

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 4975/DEL/2019 (A.Y 2014-15)

Manidhari Oils Pvt. Ltd. 36, Mohalla Ramanuj Dayal Nai Basti, Ghaziabad- 201002 PAN No. AAHCM9962F (APPELLANT)	Vs.	ITO Ward-17(1) New Delhi (RESPONDENT)
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Assessee by :	Sh. C. S. Anand, Adv
Department by:	Sh. Subhra Jyoti Chakraborty, CIT DR

Date of Hearing	01.07.2024
Date of Pronouncement	29.08.2024

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is filed by the assessee for Assessment Year 2014-15 against the order of the Principal Commissioner of Income Tax- 6, New Delhi, dated 30.03.2019 passed u/s 263 of the Income Tax Act, 1961 ('Act' for short).

2. The grounds of Appeal are as under:-

“1. That the order dt.30.03.2019 u/s 263 passed by the Id. PCIT Delhi-06 New Delhi, is bad from different factual & legal angles.

2. That the order dt. 30.03.2019 u/s 263 passed by the Id PCIT Delhi-06 New Delhi, in pursuance to his Show Cause Notice dt. 06.03.2019, is liable to be quashed because the said Show Cause Notice was the outcome of the incorrect appreciation of facts.

The observation of the Id PCIT Delhi-06 New Delhi that the AO had passed the assessment order, without taking into consideration the aspect of valuation of shares for the purposes of justification of charging of premium, is not correct. As a matter of fact, during the course of assessment proceedings, the Id AO had taken into consideration the aspect of valuation of shares for the purposes of justification of charging of premium, and had passed the assessment order on being fully satisfied with the valuation report prepared by CA Deepak Kumar on 30.09.2013 (which was furnished by the assessee), through which the value of one share was arrived at Rs.319.63.

3. That the Id PCIT Delhi-06 New Delhi has erred in holding that the assessment order passed by the Id AO u/s 143(3) on 18.11.2016 is erroneous, in so far as it is prejudicial to the interest of the revenue.

4. That the Id PCIT Delhi -06 New Delhi had failed to appreciate the fact that the assessee had allotted shares, on premium of Rs.310/- only to the family members of its directors (and not to the outsiders).

5. That the Id PCIT Delhi-06 New Delhi had failed to appreciate that the fair market value of the shares was to be arrived at on the basis of its assets & liabilities as well

as number of shares, as on the date of issue of shares (and not on the date of immediately preceding year's Balance Sheet i.e. 31.03.2013).

6. That the Id PCIT, Delhi-06, New Delhi had failed to appreciate that the premium charged by the assessee from the share holders at the time of allotment of shares, was not at all in excess of the fair market value of its shares as arrived at on the basis of its assets & liabilities as well as number of shares, as appearing in its Balance Sheet drawn as on 30.06.2013, and consequently the addition u/s 56(2)(viib) was not at all called for in the hands of the assessee.”

3. Brief facts of the case are that, the assessee filed its ITR declaring the income at Rs. 86,84,960/- for the Assessment Year 2014-15. The case was selected for limited scrutiny through CASS and the reason for the limited scrutiny was “*Large Share Premium received during the year (verify applicability of Section 56(2) (viib)*” and the assessment was completed on 18/11/2016 u/s 143(3) of the Act.

4. The Ld. PCIT called for the assessment record, examined and found that the assessment order passed u/s 143 (3) of the Act dated 18/11/2016 was prima facie found to be erroneous and also prejudicial to the interest of revenue, accordingly, issued show

cause notice u/s 263 of the Act. After considering the submissions made by the assessee, passed the order u/s 263 of the Act on 30/03/2019 observing that the assessment order passed u/s 143(3) of the Act dated 18/11/2016 is found to be erroneous, therefore, directed the A.O. to compute the income of the assessee by adding Rs. 1,18,93,440/- on account of difference valuation of shares u/s 56(2)(viib) of the Act. Aggrieved by the order of the Ld. CIT(A), the assessee preferred the present Appeal on the Grounds mentioned above.

5. The Ld. Counsel for the assessee vehemently submitted that the order impugned passed by the PCIT dated 30/03/2019 is illegal and erroneous as the show cause notice was issued on the outcome of the incorrect appreciation of facts. Further submitted that the Ld. PCIT failed to appreciate the fact that the assessee has allotted the shares on premium of Rs. 310/- to the family members of its Director and not to the outsiders, premium charged by the Assessee for the share holders at the time of the allotment was not at all been in excess of the fair market value of its shares as arrived at on the basis of its assets & liabilities as well as number of shares, as

appearing in its Balance Sheet drawn as on 30.06.2013, and consequently, thus the addition u/s 56(2)(viib) was not at all called for in the hands of the assessee.

6. Per contra, the Ld. Departmental Representative submitted that there is nothing to show that the assessee has produced valuation report before the Ld. A.O. and in the absence of the Valuation Report, it has been found that the A.O. has not made proper enquiries and omitted to take any view, therefore, the assessment order passed u/s 143(3) of the Act is erroneous and failed to make addition of Rs. 1,18,93,440/-, thus the Ld. PCIT has rightly invoked the provisions of Section 263 of the Act which requires no interference.

7. We have heard both the parties and perused the material available on record.

8. It is the case of the assessee that the assessee has produced the share valuation report before the A.O. and the Ld. A.O. after verifying the records not objected for the method adopted by the

assessee. The Ld. PCIT invoked provision of Section 263 of the Act on the ground that the valuation report submitted by the assessee was not found in assessment folders. The Assessee's Representative contended that the valuation report produced by the Assessee must have been misplaced by the Department, for which the assessee cannot be put to hardship for the same.

9. We have gone through the note sheet prepared by the A.O. As per note sheet on 15/09/2016, the A.O. specifically asked for the valuation of share price as per 11UA of the Rules and on 10/11/2016 the assessee submitted part reply and accordingly the case was adjourned to 16/11/2016 and thereafter on 17/11/2016 the Assessee's Representative submitted reply to order sheet dated 15/09/2016. The A.O. noted that books of account presented for inspection and examined on test check basis and the case has been discussed. At no point of time, the A.O. complained or demanded for production of valuation report.

10. The Ld. PCIT has show caused the Assessee as to why provision of Section 263 of the Act should not be invoked and the order passed u/s 143(3) of the Act dated 18/11/2016 be set aside on the issue of 56(2)(vii)(b) of the Act. The Assessee submitted the reply vide letter dated 14/03/2019, the relevant gist of the same areas under:

“It is a matter of record that we had allotted 61945 shares of face value of Rs. 10/-, on premium of Rs. 310/- per share, only to the family members of our directors. It is also a matter of record that we had charged premium of Rs. 310/- per share, on allotment of shares to the family members of our directors. We may clarify here that when we had decided to invite share subscription, we had referred the matter to an independent Chartered Accountant to work out the fair market value at that point of time. The said Chartered Accountant had carried out such exercise, while taking into consideration our balance sheet as on 30.06.2013. Thereafter, the said Chartered Accountant had worked out the fair market value of each share of our company at Rs. 319.63 and given his report. On the basis of such report, we had proposed to charge premium of Rs. 310/- per share from the prospective share subscribers. As & when the share subscribers had agreed to subscribe our shares on premium of Rs. 310/- per share, we had accepted the payment from the prospective shareholders in the month of October 2013.

We wish to clarify that we had made available all the details/documents (including the share valuation report), as required by the A.O. vide order sheet entry dated 15.09.2016, on two different occasions. In order to rule out any doubt, we have recently asked CA Mr. Tarun Makhija

(who had represented us for the assessment proceedings before the A.O.), to re- confirm as to whether he had made available the said valuation report to the A.O. During the course of assessment proceedings, or not. We have been told by CA Mr. Tarun Makhija that (i) he had made available the said valuation report to the A.O. during the course of assessment proceedings; (ii) the A.O. had found the same in order and thereafter closed the assessment proceedings; and (iii) in the assessment order, the A.O. had no where mentioned that the valuation report, as asked for by him to be furnished, was not furnished. We may add here that after noticing the fact that the valuation was done on the basis of the balance sheet as on 30.06.2013 i.e. book value as on 30.06.2013 (and not on the other method viz. Discounted Free Cash Flow method), the A.O. had got himself satisfied with the premium of Rs. 310/- per share charged by us on allotment of shares to family members. We may clarify here that the entire amount was received by us in the month of October 2013 and also the allotment was done thereafter. This was the reason for the A.O. not to doubt the quantum of premium charged by us @ Rs. 310/- per share on allotment of shares to the family members. For your ready reference, copy of the said Valuation Report is enclosed herewith.

We state that when we had decided to allot shares on premium, we had referred the matter to an independent Chartered Accountant to work out the fair market value of our shares. The said Chartered Accountant had carried out such exercise while taking into consideration our balance sheet as on 30.06.2013. Thereafter, the said Chartered Accountant had worked out the fair market value of each share of our company and given his report dt. 30.09.2013. Thereafter, we had proposed to charge premium of Rs. 310/- per share from the prospective share subscribers. We hereby invite your kind attention towards the explanation (ii) of (a) of sub section viib of section 56 of the Income Tax Act 1961, which reads as under:-

Explanation For the purposes of this clause,-

- (a) the fair market value of the shares shall be the value-*
- (i) 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, licenses, franchises or any other business or commercial rights of similar nature, whichever is higher;*

You will observe that nowhere in the section 56(2)(viib) and / or Rule 11UA, it is mentioned that the value should be based upon the last audited balance sheet of the company. You are therefore requested to kindly drop the proposal to set aside the issue relating to charging of premium on allotment of shares in terms of section 56(2)(viib) to the AO for examination.”

11. It can be seen from above reply, the Assessee contended that the C.A who has appeared before the A.O. has made available the valuation report to the A.O. and the A.O. found the same in order and thereafter closed the assessment proceedings. The valuation has been done on the basis of balance sheet as on 30/06/2013 i.e. book value as on 30/06/2013 which is not on the other method i.e. discounted free cash flow method. The A.O. had got himself

satisfied with the premium of Rs. 310 per share charged by the Assessee on allotment of shares to family members and the entire amount was received by the Assessee in the month of October, 2013 and also allotment was done thereafter. Therefore, there was no reason for the A.O. to doubt the quantum of premium charge at Rs. 310 per share on allotment of share to family members. The Assessee has also produced the Valuation Report before the Ld. PCIT. The Ld. PCIT neither verified the said Valuation Report produced by the Assessee nor found any fault in the method/manner adopted in the Valuation Report and without giving any reasoning set aside the assessment order. When the Ld. PCIT makes allegation that the Assessee has not produced the Valuation Report before the A.O., which has been disputed by the Assessee, nothing prohibited the Ld. PCIT from looking into the Valuation Report produced by the Assessee before him and give finding thereupon. Without even examining the Valuation Report and without even finding fault in the method of valuation adopted by the Assessee the Ld. PCIT erroneously invoked provision of Section 263 of the Act, which is not sustainable. Therefore, the order of the Ld. PCIT dated 30/03/2019 is hereby quashed.

12. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 29th August, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated : 29/08/2024

*R.N, Sr. PS**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI