

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.2611/Del/2024  
[Assessment Year : 2018-19]**

Oyo Hotels & Homes Pvt.Ltd., 4 <sup>th</sup> Floor, Spaze Palazo Sector 69, Gurgaon Haryana-122001 <b>PAN-AANCA6342H</b>	vs	Pr.CIT-7 New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Manuj Sabharwal, Adv. Shri Devvrat Tiwari, Adv. & Shri Drona Negi, Adv.	
<b>Respondent by</b>	Ms. Baljeet Kaur, CIT DR	
<b>Date of Hearing</b>	19.02.2025	
<b>Date of Pronouncement</b>	27.02.2025	

**ORDER**

**PER PRADIP KUMAR KEDIA, AM :**

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 27.03.2024 passed by Pr. Commissioner of Income Tax, Delhi-7 [“Pr. CIT(A)”] under s. 263 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 24.04.2021 passed under s. 143(3) r.w.s 144B of the Act pertaining to assessment year 2018-19.

2. The grounds of appeal raised by the assessee read as under:-

1. *“That on the facts and circumstances of the case and in law, the initiation of proceedings u/s 263 of the Act and the consequential order passed under section 263 of the Act by the Hon’ble PCIT is wholly unjustified and without exercising proper jurisdiction and therefore bad in-law.*

2. *That on the facts and circumstances of the case and in law, the Hon’ble PCIT has erred in passing the impugned order u/s 263 of the Act*

*for the subject year without satisfying the pre-conditions for initiating revisionary proceedings as under:*

*a. The order should be erroneous; and*

*b. The order should be prejudicial to the interests of the revenue.*

*3. That on the facts and circumstances of the case and in law, the Hon'ble PCIT has erred in holding that the Ld. AO has not conducted enquiries with regard to valuation at which the Compulsorily Convertible Preference Shares ('CCPS') were issued to Oravel Stays Limited (holding company of the Appellant) without appreciating that during the course of assessment proceedings the Ld. AO has conducted necessary enquiries/ investigations with regard to the issuance of CCPS and the same were answered to the satisfaction of the Ld. AO.*

*3.1. That on the facts and circumstances of the case and in law, the Hon'ble PCIT has erred in initiating the revisionary proceedings for the subject year without appreciating that the Appellant has placed on record the relevant documents/ evidence which clearly reflected the growth prospects of the company justifying the company's valuation.*

*4. That on the facts and circumstances of the case and in law, Hon'ble PCIT has erred in holding the assessment order as erroneous as well as prejudicial to the interest of revenue without taking into cognizance various jurisdictional appellate decisions, wherein it has been held that the rigours of section 56(2)(viib) of the Act are not attracted on transactions entered between holding and subsidiary companies. Accordingly, the condition for applicability of section 263 is not fulfilled in the present facts of the case.*

*5. That on the facts and circumstances of the case and in law, the Hon'ble PCIT has erred in proposing an addition to the Appellant's income on account of share premium amounting to INR 49,99,99,950, relating to issuance of CCPS by the Appellant to its holding company, alleging that such share premium is taxable as income as per section 56(2)(viib) of the Act.*

*5.1. That on the facts and circumstances of the case and in law, the Hon'ble PCIT failed to appreciate that the deeming fiction created by the provisions of section 56(2)(viib) of the Act are not attracted in the present case, since such issuance is a genuine business transaction involving allocation of the Appellant's business value to the existing shareholder.*

*6. That on the facts and circumstances of the case and in law, Hon'ble PCIT has erred in holding the assessment order as erroneous as well as prejudicial to the interest of revenue without appreciating that the order is not prejudicial to the interest of revenue and that the extent of enquiry into the valuation of CCPS is of no consequence and would have arrived at no prejudice from the transactions between holding and subsidiary company.*

7. *That on the facts and circumstances of the case and in law, the Hon'ble PCIT has grossly erred in law by applying Net Asset Value ('NAV') method specified under Rule 11UA(2)(a) of the IT Rules for computing FMV of CCPS, in complete and blatant disregard of the specific option provided to and exercised by the Appellant (under Rule 11UA(2) of the IT Rules) to apply DCF method for the purpose of its valuation.*

7.1. *Without prejudice to the above, Hon'ble PCIT has grossly erred in disregarding the Appellant's submission that the FMV of CCPS determined as per the Discounted Cash Flow ('DCF\*') method is in due compliance with the applicable provisions of Rule 11UA(1)(c)(0) of the Income-tax Rules, 1962 ('IT Rules').*

7.2. *Without prejudice to the above, the Ld. AO has grossly erred in law in terms of challenging/not accepting the valuation report obtained by the Appellant from Category 1 Merchant Banker.*

8. *That on the facts and circumstances of the case and in law, Hon'ble PCIT has erred in stepping in the shoes of the Ld. AO and directing the Ld. AO to make addition without appreciating the quasi-judicial powers of Ld. AO.*

8.1. *Without prejudice to the above, the addition proposed and consequential levy of tax proposed vide impugned order passed by Hon'ble PCIT is baseless and erroneous, without considering the complete facts of the present case. The addition proposed vide the impugned order is erroneous as the same is not limited to excess premium but also take within its ambit the face value of shares.*

9. *That on facts and circumstances of the case and in law, Hon'ble PCIT has erred in passing the impugned order without appreciating that the Appellant has taken the due course of action to revise its Return of Income and after the acceptance of the same the original Rol will stand substituted and any proceeding basis the original return of income shall be considered null and void.*

*The grounds mentioned herein by the Appellant are without prejudice to each other. The Appellant craves leave to add and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing before the Hon'ble ITAT."*

3. As per the grounds of appeal, the assessee has challenged the revisional directions towards applicability of s. 56(2)(viib) of the Act with reference to issuance of Compulsorily Convertible Preference Shares ('CCPS') by the assessment company to its holding company.

4. The Ld. Counsel pointed out at the outset that the assessee is wholly owned subsidiary of Oravel Stays Limited ('OSL'). During FY 2017-18 relevant

to AY 2018-19, the assessee issued 33,33,333 series AI Compulsorily Convertible Preference Shares ('CCPS') to its holding company at issue price of INR 150 per share aggregating to INR 49,99,99,950/- (including premium of INR 140 per share). The Pr.CIT in the revisional order observed that the Fair Market Value ('FMV') of CCPS as per Rule 11U of the income Tax Rules, 1962 stands at INR 33.55/- only and thus invoked s. 56(2)(viib) of the Act with a view to tax the excess premium so charged by the assessee company while issuing CCPS to its holding company. In this regard, Ld. Counsel referred to following decisions of the Co-ordinate Bench of the Hon'ble High Court & Co-ordinate Benches which has addressed the issue in favour of the assessee in the identical facts:-

- [i] FIS Payment Solutions & Services India Pvt.Ltd. v UOI [W.P.(C)] 10289/2024 judgement dated 29.07.2024 [Del.HC];
- [ii] DCIT v Kissandhan Agri Financial Services (P.) Ltd. [2023] 150 taxmann.com 390 (ITAT, Delhi);
- [iii] M/s. KBC India Pvt.Ltd. vs ITO [ITA No.9710/Del/2019] (ITAT, Delhi);
- [iv] ACIT vs Dhruv Milkose Pvt.Ltd. [ITA No.843/Del/2019] (ITAT, Delhi);
- [v] ITO v K.V.Global Pvt.Ltd. [2024] 160 taxmann.com 234 (ITAT, Delhi);
- [vi] Rugby Regency (P.) Ltd. v ACIT [2024] 160 taxmann.com 1056 (ITAT, Delhi); and
- [vii] ITO vs Solitaire BTN Solar (P.) Ltd [2024] 164 taxmann.com 170 (ITAT, Delhi).

5. The Ld. Counsel thus submitted that the decisions rendered by the Co-ordinate Benches clearly reflect that the provisions of s. 56(2)(viib) of the Act would not apply in the present case where the transaction is between the assessee (subsidiary company) with its 100% holding company as issuance of share to the holding company cannot be seen to involve circulation of any unaccounted money of the assessee company *per se*. The Ld. Counsel thus submitted that the twin conditions of s. 263 do not simultaneously exist in the

present case. The deeming fiction of s. 56(2)(viib) would not apply in the present case and consequently, the assessment order cannot be regarded as 'erroneous' *per se*. Hence jurisdiction under s. 263 is not available to the revisional authority. The Ld. Counsel thus sought suitable relief in the matter.

6. We straightway refer to the judgement delivered by the Hon'ble Delhi High Court in the case of *FIS P.Ltd.* (supra) wherein the decisions rendered by the Co-ordinate Bench in the case of *BLP Vayu (P.) Ltd.* (supra) & *Kissandhan Agri Financial Services (P.) Ltd.* (supra) were referred. The Hon'ble Delhi High Court in para 5 of its judgement observed that the Revenue conceded that it is bound to act in terms of declaration of law as embodied in the decisions of the Tribunal. Both the decisions of the Tribunal are on the point that s.56(2)(viib) has to be seen in proper perspective and having regard to the object of enactment of s. 56(2)(viib), the transactions between holding company and its wholly owned subsidiary company towards issuance of shares etc. are not covered within the ambit of s. 56(2)(viib) in the absence of any benefit *per se* arising from such transactions.

7. In the light of judgements referred herein above, the assessment order which is subject matter of revision, cannot be branded as 'erroneous' *per se*. Thus as rightly stated on behalf of the assessee, the pre-requisites of s. 263 are not satisfied in the present case. The impugned revisional order passed under s. 263 of the Act is thus set aside and quashed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 27<sup>th</sup> February, 2025.

**Sd/-**

**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

**Sd/-**

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

*\*Amit Kumar, Sr.P.S\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI