

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No.6850/Mum/2019
(Assessment Year: 2016-17)

M/s. ND’s Art World Pvt. Ltd. 201-A Second Level Ventura Shopping Hiranandani Business Park, Powai, Mumbai-400 076	Vs.	Asst.CIT-15(2)(1) Mumbai
PAN/GIR No. AABCN 7882 R		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Shashank Mehta
Revenue by	:	Dr. Samuel Pitta
Date of Hearing	:	26.05.2023
Date of Pronouncement	:	23.08.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-24, Mumbai (‘Id.CIT(A) for short) passed u/s. 143(3) of the Income Tax Act, 1961 (‘the Act’) vide order dated 18.09.2019, pertaining to the Assessment Year (‘A.Y.’ for short) 2016-17.

2. The assessee has challenged the addition of Rs.14,32,27,700/- u/s. 56(2)(viib) of the Act, disallowance of Rs.20,41,019/- u/s. 36(1)(vii) of the Act and disallowance of Rs.75,00,508/- u/s. 36(1)(vii) of the Act.

3. The brief facts of the case are that the assessee company engaged in the business of Art Direction, Set construction, studio and equipment hire. The assessee filed its return of income dated 17.10.2016, declaring total income of Rs.8,41,17,500/-. The assessee’s case was selected for limited scrutiny under CASS and the assessment was completed u/s.

143(3) of the Act dated 28.12.2018, where the Assessing Officer (A.O. for short) determined the total income at Rs.23,68,86,730/- by making various additions/disallowances. It is observed that the A.O. had called for calculation of share premium where the assessee company had issued 1780 shares with face value of Rs.10/- and premium of Rs.98,280/-. The assessee was also sought for to furnish financials of A.Ys. 2016-17 and 2017-18 and on perusal of the same, it was found that the assessee has increased value of the asset by calculating upward revaluation in the balance sheet of A.Y. 2015-16 thereby arriving at the valuation of the shares at higher value of the assets under Rule 11UA of the Act. The A.O. made an addition on the difference of share premium of Rs.80,465/- per share aggregating to Rs.14,33,27,700/-, thereby disallowing u/s. 56(2)(viib) of the Act on the ground that the premium value under Rule 11UA cannot be taken using the revaluation of the assets thereby recomputing the premium value at Rs.17,815/- per share as against the assessee's valuation of Rs.98,280/- per share. It was also observed that the assessee had written off bad debts amounting to Rs.2,30,00,230/- for which the assessee had given the following bifurcation :

<i>Particulars</i>	<i>Amount</i>	<i>Whether disallowed?</i>
<i>Bad debt provision during the year A.Y. 2009-10</i>	<i>20,41,019/-</i>	<i>No</i>
<i>Bad Debt provision during the year A.Y. 2010-11</i>	<i>65,07,875/-</i>	<i>Yes</i>
<i>Bad Debt provision during the year A.Y. 2011-12</i>	<i>74,08,805</i>	<i>Yes</i>
<i>Bad Debt provision during the year A.Y. 2012-13</i>	<i>75,00,508</i>	<i>Yes</i>
<i>Bad Debt provision during the year A.Y. 2013-14</i>	<i>4,38,637</i>	<i>Yes</i>

4. The A.O. observed that the assessee has shown the same amount for A.Ys. 2009-10 and 2012-13 as the provision of bad debt and in the A.Y. 2012-13, the assessee has not shown any disallowance in the column for additional provision of bad and doubtful debts. As the assessee's submission was not to the satisfaction of the A.O., the A.O.

proceeded to make impugned addition of Rs.95,41,527/- (bad debt for A.Y. 2009-10 – Rs.20,49,019/- and A.Y. 2012-13 – Rs.75,508/-) u/s. 36(1)(vii) of the Act.

5. The assessee was in appeal before the Id. CIT(A), challenging the impugned addition/disallowance made by the A.O.

6. The Id. CIT(A) then confirmed the addition made by the A.O.

7. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A) in confirming the addition made by the A.O.

8. Ground no. 1- This ground pertains to the addition of Rs.14,32,27,700/- made u/s. 56(2)(viib) of the Act. It is observed that the assessee has revalued the assets dated 31.03.2015 and had created a revaluation reserve. The immovable assets in the balance sheet pertain to land situated at Karjat along with the other assets, building, sets, etc. which were shown at WDV. The A.O. also observed that the assessee while computing the book value of the assets for determining the fair market value of the shares has only considered the book value and has not reduced the upward revaluation of the assets. The A.O. further contended that the assessee has increased the value of the assets in the previous year by creating an upward revaluation and as a result has determined the higher price per share. The A.O. stated that he had verified the valuation report filed by the assessee and found that the valuer has not considered the prevailing stamp duty value at the time of valuation of land and building of the assessee. The A.O. further contended that the valuer has not specified as to what methodology or reference was made to substantiate the value of the assets. The A.O. further stated that the valuer has merely

arrived at the market value of the land at 6500 per square feet without considering the value of the land, current market price and various other criteria and has also not made a comparable analysis of nearby land sold during that period. The A.O. stated that the valuer has not justified the charging of additional premium in his report and has merely increased the value of the Sets and buildings which are depreciable assets which does not increase over a period of time. Similar observation is also made on the value of the vehicles, plant and machinery, office equipments, etc. which are properties subject to the depreciation. Though the assessee has only taken a meager depreciation amount, the assessee contended that the same are included under the assets which does not have such value as these are used only for specific purpose and not afterwards their value has been increased in the valuation report which according to the A.O. was six times higher than the depreciation, i.e., value as on 01.04.2014. The A.O. contended that the assessee has failed to substantiate the increase in the value. The A.O. further stated that the Rule 11UA specifies that the revaluation of the assets is not to be considered for calculation of the share premium. The A.O. also contended that the assessee has not provided the purchase deed of the property with stamp duty at the time of the valuation and calculated the fair market value of the shares after removing the revaluation value of the assets and arrived at the share price of Rs.17,815/- per share as against the assessee's determination of the value per share amounting to Rs.80,465/-. The A.O. made an impugned addition by calculating the difference in the value of the shares determined by the assessee and the A.O. u/s. 56(2)(viib) of the Act.

9. The Id. CIT(A) while considering Rule 11UA states that the fair market value of unquoted shares should be done as on the date of the valuation and not as per the

previous year market value when the assessee has created an upward revaluation of the assets. The Id. CIT(A) further held that the assessee has not referred to the stamp duty valuation for the land and building while determining the market value of the property and has also increased the value of the said sets and buildings for which the assessee had claimed depreciation in the previous years. The Id. CIT(A) further held that along with the land and building, the assessee has also increased the value of plant and machinery, office equipment, vehicles, etc. for which depreciation was claimed. The Id. CIT(A) relied on the Notification No. 61/2017 dated 17.07.2018 along with the provision of Rule 11UA which provides that the book value of the assets should be considered as reduced by unamortized amount or deferral expenditure which does not represent the value of any assets and further the notification instructs that the value of the immovable property has to be made as per the stamp duty valuation for the purpose of Rule 11UA. The Id. CIT(A) stated that either the historical cost or the stamp duty cost to be considered instead of fair market value of the assets by revaluing the assets after creating an upward revaluation as done by the assessee. The Id. CIT(A) also stated that though the notification will not be applied for the impugned year, the inference can be drawn for determining the value of the assets. The Id. CIT(A) confirmed the impugned addition made by the A.O. u/s. 56(2)(viib) of the Act by stating that where the consideration for issue of shares exceeds the face value of such shares then the aggregate consideration which exceeds the market value of shares shall be deemed to be incurred by the company.

10. The learned Authorised Representative (Id. AR for short) for the assessee contended that the assessee would not be covered u/s. 56(2)(viib) of the Act for the

reason that the shares were transferred only amongst the family members of the assessee and even otherwise neither the A.O. nor the Id. CIT(A) has referred the matter to the DVO for the purpose of determining the valuation of the assets. The Id. AR further stated that Rule 11UA does not mention that the revaluation reserve is to be reduced as liable and that only Rule 11UAA inserted w.e.f. 01.04.2018 lays down the Rules for valuation and that Rule 11UAA was not applicable to the assessee for the impugned year. The Id. AR relied on the decision of the co-ordinate bench in the case of *DCIT vs. Pali Fabrics Pvt. Ltd.* [2019] 110 taxmann.com 310 (Mum)(Trib).

11. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the contention of the Id. AR and stated that the A.O. had challenged the validity of the valuation report and that the A.O. is entitled with the power of the valuer and can determine the valuer himself. Without prejudice, the Id.DR for the Revenue stated that this issue may be remanded to the file of the A.O. for determining the valuation after referring the same to the DVO. The Id. DR relied on the decision of the Delhi Tribunal in the case of *Agro Portfolio Pvt. Ltd. vs. ITO* [2018] 94 taxmann.com 112 (Del Trib). The Id. DR also relied on the orders of the lower authorities.

12. We have heard the rival submissions and perused the materials available on record. It is observed that the difference of share premium was added u/s. 56(2)(viib) of the Act where the A.O. has rejected the valuation determined by the assessee as per the valuation report submitted by the assessee vide letter dated 13.12.2018. The A.O. further has failed to accept the valuation report of the assessee for the reason that the valuer has not adopted any methodology or reference for the purpose of calculation of the land value

without considering the factors such as value of the land as per stamp authority, land market price, location factors and the value at which the neighboring lands were sold during that period etc. It is observed from the said fact that the A.O. has not referred the said matter for valuation to the DVO while he has merely rejected the valuation report submitted by the assessee. It is pertinent to point out that the lower authorities have failed to exercise the option of referring the matter to the DVO for the purpose of valuation of the assets which are very much within the purview of the jurisdiction of the lower authorities. In our considered opinion, we deem it fit to remand this issue back to the file of the A.O. for the purpose of valuation of the assets by referring the same to the DVO and to consider the said issue in light of the valuation report of the DVO. Hence, the issue raised by the assessee in ground no. 1 is remanded back to the file of the A.O.

13. Ground nos. 2 & 3 pertains to the disallowance u/s. 36(1)(vii) of the Act amounting to Rs.20,41,019/- and Rs.75,00,508/- being the bad debt provision during the A.Ys. 20-09-10 and 2012-13 respectively. As this require factual verification by the A.O., we deem it fit to remand this issue back to the file of the A.O. to verify whether the assessee had claimed the said amount in the previous years and the A.O. is directed to decide this issue on the merits based on the submissions of the assessee.

14. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23.08.2023.

Sd/-

Sd/-

(B R Baskaran)

Accountant Member

Mumbai; Dated : 23.08.2023

(Kavitha Rajagopal)

Judicial Member

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai