt. Ltd.....Appellant
[PAN: AABCV 0848 F]

Vs.

ACIT, Circle-7(2), Kolkata.....Respondent

Appearances:

Assessee represented by: S.M. Surana, Adv.

Department represented by: Rakesh Kumar Das, CIT, D/R.

Date of concluding the hearing : June 13th, 2024

Date of pronouncing the order : August 13th, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 07.10.2022 arising out of the assessment order framed u/s 143(3) of the Act dated 28.11.2019.

2. The brief facts of the case are that the assessee filed return of income for the AY 2017-18. The case of the assessee was selected for scrutiny under CASS after issuing statutory notices u/s 142(1) & 143(2) of the Act. During the assessment proceedings, the Assessing Officer (hereinafter referred to as Id. 'AO') made addition of Rs. 7,54,38,625/- against the purchase of shares at lower fair market value which attracts Section 56(2)(vii) of the Act. The AO

in the assessment order held that the appellant had purchased 8,47,625 shares of M/s. Spectra Realities Pvt. Ltd. at the rate of Rs. 240/- per share. However, the ld. AO viewed that fair market value of the share is Rs. 329/- per share. Hence, the difference of Rs. 7,54,38,625/- was added to the total income of the assessee by rejecting the reply filed by the assessee.

3. Aggrieved by the above order, the assessee went into appeal before ld. CIT(A) where the appeal of the assessee was dismissed by sustaining the order of the AO.

4. Dissatisfied with the above order, assessee is in appeal before this tribunal raising multiple grounds of appeal.

5. The ld. A/R of the assessee appeared before the Bench and stated that it is undisputed fact that in the case of the assessee investment of Rs. 20,34,00,000/- in convertible debenture of M/s. Spectra Realities Pvt. Ltd. and said debentures were converted into different shares of said company during the year, at the instance of M/s. Spectra Realities Pvt. Ltd. the assessee made application for issue of different shares at the rate of Rs. 320/- per share against the said debentures. On such application assessee was allotted 8,47,625 preference shares at the rate of Rs. 320/- out of which Rs. 100/- was face value of each of the share and Rs. 220/- was premium. Therefore, the sum of Rs. 20,34,00,000/- was adjusted against the application money of Rs. 240/- (75 towards face value of issue of preference shares and Rs. 165/- was against the premium payable). The remaining balance of Rs. 80/- (Rs. 25/- against issue price of shares and Rs. 55/- against premium) which was evident from the application for shares and share certificate which are filed by the assessee at page nos. 50-51 furnished before the Bench. He further stated that in order to prove the market price of equity shares (since Rule 11UA was only for valuation of equity shares and not for preference shares during the assessment year in question). Rule 11UAA for valuation of preference shares was incorporated with effect from 01.04.2018 and assessee had submitted the valuation report from the Chartered Accountant who determined the value of each equality share at Rs. 320/-. The preference shares were issued at the rate of Rs. 320/- per share.

However, during the assessment proceedings, the AO did not accept the said valuation and made his own calculation by determining the value of share at Rs. 329/- by holding that assessee has paid only Rs. 240/- per share. Doing so the ld. AO held that the date of payment of call money was left blank. No documents have been filed to ascertain the date of call. Therefore, he ignoring the condition of payment of call money, held that assessee had paid Rs. 240/- by adding the difference at the rate of Rs. 89/- per share as income u/s 56(2)(viii) of the Act. Similarly, ld. CIT(A) did not discuss on the issue in detail and simply confirmed the order of ld. AO. Therefore, such addition needs to be deleted.

6. On the other hand, ld. D/R stated before the Bench that above facts were never furnished before the ld. CIT(A) as the impugned order passed by the ld. CIT(A) was an *ex-parte* order. Therefore, it is necessary to remand back the whole issue to the file of ld. CIT(A) for re-examining the case.

7. We after hearing the rival submissions of the parties and perusing the material available on record find that instant impugned order passed by the ld. CIT(A) was an *ex-parte* order since assessee has failed to appear before the authority on various dates. Therefore, the ld. CIT(A) has passed the impugned order *ex-parte* against the assessee and assessee never furnished any submission before him in order to substantiate its claim. Therefore, in the interest of justice and fair play to the parties of the case, the matter remand back to the file of ld. CIT(A) with a direction to re-examine the issue after considering the submission as well as documents filed by the assessee before him and consider the same in accordance with law and pass a speaking order.

8. In terms of the above, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 13th August, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 13.08.2024

Sd/-

[Sonjoy Sarma]

Judicial Member

Bidhan (P.S.)

Copy of the order forwarded to:

1. **M/s. Vishal Victory Oiltech Pvt. Ltd., 502, Centre Point Apartment, 28/2, Shakespeare Sarani, Kolkata, West Bengal, 700017.**
2. **ACIT, Circle-7(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata