

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.357/Chny/2022  
निर्धारण वर्ष/Assessment Year: 2015-16

Star Health Investments  
Private Limited (Dissolved),  
No. 10 & 11, 4<sup>th</sup> Floor, Chennai CITI  
Centre, Dr. Radhakrishnan Salai,  
Mylapore, Chennai 600 004,  
Tamil Nadu.

Vs. The Principal Commissioner of  
Income Tax-3, Room No. 410, Main  
Building, IV<sup>th</sup> Floor, 121, Mahatma  
Gandhi Road, Nungambakkam,  
Chennai.

**[PAN:AAJCS6207K]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri R. Venkata Raman, CA & Shri V. Padmanabhan, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri P. Mohan Reddy, CIT
सुनवाई की तारीख/ Date of hearing	:	09.02.2023
घोषणा की तारीख /Date of Pronouncement	:	15.03.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax, Chennai – 3, Chennai dated 31.03.2021 relevant to the assessment year 2015-16 passed under section 263 of the Income Tax Act, 1961 [“Act” in short].

2. The appeal filed by the assessee is delayed by 353 days in filing the appeal due to outbreak of Covid-19 pandemic and accordingly, the

delay in filing the appeal is condoned and admitted for adjudication.

3. The grounds raised by the assessee are reproduced as under:

1. *For that the revision order dated 31.03.2021 passed by the Principal Commissioner of Income Tax – 3, Chennai under section 263 of the Income-tax Act, 1961, is without jurisdiction, barred by limitation and is opposed to the principles of law, weight of evidence, probabilities, equity, natural justice, fair play and the facts and circumstances of the case of the appellant.*

2. *For that the PCIT-3, Chennai erred in passing the impugned revision order u/s.263 in spite of the fact that the order of assessment dated 31.10.2017 passed by the Assessing Officer u/s.143(3) was neither erroneous nor prejudicial to the interests of the revenue.*

3. *For that the PCIT-3, Chennai erred in not appreciating that no addition u/s.56(2)(viib) is warranted in the hands of the appellant company since 'the consideration of Rs.33/per share, received towards allotment of right shares to the existing shareholders, is lesser than the Fair Market Value of Rs.34.05/- per share.*

4. *For that the Fair Market Value of Rs.15.14/- per share stated by the PCIT-3, Chennai in the revision order is erroneous and not in alignment with the valuation methodology prescribed for the purpose of section 56(2)(viib) of the Act.*

5. *For that the PCIT-3, Chennai is not justified in holding that the excess premium of Rs.4,32,96,962/- is taxable in the hands of the appellant company u/s.56(2)(viib) of the Act.*

6. *For that the appellant craves for the permission of the Hon'ble Income Tax Appellate Tribunal to add, delete or amend the grounds of appeal hereinabove before or during the course of hearing of the instant appeal.*

4. Facts are, in brief, that the assessee company filed its return of income for the assessment year under consideration on 28.09.2015 admitting total loss of ₹.7,92,483/-. The case was selected for limited scrutiny under CASS. Notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] dated 23.03.2016 was served on the assessee. A

notice under section 142(1) of the Act was issued on 08.06.2017. In response to notice, the AR of the assessee appeared and furnished the details as called for. After examining the details, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 31.10.2017 by accepting the returned loss.

4.1 Subsequently, the Id. PCIT, while exercising the powers conferred under section 263 of the Act, noted from the assessment records that the assessee company issued 86,35,077 shares of ₹.19,86,06,771/- on right issue basis at ₹.33/- per share (face value ₹.10/-) and issued at a premium of ₹.23/- per share to the following:

S.No.	Name	No. of shares
1.	Ashraf Anduk Rahman Buhari	12,12,121
2.	Ahmed Shakir	12,12,121
3.	Snowdrop Capital Pvt. Ltd.	62,10,835

In this regard, the assessee company had stated that since M/s. Snowdrop Capital Pvt. Ltd., Singapore is a foreign company, the issue of shares at a premium would be outside the purview of the provisions of section 56(2)(viib) of the Act as the said provisions is applicable only in respect of shares issued in respect of S.No. 1 and 2, the assessee company determined fair market value of ₹.33% adopting the discounted cash flow method, considering the net worth of its subsidiary company M/s. Star Health and Allied Insurance Co. Ltd., stating that the valuation

of the holding company is solely on the basis of value of the subsidiary company and accordingly the net worth of its subsidiary company has to be considered for valuation of shares of the assessee company. To work out the fair market value of the shares issued, the assessee company had adopted the net worth of its subsidiary company instead of valuation of the assets and liabilities of the assessee company. As per section 56(2)(viib) of the Act, where a company not being the company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares is taxable in the hands of the company. As per Rule 11 UA of the Income Tax Rules, the fair market value of the assessee company is ₹.15,139/- as on 31.03.2014 adopting the formula  $(A-L)/(PE)*(PV)$ . The assessee had issued 24,24,242 shares to Resident Indians at ₹.33/- per share (including premium of ₹.23/- per share). Hence, the excess share premium issued to be taxed which works out to ₹.4,32,96,962/- [2424242 shares x 17.86(33-15.14)].

4.2 The Assessing Officer has failed to verify the above issue while passing the assessment order under section 143(3) of the Act. According

to the Id. PCIT, the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue, issued a show cause notice under section 263 of the Act to the assessee on 07.02.2020 and 22.02.2021.

4.3 In response to the notice, the assessee's AR filed detailed letter dated 11.03.2020, wherein, he has submitted that the during the course of assessment proceedings, the Assessing Officer has examined all the details in respect of fair market value of the shares issued and also the method adopted by the assessee. It was submitted before the Id. PCIT that fair market value of ₹.33/- per share was determined on the basis of net asset method, which is in accordance with sub-clause (ii) of clause (a) of Explanation to section 56(2)(viib) of the Act and justified that the issue price is not exceeding the fair market value.

4.4 It was further submitted before the Id. PCIT that the assessee company went into voluntary liquidation during the financial year 2019-20 and the existing shareholders sold the shares at a price of ₹.142.43/- per share which is higher than ₹.33/- per share and accordingly submitted that ₹.33/- per share is fair and reasonable. It was further submitted before the Id. PCIT that section 56(2)(viib) of the Act cannot be invoked in the absence of involvement of unaccounted money in the garb of share

premium and also submitted that the proceedings initiated under section 263 of the Act may be dropped.

4.5 However, the Id. PCIT was not convinced with the explanation given by the assessee, the Id. PCIT was of the opinion that the assessment order passed by the Assessing Officer under section 143(3) of the Act is very cryptic and there is no discussion on the issue at all despite the fact that one of the reason for limited scrutiny selection is verification of share premium received during the year under consideration (verify the applicability of section 56(2)(viib) of the Act). As the Assessing Officer failed to examine the applicability of section 56(2)(viib) of the Act, the Id. PCIT set aside the assessment order for limited purposes to examine the applicability of section 56(2)(viib) of the Act after providing adequate opportunity to the assessee.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that during the course of assessment proceedings, in order to examine the applicability of section 56(2)(viib) of the Act, the Assessing Officer has called for various details and various source from various concerned authorities and after thorough examination, the Assessing Officer passed the assessment order under section 143(3) of the Act dated 31.10.2017. Therefore, the assessment

order passed by the Assessing Officer cannot be said as erroneous order.

5.1 He further submitted that the Id. PCIT was of the opinion that the order passed by the Assessing Officer is cryptic order. However, the Id. Counsel for the assessee has submitted that once the Assessing Officer examined all the details in respect of the issue involved in this appeal, particularly, the case was selected for limited scrutiny and in that regard all the details are examined. Once the details are examined, it was not necessary that detailed assessment order is required to be passed. Therefore, the Id. Counsel for the assessee pleaded that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue and submitted that the revision order passed by the Id. PCIT has to be quashed.

5.2 The Id. Counsel for the assessee has submitted that the case was selected for scrutiny to examine the application of section 56(2)(viib) of the Act in connection with the share premium received. The Assessing Officer issued notice under section 142(1) of the Act dated 08.06.2017 to examine the share premium received by the assessee. The Assessing Officer specifically asked the details of shares issued and premium received through specific question No. 13(a) and (b) and the same are reproduced as under:

- “13. You are also requested to furnish the details for the following specific queries:*
- (a) Details of shares issued and premium received during the F.Y.2014-15.*
  - (b) Produce the details of the investments made during the F.Y.2014-15.”*

The Id. Counsel for the assessee has submitted that in response to the notice under section 142(1) of the Act issued by the Assessing Officer, vide letter dated 15.06.2017, the assessee has submitted complete details including reply to specific question No. 13(a) and (b) [pages 7 to 10 of the paper book more specifically page 9].

5.3 The Id. Counsel for the assessee has submitted that on 27.06.2017, the assessee company had furnished before the Assessing Officer, a note on non-applicability of provisions of section 56(2)(viib) of the Act in respect of share premium received from non-resident shareholders, which is placed at pages 11 to 14 of the paper book.

5.4 It was further submission that during the course of assessment proceedings, the Assessing Officer directed the assessee to furnish valuation certificate justifying the fair market value of ₹.33/- per share. In response, the assessee vide letter dated 01.09.2017 furnished the certificate of valuation dated 10.01.2015 issued by a Chartered Accountant, which is placed at pages 15 to 22 of the paper book.



5.5 It was further submission that during the course of hearing on 08.09.2017, the Assessing Officer directed the assessee to furnish certain documents like declaration in Form FC-GPR and audited financial statements of the subsidiary company M/s. Star Health and Allied Insurance Company Ltd. In response, the assessee vide its letter dated 15.09.2017 submitted the details as called for by the Assessing Officer and placed in pages 23 to 24 of the paper book.

5.6 It was further submission that during the course of hearing on 15.09.2017, the Assessing Officer directed the assessee to furnish valuation certificate of a subsidiary company M/s. Star Health and Allied Insurance Co. Ltd. and the assessee submitted the same through its letter dated 27.10.2017, which is placed in paper book pages 25 to 33.

5.7 The Id. Counsel for the assessee has submitted that the Assessing Officer has examined the issue in depth, called for all the relevant details and documents and after examining all those details, the assessment was completed under section 143(3) of the Act. Therefore, the Id. PCIT was not correct in setting aside the assessment order passed by the Assessing Officer and directing him to redo the assessment and prayed for quashing the revision order passed under section 263 of the Act. In this context, he relied on the judgement of the Hon'ble Supreme Court in

the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC). He also relied on the judgement of the Hon'ble Madras High Court in the case of CIT v. Smt. Padmavathi [2020] 120 taxmann.com 187 (Mad).

6. On the other hand, the Id. DR strongly supported the order passed by the Id. PCIT and submitted that the Assessing Officer has called for the details and not examined and thus, the assessment order is erroneous and prejudicial to the interest of Revenue.

7. We have heard both the sides, perused the materials available on record and gone through the order passed under section 263 of the Act including various details filed in the form of paper book by the assessee. In this case, the case of the assessee was selected for limited scrutiny for application of section 56(2)(viib) of the Act. During the course of assessment proceedings, the Assessing Officer issued notice under section 142(1) r.w.s. 129 of the Act dated 08.06.2017 and called for various details from the assessee company, particularly, through question No. 13(a) and (b) – details of shares issued and premium received during the financial year 2014-15 and produce the details of the investments made during the financial year 2014-15, which is placed at page 5 to 6 of the paper book filed by the assessee. Vide its letter dated 15.06.2017, the assessee has furnished particulars in respect of M/s. Star Health

Investments Pvt. Ltd. at pages 7 to 10 of its paper book. On 27.06.2017, again the assessee filed further details in respect of M/s. Star Health Investments Pvt. Ltd., which is placed at pages 11 to 14 of its paper book. Again the assessee company vide its letter dated 01.09.2017 filed separate document, the details in respect of M/s. Star Health Investments Pvt. Ltd., which is filed at pages 15 to 22. Further, vide letter dated 15.09.2017, the assessee filed the details as called for by the Assessing Officer at pages 23 to 24 of the paper book. Again, as per notice issued under section 142(1) of the Act, vide letter dated 27.10.2017, the assessee filed details in respect of supporting documents for adoption of value of shares at ₹.33/-, which is placed at pages 25 to 33 of paper book.

7.1 In view of the above, it is very clear that the Assessing Officer has conducted specific enquiries relating to receipt of share premium, basis for fair market value of ₹.33/- per share and applicability of provisions of section 56(2)(viib) of the Act. During the course of assessment proceedings, the assessee has furnished required details as called for by the Assessing Officer. After examining the details, the Assessing Officer satisfied with issue price of ₹.33/- per share and taken a conscious decision not to make any addition under section 56(2)(viib) of the Act.

Therefore, it cannot be said that the order passed by the Assessing Officer under section 143(3) of the Act dated 31.10.20-17 is erroneous and prejudicial to the interest of Revenue.

8. The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v. CIT(supra) has considered the issue of exercising the power under section 263 of the Act and noted that the order passed by the Assessing Officer must be erroneous and prejudicial to the interest of Revenue i.e., both the conditions are required to be cumulatively satisfied and if one of them is absent, section 263 of the Act cannot be exercised. In this case, the Assessing Officer, after examining all the details, the assessment order was passed. Therefore, it cannot be said that the order passed by the Assessing Officer is erroneous. Therefore, as per the above decision of the Hon'ble Supreme Court, the provisions of section 263 of the Act cannot be invoked in this case.

9. In the case of CIT v. Smt. Padmavathi (supra), the Hon'ble Jurisdictional High Court has held that where the Commissioner by invoking his power under section 263 of the Act, faults with the Assessing Officer on the ground that he did not make proper enquiry, in absence of any clarity as to why in opinion of Commissioner, enquiry was not proper, invocation of power under section 263 of the Act was not justified.

10. In this case, the Id. PCIT simply noted that the assessment order passed by the Assessing Officer is cryptic. The Id. PCIT ought to have been examined the entire record, particularly, notice issued under section 142(1) of the Act dated 08.06.2017, wherein, the Assessing Officer has called for various details from the assessee and specifically, all the details were filed before the Assessing Officer. Thus, we are of the opinion that the order passed by the Assessing Officer is not erroneous and therefore, revision order under section 263 of the Act is not warranted and accordingly, the order passed under section 263 of the Act is liable to be quashed.

11. So far as merits of the case is concerned, the assessee company has determined the fair market value at ₹.33/- per share on the basis of Net Assets method which is in accordance with the second method i.e., as per Explanation (a)(ii) to section 56(2)(viib) of the Act. The said value is duly substantiated by the valuation certificate issued by the Chartered Accountant, which is already filed in the form of paper book page No. 27. Further, the valuation of a subsidiary company is also supported by the valuation certificate issued by a Chartered Accountant. Moreover, the Id. PCIT did not find fault with the fair market value of ₹.33 per share determined by the assessee company on the basis of second method.

Therefore, shares were issued at a consideration of ₹.33/- per share which is in line with the fair market value of ₹.33/- per share determined as per Explanation (a)(ii) to section 56(2)(viib) of the Act. Hence, the assessee company has not received any consideration exceeding the fair market value of its shares. Thus, the question of making any addition under section 56(2)(viib) of the Act does not arise. The Id. PCIT arrived at a fair market value of ₹.15.14/- per share as per Rule 11UA which is as per Explanation (a)(i) and the same is irrelevant since the assessee company had opted for determination on the basis of Net Assets method. In view of the above, we are of the opinion that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue. Thus, the revision order passed by the Id. PCIT under section 263 of the Act is quashed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 15<sup>th</sup> March, 2023 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 15.03.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &  
6. गार्ड फाईल/GF.