

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6353/DEL/2018 [A.Y. 2014-15]

M/s Sagitarius Securities Pvt Ltd
13/34, W.E.A Karol Bagh
New Delhi

Vs. The I.T.O
Ward -22(3)
New Delhi

PAN: AAHCS 6788 F

(Applicant)

(Respondent)

Assessee By : Shri Anunav Kumar, Adv
Department By : Ms. Maninder Kaur, Sr. DR

Date of Hearing : 03.01.2023

Date of Pronouncement : 05.01.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER :-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 30, New Delhi dated 26.07.2018 pertaining to Assessment
Year 2014-15.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in upholding the addition made by the Assessing Officer amounting to Rs. 1,49,60,000/- u/s 56(2)(viib) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. The peculiar facts of the case are that the appellant company was incorporated in the year 1995 and since then, till date, is not doing any business but is only engaged in providing accommodation entries, as admitted by the ld. counsel for the assessee before the Bench.

4. The more peculiar fact is that during the year, in spite of zero business activities, the assessee company issued 8 lakhs shares, each of face value of Rs. 10/- to two companies, namely, M/s Elecon Securities Pvt Ltd and M/s Ordinary Financial Services Pvt Ltd.

5. This transaction becomes more scarier when we find that this issue of 8 lakhs shares was in consideration of 60,000 shares received by the assessee from the two companies to whom shares were allotted. These two companies have allotted 60,000 shares for Rs. 6 crores with a staggering Rs. 1,000/- per share.

6. Since the assessee has received shares of value Rs. 6 crores each from M/s Elecon Securities Pvt Ltd and M/s Ordinary Financial Services Pvt Ltd., it valued its own shares at Rs. 75/- each, which comprises of face value of Rs. 10/- and premium of Rs. 65/-. This entire transaction is something called "*res ipsa loquitor*" - Facts speaking their own story.

7. When the Assessing Officer confronted the assessee to explain the issue of 60,000 shares at Rs. 75/- per share, the assessee justified it by submitting a valuation report as per Rule 11UA of the IT Rules.

8. The report filed by the assessee and the reply was not accepted by the Assessing Officer who was of the firm belief that the basis of the valuation being balance sheet as on 31.03.2014 was not adopted in the Annual General Meeting of the company and hence it was not as per Rule 11UA of the IT Rules and proceeded by valuing the shares as per IT Rules and determined the price at 65.6447 per share and made addition of the difference i.e. Rs. 75 minus Rs. 65/- = Rs. 1,49,60,000/-

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9. The assessee agitated the matter before the ld. CIT(A) but without any success.

10. Before us, the ld. counsel for the assessee not only reiterated what has been stated before the lower authorities, but also placed strong reliance on the decision of the co-ordinate bench at Chandigarh in the case of Electra Paper and Board Pvt Ltd ITA No. 222/Chd/20221 and also on the decision of the co-ordinate bench at Chennai in the case of Vaani Estates Pvt Ltd in ITA No. 1352/Chny/2018 supported by referring to the speech of the Hon'ble Finance Minister while making the amendment.

11. The ld. counsel for the assessee also referred to the Valuation Certificate, which is at page 51 of the Paper Book.

12. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and vehemently stated that the Assessing Officer has rightly valued the shares as per the relevant rules of the IT Rules, rightly confirmed by the ld. CIT(A) and there is no error or infirmity.

13. We have given thoughtful consideration to the orders of the authorities below. The peculiarity of the transaction has already been explained hereinabove. The bone of contention is as to whether the assessee has valued the shares as per the balance sheet of the valuation date 31.03.2014 in consonance with Rule 11U/11UA of the IT Rules.

14. Before proceedings further, let us consider the meaning of the Balance Sheet as given u/r 11U of the Rules and the same reads as under:

“For the purposes of this Rule and Rule 11UA

The balance sheet”, in relation to any company, means,—

(i) for the purposes of sub-rule (2) of rule 11UA, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956)⁶⁹ and where the balance sheet on the valuation date is not drawn up, the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company”

15. A bare perusal of the aforementioned rule shows that Balance Sheet should be drawn on the valuation date, which is 31.03.2014 in the present case, which has been audited by the auditor of the company and if these two conditions are not satisfied, then the balance sheet drawn up as on the date immediately preceding the valuation date which has been approved and adopted in the Annual General Meeting of the share holders of the company, which would be 31.03.2013 in the present case.

16. For a company, it is impossible to get its accounts audited on 31st March and present the same for approval in the Annual General Meeting on March 31st.

17. The Chandigarh Bench of ITAT had the occasion to decide whether it would be justifiable to accept the unaudited balance sheet as on the valuation date when the same has been audited at a later date with no material variance in the financials.

18. But in the case in hand, when the Bench asked the ld. counsel for the assessee about the unaudited balance sheet as on 31.03.2014, the ld. counsel for the assessee could not reply and instead, referred to the certificate of the auditors, which is as under:

“TO WHOM IT MAY CONCERN

This is to certify that the Fair Market Value of each fully paid up Equity Share of M/s Sagitarius Securities Private Limited having registered office at 13/34 W.E.A. 4th floor. Main Arya Samaj Road. Karol Bagh. New Delhi- 1100 05 as on 31st March. 2014 is Rs. 74.23 per share which is rounded off to Rs.75.00 per share.

The above valuation has been made as per Rule 11UA of the Income tax Rules. 1962 and on the basis of Statements and documents furnished to us by the Company

The computation of Fair Market Value as on 31st March. 2014 as per Rule 11UA of the Income tax Rules. 1962 is attached.”

19. The aforementioned certificate nowhere says that the valuer has considered the audited balance sheet as on 31.03.2014 which was approved and adopted in the Annual General meeting by the shareholders for the simple reason that it is practically impossible for any company to present the audited balance sheet of the F.Y. before the Annual General Meeting on the date of closing of the F.Y. i.e. 31st March. The certificate of the auditors is based on the statement and

documents furnished by the company which is neither audited nor certified by the auditors.

20. On these peculiar facts, it would be a futile exercise to refer to the decisions relied upon by the Id. counsel for the assessee which are totally based upon different set of facts. In fact, the reference to the speech of the Hon'ble Finance Minister goes against the assessee, in as much as, the Hon'ble Finance Minister had emphatically, inter alia, said:

“I propose a series of measures to deter the generation and use of unaccounted money.

To this end, I propose :

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Increasing the onus of proof on closely held companies for funds received from shares holders as well as taxing share premium in excess of fair market value.”

21. This shows that even the Legislators put the onus of proof on the companies and in the case in hand, the assessee has miserably failed in discharging the onus.

22. The Assessing Officer found that the audited balance sheet of 31.03.2013 was approved by the shareholders in the Annual General Meeting and, accordingly, computed the fair market value of the shares as per the balance sheet as on 31.03.2013 which, in our considered opinion, is as per the provisions of the Act read with the relevant rules of the IT Rules and cannot be faulted with.

23. In the result, the appeal of the assessee in ITA No. 6353/DEL/2018 is dismissed.

The order is pronounced in the open court on 05.01.2023.

Sd/-

[KUL BHARAT]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 05th January, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	