

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 75/JP/2020
निर्धारण वर्ष / Assessment Year :2013-14

D.C.I.T., Circle-2, Jaipur.	बनाम Vs.	Smt. Veena Goyal, 76, Dhuleshwa Garden, Ajmer Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACPPG 7004 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 76/JP/2020
निर्धारण वर्ष / Assessment Year :2013-14

D.C.I.T., Circle-2, Jaipur.	बनाम Vs.	Smt. Kajal Goyal, 76, Dhuleshwa Garden, Ajmer Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACPPG 7003 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Runi Paul (Addl.CIT-DR)
निर्धारिती की ओर से / Assessee by: Shri Manish Tantiwala (CA)

सुनवाई की तारीख / Date of Hearing : 07/09/2020
उद्घोषणा की तारीख / Date of Pronouncement : 15/09/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the revenue against the separate orders of Id. CIT(A)-I, Jaipur dated 19/11/2019 for the A.Y. 2013-14 in the matter of order passed U/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. Common grounds have been taken by the revenue in both these appeals and both the assesseees are related persons, therefore both these appeals are heard together and disposed of by this consolidated order.

3. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

4. Firstly, we take ITA No. 75/JP/2020.

In this appeal, the revenue is aggrieved for deleting the addition of Rs. 50.00 lacs made by the A.O. U/s 2(22)(e) of the Act for deemed dividend.

5. Rival contentions have been heard and record perused. The brief facts of the case are that the assessee who is a Share Holder in M/s Pinkcity Jewelhouse Pvt. Ltd. having more than 10% voting power had applied for allotment of shares of the Company Pinkcity jewel House Pvt Ltd. The assessee accepted the offer and applied for allotment of 11,20,000 shares and paid the value of shares amounting to Rs. 1,12,00,000/- through various cheques. The cheque was handed over to the company along with share applications. The assessee was also having a running account in the company in which he had a credit balance. The Company allotted the shares without presenting the cheque for clearance before allotment and made credit entry for these cheques in her ledger account as well as debited the value of shares to her running account and

therefore her account never represented a debit balance. However, two Cheque of Rs. 35,00,000/- each which were credited in the books on 01.02.2013 & 2.2.2013 but the cheques was presented by the company after some time but during the current financial year, in the books of the assessee there was a credit balance of Rs 20,00,000/- on 4.2.2013 even after debit of Rs 70 Lacs for Share Application money but the learned ACIT has treated the same as deemed dividend u/s 2(22)(e) of the Income Tax Act and made the addition.

6. By the impugned order, the Id. CIT(A) had deleted the addition after observing as under:

“(iii) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is seen that before allotment of shares, the balance of the appellant in the books of accounts of the M/s Pinkcity Jewel House Pvt. Ltd. was credit of Rs. 20,00,000/-. It is also noted that the debit balance of Rs. 50,00,000/- appeared in the books of accounts of the company as the entry of allotment of shares was passed before clearance of cheques paid by the appellant against such allotment. The AO has reproduced the statement of Shri Manuj Goyal, key person of group, recorded during the survey in the assessment order where question No. 33 and 34 reads as under:

इच्छा 33 दिनांक 04.02.2013 को Pinkcity Jewelhouse में द्वारा Manuj Goyal, Smt. Kajal Goyal Smt. Veena Goyal को Shares allote किए गए है। हालांकि इस तिथि को इन तीनों का company के Account में निम्न Debit Balance है:

Manuj Goyal 60,00,000 Dr.

04.02.2013

Smt. Kajal Goyal 70,00,000 Dr

04.02.2013

Smt. Veena 50,00,000

04.02.2013

अर्थात् M/s Pinkcity Jewelhouse द्वारा दिनांक 04.02.2013 को उपरोक्त तीन अं व्यक्तियों के Hand में Deemed Dividend बनता है इस विषय में अपना स्पष्टीकरण देवे?

उत्तर मैंने या अन्य Share Holders ने कम्पनी के किसी भी प्रकार का ऋण या अग्रिम नहीं लिया है। 04.02.2013 को Company ने हमें कुछ Shares Allote किए थे जिसका भुगतान हमने Cheque द्वारा किया था इसके अलावा और कोई हमारा Company से Transaction नहीं है। मुझे लगता है यह Debit Balance date of shares allotted व Cheque की Clearing Date में अंतर के कारण लिया है। अतः ये Deemed Dividend में नहीं आता है।

परन्तु 34 कम्पनी Bank Account एवं Directors के Company के Account में Ledger को देखने से यह बात स्पष्ट हो जाती है कि यह पैसा तो Shares Allotted के एक महीने से ज्यादा Time गुजर जाने के बाद Company के Bank Account में Credit हुआ है फिर आप किस आधार पर कह रहे हैं कि Cheque clearance में देरी की वजह से Debit Balance ज्यादा है

उत्तर Deemed Dividend के प्रावधानों के बारे में हमें ज्यादा नहीं बता सकता हूँ जो Factual बात थी वो मैंने आपके सामने स्पष्ट कर दी।”

(iv) Thus, during the survey also, the appellant clarified that the debit balance occurred in the books of accounts of the company on account of delay in clearance of cheques issued against the allotment of shares. It is also noted from the accounts produced by the appellant that after the clearance of the cheques against the allotment of shares, the balance of the appellant in the books of accounts of the company again became credit of Rs. 20,00,000/-. While making the addition, the AO considered

- (iv) *Thus, during the survey also, the appellant clarified that the debit balance occurred in the books of accounts of the company on account of delay in clearance of cheques issued against the allotment of shares. It is also noted from the accounts produced by the appellant that after the clearance of the cheques against the allotment of shares, the balance of the appellant in the books of accounts of the company again became credit of Rs. 20,00,000/-. While making the addition, the AO considered the debit balance in the books of the company while the keyword used in the section 2(22)(e) of the Act is that payment to the shareholder is to be made by way of advance or loan. In the present case, the debit balance occurred not because of any payment was made by the company to the shareholder rather it was due to journal entry passed by the company regarding allotment of fresh shares. The AO has made the addition by considering the other conditions like percentage of holding, reserves and surplus etc. but completely missed the basic principle that the provisions of section 2(22)(e) of the Act can be applied only when the debit balance occurred against the shareholder on account of advance or loan. The fact of allotment of shares by the company and payment made by the appellant is not denied by the AO, rather addition on account of same has also been made under different provisions of the Act. In view of the above and totality of the facts, the addition made by the AO on account of deemed dividend u/s 2(22)(e) of the Act is deleted.*

7. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the fact is that the assessee had made payment of value of shares along with the application for allotment of 1120000 shares thus she was

not in default of making payment for value of shares applied for on her part. The Company M/s Pinkcity Jewelhouse Pvt. Ltd. did not present the cheque for claim before making the allotment and on allotment of shares on 4.2.13 debited the value of shares to the ledger account of the assessee, thus in fact there was no debit balance as on 4.02.2013. But the learned assessing officer due to the fact the cheque were cleared later on treated Rs 50 Lacs as deemed dividend.

8. Provisions of Section 2(22)(e) of the Act comes to play only if the company makes any payment to such shareholder, by way of advance or loan and that too to the extent the company possesses accumulated profit, provided that his/her holding is not less than ten percent of voting power. From provisions of section 2(22)(e) it is clearly evident that the provisions of this section come to play only if the company makes any payment of advance or loan to a shareholder holding not less than ten percent of voting power. In the case of assessee, the company has not paid any sum and in fact amount is being debited by way of Journal Entry and no amount or money has been given as loan or advance to the shareholder. The debit balance has been notionally worked out by the assessing officer by working out the balance in ledger account of shareholder on the basis of clearing date of cheque received (not paid) in the bank account, which is not correct. As per accounting principles

entries in the books of accounts are required to be made on the basis of transactions entered which is the receipt of cheque, which was subsequently honoured by the bank, hence the entries appearing in the ledger account is correct and same cannot be ignored and balance cannot be worked out on notional basis and even if he wants to do the same, then also the amount was never paid to the Share Holder but in fact was received from the Share Holder and the date of debit should also be transferred to the date on which the amount was cleared. And as discussed earlier in no way by this company has paid any amount to the shareholder and thus provisions of section 2(22)(e) are not applicable.

9. The substance of section 2(22)(e) is "any payment made by a company that too by way of advance or loan" which shows that for invoking the provisions of section 2(2)(e), there must be a payment by way of advance or loan. This vital aspect is missing in the case of the assessee as neither there is any payment nor the company made any advance or loan to the assessee, thus debit balance worked out by the assessee company will not fall within the ambit of the provisions of section 2(22)(e) and thus are not applicable in the case of the assessee.

10. Detailed finding recorded by the Id. CIT(A) are as per the material on record, accordingly, we do not find any reason to interfere in the order

of the Id. CIT(A) for deleting the addition so made. Hence, we uphold the same.

11. The revenue is also aggrieved for deleting addition of Rs. 1,16,14,400/- u/s 56(2)(vii)(c) of the Act.

12. Rival contentions have been heard and record perused. The facts of the issue is that the assessee was allotted 1120000 shares @ Rs. 10/- per share whereas the learned ACIT determined the fair market value of the share at Rs. 20.37 per share and made an addition of Rs. 1,16,14,400/- being the difference calculated between fair market value and that of face value under section 56(2)(vii)(c) of the Act.

13. By the impugned order, the Id. CIT(A) had deleted the addition after observing as under:

"3.2.2 Determination:

- (i) *As discussed during the year, the appellant was allotted 11,20,000 additional shares by M/s Pinkcity Jewel House Pvt. Ltd. The above shares were allotted at Rs. 10/- of face value only. The AO noted that the FMV of such shares at the time of allotment, as per the books of accounts of the company was Rs. 20.37. As the share's were allotted at Rs. 10/- only, the AO treated the difference of Rs. 10.37 as benefit transferred to the appellant. Considering the provision of section 56(2)(vii)(c) of the Act, the AO taxed Rs.1,16,14,400/- (11,20,000 * 10.37) as deemed income of the*

appellant. The relevant portion of the assessment order is reproduced as under:

"8. ADDITION ON A/C SHARE ALLOTMENT U/S 56(2)(Vii)(C

Further, as mentioned above in the reasons recorded for re-opening of the case, the assessee was allotted 11,20,000 shares by M/s Pinkcity Jewel House Pvt. Ltd. Jaipur and the assessee is also a director in the said company. The shares were allotted on face value of Rs. 10/- only. Whereas as per the section 56(2)(vii)(c) the value of the share at the time of allotment is of Rs. 20.37, thus it can clearly be concluded that the shares were issued, less by Rs. 10.37 than the fair market value, therefore difference required to be added as income in the hands of director assessee. Out of total shares issued by the company i.e. 32,00,000 the assessee was allotted 11,20,000 shares. Thus difference of Rs. 10.37 on these share which come to Rs. 1,16,14,4001 (1120000 X 10.37) is deemed to be an income of the assessee and to be assessed under the head " Income from Other Sources". In this regard the section 56(2)(vii)(c) reads as under:

" 56. (2) In particular, and without prejudice to the generality of the provisions of sub-section(I), the following incomes, shall be chargeable to income-tax under the head "Income from Other sources", namely :-(vii) where an individual or a hindu undivided family receives, in any previous year, from any persons or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017.

1.....

2.....

3. any property, other than immovable property -,

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding

fifty thousand rupee. the aggregate fair market value of such property as exceeds such consideration :

By a plain reading of the above section, it can be clearly hold that the section 56(2)(vii)(c) is dewy applicable in the case of the assessee, as the assessee has received 11,20,000 share below the fair market value by Rs. 10.37. The assessee has already been provided ample opportunity to explain her case, but she has failed to do so and it can also be hold that the assessee having nothing to say in this regard in her defence. Thus, an amount of Rs. 1,16,14,4001 is being added into the total income of the assessee under the head "Income from Other Sources"

- (ii) *In the appellate proceedings, it was contended that during the year only additional shares were allotted to all the shareholder of the company in proposition to the existing shareholding of the shareholder in the company. It was submitted that the appellant's share in company before allotment of additional shares was 35% which also remained at 35% even after allotment of additional shares. The appellant relied on the judgment of Hon'ble ITAT in the case of M/s Sudhir Menon HUF vs. AC IT (2014) 103 DTR 0145 (Mum ITAT) wherein it was held that as long as there no disproportional allotment of shares, there is no scope for any property being received by the taxpayer and addition u/s 56(2)(vii)(c) of the Act cannot be made. The appellant also filed the working to show that after allotment of additional shares. the average value per share has also reduced and after taking into account the payment made by the appellant; no gain has arisen in hands of the appellant.*
- (iii) *I have duly considered the submissions of the appellant, assessment order and the material placed on record. The shareholding pattern of the M/s Pinkcity Jewel House Pvt. Ltd*

before and after the allotment of additional shares, as submitted by the appellant, is as under:

"Memberwise Share Holding Pattern and Analysis

S.No.	Category	Name	No of Shares As on 31.3.2012	% of Share Holding	No of Shares As on 31.3.2013	% of Share Holding
1	Director	Manuj Goyal	1353000	30%	2313000	30%
2	Share Holder	Veena Goyal	1578500	35%	2698500	35%
3	Director	Kajal Goyal	1578500	35%	2698500	35%
		<i>Total</i>	<i>4510000</i>	<i>100%</i>	<i>7710000</i>	<i>100%</i>

No of Shares Allotted During FY 2012-13

S.No..	Category	Name	No of Shares As on 31.3.2012	No of Shares Allotted during FY 2012.13	% of Share Allotment	No Of Shares As on 31.3.2013
1	Director	Manuj Goyal	1353000	960000	30%	2313000
2	Share Holder	Veena Goyal	1578500	1120000	35%	2698500
3	Director	Kajal Goyal	1578500	1120000	35%	2698500
		<i>Total</i>	<i>4510000</i>	<i>3200000</i>	<i>100%</i>	<i>7710000</i>

(iv) *From the above table, it can be seen that initially 45,10,000 shares were allotted by the company in which 15,78,500 were held by the appellant having 35% shareholding. During the year, the company issued 3200000 additional shares in which 11,20,000 shares were allotted to the appellant. Thus, after allotment out of total shares of 77,10,000 of the company, the*

appellant was holding 26,98,500 shares having 35% shareholding. Thus, even after allotment of additional shares, the shareholding percentage of the appellant in the company remained the same. Similar issue came up before Hon'ble ITAT, Mumbai in the case of Sudhir Menon HUF vs. ACIT (2014) 103 DTR 0145 (Mum ITAT) on which the appellant has also relied. The Hon'ble ITAT while deciding the above issue held as under:

"Income—Computation of income—Income from other sources—Assessee, held 15,000 shares in company 'X' where entire capital was held by family members of assessee's karta's family—Assessee was offered certain additional shares on proportionate basis at face value rate of Rs. 100 each—Book value of shares of 'X' was Rs.1,538 per share, which was to be adopted as measure of their fair market value (FMV) u/r. 11U and 11 UA—AO, treating difference of money per share as extent of inadequate consideration in terms of section 56(2)(vii)(c), toward acquisition of additional shares, brought same to tax—Order of AO confirmed in appeal—Held, section 56(2)(vii)(c) would be attracted whenever individual or HUF receives property without consideration, FMV of which was in excess of Rs.50,000, or where difference between FMV and such consideration exceeds amount . specified—Issue of additional/bonus shares was capitalization of profit by issuing-company—There was neither any increase nor decrease in wealth of shareholder or of issuing company on account of bonus issue—As long as there was no disproportionate allotment, there was no scope for any property being received by shareholders on allotment of bonus shares—Section 56(2)(vii)(c) would apply uniformly for all capital assets, drawing no exception for any particular class or category of specified Assets, as 'right' shares—No addition u/s. 56(2)(vii)(c) would arise—Language employed in statute would be determinative factor of legislative intent—Foundational basis of any interpretation, would be found from words used by Legislature itself—Consequences would not alter meaning of statutory provision where such meaning is plain and unambiguous—'Income' being word of widest 'amplitude, would include gains derived in any manner=Provision of section 56(2)(vii)(c) would not apply and specified amount could not be assessed as income in hands of

assessee on ground of inadequate consideration—Appeal partly allowed.

Held

Section 56(2)(vii)(c) gets attracted whenever an individual or Hindu undivided family (HUF) receives without consideration a property (as defined) the FMV of which is in excess of Rs.50,000/-, or where at a consideration the difference between the FMV and such consideration exceeds the said amount Issue of bonus shares is by definition capitalization of its profit by the issuing-company. There is neither any increase nor decrease in the wealth of the shareholder (or of the issuing company) on account of a bonus issue, and his percentage holding therein remains constant."

- (v) *Thus, the Hon'ble ITAT while deciding the allotment of additional shares on proportional basis, held that as long as additional shares are allotted on prorata to the shareholders based on their existing shareholding, no additional property can be said to have been received by the shareholder. On the allotment of additional shares to the extent the value of the property in the additional shares is derived from that of the existing shareholding on the basis of which, the same are allotted, there being only an apportionment of the value of their existing shareholding over a large number of shares and therefore, section 56(2)(vii)(c) of the Act, though per se applicable to the transaction of this genre, is not attracted in such a case. Thus, the Hon'ble ITAT held that in case of proportional allotment of additional shares at par the provisions of section 56(2)(vii)(c) of the Act will not apply. In the case of the appellant, the shareholding with the appellant was 35% before allotment of additional shares which also remained at 35% after allotment of additional shares. Therefore, there is no change in shareholding pattern of the company and all the shareholder were allotted additional shares on proportional basis. Thus, it amounts to capitalization of profit of the company and does not result into any additional gain in the hands of the*

appellant. Further, as per working submitted by the appellant it is seen that after allotment of additional shares, the average value per share has also reduced and after taking into account the payment made by the appellant, no gain has arisen in hands of the appellant.

(vi) In view of the above discussion and judicial pronouncement, no addition is justified in the hands of the appellant. The addition made by the AO amounting to Rs. 1,16,14,400/- is deleted."

14. Against the above order of the Id. CIT(A), the revenue is in appeal before the ITAT.

15. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that as per the provisions of the section 56(2)(vii)(c)(i), any property other than immovable property is transferred for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50000/-, the aggregate fair market value of such property as exceeds such consideration will be treated as income of the assessee. Following the above provisions of the Act, the learned ACIT has made an addition of Rs. 1,16,14,400/- treating the difference exceeding the consideration paid for shares as income of the assessee. This issue was subject matter of dispute in the case of Sudhir Menon HUF vs. ACIT (TS146 ITAT 2014) (Mum.) before ITAT Mumbai Bench. The facts of the case of Sudhir Menon was that he held 15000 shares of Dorf Catal Chemicals Pvt. Ltd. During 2009-10, the company M/s Dorf Catal

Chemicals Pvt. Ltd. Offered additional shares 313624 shares to Sudhir Mennon HUF (shareholder), the HUF subscribe and was allotted 1,94,000 shares at the face value of Rs. 100/- each. The book value of shares as at 31.03.2009 was Rs. 1538/-. The assessing officer treated the difference of Rs. 1438/- per share (Rs. 1538/- - Rs. 100/-) as inadequate consideration u/s 56(2)(vii)(c) of the Act and taxed Rs. 27 lacs as additional income in the hands of the assessee. The Mumbai ITAT following the Judgment of the Hon'ble Supreme Court in the case of Dhun Dadabhoy Kapadia vs. CIT (1967) 63 ITR 651 (SC) and Hon'ble Bombay High Court in the case of H. Holck Larsen vs. CIT (1972) 85 ITR 285 (Bom) held that as long as there is no disproportional allotment of shares, there was no scope for any property being received by the tax payer as there was only an apportionment of the value of the existing shareholder over a larger number of shares, no addition u/s 56(2)(vii)(c) of the Act would arise in the present case. In view of the decision of the Hon'ble Supreme Court in the case of Dhun Dada Bhoy Kapadia vs. CIT (supra) as follows in the case of Sudhir Mennon HUF vs. ACIT (supra) before concluding that the difference of Rs. 10.37 can be treated as inadequate consideration or not, the ACIT had to work out prorata holding of the shares prior to allotment of 1120000 shares and after allotment of the same, as it is a settled decision of the Hon'ble Supreme Court. That the Mumbai Bench of ITAT in the case of ACIT Vs Subodh Mennon 198 TTJ

(Mumbai) 79 (2019) have held that only when a higher than a propionate allotment of fresh shares issued by a company is received by a shareholder, the provisions of section 56(2)(vii) get attracted; provisions of section 56(2)(vii) are not applicable to the facts of the case. The facts of the case were that the existing shareholders of the company were allotted additional shares below book value assessee held 104179 shares which was equivalent to 34.57% of total issued share capital, based on the existing shareholding of 34.57 % the assessee was offered 21,78,204 shares at face value of Rs 100 per share. Assessee accepted part offer of the Shares only to the extent of 20,94,032 shares consequently his shareholding came down from 34.57 % to 33.30 %. The ITAT held that the addition under 56(2)(vii)(c) being the difference between alleged fair market value of shares and the subscribed value of shares was not sustainable. It is only when a higher than propionate allotment of fresh shares issued by a company is received by a shareholder, the provisions of section 56(2)(vii) get attracted.

16. Detailed finding so recorded by the Id. CIT(A) while deleting the addition made U/s 56(2)(vii)(c) of the Act of Rs. 1,61,14,400/- are as per material on record which do not require any interference on our part. Accordingly, we uphold the finding of the Id. CIT(A) qua this issue.

17. In the result, this appeal of the revenue is dismissed.

18. Now we take ITA No. 76/JP/2020.

In this appeal, the grounds taken by the revenue are exactly same as ITA No. 75/JP/2020. Facts and submissions are also identical to the facts and submissions made in ITA No. 75/JP/2020, therefore, following the reasoning given in ITA No. 75/JP/2020 hereinabove in case of Smt. Veena Goyal, we do not find any infirmity in the order of the Id. CIT(A) and we uphold the same. This appeal of the revenue is dismissed.

19. In the result, both these appeals of the revenue are dismissed.

Order pronounced in the open court on 15th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 15/09/2020

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The DCIT, Circle-2, Jaipur.
2. प्रत्यर्थी / The Respondent- (i) Smt. Veena Goyal, Jaipur.
(ii) Smt. Kajal Goyal, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 75 & 76/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar