

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 3828/Del/2019
Assessment Year: 2015-16

Allianz International Pvt. Ltd.,4, Local Shopping Centre, Bhanot Apartment, Madangir, New Delhi PIN:1100 62	Vs.	ITO, Ward-2(2), New Delhi
PAN :AADCA1252A		
(Appellant)		(Respondent)

Appellant by	Shri S. Krishnan, Advocate
Respondent by	Shri D.K. Shrivastav, Sr. DR

Date of hearing	29.03.2023
Date of pronouncement	31.03.2023

ORDER

This is an appeal by the assessee against the order dated 20.02.2019 of learned Commissioner of Income-Tax (Appeals)-32 New Delhi pertaining to assessment year 2015-16.

2. The dispute in the present is confined to addition of an amount of Rs.2,12,161 made by the Assessing Officer under Section 56(2)(viiia) of the Income-Tax Act,1961.
3. Briefly, the facts are, assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 11.01.2016 declaring income of Rs.18,243.
4. In course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee has sold shares of M/s. Chandni Real Trust Pvt. Ltd. @ Rs.100 per share. Whereas, the fair market value (FMV) of the shares valued in terms of Rule 11UA works out to Rs.99.13. Thus, the Assessing Officer treated the difference between the sale price and the FMV of the shares as income of the assessee under Section 56(2) read with section 11UA and added back an amount of Rs.2,12,161 to the income of the assessee.
5. Learned Commissioner (Appeals) sustained the addition.
6. I have considered rival submissions and perused the material available on record.

7. In so far as the factual aspect of the issue is concerned, there is no dispute that the assessee had sold shares of a particular company at a price of Rs.100 per share. To demonstrate that the sale price of shares is more or less at par with the FMV of shares, assessee had obtained a valuation report determining the value of shares at Rs.99.13 per share, in terms of Rule 11UA.

8. Undisputedly, invoking the provisions of section 56(2)(viiia) of the Act, the Assessing Officer has treated the difference between the sale price and FMV of the shares of the assessee as income of the assessee. On careful reading of section 56(2)(viiia) of the Act, it is observed that the Assessing Officer can invoke the provision in two contingencies. Firstly, if the shares are received by the assessee without consideration and aggregate FMV of shares exceeds Rs.50,000 then whole of such amount shall be treated as FMV of the shares and added to the income of the assessee. In the second situation, if the consideration for which shares are received is less than the aggregate FMV by an amount exceeding Rs.50,000, such excess amount shall be treated as consideration of the shares and added to the income of the assessee. In the facts of the present appeal, admittedly,

the sale price of shares at Rs.100 per share is more than the FMV of the shares determined at Rs.99.13. Therefore, in the first place, the provisions of section 56(2)(viiia) of the Act are not applicable. Therefore, I direct the Assessing Officer to delete the addition of Rs.2.12.161. Grounds are allowed.

9. In the result, the appeal is allowed.

Order pronounced in the open court on 31st March, 2023.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 31st March, 2023.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi