

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.655/PUN/2024

निर्धारण वर्ष / Assessment Year : 2015-16

Vensun Laboratories Pvt. Ltd., A-20/7, A-20/8, MIDC Chincholi, Solapur – 413 255, Maharashtra PAN : AACCV9741Q	Vs.	ACIT, Circle-2, Solapur
Appellant		Respondent

Assessee by : Shri Krishna Gujarathi
Revenue by : Shri Ajay Kumar Keshari &
Shri Arvind Desai

Date of hearing : 21.08.2024
Date of pronouncement : 21.08.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre, Delhi dated 24.02.2024 for the Assessment Year 2015-16.

2. Briefly the facts of the case are that the appellant is a company incorporated under the provisions of Companies Act. It is engaged in the business of manufacturing of all types of organic, inorganic, industrial laboratory, fine, pharmaceutical and other chemicals compounds, preparations, acids, solvents, solutions, derivatives fluids, products, bye products, residues, catalyst reagents, mixtures, concentrates, lumps, powders, granules and allied items. The Return of Income for the A.Y. 2015-16 was filed on 04.02.2016 declaring Nil

income. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 26.12.2017 passed u/s.143(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act') at a total income of 1,93,29,480/- after making addition of Rs.2,31,08,289/- u/s.56(2)(viib) of the Act.

3. The factual matrix of the case is as under :

During the previous year relevant to the assessment year under consideration, the appellant company had issued shares of Face Value of Rs.100/- at a premium of Rs.418/- per share to Neelam Aqua and Special Chem Pvt. The valuation of the share premium is arrived at on the basis of Discounted Cash Flow approach. During the course of assessment proceedings, the Assessing Officer was of the opinion that the intrinsic value of the shares is at Rs.245.84 per share. The Assessing Officer had called upon the appellant company to substantiate the calculation of share premium adopted by it. On failure of the appellant company to substantiate the same, the differential amount of Rs.418/- per share minus Rs.245.84 per share was added to the total income invoking the provisions of section 56(2)(viib) of the Act.

4. Being aggrieved, an appeal was filed before the CIT(A)/NFAC raising contention that it is beyond the power of the Assessing Officer to substitute the method of valuation of the shares adopted by assessee. However, CIT(A)/NFAC confirmed the action of the Assessing Officer placing reliance on the following ITAT decisions :

1. Agro Portfilio (P) Ltd Vs. ITO, Ward-1(4), New Delhi (2018) 94 taxmann.com 112 (Delhi-Trib.)
2. Kottaram Agro Foods (P) Ltd. Vs. ACIT (ODS), Range-4(1), Bangalore (2019) 102 taxmann.com 183 (Bangalore-Trib.)

5. Being aggrieved, the appellant company is in appeal before the Tribunal in the present appeal.

6. The Id. Authorised Representative for the appellant company submits that it is beyond the power of the Assessing Officer to substitute the method of valuation of shares adopted by the appellant company. He further submitted before the CIT(A)/NFAC that he had filed a detailed explanation furnishing the information called for by the Assessing Officer during the course of assessment proceedings, which is placed at pages 24 to 31 of the paper book. It is further submitted that the appellant company had filed written submissions explaining the discrepancy between the projected results and the actual results. Without advert to the written submissions made, the CIT(A)/NFAC disposed of the appeal. It is therefore prayed for remand of the matter to the CIT(A)/NFAC for *denovo* adjudication of the appeal.

7. On the other hand, the Id. Sr. Departmental Representative had no objection to remand the matter back to the file of CIT(A)/NFAC.

8. We heard the rival submissions and perused the material on record. On mere perusal of the assessment order, it would reveal that the Assessing Officer had made addition of Rs.2,31,08,289/- u/s.56(2)(viib) of the Act on failure of the appellant company to substantiate the calculation adopted by them for arriving at the share premium of Rs.418/-. During the course of appellate proceedings before the CIT(A)/NFAC, the appellant company had filed detailed explanation as evident from pages 24 to 31 of the paper book explaining the method of calculation of the share premium as well as explaining the reasons for the variation between the projects results and the actual results etc. Apparently, the CIT(A)/NFAC had failed to advert to these submissions while disposing of the matter. Therefore,

we are of the considered opinion that interest of justice would be served if the matter is restored to the file of CIT(A)/NFAC for *denovo* adjudication of the issues in appeal by adverting to the written submissions filed by the appellant company.

9. In the result, the appeal filed by the appellant company stands partly allowed for statistical purposes.

Order pronounced on this 21st day of August, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st August, 2024.

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.