

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

**BEFORE: SHRI C.M GARG, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.7801/Del/2018
(Assessment Year: 2013-14)**

CNR Leading Softek Pvt Ltd. C/o Kapil Goel Adv. F-26/124 Sector 7, Rohini Delhi 110085	Vs.	ITO, Ward 6(2), New Delhi
PAN/GIR No. AABCC 7720 P		
(Appellant)	..	(Respondent)

Assessee by	Shri Kapil Goel, Adv.
Revenue by	Ms. Maimun Alam, Sr. DR
Date of Hearing	24/04/2023
Date of Pronouncement	/05/2023

ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.7801/Del/2018 for A.Y. 2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, New Delhi in appeal No.10278/16-17 dated 10.10.2018, (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 11.03.2016 by the Id. Income Tax Officer, New Delhi (hereinafter referred to as Id. AO).

2. The ground No. 1 is with regard to challenging the jurisdictional ground on the issuance of notice u/s. 143(2) of the Act. No arguments

were advanced by the Id. AR at the time of hearing on this ground. Hence the same is dismissed as not pressed.

3. The grounds no. 2, 3 and 4 raised by the assessee are challenging the addition made in the sum of Rs. 1,75,00,000/- u/s. 56(2)(viib) of the Act.

4. We have heard rival submissions and perused the materials available on record. The assessee is engaged in the business of software development, market research and public opinion polling, business and management consultancy etc. The assessee company was incorporated on 24.12.1999. The assessee issued 50 lakhs shares of Rs. 20 per share comprising of face value of Rs. 10 and share premium of Rs. 10. However during the under consideration, the assessee has received only Rs. 10, which included share premium of Rs. 7.50 per share and face value of Rs. 2.50 per share. Accordingly the subscribed share capital of the assessee company increased from 8,67,000 shares to 58,67,000 shares. The paid up share capital increased from Rs 86,70,000/- to Rs. 2,11,70,000/-, resulting in an increase of Rs. 1,25,00,000/- (50 lakhs shares x Rs. 2.5 per share). Similarly there was increase in share premium which was reflected under the head 'reserve and surplus' in the balance sheet to the tune of Rs. 3,75,00,000 (50 lakhs x Rs. 7.5 per share). The assessee was asked by the Id. AO to furnish the justification for the premium received in respect of the issue of shares. The assessee provided a reply dated 12.01.2016 together with the valuation report wherein the value of each share was computed @ Rs. 20.98 per share. The basis of said value as per 'liability approach' is as under:-

<i>Particulars</i>	<i>Amount</i>
<i>Paid up capital as on 31.03.2012</i>	<i>86,70,000/-</i>
<i>Share Premium reserved</i>	<i>62,00,000/-</i>
<i>General Reserve</i>	<i>33,02,683/-</i>
<i>Profit and Loss Account Balance</i>	<i>17,762/-</i>
<i>Net Worth</i>	<i>1,81,90,445</i>
<i>Number of Shares</i>	<i>867000</i>
<i>Value of share</i>	<i>20.98/-</i>
<i>Or say</i>	<i>21/-</i>

5. The assessee also furnished the workings of valuation of per share based on 'asset approach' as under:-

<i>Particulars</i>	<i>Amounts</i>
<i>Fixed Assets</i>	<i>Rs. 19,72,000/-</i>
<i>Investment in properties</i>	<i>Rs. 79,75,000/-</i>
<i>Investment in properties</i>	<i>Rs. 61,71,178/-</i>
<i>Loan and Advance</i>	<i>Rs. 18,97,482/-</i>
<i>Cash in hand</i>	<i>Rs. 1,11,125/-</i>
<i>Cash at bank</i>	<i>Rs. 81,845/-</i>
<i>Total (A)</i>	<i>Rs. 1,82,08,630/-</i>
<i>Short Term provision (B)</i>	<i>Rs. 18,185/-</i>
<i>Net Assets (A) – (B) = (C)</i>	<i>Rs. 1,81,90,445/-</i>

Fair market value of unquoted equity shares = 1,81,90,445/- divided by 8,67,000/- = 20.98 per share. The assessee submitted that using Net Asset Value (NAV) Method was in accordance with Rule 11UA of the Income Tax Rules which is the prescribed method for the purpose of section 56(2)(viib) of the Act.

6. The Id. AO resorted to value the shares of the assessee company using Net Asset Value Method as on 31.03.2012 by ignoring the share premium figure of Rs. 62 lakhs already reflected in the 'reserves and

surplus' on the premise that assessee has no active business and derives only interest income. Accordingly it is not entitled to receive any share premium. Accordingly the Id. AO valued the share of the company using Net Asset Value Method both under 'asset approach' as well as under 'liability approach'. Under 'liability approach', the Id. AO valued the shares as under:-

<i>Particulars</i>	<i>Amount</i>
<i>Paid up capital as on 31.03.2012</i>	<i>Rs. 86,70,000/-</i>
<i>General Reserved</i>	<i>Rs. 33,02,683/-</i>
<i>Profit and Loss Account Balance</i>	<i>Rs. 17,762/-</i>
<i>Net worth</i>	<i>Rs. 1,81,90,445/-</i>
<i>Number of shares</i>	<i>Rs. 8,67,000/-</i>
<i>Or say</i>	<i>Rs. 14/-</i>
<i>Value of share taken by the assessee</i>	<i>Rs. 17.5/- including share premium</i>
<i>Difference where share premium is taken in excess of FMV</i>	<i>Rs. 3.5/-</i>

7. Under 'asset approach', the Id. AO valued the share of the assessee company as under:-

<i>Particulars</i>	<i>Amounts</i>
<i>Fixed Assets</i>	<i>Rs. 19,72,000/-</i>
<i>Investment in properties</i>	<i>Rs. 79,75,000/-</i>
<i>Investment in properties</i>	<i>Rs. 61,71,178/-</i>
<i>Loan and Advance</i>	<i>Rs. 18,97,482/-</i>
<i>Cash in hand</i>	<i>Rs. 1,11,125/-</i>
<i>Cash at bank</i>	<i>Rs. 81,845/-</i>
<i>Total (A)</i>	<i>Rs. 1,82,08,630/-</i>
<i>Short Term provision (L)</i>	<i>Rs. 18,185/-</i>
<i>Share Premium (L)</i>	<i>Rs. 62,00,000/-</i>
<i>Total (L)</i>	<i>Rs. 62,18,185/-</i>

*Fair Market Value of unquoted equity shares = (Rs. 1,82,08,630 (-) 18,185) / 8670000 * 10 = 13.82/- say 14/-*

Difference where share premium is taken in excess of FMV = Rs. 17.5 -14 = 3.50 per share.

8. Accordingly, the Id. AO determined the fair market value of the share of the assessee company @Rs.14 as against the issue price of 17.50 per share. Hence the excess portion of Rs. 3.50 per share * 50 lakhs shares worked out to 1,75,00,000/- which was sought to be added by the Id. AO as income u/s. 56(2)(viib) of the Act. This action of the Id. AO was upheld by the Ld. CIT(A).

9. From the aforesaid valuation method carried out by the Id. AO, we find that the Id. AO had under 'liability approach' ignored share premium of Rs. 62,00,000/- lying in the balance sheet as on 31.03.2012 under 'reserve and surplus'. Under 'asset approach', the Id. AO treated the said share premium of Rs. 62,00,000/- as a liability and computed the net asset value. In our considered opinion, both the workings of the Id. AO are completely flawed as it is neither in consonance with the mandate of the Companies Act 1956, nor the provisions of Rule 11UA of the Income Tax Rules.

10. Rule 11UA of the Income Tax Rules which prescribes the method of determination of fair market value of unquoted shares does not prohibit inclusion of share premium as part of reserves and surplus. Even if the recipient company does not justify receipt of share premium, still the fact of share premium being reflected in the balance sheet cannot be ignored by the Id. AO as the taxation of the same is only by way of deeming fiction. In any case, what is required for the purpose of valuation of

shares is the figures reflected in the books of accounts or in the balance sheet prepared as per Companies Act, 1956 which the Id. AO does not have power to tinker with. Only any reserve that has been set apart towards deprecation would not get included under 'reserves and surplus'. In other words, such reserves set apart for depreciation would partake the character of a liability for the purpose of determination of fair market value of shares. Hence the share premium would be included in the 'reserves and surplus' even as per Rule 11UA of Income Tax Rules. While this is so, it is completely wrong on the part of the Id. AO to ignore the same while valuing the shares of the assessee company both under 'liability approach' and considering the same as a liability under 'asset approach'. Accordingly, the value determined by the Id. AO is totally flawed and since no mistake is found by us in the valuation adopted by the assessee, we hold that addition made by the Id. AO would have no legs to stand. In any case, NAV method adopted by the assessee is one of the recognized methods provided in rule 11UA of the Rules. Accordingly, the addition made by the Id. AO in sum of Rs. 1,75,00,000/- u/s. 56(2)(viib) of the Act, is hereby directed to be deleted. Since the addition is deleted on this aspect of the issue, the other grounds raised by the assessee on the non-applicability of provisions of section 56(2)(viib) of the Act in the instance case, need not be gone into and they are left open. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 03/05/2023.

Sd/-
(C.M GARG)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Delhi; Dated 03/05/2023

NV, *sr.ps***Copy of the Order forwarded to :**

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

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Delhi