

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 2306/KOL/2025
Assessment Year: 2015-16**

Gaurav Vinimay Pvt. Ltd. (Appellant)	Vs.	D.C.I.T., Circle-8(1), Kolkata (Respondent)
PAN: AACCG4269Q		

Appearances:

Assessee represented by : Sanjay Bhattacharaya, FCA.

Department represented by : P.N. Barnwal, CIT, DR.

Date of concluding the hearing : 11-December-2025

Date of pronouncing the order : 10-February-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2015-16 dated 15.09.2025.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. That the Ld. Commissioner of Income-tax (Appeals), NFAC was wrong in confirming the action of the Assessing Officer in applying the provisions of Section 56(2) (viiia) in relation to the allotment of Shares made by 3(three) Companies to the appellant and the Addition made of Rs.13,53,09,500 under section 56(2)(viiia).

2. That without prejudice to the contention raised in Ground No. (1) above, the Ld. Commissioner of Income-tax (Appeals), NFAC failed to appreciate that Shares received on Allotment by a Company could not attract the provisions of Section 56(2)(viiia) and thus the Commissioner of Income-tax (Appeals), NFAC was wrong in confirming the Addition of Rs.13,53,09,500 to the Income of the appellant.



3. That the appellant craves leave to add, delete or modify any Ground or Grounds of Appeal before or at the time of the Hearing of the Appeal.”

3. Brief facts of the case are that the assessee had e-filed its return of income for the assessment year under consideration on 29.09.2015 showing total income at ₹ 'NIL' and the current year's loss of ₹22,93,83,105/-. During the relevant financial year, the assessee acquired the shares of the following group companies:

Sl. No.	Scrip Name	No. of shares
i	Gujarat NRE Energy Resources Ltd.	16,51,300
ii	Gujarat NRE Energy Resources Ltd.	56,80,000
iii	Madhur Coal Mining Pvt. Ltd.	1,98,750
iv	Madhur Coal Mining Pvt. Ltd.	33,35,000
v.	Newage Vinimay Pvt. Ltd.	52,23,000

3.1 The Assessing Officer (hereinafter referred to as Ld. 'AO') observed that the above-mentioned shares of group companies were acquired at lower than the fair market value of such shares and issued show cause notice to the assessee as to why the provisions of section 56(2)(viiia) of the Act should not be invoked; in response to which the assessee submitted that the shares of Gujarat NRE Energy Resources Ltd. (₹16,51,300/-) were not sold below the FMV as on the date of transaction. However, the Ld. AO added a sum of ₹13,53,09,500/- by invoking the provisions of section 56(2)(viiia) of the Act and further, added a sum of ₹2,03,68,000/- as Short term Capital Gains by invoking the provisions of section 50D of the Act and assessed the total income of the assessee at ₹15,11,71,870/- u/s 143(3) of the Act.

3.1 Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who perused the assessment order, considered the submission of the assessee, the provisions of section 56(2)(viiia) of the



Act and annual reports of the above-mentioned three companies and observed that the companies had low share capital and huge reserves on account of security premium and not due to profit of business, had hardly any business transaction as evident from the profit and loss account and all the three companies had common features i.e. all the shareholders holding more than 5% are again some Pvt. Ltd. companies. It proved a web of companies used to rotate the funds and provide accommodation entries to ultimate beneficiaries. Other current liabilities in all three companies are huge whereas there is no notable transaction in the profit and loss account and other current assets in all three companies were also huge on account of sale of shares whereas no notable transaction is there in the profit and loss account. It clearly proved that these companies were used to rotate the funds in the form of share capital and to provide accommodation entries to the ultimate beneficiaries. Therefore, the Ld. CIT(A) dismissed this ground of appeal by holding that these companies had been used to rotate the funds to the assessee and the Ld. AO had correctly applied the anti-abuse provision of section 56(2)(viia) of the Act and confirmed the additions made by the Ld. AO u/s 56(2)(viia) of the Act and accordingly, the appeal was partly allowed as relief was granted on account of addition under section 50D of the Act.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. AR submitted that the only issue for consideration is whether the share subscription can be covered u/s 56(2)(viia) of the Act. The valuation of the three companies were carried



out and the fair market value was more than the price paid. The provisions of section 56(2)(viia) of the Act were applied by the Ld. AO. However, he submitted that any issue of shares is not covered u/s 56(2)(viia) of the Act. The assessee is a private limited company and the provisions of section 56(2)(viia) of the Act were introduced with effect from 01.06.2010 to stop the transfer of shares below the fair market value. It was stated that only an allotment of share comes into existence and the shares were allotted, the price fixed by the issuing company was paid, the shares were allotted to the group companies and not to any outsider. The assessee relied upon the decision of **Khoday Distilleries Ltd. vs. Commissioner of Income-tax [2009] 176 Taxman 142 (SC)/[2008] 307 ITR 312 (SC)/[2008] 220 CTR 228 (SC)[14-11-2008]** para 7 and 8, However, the same was rendered in the case of gift, as was argued by the Ld. DR.

6. The Ld. DR further stated that the assessee is relying upon a provision which came later and relied upon page 12 of the order of the Ld. CIT(A) in which the provisions have been reproduced. On page 14, the Ld. CIT(A) has also discussed the issue relating to “receives” and on page 22 of the appeal order the conclusions have been drawn after discussing the financials of the company as per para 4.2. Our attention was drawn to page 22, paragraphs 1 to 5 of the appeal order wherein it is stated that the companies are used to rotate the funds. The provisions of section 56(2)(viia) of the Act are stated to be an anti-abuse provision. The Ld. AR countered that the provisions were enacted to stop the misuse of the transfer and the addition has been made only on the basis of the balance sheet.

7. We have considered the facts of the case, the submissions made and the documents filed. The Ld. CIT(A), vide para 7.1.4, has discussed the issue and has dismissed this ground of appeal and upheld the addition made by the Ld. THE LD. AO.

8. We find that the Ld. CIT(A) has passed a very reasoned order considering the relevant provisions of the Act. Similar issue arose before the Coordinate Bench of ITAT, Kolkata in the case of **Madhur Coal Mining Pvt. Ltd. vs DCIT** in **ITA No. 1784/KOL/2025** for AY 2015-16 in which vide order dated 02.01.2026, the appeal has been dismissed and the decision of the Ld. CIT(A) has been confirmed. The relevant extract from the order is as under:

“7. We have considered the submissions made. The provisions of section 56(2)(viii) of the Act are reproduced 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:—

(viii) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010 but before the 1st day of April, 2017, any property, being shares of a company not being a company in which the public are substantially interested,-

(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 31consideration:

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under

clause (via) or clause (vic) or clause (vich) or clause (vid) or clause (vii) of section 47.

Explanation.-For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);]."

8. The Ld. AO has countered the arguments of the assessee that the provisions of section 56(2)(viiia) of the Act were not applicable, with which we are in agreement. The Ld. CIT(A) confirmed the addition made by the Ld. AO after considering the submission of the assessee. The Ld. CIT(A) has gone through the contentions of the assessee and has confirmed the addition by holding as under:

"8.5 Grounds of Appeal No. 1:

8.5.1 Vide above ground of appeal, the appellant has challenged the addition of Rs. 13,23,01,000/- made by the AO u/s 56(2)(viiia) of the Act on account of purchase of shares at a price lower than their fair market value (FMV).

8.5.2 The appellant submitted that the shares in question were allotted by the issuing companies against subscription to share capital and not acquired from an existing shareholder. It was argued that there was no "transfer" of shares in such a case, as shares do not come into existence until they are allotted. The appellant relied on various judicial pronouncements including Khoday Distilleries Ltd. v. CIT [(2008) 307 ITR 321 (SC)] and Sri Gopal Jalan & Co. v. Calcutta Stock Exchange [(1964) AIR SC 250], to contend that allotment of shares constitutes "creation" and not "transfer", and hence does not fall within the ambit of section 56(2)(viiia). The appellant stated that section 56(2)(via) uses specific term 'receives' which is not being defined in the Income Tax Act. Therefore, dictionary meaning of the word is to be taken into consideration. As per advanced law lexicon dictionary, the term 'received' 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". The taxability for the receiver is triggered on receipt basis. In case of shares, transfer would be regarded as complete upon receipt of physical share certificate. Therefore, receipt of shares can be said to be completed only upon receipt of physical share certificate. The appellant submitted that, for something to be given by the giver there should be some existing property in the hands of the giver. In the case of fresh allotment of shares, such shares allotted to share holder cannot be treated as

property of the company as such shares would not have appeared on the assets side of its Balance Sheet either as investment or stock in trade. The appellant also relied on the legislative intent behind insertion of the said provision, arguing that the provision is anti-abuse in nature and is not attracted in case of fresh allotment of shares.

8.5.3 The assessment record shows that the AO invoked section 56(2)(viiia) after finding that the appellant company received unlisted shares of closely held companies for a consideration significantly lower than the FMV, as determined in accordance with Rule 11UA. Details of shares allotted to appellant, FMV or shares, purchase price of shares are mentioned in the table below:

Name of the Scrip purchased below FMV(A)	Fair Market Value of the Scrip in Rs. (FMV) (B)	Purchase rate in Rs.	Difference	No. shares Purchased	Amount chargeable to tax u/s 56(2)(viiia) (Rs.) (B)
Gujarat NRE Energy Resources Ltd.	100	82	18	48,54,000	8,73,72,000
Gaurav Vinimay Pvt Ltd	88	83	5	40,79,000	2,03,95,000
Newage Vinimay Pvt Ltd	88	82	6	40,89,000	2,45,34,000
Total					13,23,01,000

8.5.4 The AO treated the difference amounting to Rs.13,23,01,000/- as income under the head "Income from Other Sources". The AO held that the shares were received for inadequate consideration and the differential between the FMV and actual consideration was taxable under section 56(2)(viiia).

8.5.5 During the assessment proceedings, the appellant contended that the shares were acquired through fresh issue and allotment by the investee companies, and hence, there was no transfer from an existing shareholder and since there was no existing property in the form of shares, allotment of fresh shares cannot be treated as receipt of shares in the hands of appellant within the meaning of section 56(2)(viiia) of IT Act. However, the AO rejected the contention, stating that the language of the provision is clear, purposive interpretation of provision is not required when the language of the section is very clear and section 56(2)(viiia) does not exclude fresh allotment from its scope, and held that the receipt of shares at a value lower than FMV, irrespective of the mode of acquisition, attracts the provisions of section 56(2)(viiia).

8.5.6 It is noted that the appellant has furnished audited balance sheets and allotment details of the three companies i.e. Gujarat NRE

Energy Resources Ltd, Gaurav Vinimay Pvt Ltd, and Newage Vinimay Pvt Ltd to show that the shares were issued through fresh allotment. The AO has also acknowledged the fact that shares were received by appellant during the previous year under consideration. Now coming to argument of appellant that, fresh issuance of shares are not covered by provisions of section 56(2)(viiia), the section is applicable to all the assesseees who are in receipt of shares for consideration lesser than FMV. The Legislature consciously refrained from using words like "transfer of shares", intending to cover situations where fresh shares are allotted at a value lower than FMV of the shares. Contention of appellant that as per dictionary definition of received, the item received by 'receiver' should necessarily constitute property of giver is incorrect since definition of 'received as per advanced law dictionary provided by the appellant includes 'receipt of letter' and 'letter in the hands of the sender by no stretch of imagination constitutes property. Letter is something which is created / written just before sending it to the receiver by the sender akin to allotment of shares. Therefore, receipt of shares by a person irrespective of mode of receipt and also irrespective of the fact that they constitute pre-existing property in the hands of giver or not, are covered by provisions of section 56(2)(viiia). As per provisions of section 56(2)(viiia), shares received by the company if constitute property in the hands of receiving company, it is sufficient. There is no pre condition in the section that they should constitute 'property' by figuring in balance sheet of the company that is allotting shares.

8.5.7 CBDT vide Circular No. 3/2019, dated 29.01.2019, has clarified that Section 56(2)(viiia) would apply to fresh issuance of shares. In the circular it is clarified that, the argument that above section would not be applicable in case of fresh issuance of shares is not a correct approach, as it could be subject to abuse, and would be contrary to the express provisions and the legislative intent of Section 56(2)(viiia) or similar provisions contained in Section 56(2). Further, the memorandum explaining provisions of Finance Bill 2010 stated that section 56(2)(via) of the Act was introduced as an anti-abuse provision to prevent the practice of transferring shares of a private company for no or in adequate consideration. In the present case, it is an admitted fact that shares were allotted to appellant at a price lower than the fair market value of shares which practice the section wanted to plug.

8.5.8 In Sudhir Memon HUF v. Asstt. CIT [2014] 45 taxmann.com 176, Hon'ble Mumbai tribunal has interpreted the word "Receive" used under section 56 (2) (viiia) and held that 'Receipt' is a word or



term of wide import and would include the acquisition of the subject matter of receipt by modes other than by way of transfer as well. The scope of the word 'receipt' should not be restricted to the word 'transfer' only. Thus, it was held by the ITAT that Section 56(2)(vii) would be applicable in case of fresh allotment of shares. Hon'ble tribunal opined that giving a restrictive scope of the word "receipt" would be tantamount to reading down the provision of law, which is in consistent with clear intent of law. Relevant portion of decision of Hon'ble ITAT is reproduced as under:

"We are completely unimpressed. The argument, attractive on its face, fails miserably the moment the nature of the transaction, i.e., the allotment of the shares (through which the relevant shares stand acquired or received), upon which only the shares come into existence and are received by the allottee thereof, is clarified. The same has been subject to dilation and elucidation by the apex court inter alia in Shree Gopal and Company (supra) and Khoday Distilleries Ltd. (supra) relied upon by the parties themselves before us. As stated explicitly in the former case, a share is a chose in action. A chose in action implies the existence of some person entitled to the rights, which are rights in action as distinct from rights in possession, and, until the share is issued, no such person exists. A share does not exist prior to its allotment, and in that sense comes into existence only on its allotment. Allotment of a share is only the appropriation of the authorized share capital, being un-appropriated, to a particular person. In nutshell, the difference between the issue of a share to a subscriber and a purchase of a share from an existing shareholder is the difference between the creation and transfer of a chose in action (refer pgs.865, 866). How could, therefore, purchase be equated with allotment? In fact, the purchase or transfer implies existence of a property, while the shares, where out of un-appropriated capital, come into existence only on their allotment. It becomes, thus, in the context of the provision, completely irrelevant and of no consequence that the shares in the issuing company are not its property, and that it does not become, therefore, any poorer as a result of the allotment of shares therein. 'Receipt' is a word or term of wide import, and would include acquisition of the subject matter of receipt defined capital assets in the present context, by modes other than by way of transfer as well. We find no reason to limit or restrict the scope of the word

'receipt' in the provision to cases of 'transfer only. Doing so would not only amount to reading down the provision, which the tribunal is even otherwise not competent to, being not a court of law, but reading it in a manner totally inconsistent with the unambiguous language and the clear intent (of the Legislature) conveyed thereby, but also its context as well as the drift of section, in complete violence thereto."

8.5.9 Hon'ble Tribunal in above decision has examined decisions relied on by appellant in its submissions and thereafter came to the conclusion that provisions of section 56(2)(viii) cover cases of fresh allotment of shares like that of appellant. Therefore, addition made by the AO of Rs. 13,23,01,000/- under section 56(2)(viii) is upheld. Accordingly, Ground of Appeal No. 1 is Dismissed."

*9. We have considered the submissions made and have gone through the order of the Ld. CIT(A). It is difficult to agree with the argument of the Ld. AR that section 56(2)(viii) of the Act applies only for the receipt of share and not for the allotment of share since only on allotment of shares, the shareholder receives the shares and not prior to the allotment. The Ld. CIT(A) has relied upon the decision of **Sudhir Memon HUF** (supra) in which it has been held that a share does not exist prior to its allotment and the purchase or transfer implies existence of the property and the shares out of un-appropriated capital comes into existence only on their allotment. It has also been held that 'receipt' is a word of wide import and would include the acquisition of the subject matter of receipt by modes other than by way of transfer as well and, therefore, there is no reason to limit or restrict the scope of the word 'receipt' in the provision to cases of 'transfer' only, as doing so would not only amount to reading down the provision, which the Tribunal is even otherwise not competent to do, being not a court of law, but reading it in a manner totally inconsistent with the unambiguous language and the clear intent of the legislature would be in complete violence thereof. We are in agreement with the decision of the Coordinate Bench of the ITAT, Mumbai and see no reason to interfere with the order of the Ld. CIT(A) who has passed a very reasoned order on the facts of the case and, therefore, his order is confirmed and the Ground nos. 1 and 2 of the appeal are dismissed.*

9. Since the facts and the issues raised are nearly identical, therefore, relying upon the decision in the case of **Madhur Coal Mining Pvt. Ltd.** (supra), Ground Nos. 1 & 2 are dismissed and the order of the Ld. CIT(A) is hereby confirmed. Ground No. 3 is general in nature and does not require any separate adjudication



10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 10th February, 2026.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 10.02.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Gaurav Vinimay Pvt. Ltd., Block - C, 5th Floor, 22, Camac Street, Kolkata, West Bengal, 700016.**
2. **D.C.I.T., Circle-8(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
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By order

Assistant Registrar
ITAT, Kolkata Benches
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