



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.304/CTK/2018

Assessment Year : 2013-14

ITO, Ward 1(1), Bhubaneswar.	Vs.	M/s. Ashoka Industries Ltd., Plot No.86/A-1, Goutam Nagar, Bhubaneswar.
PAN/GIR No.AACCA 5712 C		
(Appellant)	..	(Respondent)

Assessee by : Shri Mohit Sheth, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 14 /07/ 2020
Date of Pronouncement : 10 /08/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the revenue against the order of the CIT(A),1, Bhubaneswar dated 31.5.2018 for the assessment year 2013-14.

2. Grounds of appeal raised by the revenue read as under:

"1. The order of the Id CIT(A) is erroneous on facts and in law.

2. Whether on the facts and in the circumstances of the case and in law, the Id CIT(A) is right in deleting the addition of Rs.2,61,56,000/- made by the AO u/s.56(2)(viib) of the I.T.Act, 1961 following "net value method" as per Rule 11UA (2)(a) of the I.T.Rules, 1962?

3. Whether on the facts and in the circumstances of the case and in law, the Id CIT(A) is right in law in holding that the assessee is entitled to value the shares as per the provisions of Rule 11UA (2)(b)

inserted w.e.f 29.11.2012 when the assessee had received the consideration amount towards issue of shares prior to 29.11.2012 ?”

3. The relevant facts, as emerged from the order of the CIT(A), are that the assessee, during the relevant previous year had issued 2,00,000 equity shares of face value of Rs.10/- to one M/s. Enbee Resources (P) Ltd. on 7.1.2013 at Rs.180/- per share which included premium of Rs.170/- per share. On being asked by the AO to explain the basis of valuation of equity shares for issuing at a premium of Rs.170/- against the face value of Rs.10/-, the assessee explained that the fair market value of shares as per Rule 11UA(2)(a) was Rs.49.22 whereas as per Rule 11 UA(2)(b) the fair market value came to Rs.189/-. It was explained to the AO that since the fair market value as per valuation in accordance with Rule11 UA(2)(b) was Rs.189/- and the assessee had issued shares at Rs.180/- including premium of Rs.170/-, which is less than the fair market value, no amount was required to be taxed as income from other sources u/s.56(2)(viib) of the Act. The AO, however, did not accept the explanation of the assessee and was of the view that since Rule 11UA(2) was inserted w.e.f. 29.11.2012 and the assessee had received, the consideration amount towards issue of shares prior to 21.11.2012, the provisions of Rule 11UA(2) were not applicable in the case of the assessee and, therefore, the market value of the shares was required to be determined as per Rule 11 UA(1)(c)(b) and not as per Rule 11UA(2), Accordingly, the AO adopted the fair market value of the shares at Rs.49.22 per share and taxed the excess receipt of

Rs.130.78 (Rs.180 minus Rs.49.22) as income of the assessee to be taxed u/s.56(2)(viib) as income from other sources.

4. On appeal before the first appellate authority, the assessee contended that since the shares were issued much after 29.11.2012, being the date with effect from which Rule 11UA(2) came into force and the major amount towards issues of share was received after 29.11.2012, the AO is not justified to reject the fair market value calculated as per discounted free cash flow method prescribed under Rule 11UA(2)(b) of the Act. It was also contended that the discounted free cash flow method is a well recognized method for valuation of shares which could be adopted for valuation of shares even before insertion of Rule 11UA(2).

5. After considering the submissions of the assessee, the Id CIT(A) deleted the addition by observing as under:

"I have considered the matter carefully and perused the facts on record. I have also gone through the elaborate written submissions of the assessee. The AO has refused to accept the valuation of shares as per the discounted free cash flow method prescribed under Rule 11UA(2)(b) on the ground that. the consideration money towards allotment of equity shares was received prior to insertion of Rule 11UA(2) w.e.f. 29.11.2012. This reason given by the AO is factually incorrect. It is seen from the details of receipt of the consideration money that out of the total amount of Rs.3,60,00,000/- received from M/s. Enbee Resources (P) Ltd. an amount of Rs.1,50,00,000/-only was received prior to 29.11.2012 and the balance amount of Rs.2,10,00,000/- was received after 29.11.2012. Moreover, the shares were issued much later on 5.1.2013. Hence, the AO is not justified to refuse the assessee the benefit of discounted free cash flow method as prescribed under Rule 11 UA(2)(b). The Hon'ble ITAT, Jaipur Bench in the case of ACIT v. M/s. Safe Decore (P) Ltd. in ITA NO.716/JP/2017 for the AY 2014-15 has held vide their order dt.12.1.2018 that the assessee cannot be

denied the benefit of discounted free cash flow method only because the consideration amount was received much before Rule 11UA(2) came into force. The Hon'ble ITAT has held in this case that since the shares were issued at less than the fair market value calculated as per discounted free cash flow method, nothing is taxable u/s.56(2)(viib). On the facts of the assessee's case since the shares have been issued at Rs.180/- per share as against the fair market value of Rs.189/- determined as per discounted free cash flow method, no amount is required to be taxed u/s.56(2)(viib). Hence, the addition of Rs.2,61,56,000/- is deleted."

6. Ld Departmental Representative (DR) submitted that since Rule 11UA(2) was inserted w.e.f. 29.11.2012 and the assessee had received the consideration amount towards issue of shares prior to 21.11.2012, the provisions of Rule 11UA(2) were not applicable in the case of the assessee and, therefore, the market value of the shares was required to be determined as per Rule 11 UA(1)(c)(b) and not as per Rule 11UA(2), Ld DR submitted that, accordingly, the AO adopted the fair market value of the shares at Rs.49.22 per share and taxed the excess receipt of Rs.130.78 as income of the assessee to be taxed u/s.56(2)(viib) as income from other sources.

7. Ld DR further submitted that the Id CIT(A) was not right in holding that the assessee is entitled to value the share as per provisions of Rule 11UA (2) w.e.f 29.11.2012 especially when the assessee had received the consideration amount towards issue of shares prior to 29.11.2012 on 21.11.2012. Ld DR strenuously submitted that the Id CIT(A) was not right and justified in granting relief to the assessee. Therefore, the impugned

order may kindly be set aside by restoring the order of the Assessing officer.

8. Replying to above and supporting to the order of the Id CIT(A), Id counsel for the assessee drew our attention towards para 2.2 of the order of the Id CIT(A) and submitted that as per the decision of ITAT Jaipur Bench in the case of M/s. Safe Decore (P) Ltd (supra), the assessee cannot be denied the benefit of discounted free cash flow method only because the consideration amount was received much before insertion of Rule 11UA(2), which came into force. Ld AR submitted that the ITAT Jaipur Bench in the case of Safe Decore (P) Ltd.(supra) has categorically held that since shares were issued at less than the fair market value calculated as per discounted free cash flow method, nothing is taxable u/s.56(2)(viib) of the Act. Ld counsel also pointed out that since shares have been issued by the assessee at Rs.180/- per share as against the fair market value of Rs.189/- determined as per discounted free cash flow method, no addition is required to be made in the hands of the assessee u/s.56(2)(viib) of the Act. Therefore, the findings recorded by Id CIT(A) may kindly be upheld.

9. We have heard the rival submissions and perused the relevant materials placed on the record of the Tribunal. In this case, the assessee had issued 2,00,000 equity shares of face value of Rs.10/- to One M/s. Enbee Resources Pvt Ltd., on 7.1.2003 at Rs.180/- per share which included premium of Rs.170/- per share. It is the explanation of the assessee that

since the fair market value as per the valuation in accordance with Rule 11ua (2)(B) was Rs.189/- and the assessee had issued shares at Rs.180/- including premium of Rs.170/-, which is less than the fair market value, no amount was required to be taxed as income from other sources u/s.56(2)(viib) of the Act. As per Rule 11UA(1)(c)(b) of the Rules, it is the prerogative of the assessee to estimate the fair market value of the shares issued by it adopting one method out of two methods i.e. discounted cash flow method or book value method. The revenue authorities cannot force the assessee to adopt particular method for valuing the fair market value of the share especially when Rule 11UA(1)(c)(b) provides that it is the option of the assessee to chose any method either discounted or book value method for estimating the fair market value of the shares issued by it during the relevant financial period. In this case, the assessee has adopted the discounted free cash flow method as prescribed under Rule 11UA (2)((b) of the Act.

10. We also find that the Jaipur Bench of ITAT in the case of Safe Decore Pvt Ltd., (supra) has held that the assessee cannot be denied the benefit of discounted free cash flow method only because the consideration amount was received much before Rule 11UA(2) came into force, which is one of the method to be adopted by the assessee for valuing the fair market rate. The above decision has been followed by the Id CIT(A) in the impugned order in deleting the addition. We also find that in the present case shares

have been issued by the assessee at Rs.180/- per share as against the fair market value of Rs.189/- determined as per discounted free cash flow method and, therefore, no addition is required to be made in the hands of the assessee u/s.56(2)(viib) of the Act Therefore, we find no infirmity in the impugned order of the Id CIT(A) to interfere. Accordingly, we uphold the findings of the Id CIT(A) and reject the ground of appeal of the revenue.

11. In the result, appeal of the revenue is dismissed.

Order pronounced on 10/08/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 10/8/2020
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : ITO, Ward 1(1),
Bhubaneswar.
2. The Respondent. M/s. Ashoka Industries Ltd.,
Plot No.86/A-1, Goutam Nagar, Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- 1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack