

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.882/Bang/2019
Assessment Year: 2015-16

M/s. I Brands Beverages Pvt. Ltd. No.90, Above Bimal Hero Showroom Byatarayanapura Amruthahalli Cross Bangalore PAN NO : AABCI9950M	Vs.	Deputy Commissioner of Income-tax Circle-3(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthu Krishnan, A.R.
Respondent by	:	Shri Pradeep Kumar, D.R.

Date of Hearing	:	01.07.2021
Date of Pronouncement	:	13.07.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 21.03.2019 passed by Ld CIT(A)-3, Bengaluru and it relates to the assessment year 2015-16. All the grounds urged by the assessee relate to the addition of Rs.16.20 crores made by the AO u/s 56(2)(viib) of the Income-tax Act,1961 ['the Act' for short].

2. The facts relating to the above said issue are stated in brief. The assessee company is engaged in the business of manufacture and sale of beverages. During the year under consideration, the

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assessee has allotted 4,80,000 shares having nominal value of Rs.10/- each at a price of Rs.375/- per share to M/s Raynal Realtors Pvt Ltd. The premium was Rs.365/- per share. Thus, the assessee has collected Rs.18.00 crores on allotment of above said shares. Hence the AO examined the transaction in terms of sec.56(2)(viib) of the Act. As per the provisions of sec. **56(2)(viib)** of the Act, a Company (issuer), not being a company in which the public are substantially interested, is required to issue shares at Fair Market Value (FMV). Accordingly, any consideration received by such issuing Company in excess of the FMV, to the extent it exceeds the face value of such shall be liable to tax.

3. The assessee furnished a valuation report dated 22.01.2015 issued by a Chartered Accountant. The AO noticed that the valuation has been done under “Discounted Cash Flow” method. The AO noticed that the value of per share, as per projections was Rs.37.49 per share and it was mistakenly arrived at Rs.374.95. Accordingly, the AO assessed the difference amount of Rs.16.20 crores as income of the assessee u/s 56(2)(viib) of the Act.

4. Before Ld CIT(A), the assessee furnished a “Corrigendum” issued by the Chartered Accountant in respect of Valuation report earlier furnished by him. The assessee furnished the same as an additional evidence. The assessee submitted that there was an error in the Schedule attached to the original valuation report. The assessee submitted that the Corrigendum issued by the valuer has to be read together along with the original report and the same would show that the fair market value of share was arrived at by the valuer at Rs.374.95.

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5. The Ld CIT(A) called for a remand report from the AO on the additional evidence filed by the assessee. The AO expressed the view that the corrigendum issued by the valuer is an afterthought of the assessee. He also expressed the view that the valuation report cannot be changed as per whims and fancies of the assessee. The Ld CIT(A) confronted the remand report of the AO with the assessee. After considering the reply filed by the assessee, the Ld CIT(A) first examined the issue of admissibility of additional evidence and took the view that the same is not admissible. Accordingly, the Ld CIT(A) refused to admit additional evidence and accordingly confirmed the addition made by the AO. Aggrieved, the assessee is in appeal before us.

6. We heard the parties and perused the record. We notice that the additional evidence furnished by the assessee before the AO is in the nature of Corrigendum issued by the Valuer, who was constrained to issue the same as there was an error in the original valuation report. The corrigendum issued same shall form part of original valuation report. In our view, the same should not be treated as additional evidence, as observed by Ld CIT(A). Hence, in our view, there is no reason to reject the corrigendum. Accordingly, we admit the corrigendum furnished by the assessee before the Ld CIT(A), since the same has been issued to correct the error in arriving at the fair market value of shares issued by the assessee. Accordingly, the original report and corrigendum shall constitute full report and the same has to be examined by the AO. Accordingly, we set aside the order passed by Ld CIT(A) and restore the same for examination of the AO with the direction to take into account full report.

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7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 13th Jul, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 13th Jul, 2021.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.