IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Satbeer Singh Godara, Judicial Member
&
Shri Amarjit Singh, Accountant Member

ITA No. 132/Coch/2023
(Assessment Year: 2016-17)

Sils Karingattil Jose NP 3/406, Karingattil House, Munnar Road Nedumkandom P.O. [PAN: AFOPJ8789C]	vs.	Income Tax Officer Ward - 2, Thodupuzha
(Appellant)		(Respondent)

Appellant by:	Shri P. M. Veeramani, CA
Respondent by:	Smt. V. Swarnalatha, Sr. D.R.

Date of Hearing:	22.08.2024
Date of Pronouncement:	19.11.2024

O R D E R

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for A.Y. 2016-17 arises against the CIT(A)/National Faceless Appeal Centre, Delhi's DIN & Order No. ITBA/NFAC/S/250/2022-23/1047998328(1) dated 14.12.2022 in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act).

2. Heard both the parties. Case file perused.

3. The assessee pleads the following substantive grounds in the instant appeal:

> *1. The learned Commissioner of Income tax (Appeals)-12, Bengaluru has grossly erred in sustaining the addition in part, for the assessment year 2010-11, on the finding that*

the alleged agreement executed by the appellant will result into "transfer" of property as defined under section 2(47) of the Income tax Act read with section 53A of the Transfer of Property Act.

2. The appellant submit that the agreement entered into by him together with two other joint owners of land will not come under the definition of "transfer" as envisaged under section 2(47) of the Income tax Act and also that the agreement referred above will not be hit by the provisions of section 53A of the Transfer of Property as well, to treat the same liable to tax under capital gain.

3. The transferee in the instant case, has complied none of the conditions specified under section 53A of the transfer of property Act during the year under reference, and the mere handing over the possession if any, did not itself cloth the transaction under the definition of "transfer" as envisaged under the Income tax Act.

4. The agreement executed is in consideration of an asset to be created in future and not for an existing asset with regard to the land owners and hence the value of consideration is not ascertainable as on the date of agreement. The learned Commissioner of Income tax (Appeal)'s finding that the consideration being the estimated value of asset under section 50C, is against the settled provisions of the Act.

5. The assessing officer and the learned Commissioner of Income Tax (Appeal) have grossly erred in presuming that the appellant has entered into an agreement for transferring his right in the property to others and have given possession of the property in pursuance of the agreement, so as to make it liable to tax under section 2(47) read with section 53A of the Transfer of Property Act. The appellant submit that these conclusions by the officer and by the first appellate authority are wrong and against the facts of the case.

6. The joint development agreement entered into between the appellant and the builders do not tantamount to an agreement specified under section 53A of the transfer of property Act and there is absolutely no specification and determined amount in the agreement and also that the possession of the property is not given or transferred to the transferee, as per the agreement. The appellant also submit

that the provisions of section 50C of the Act is not applicable to the facts of the case.

7. The appellant submit that none of the conditions specified in section 53A of the Transfer of Property Act read with section 2(47)(V) of the Income Tax Act were complied in the agreement under reference, and the findings Of the assessing officer and the first appellate authority in this regard are grossly unfounded and incorrect.

8. There being no "transfer" by way of a Joint development agreement in the case under reference, the conclusion of the officer and first appellate authority is against the facts and circumstance of the case.

9. The appellant humbly submits that no profit or gain is arising from the Joint development agreement under reference, especially during the year under reference, mainly because there is no definite and determined consideration during the year. The value and nature of consideration is to arise in future, that too depending upon a variety of conditions to be complied in future, and hence the computation of income and taxing the same, especially during the year is grossly against settled principles of law."

4. Coming to the assessee's sole substantive grievance raised herein challenging correctness of both the lower authorities action making Section 56(2)(vii)(c)(ii) addition of Rs.11,67,000/-, in the course of assessment as upheld in the lower appellate discussion, we note that the CIT(A)/NFAC has decided the said issue against him as follows:

5. DECISION: I have considered appellant's submissions. In this case, the appellant is an employee of M/s. Anson Fincorp Pvt. Ltd., Wherein the appellant received 510000 unquoted shares of M/s. Anson Fincorp Pvt. Ltd. at Rs. 10 per share. The Assessing Officer took the fair market value of Rs. 12.29 per share as per NAV method and initiated proceedings u/s 147 of the Income Tax Act for the difference of Rs. 11,67,900/- as escapement of income.

5.2 During the assessment proceedings, the appellant argued that the valuation of shares has been done through

DCF method. The appellant also submitted the valuation report. The Assessing Officer found that it is not backed by any documentary evidence. Hence, the Assessing Officer rejected the valuation report of the appellant and made the valuation as per NAV method in accordance with Rule 11U r.w. Rule 11UA (1)(c)(b) of the Income Tax Rule and made the addition of Rs.11,67,900/- u/s 56(2)(vii)(c)(ii) of the Income Tax Act. The Assessing Officer relied upon following judgments:

a) *Hon'ble ITAT, Delhi in Agro Portfolio Pvt. Ltd. [TS-7311-ITAT2018 (Delhi).*
b) *Hon'ble ITAT Bangalore order dated 27.12.2019 TUV Rheinland NIFE Academy Pvt. Ltd. Vs. ITO- ITA 3160/Bang/2018.*
c) *Innoviti Payment Solutions Pvt. Ltd. Vs. ITO 175 ITD 10/178 DTR332/199 TTJ 626(Bang.)(Trib.).*

In all these cases, the contention of the revenue that NAV method should be adopted if the Assessing Officer is not satisfied with DCF method has been upheld by various benches of Hon'ble Tribunal.

5.3 Now the appellant in the appellate proceedings has submitted that the revenue authorities cannot force the appellant to adopt particular method to valuation of shares. Reliance has been placed upon certain decisions of Hon'ble Tribunal. I have gone through the decisions cited by the appellant. They are not applicable to the facts of the case.

5.4 Further, the appellant has not been able to controvert the finding of the Assessing Officer that the valuation of the appellant done through DCF method was not backed by any documentary evidence. Furthermore, it was based on unsupported assumptions/projections.

5.5 Hence, I find merit in the method of evaluation taken by the Assessing Officer for valuation of shares as per NAV method. The addition done by the Assessing Officer u/s 56(2)(vii)(c)(ii) of Rs. 11,67,900/- is upheld and the appeal of the appellant is dismissed.
6. In the result, the appeal of the appellant is dismissed."

5. It is in this factual backdrop that the assessee *inter alia* argues that once he was already a shareholder in M/s Anson Fincorp Pvt. Ltd. Which allotted him shares via "rights issue", the same

could not have held to have "received" u/s 56(2)(vii) of the Act, being in the nature of mere creations than transfer in light of (2024) 460 ITR 628 (Guj.) PCIT Vs. Jigar Jashwantlal Shah rejecting the Revenue's identical stand as under:

> *6. Section 56(2)(vii)(c) of the Act, reads as under:*
>
> *"56. (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to Income-tax under the head "Income from other sources", namely :-...*
>
> *(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,— . . .*
>
> *c) any property, other than immovable property,—*
>
> *(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property ;*
>
> *(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :*
>
> *Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :*
> *Provided further that this clause shall not apply to any sum of money or any property received—*
>
> *(a) from any relative ; or*
> *(b) on the occasion of the marriage of the individual ; or*
> *(c) under a will or by way of inheritance ; or*
> *(d) in contemplation of death of the payer or donor, as the case may be ; or*

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(e) from any local authority as defined in the Explanation to clause (20) of section 10 ; or
(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10 ; or
(g) from any trust or institution registered under section 12AA ; or
(h) by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47.

Explanation.—For the purposes of this clause,—

(a) 'assessable' shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 50C ;

(b) 'fair market value' of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed ;

(c) 'jewellery' shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of section 2 ;

(d) 'property' means the following capital asset of the assessee, namely :—

(i) immovable property being land or building or both ;
(ii) shares and securities ;
(iii) jewellery ;
(iv) archaeological collections ;
(v) drawings ;
(vi) paintings ;
(vii) sculptures ;
(viii) any work of art; or
(ix) bullion
7. The aforesaid provisions of section 56(2)(vii)(c) of the Act was inserted vide amended Act with effect from July 1, 2010. Explanatory Notes Explaining the Provisions of Finance Bill reads as under:*

"Taxation of certain transactions without consideration or for inadequate consideration.

Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without

consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000) by an individual or an HUF is chargeable to Income-tax.

**[2010] 321 ITR (St.) 110, 123.*

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in the hands of recipient under the head 'income from other sources'.

However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archaeological collection, drawings, paintings, sculpture or any work of art.

A. These are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision.

In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested)either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). Section 2(18) provides the definition of a company in which the public are substantially interested.

It is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.

Consequential amendments are proposed in—

(i) section 2(24), to include the value of such shares in the definition of income ;

(ii) section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56(2).

These amendments are proposed to take effect from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

B. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift tax Act.

The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in

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the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property, so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capitalasset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

C. In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. It is, therefore, proposed to amend clause (vii) of section 56(2) so as to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

These amendments are proposed to take effect retrospectively from 1st October, 2009 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

D. It is proposed to amend the definition of 'property' as provided under section 56 so as to include transactions in respect of 'bullion'.

This amendment is proposed to take effect from 1st June, 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

E. It is proposed to amend section 142A(1) to allow the Assessing Officer to make a reference to the Valuation Officer for an estimate of the value of property for the purposes of section 56(2).

This amendment is proposed to take effect from 1st July, 2010."

8. A conjoint reading of the provision as well as the Explanatory note of the said provision, it is clear that only when an individual or a HUF receives any property for consideration which is less than the fair market value, the provisions of section 56(2)(vii)(c) would be attracted. In the facts of the case, the shares had come into existence only when the allotment is made by the company as rights shares cannot be said to be "received from any person". The shares which have been allotted to the assessee were not "received from any person" which is the fundamental requirement for invoking section 56(2)(vii)(c). In other words, the property must pre-exist for application of section 56(2)(vii)(c), which is clear from the intention of the Legislature.

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9. The Tribunal, applying the above reasoning, relied upon the decisions in the case of Sudhir Menon (HUF) v. Asst. CIT dated March 12, 2014, of the Income-tax Appellate Tribunal, Mumbai "A" Bench, and on a decision of the hon'ble Supreme Court in the case of Miss Dhun Dadabhoy Kapadia v. CIT**. The Tribunal, also relied on a decision in the case of H. Holck Larsen v. CIT***, to hold that as long as there is no disproportionate allotment of shares, there was no scope of any property being received by them on the said allotment of shares, as there was only an apportionment of the value of their existing shareholding over a large number of shares and hence no addition under section 56(2)(vii)(c) would arise. It was, therefore, held that if the shares are allotted strictly on proportionate basis based on existing shareholding, then though the provisions per se are applicable, but will not*

operate adversely because the gains accruing on allotment of fresh shares will be offset by the loss in the value of existing shares.

10. The Tribunal, in support of its finding relied upon the decision in the case of Dy. CIT v. Smt. Veena Goyal# and on a decision in the case of ITO v. Rajeev Ratanlal Tulshyan##. The Tribunal, therefore held that the provisions of section 56(2)(vii)(c) would not apply in respect of allocation of 1,03,000 rights shares allotted to the assessee proportionate to its shareholding in the company.

11. With regard to the issue whether section 56(2)(vii)(c) of the Act can be invoked in respect of additional 82,200 shares received by the assessee since the wife and father of the assessee did not exercise the rights shares issued and renounced the right in favour of the assessee, reliance was placed on a settled principle of law that what cannot be done directly cannot be done indirectly as well. The Tribunal, therefore, held that had the wife and father of the assessee directly transferred their shares in favour of the assessee, the provisions of section 56(2)(vii)(c) of the Act could not have been invoked since both of them are falling in the definition of "relatives" which are excluded from within the purview of operation of section 56(2)(vii)(c) of the Act. As a consequence it was held that the renunciation of rights shares by wife and father of the assessee by not exercising the right to subscribe would not attract the provisions of section 56(2)(vii)(c) of the Act. The Tribunal relied upon the decision in the case of Kumar Pappu Singh v. Dy. CIT### and in the case of Asst. CIT v. Y. Venkanna Choudary#.*

**[2014] 45 taxmann.com 176 (Mumbai).*
***[1967] 63 ITR651 (SC).*
****[1972] 85 ITR 285 (Bom).*
#[2020] 119 taxmann.com 362 (Jaipur).
##[2021] 92 ITR (Trib) 332 (Mumbai); [2022] 136 taxmann.com 42 (Mumbai).
###[2019] 101 taxmann.com 122 (Visakhapatnam).
**#[2019] 112 taxmann.com 71 (Visakhapatnam).*

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The Tribunal, therefore, held that the provisions of section 56(2)(vii)(c) of the Act cannot be invoked in respect of additional 82,800 shares received by the assessee.

12. With regard to the application of section 56(2)(vii)(c) of the Act for the balance 14,800 shares allotted to the assessee as a result of third party shareholder declining to apply for rights shares in favour of the assessee, the Tribunal held against the assessee because renunciation of rights in favour of the assessee by third party who are not related does lead to disproportionate allocation of shares in favour of the assessee.

13. With regard to the reduction in valuation of shares to Rs. 205.55 per share by computing the fair market value per share on the date of allotment, taking into consideration the book value as on March 31, 2012, and adding further consideration received on account of issuance of additional shares, the Tribunal upheld the decision of the Commissioner of Income- tax (Appeals) holding that the Commissioner of Income-tax (Appeals) has not erred in facts and in law in computing the fair market value of shares on the above lines. The Tribunal relied on a decision in the case of Asst. CIT v. Y. Venkanna Choudary and in the case of Sadhvi Securities (P.) Ltd. v. Asst. CIT**, wherein, it is held that in case the balance sheet was not drawn on the date of allotment, the previous balance-sheet which was approved in the Annual General Meeting has to be considered for valu¬ation of fair market value of the shares. The Tribunal, therefore, held that since the shares were allotted before balance-sheet for the assessment year 2013-14, the Commissioner of Income-tax (Appeals) did not err in computing the fair market value per share considering the previous balance- sheet approved in Annual General Meeting for valuation of fair market value of the shares.*

14. Mr. Varun Patel, learned senior standing counsel appearing with Mr. Dev D. Patel, learned advocate for the Revenue, would submit that the Commissioner of Income-tax (Appeals) erred in law in holding the addition under section 56(2)(vii)(c). He would further submit that the Commissioner of Income-tax (Appeals) erred in law and on facts adopting the valuation of shares at Rs. 205 per share instead of Rs. 255 per share determined by the Assessing Officer as per rule 11 UA(1)(c)(b).

15. Mr. B S. Soparkar, learned counsel appearing for the assessee would support the order of the Commissioner of Income-tax (Appeals) holding that the provisions of section 56(2)(vii)(c) cannot be invoked as was rightly held by the appellate authority, as what was found by the appellate

**[2019] 112 taxmann.com 71 (Visakhapatnam).*
*** [2019] 109 taxmann.com 245 (Trib); [2019] 179 ITD 197 (Delhi).*

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authority that the additional 82,200 shares received by the assessee were as a result of the fact that the assessee's father and wife did not exercise to opt for the issue and renounced their rights shares in favour of the assessee. Consequently, such renunciation of rights shares by way of not exercising the right to subscribe to them in favour of the assessee, as held by the Commissioner of Income-tax (Appeals) and confirmed by the Income-tax Appellate Tribunal would not attract the provisions of section 56(2)(vii)(c).

16. Mr. Soparkar, learned counsel, in support of his submission, relied on the following decisions :

(i) Miss Dhun Dadabhoy Kapadia v. CIT.*
*(ii) H. Holck Larsen v. CIT**.*
*(iii) Sudhir Menon (HUF) v. Asst. CIT***.*
(iv) Kumar Pappu Singh v. Dy. CIT#.
(v) Sadhvi Securities (P.) Ltd. Asst. CIT##.
(vi) Asst. CIT v. Y. Venkanna Choudary###.
(vii) Dy. CIT v. Smt. Veena Goyal#.*
(viii) ITO v. Rajeev Ratanlal Tulshyan#.*
(ix) Prakash Chand Sharma HUF v. ITO##.*

17. The Tribunal, therefore, has not committed any error in answering all the four issues which are raised by it holding that section 56(2)(vii)(c) of the Act cannot be invoked in respect of allocation of 1,03,000 rights shares allotted to the assessee proportionate to his shareholding in the company as it cannot be said that the assessee has received as there is transfer of the shares which pre-existed prior to the issuance of shares by the company as there is vital difference between "creation" and "transfer of shares". The words "allotment of shares" having used to indicate the creation of shares by appropriation out of the unappropriated share capital to a particular person who has the right to choose for such allotment. Therefore, there is a difference between issue of a share to a subscriber and the purchase of a share from an existing shareholder as in the first case, because, the first

**[1967] 63 ITR651 (SC).*

***[1972] 85 ITR 285 (Bom).*
****[2014] 45 taxmann.com 176 (Mumbai).*
#[2019] 101 taxmann.com 122 (Visakhapatnam).
##[2019] 109 taxmann.com 245 (Delhi); [2019] 179 ITD 197 (Delhi).
###[2019] 112 taxmann.com 71 (Visakhapatnam).
**#[2020] 119 taxmann.com 362 (Jaipur).*
#[2021] 92 ITR (Trib) 332 (Mumbai); [2022] 136 taxmann.com 42 (Mumbai).*
##[2022] 139 taxmann.com 286 (Jaipur).*

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case is that of creation, whereas, the second is that of "transfer" entitled to the right in action.

18. In view of the above, the provisions of section 56(2) would not be applicable to the issue of new shares which is also submitted by the Explanatory Notes to the Finance Bill, 2010, wherein, it is clarified that section 56(2)(vii)(c) of the Act ought to be applied only in the case of transfer of shares. It is trite law that allotment of new shares cannot be regarded as transfer of shares. Therefore, in order to apply the provisions of section 56(2)(vii)(c), there must be an existence of property before receiving it. As per Advanced Law Lexicon Dictionary, the term "receive" has been defined as "To receive means to get by a transfer, as to receive a gift, to receive a letter or to receive money and involves an actual receipt". Issue of new shares by a company as rights shares is creation of property and merely receiving such shares cannot be considered as a transfer under section 56(2)(vii)(c) and accordingly, such provision would not be applicable on the issuance of shares by the company in the hands of the allottee.

19. The apex court in the case of Khoday Distilleries Ltd. v. CIT, after referring to the decision in the case of Sri Gopal Jalan and Co. v. Calcutta Stock Exchange Association Ltd.**, noted the question arose as to the amendment of the word "allotment held that the word "allotment" means appropriation out of previously unappropriated capital of a company, of a certain number of shares to a person and till such allotment, the shares do not exist as such. Therefore, it is only on allotment that the shares come into existence. In every case, the words "allotment of shares" having used to indicate the creation of shares appropriation out of unappropriated share given to a particular person which is*

also referred to in the Explanatory Notes to the Finance Bill, 2010. Therefore, the aim and intention behind amending the provisions of section 56 is to prevent the practice of transferring unutilized shares at a price which are allotted for the first time by way of rights shares. The amendment is therefore never meant to aim the "fresh issue" or "fresh allotment" of shares by a company.

20. With regard to the issue of 82,200 shares, the name of wife and father of the assessee would also not be hit by the provisions of section 56(2)(viii)(c) as both of them would be covered by the definition of relative covered in the exemption of relative, and therefore, the provisions of section 56 would not be applicable at all. The findings recorded about valuation of shares to Rs. 205.55 is concerned, there are concurrent findings of fact which do not require any interference as the Commissioner of Income-tax

**[2008] 307 ITR 312 (SC); [2009] 176 Taxman 142 (SC).*
*** [1963] 33 Comp Cas 862 (SC); [1964] 3 SCR 698.*

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(Appeals) has rightly computed the fair market value on the basis of the balance-sheet which was available on record for the previous year and which was approved in Annual General Meeting.

21. In view of the foregoing reasons, we are of the opinion that no question of law, much less any substantial question of law would arise from the impugned common judgment and the order passed by the Tribunal. Both the appeals are accordingly, dismissed with no orders as to costs."

6. The assessee's 2nd contention is that both the learned lower authorities couldn't have substituted his valuation based on one of the twin approved methods and therefore, the impugned addition deserves to be deleted.

7. The assessee's third argument that gives his "rights" issue has been held as a genuine transaction in both the lower proceedings, the impugned Section 56(2)(vii)(c)(ii) addition deserves to be reversed.

8. The assessee's last stand is that the impugned "rights" issue in fact had depreciated "FMV" of the company shares already held in light of the foregoing case law, the impugned addition be deleted.

9. The Revenue on the other hand has strongly supported the impugned addition made in the assessee's hands u/s 56(2)(vii)(c)(ii) of the Act.

10. It is in this factual backdrop that we first of all deal with the asssessee's legal plea that his impugned "rights issue" does not satisfy the statutory test of "receives", so as to be covered u/s 56(2)(vii)(c)(ii) of the Act.

11. There could be hardly any dispute between the parties that Section 56(2)(vii)(c)(ii) comes into play when an individual or HUF, as the case may be, "receives" any property, including "shares and securities" as defined in Explanation (d)(ii), for a consideration less than the aggregate fair market value of the property exceeding fifty thousand rupees .....Learned counsel admittedly seeks to exclude a "rights issue" of shares and securities on the ground that hon'ble Gujarat High Court has held that dictionary meaning of "receives" does not amount to transfer, such an addition is not sustainable.

12. It is at this stage that there arises a broader question of interpretation of the instant "anti-abuse" provisions itself wherein, the only exception stipulated by the legislature is given in the 2nd proviso to Section 56(2)(vii) in clauses (a) to (h). When we invited learned counsel's attention, he sought to highlight the fact that we have to read "receives" only by transfer which does not include a

"rights issue". We express our reluctance to accept the assessee's instant argument going by the principle of stricter interpretation reiterated from time to time by hon'ble apex court recently in Commissioner Vs. Dilip Kumar & Co. (2018) 9 SCC 1 (SC) (FB) and their lordships latest judgment in Chief Commissioner of Income Tax Vs. M/s Safari Retreats Pvt. Ltd. (2024) 167 taxmann.com 73 (SC) as follows:

> *"25. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well-settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:*
>
> *a. A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise;*
>
> *b. If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity;*
>
> *c. While dealing with a taxing provision, the principle of strict interpretation should be applied;*
>
> *d. If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue;*
>
> *e. In interpreting a taxing statute, equitable considerations are entirely out of place;*
>
> *f. A taxing provision cannot be interpreted on any presumption or assumption;*
>
> *g. A taxing statute has to be interpreted in the light of what is clearly expressed. The Court cannot imply anything which is not expressed. Moreover, the Court cannot import provisions in the statute to supply any deficiency;*

h. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly;

i. If literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language;

j. Equity and taxation are strangers. But if construction results in equity rather than injustice, such construction should be preferred;

k. It is not a function of the Court in the fiscal arena to compel the Parliament to go further and do more;

l. When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage."

13. Coupled with thus, learned CIT-DR submitted since the hon'ble high court as adopted dictionary meaning which is contrary to stricter interpretation, the same does not amount to a binding which frustrates applicability of the provisions itself is not sustainable once the words herein are unequivocal and such a meaning leads to an absurdity in light of Pandian Chemicals Ltd. Vs. CIT 2003 (5) SCC 590 (SC) and CIT Vs. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom.). Mr. Pandian (CIT-DR) further cites the CBDT's three landmarks circulars No. 10/2018 dt. 31.12.2018, No. 2/2019 dt. 04.01.2019 and No. 03/2019 dt. 21.01.2019; respectively. His case is that even the Board had exempted such a "rights issue" from the purview of Section 56(2)(vii)(c) which was

withdrawn by the 2nd one followed by the said last circular that such an exclusion is contrary to the express provisions of the Act.

14. We find merit in the Revenue's foregoing argument that hon'ble Gujarat high Court (a non-jurisdiction high court), becomes a non-binding precedent since it had failed to consider stricter interpretation settled upto hon'ble apex court and also ignored the CBDT's last circular that such "rights issue" very well came u/s 56(2)(vii)(c) of the Act. Case law Thana Electricity Supply Ltd. (supra) holds that a non-jurisdictional high court ceases to be a binding precedent since having only persuasive value as follows:

> *21. From the foregoing discussion, the following propositions emerge :*
>
> *……..*
>
> *(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Tribunal within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of article 141 of the Constitution."*

15. Learned counsel at this stage further seeks to buttress the point that hon'ble Gujarat high court had discussed a catena of case law whilst affirming the tribunal's finding on "rights issues" that there was no disproportionate allotment which could attract Sec. 56 (2)(vii) (c) of the Act. We are of the considered view that the impugned statutory provision nowhere imposes any restriction at all on it's applicability in an instance of "rights issue" and therefore, going by stricter interpretation thereof on standalone basis, we do not have any other option but to reject assessee's substantive arguments. We further observe that even as per the explanatory Memorandum (supra) clarifies only those transaction taxable under specific heads are excluded which is not the case before us. Learned counsel's last plea is that a "rights issue" is not received from any "person" as per para 8 in hon'ble Gujrat high court which also fails to evoke our concurrence going by the fact that Sec. 2 (31)(iii) of the Act very well includes a "company" i.e. M/s. Ansan Fincorp (P) Ltd. before us. We accordingly reiterate going by our preceding detailed discussion that this case law holding blanket exclusion of sec. 56 (v) (vii) (c) in case of a "rights issue" ceases to a binding precedent.

16. We next advert to the assessee's remaining arguments that its share's valuation as per discount cash flow "DCF" method had seen wrongly substituted by the learned lower authorities. And that they could not have questioned his genuine transactions of the "rights issue" in question. We prima facie find merit his assessee's contents in light of Agra Portfolio (P) Ltd. Vs. PCIT (2024) 464 ITR 348 (Delhi) wherein their lordships hold such an actions is not sustainable in law. The fact also remains that the explanatory

Memorandum to Finance Bill 2010 in para "E" has made it clear that section 142 A(1) has also been amended to make a reference to the Valuation Officer to get an estimate of the value of property.

17. Faced with this situation, we find merit in assessee's instant twin latter substantive arguments in principle and direct the Learned Assessing Authority to make the statutory reference u/s 142A(1) in very terms.

18. We make it clear before parting that we have rejected the assessee's endeavour seeking to reject applicability of Sec. 52(2)(vii)(c) of the Act, qua the shares "received" by way of "rights issue" at the threshold itself by applying stricter interpretation in principle with liberty to plead and prove all factual aspects before "Valuing Officer" in Section 142A(1) proceedings. Ordered accordingly.

19. This assessee's appeal is partly allowed for statistical purpose. Order Pronounced in the Open Court on 19/11/2024.

Sd/-

(Amarjit Singh)
Accountant Member

Sd/-

(Satbeer Singh Godara)
Judicial Member

Dated: 19/11/2024

Subodh Kumar, Sr. PS

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

ASSISTANT REGISTRAR