

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. A.K. GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.762/Bang/2018
Assessment Year : 2014 - 15

M/s IStar Skill Development Pvt. Ltd., No.63/1, 2 nd Floor, Makam Plaza, 3 rd Main Road, 18 th Cross, Malleshwaram, Bengaluru-560 055.	Vs.	The Income Tax Officer, Ward-3(2)(1), Bengaluru.
PAN - AACCI 2649 L		
APPELLANT		RESPONDENT

Appellant by	:	Shri C Sundeep, C.A
Respondent by	:	Shri Priyadarshi Mishra, JCIT (DR)

Date of Hearing	:	30-09-2020
Date of Pronouncement	:	-10-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 09/01/2018 passed by Ld.CIT(A)-3, Bangalore for assessment year 2014-15 on following grounds of appeal:

"1. That the order passed by the learned Commissioner of Income-Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) ought to have held that the assessing officer has no jurisdiction to go beyond the valuation report issued by chartered accountant.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the DCF method adopted by the appellant for valuation of shares is irrational and does not have relevance to the factual financial results of the assessee company.

4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the valuation report cannot be relied upon because the Chartered Accountant did not verify the projections provided by the appellant.”

Brief facts of the case are as under:

2. During the financial year 2013-14 relevant to assessment year 2014-15, the appellant issued preference shares and equity shares. The details are as follows;

Sl. No.	Name of the shareholder	Status	Nature of shares	No. of shares	Value per share	Total amount received	Security Premium
1	Unitus Seed Mauritius	Non Resident	Preference shares	24,917	413.88	1,03,12,500	1,00,63,500
2	T V Mohandas Pai	Resident	Preference shares	8,305	413.88	34,37,500	33,54,450
3	CIIE Initiatives	Resident	Equity shares	7,161	279.29	20,00,000	19,28,390

3. The appellant arrived at value of shares based on valuation report of a Chartered Accountant. The method of valuation adopted was based on Discounted Cash Flow method (DCF).

4. The Ld.AO held that value of shares arrived by the Chartered Accountant cannot be acceptable for following reasons;

- a. The DCF method is from the view point of shareholder however, this aspect is completely missing in the valuation report.
- b. Projections considered for valuation are irrational and do not match with the actual financial results.
- c. No evidences for estimates and projections adopted in the valuation report.
- d. The projections and estimations are provided by assessee and no verifications were made by the Chartered Accountant before adopting the same.

Therefore, the Ld.AO adopted Net Asset Value Method (NAV) and arrived at Rs. -11.17 as fair market value per share.

5. Based on the above findings, the Ld.AO held that, value of share computed by assessee exceed the fair market value and added the excess over face value of the shares issued to the residents as income u/s. 56(2)(viib) of the Act.

6. Aggrieved by the aforesaid order, preferred appeal before Ld.CIT(A) who dismissed the appeal of on the same findings of Ld.AO in the assessment order.

7. Aggrieved by order of Ld.CIT(A) assessee is in appeal before us now.

8. At the outset Ld.AR drew our attention to following Additional Ground raised vide application dated 10/03/2018:

“That the addition made u/s 56(2)(viib) is not justified in view of Circular # dated 06.02.2018 issued by CBDT as the appellant is a start-up as per Department of Industrial Policy and Promotion notification issued by Department of Industrial

Policy and Promotion, Ministry of Commerce and Industry, in GSR 501(E) dated 23.05.2017.”

9. Ld.AR submitted that, Ministry of Commerce and Industry vide notification dated 23/05/2017 in GSR.501(E) has announced start-up India initiative for creating a conducive environment for start-ups in India. It has been submitted that, Government of India had directed various ministries to identify and recognising a start-up. Ld.AR submitted that, in view of said notification, CBDT Vide F.No.173/147/2019-ITA-I, intimated that, provisions of section 56(2)(viib) shall not apply to assessee on amounts received as consideration for issue of shares, subject to fulfilment of conditions specified in notification No.GSR.127(E) dated 19/02/2019 of DPIIT and subsequent amendments if any, more particularly placed at page 2-3 of paper book.

10. Ld.AR submitted that, said notification was not available with assessee at the time of proceedings before Ld.CIT(A). He also placed reliance at page 36-37 which is a consolidated Circular for assessment of start-ups dated 30/08/2019, being Circular No.22/2019 issued by CBDT. Ld.AR submitted that, assessee has filed Form 2 which has not been verified by authorities below in light of the circulars referred and relied by Ld.AR herein above.

11. On the contrary, Ld.Sr.DR placed reliance on orders passed by authorities below, however could not controvert applicability of said circular referred to by Ld.AR placed at page 2 of paper book in case of assessee.

12. We have perused submissions advanced by both sides in light of records placed before us.

13. This is a subsequent development in regards to issue that could go to the root cause for consideration. It is also noted that, these documents was not have placed before authorities below at the time of hearing. However, we are of opinion that these Circular would be helpful in considering the issues on merits.

14. Accordingly, we are inclined to admit the additional ground raised by assessee for considering the claim.

15. For sake of convenience we reproduce here with the relevant circulars relied by Ld.AR.

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F.No.173/147/2019-ITA-I, dated 16/05/2019

Fwd: Intimation under clause (ii) of the proviso to Section 56(2)(viib) of the Income-tax Act, 1961

Finance iStar <finance@istarindia.com>
To: sandeep@mssv.in

Thu, Oct 3, 2019 at 5:39 f

Hi

PFA the mail received from CBDT after submitting declaration in Form 2

----- Forwarded message -----

From: **Deepshikha Sharma** <rsuform2-cbdt@gov.in>

Date: Thu, May 16, 2019 at 12:07 PM

Subject: Intimation under clause (ii) of the proviso to Section 56(2)(viib) of the Income-tax Act, 1961

To: <finance@istarindia.com>

Cc: Deepshikha Sharma <deepshikha.sharma@nic.in>

F.No. 173/147/2019-ITA-I

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

(ITA-I)

Reference No. 130519000684

Dated 16th May 2019

Intimation under clause (ii) of the proviso to Section 56(2)(viib) of the Income-tax Act, 1961

With regard to your declaration dated **13-May-19**, furnished in Form 2 in pursuance of para 5 of the notification no. G.S.R.127(E) dated 19th February 2019 of Department for Promotion of Industry and Internal Trade ('DPIIT'), Ministry of Commerce and Industry read with notification no. S.O.1131 (E) dated 5th March 2019 of Central Board Of Direct Taxes, it is stated that the provisions of clause (viib) of sub section 2 of Section 56 of the Income-tax Act, 1961 ('Act') shall not apply to (name of the applicant company) **ISTAR SKILL DEVELOPMENT PRIVATE LIMITED** PAN **AACCI2649L** DPIIT Recognition number **DIPP37443** on the amounts received as consideration for issue of shares subject to the fulfilment of conditions as specified in the notification no. G.S.R.127(E) dated 19th February 2019 of DPIIT and subsequent amendments if any.

(Deepshikha Sharma)

OSD, CBDT

E-Mail Id:- rsuform2-cbdt@gov.in

Circular No.22 dated 30/08/2019Circular No. ~~22~~/2019

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, dated the 30th August, 2019**Sub: Consolidated circular for assessment of Startups - reg.**

In order to provide hassle-free tax environment to the Startups, a series of announcements have been made by the Hon'ble Finance Minister in her Budget Speech of 2019 and also on 23rd August, 2019. To give effect to these announcements, the Central Board of Direct Taxes (CBDT) has issued various circulars/clarifications in the matter. This circular consolidates all these circulars and further clarifies as under:-

2. Assessment of Startups

The circular No. 16/2019 dated 7th of August, 2019 provided for the following procedure for pending assessment of the Startups:-

- i. In case of Startup companies recognized by Department for Promotion of Industry and Internal Trade (DPIIT) which have filed Form No. 2 and whose cases are under "limited scrutiny" on the single issue of applicability of section 56(2)(viib) of the Income-tax Act, 1961 (the Act), the contention of the assessee will be summarily accepted.
- ii. In case of Startup companies recognized by DPIIT which have filed Form No. 2 and whose cases have been selected under scrutiny to examine multiple issues including the issue of section 56(2)(viib) of the Act, this issue will not be pursued during the assessment proceedings and inquiry on other issues will be carried out by the Assessing Officer only after obtaining approval of the supervisory authority.
- iii. In case of Startup Companies recognized by the DPIIT, which have not filed Form No. 2, but have been selected for scrutiny, the inquiry in such cases also will be carried out by the Assessing Officer only after obtaining approval of the supervisory authorities.

3. Time limit for Completion of pending assessments of the Startups

All assessment referred to in 2(i) should preferably be completed by the AOs by 30th September, 2019. The assessments referred to in 2(ii) & 2(iii) should be taken up on priority and should be preferably completed by 31st October, 2019.

4. Procedure for addition made u/s 56(2)(viib) in the past assessment

The clarification issued on 9th August,2019 provided that the provisions of the section 56(2)(viib) of the Act shall also not be applicable in respect of assessment made before 19th February, 2019 if a recognised Startups has filed declaration in Form No. 2. The following procedure is laid down with regard to addition made under section 56(2)(viib) of the Act in assessment order passed before 19th February, 2019:-

- i. In case the appeal against the assessment is pending before the Commissioner of Income-tax (Appeal)[CIT(A)], the appellate order should be passed by CIT(A) on or before 31stDecember, 2019 after taking into account the fact that the Startup has filed declaration in Form No. 2 and hence the provisions of section 56(2)(viib) of the Act are not applicable for the addition made under section 56(2)(viib) of the Act before 19thFebruary, 2019. The Department shall not file further appeal on the issue of addition made under section 56(2)(viib) of the Act;
- ii. In case the case is pending before the ITAT, the Department shall not press the ground relating to addition under section 56(2)(viib) of the Act in these cases.

5. Income-tax demand

It is reiterated that the outstanding income-tax demand relating to additions made under section 56(2)(viib) shall not be pursued and no communication with the assessee in respect of outstanding demand shall be made for this purpose. In respect of other income-tax demand, it is decided that the income-tax demand shall not be pursued unless the demand is confirmed by the ITAT.

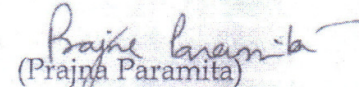
6. Constitution of Startup cell

In order to redress grievances and to address various tax related issues in the cases of Startups, a Startup Cell is constituted on 30th August, 2019 with the following ex-officio members:-

S.No.	Portfolio	Designation	Contact Number
1.	Member (IT&C)	Chairman	011-230982831
2.	JS (TPL-II)	Member	011-23092859
3.	CIT (ITA)	Member	011-23092837
4.	Director (ITA-I)	Member Secretary	011-23092107
5.	Under Secretary (ITA-I)	Member	011-23095479

7. The Cell, for any grievances/communications relating to Startups may be approached at O/o Under Secretary, ITA-I, Room No. 245A, North Block, New Delhi-110001. Ph. No. 011-23095479/23093070 (F). The Cell will also be accessible at startupcell.cbdt@gov.in.

8. Hindi version to follow.


(Prajna Paramita)
Director (ITA-1)

(F.No. 173/149/2019-ITA-I)

Copy to:

1. PS to FM/OSD to FM/PS to MoS(R)/OSD to MoS(R)
2. PS to Secretary(Finance)/(Revenue)
3. The Secretary, DPIIT
4. The Chairman, CBDT & All Members, CBDT
5. All Pr.CCsIT/Pr.DGsIT, CBDT
6. All Joint Secretaries/CsIT, CBDT
7. The C&AG
8. The CIT(M&TP), Official Spokesperson of CBDT
9. O/o Pr.DGIT(Systems) with request to upload on the departmental website
10. Addl.CIT, Data-Base Cell for uploading on IRS officer's website

16. In view of the above, we are of opinion that the issue deserves to be remanded to Ld.CIT(A) to verify the issue in light of above circular. Ld.CIT(A) shall verify fulfilment of necessary criterias as required by the said circulars for its applicability to its fullest. Ld.CIT(A) is directed to grant proper opportunity of being heard to assessee in accordance with law. LdCIT(A) is also directed to pass reasoned order after carrying out necessary verification/investigations. Assessee is directed to file all requisite details/information is as called for by Ld.CIT(A) to consider the issue in light of the circulars.

Accordingly, grounds and additional grounds raised by assessee stands allowed for statistical purposes.

In the result, appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 19th Oct, 2020

Sd/-
(A.K GARODIA)
Accountant Member
Bangalore,
Dated, the 19th Oct, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-10-2020		Sr.PS
3.	Draft proposed & placed before the second member	-10-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-10-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-10-2020		Sr.PS/PS
6.	Kept for pronouncement on	-10-2020		Sr.PS
7.	Date of uploading the order on Website	-10-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-10-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS