

IT: Where AO did not find any defect in valuation of shares arrived at by assessee on basis of discounted cash flow method, impugned addition made by him on basis of net asset value method was to be set aside

IT: Payments of handling charges to shipping agents of non-resident shipping companies not liable to TDS under section 194C

IT: Where AO disallowed claim of entry tax on ground that assessee had not furnished any proof of payment, in view of fact that assessee had brought on record e-challan containing all relevant details including name of assessee, impugned disallowance was to be deleted

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IN THE ITAT JAIPUR BENCH

Assistant Commissioner of Income-tax, Circle-2, Alwar

v.

Safe Decore (P.) Ltd.\*

VIJAY PAL RAO, JUDICIAL MEMBER  
AND BHAGCHAND, ACCOUNTANT MEMBER

IT APPEAL NO. 716 (JP) OF 2017

C.O. NO. 36 (JP.) OF 2017

[ASSESSMENT YEAR 2014-15]

JANUARY 12, 2018

I. Section [56](#) of the Income-tax Act, 1961, read with rule [11UA](#) of the Income-Tax Rules, 1962 - Income from other sources - Chargeable as (Shares) - Assessment year 2014-15 - During year under consideration assessee company allotted shares to 'J' Ltd. - Assessee submitted valuation per equity share computed on discounted cash flow method which was arrived at Rs. 54.98 per share - Assessing Officer did not accept said valuation and applied Net Asset Value of company which came to Rs. 26.69 per share - Applying said value, Assessing Officer made addition to assessee's income under section 56(2)(vii)(b) - Whether provisions of section 56(2)(vii)(b) give options to assessee to adopt any of methods which can be compared with Net Asset Value Method and Assessing Officer shall adopt value whichever is higher - Held, yes - Whether since discounted cash flow method is one of prescribed method and, moreover, Assessing Officer had not found any serious defect in facts and details used in determining fair market value under said method, impugned addition made by him was to be deleted - Held, yes [Para 4.1] [In favour of assessee]

II. Section [194C](#), read with section [40\(a\)\(ia\)](#), of the Income-tax Act, 1961 - Deduction of tax at source - Contractors/sub-contractors, payments to (Handling charges) - Assessment year 2014-15 - During relevant year assessee made payments of handling charges to shipping agents of non-resident shipping companies - Since assessee did not deduct tax at source while making said payments, Assessing Officer disallowed same- It was found that as per CBDT Circular No. 723 dated 19-9-1995, payment made to shipping agents of non-resident shipowners did not require deduction of tax at source -

Moreover, department had already granted exemption certificate to non-resident ship owners that there was no obligation on assessee to deduct tax at source in respect of payments made to their shipping agents - Whether in view of aforesaid, impugned disallowance was to be deleted -Held, yes [Para 5.2] [In favour of assessee]

III. Section [37\(1\)](#) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Entry tax) - Assessment year 2014-15 - In course of assessment, Assessing Officer disallowed claim of entry tax on ground that assessee had not furnished any proof of payment - Whether in view of fact that assessee had brought on record e-challan containing all relevant details including name of assessee, impugned disallowance was to be deleted and, matter was to be remanded back to Assessing Officer with a direction to verify details of e-Challan and then allow claims made on said account - Held, yes [Para 6.3] [Matter remanded]

Circulars and Notifications - [Circular No. 723, dated 19-9-1995](#)

#### **FACTS-I**

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- During the year under consideration the assessee company allotted shares to 'J' Ltd. The assessee submitted valuation per equity share computed on the discounted cash flow method as per the certificate of Chartered Accountants wherein the value per shares was arrived at Rs. 54.98 per share.
- The Assessing Officer did not accept said valuation and applied Net Asset Value method as per which value of share came to Rs. 26.69 per share. Applying the said value, the Assessing Officer made addition under section 56(2)(vii)(b) of the Act.
- In appellate proceedings the assessee contended that as per rule 11UA of 1962 Rules, the Fair Market Value of unquoted equity shares would be the value, on the allotment date, of such unquoted equity shares as determined as per method provided or Net Asset Value whichever was higher. The Commissioner (Appeals) accepted the contention of the assessee and held that the shares allotted to 'J' Ltd. were within the fair market value as determined under the prescribed method under Rule 11UA of the 1962 Rules, and accordingly, the addition was deleted.
- On revenue's appeal:

#### **HELD-I**

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- There is no dispute that the assessee had issued shares to 'J' Ltd., during the year under consideration. Further, the fair market value as per the provision of section 56(2)(vi)(b) has to be determined in accordance with the method prescribed under rule 11UA of the IT Rules and as per sub-rule (2) of rule 11UA, discounted cash flow method is one of the prescribed method. Therefore, it is the option of the assessee to adopt any of the prescribed method under rule 11UA(2) of the 1962 Rules.
- Section 56(2)(vii)(b) read with Explanation has specifically provided that the fair market value of the unquoted shares shall be determined as per the prescribed methods and shall be taken whichever is higher fair market value by comparing the value based on the asset of the company. Therefore, the Net Asset Value method as well as any of the other methods prescribed under rule 11UA of the 1962 rules, whichever is higher shall be adopted as per the option of the assessee. [Para 4]

- In view of the statutory provisions giving options to assessee to adopt any of the methods which can be compared with the Net Asset Value Method and the Assessing Officer shall adopt the value whichever is higher. In the case of the assessee the Fair Market determined as per the discounted cash flow method at Rs. 54.98 per share which is higher than the valuation adopted by the Assessing Officer as per the Net Asset Value at Rs. 26.69 per share.
- The Assessing Officer had not found any serious defect in the facts and details used in determining the fair market value under discounted cash flow method. Hence, there is no error or illegality in the impugned order of the Commissioner (Appeals) *qua* this issue. [Para 4.1]

**Devendra Kumar** and **Dinesh Kumar**, (Adv.) *for the Appellant.* **Smt. Neena Jaif**, (JCIT) *for the Respondent.*

## **ORDER**

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**Vijay Pal Rao, Judicial Member** - This Appeal by the Revenue and Cross-Objection by the Assessee are directed against the order of Ld. CIT (A)-22, Alwar dated 14.07.2017 pertaining to the Assessment Year 2014-15.

2. First, we take up Revenue's appeal wherein the Revenue has raised the following grounds of appeal:—

*"Ground of appeal*

Appeal is filed on the following grounds against the order of Ld. CIT (A), Alwar in appeal no. 258/2016-17 dated 05-06-2017 in the case of M/s Safe Decore (P) Ltd., SP-812, E-6, Phase-III, Industrial Area, Bhiwadi, Distt. Alwar (PAN: AAFCS0374R) for the A. Y. 2014-15:-

1. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleting the addition of Rs. 66,55,000/- u/s. 56(2)(vii)(b) r.w. Rule 11UA of the IT Rule made by the AO without appreciating the material facts of the case.
2. On the facts and circumstances of the case and in law Ld. CIT (A) erred in deleting the disallowance of the payment of handling charges/commission of Rs. 3,94,044/- made by the AO on account of violation of the provisions of section 194C r.w.s. 40(a)(ia) of the IT Act 1961.

That the appellant craves leave to add, amend or alter the grounds of appeal on or before the date the appeal is finally heard for disposal."

3. Ground no. 1 is regarding the deletion of addition made by the AO u/s. 56(2)(vii)(b) of the Income Tax Act read with Rule 11UA of the IT Rule, in respect of the equity shares issued by the assessee company.

3.1 The AO noted that during the year under consideration the assessee company has allotted shares and there is increase in the paid up capital amounting to Rs. 50,00,000/-. Further, Rs. 1,50,00,000/- was share premium on these shares. The AO asked to assessee to furnish the name and complete details of the investors and confirmation with copy of ITR, copy of bank statement etc. for verification of identity, creditworthiness and genuineness of transaction. In reply, the assessee submitted that the share application money in question was received in the Assessment Year 2011-12 and therefore the provision of Section 56(2)(vii)(b) are not applicable in respect of this amount received. This provision has come into force with effect from 29/01/2012. The assessee has also submitted valuation per equity share

computed on the discounted cash flow method as per the certificate of Chartered Accountants wherein the value per shares was arrived at Rs. 54.98 per share. The AO did not accept the said valuation and had applied Net Asset Value of the company which came to Rs. 26.69 per share. Applying the said value the AO made addition of Rs. 66,55,000/- u/s. 56(2)(vii)(b) of the Act. The assessee challenged the action of the AO before the Ld. CIT (A) and contended that as per Rule 11UA of IT Rules, the Fair Market Value of unquoted equity shares shall be the value, on the allotment date, of such unquoted equity shares as determined as per method provided or Net Asset Value whichever is higher. The Ld. CIT (A) accepted the contention of the assessee and held that the shares allotted to M/s Jasmine Barter Private Limited are within the fair market value as determined under the prescribed method under Rule 11UA of the IT Rules, 1962, and accordingly the addition was deleted.

**3.2** Before us the Ld. D/R has submitted that assessee has submitted the valuation by adopting the discounted cash flow method whereas as per net asset value of the company, the value per share undisputedly is Rs. 26.69. Therefore, the AO has held that the value adopted by the assessee does not hold any merit when the value as per the net asset method is substantially low in comparison to the value adopted by the assessee. Further, the computation of the fair market value of the share is not based on any real data when the AO has specifically stated the net profit has increased only an average of 4 and 5%. She has relied upon the order of the Assessing Officer.

**3.3** On the other hand, Ld. A/R of the assessee has referred to the certificate of the Chartered Accountant at page 9 to 11 of Paper Book and submitted that the valuation has been done by using the discounted cash flow method which is one of the prescribed methods under Rule 11UA of the Income Tax Rules. Further, as per the provision of Section 56(2)(vii)(b) the fair market value share shall be the value as may be determined in accordance with method prescribed and for this purpose Rule 11UA has prescribed the method for determination of fair market value of the shares or the value as may be substantiated based on the value of its assets to the satisfaction of the AO, whichever is higher. He has supported the impugned order of the Ld. CIT (A). Alternatively, the AR of the assessee submitted that provision of section 56(2)(vii)(b) are not applicable in the case of the assessee as shares application money was received in the Assessment Year 2011-12 and this provision of section 56(2)(vii)(b) has been newly inserted w.e.f. 1/4/2013.

**4.** We have considered the rival contentions as well as the relevant material on record. There is no dispute that the assessee has issued the shares to M/s Jasmine Pvt. Ltd., during the year under consideration. Further, the fair market value as per the provision of section 56(2)(vii)(b) has to be determined in accordance with the method prescribed under Rule 11UA of the IT Rules and as per sub-Rule (2) of Rule 11UA, discounted cash flow method is one of the prescribed method. Therefore, it is the option of the assessee to adopt any of the prescribed method under Rule 11UA(2) of the IT Rules Section 56(2)(vii)(b) read with Explanation has specifically provided that the fair market value of the unquoted shares shall be determined as per the prescribed methods and shall be taken whichever is higher fair market value by comparing the value based on the asset of the company. Therefore, the Net Asset Value method as well as any of the other methods prescribed under Rule 11UA of the IT Rules, whichever is higher shall be adopted as per the option of the assessee.

**4.1** In view of the statutory provisions giving options to assessee to adopt any of the methods which can be compared with the Net Asset Value Method and the AO shall adopt the value whichever is higher. In the case of the assessee the Fair Market Value determined as per the discounted cash flow method at Rs. 54.98 per share which is higher than the valuation adopted by the AO as per the Net Asset Value at Rs. 26.69 per share. Therefore, the share allotted at Rs. 40 per share is within the fair market value as determined by adopting the discounted cash flow method. The Assessing Officer has not found any serious defect in the facts and details used in determining the fair market value under discounted cash flow method. Hence, we do not find any error or illegality in the impugned order of the Ld. CIT (A) qua

this issue.

**5.** Ground no. 2 is regarding disallowance made by the AO u/s. 40(a)(ia) and deleted by the Ld. CIT (A).

**5.1** The AO found that the assessee has claimed expenses of handling charges to M/s Evergreen Shipping Agency India Pvt. Ltd. and Emirates Shipping Agencies Pvt. Ltd. without deduction of tax at source as per the provisions of Section 194C of the Act. Accordingly, the AO invoked the provision of Section 40(a)(ia) of the Act and disallowed the payment of handling charges of Rs. 3,94,000/-. The Assessee challenged the action of the AO before the Ld. CIT (A) and submitted that these payments were made to the shipping agents of non-resident shipping companies of UK and UAE. As per DTAA between Indo UK and Indo UAE the said remittance is not taxable in the hands of the Non-Resident shipping companies. The assessee also relied upon CBDT Circular No. 723 dated 19.09.1995 and submitted that the payments have been made through shipping agents of Non-Resident ship owners shipped at the port in India. Further, the assessee also produced the certificate issued by the Department whereby exemption was granted to these shipping companies/ship owners for non deduction on tax at source. The Ld. CIT (A) accepted these explanations and contentions of the assessee and deleted the disallowance made by the AO on this account.

**5.2** We have heard the rival contentions and considered the relevant material on record. The Revenue has not disputed that the assessee has made the payment in question to the shipping agents of Non-Residents ship owners. Therefore, as per the CBDT Circular No. 723 dated 19/09/1995 payment made to the shipping agents of Non-Resident ship owners does not require deduction of tax at source. We further note that the Director International Taxation vide Certificate dated 23/06/2011 and 28/03/2013 respectively granted the exemption to the Non-Resident ship owners in question from deduction of tax at source. The assessee filed these certificates which are placed at page no. 13 and 14 of the paper book. Therefore, when the Department has already granted the exemption certificate to the Non-Resident ship owners then there is no obligation on the assessee to deduct tax at source in respect of the payment made to the shipping agents of these Non-Resident ship owners. Accordingly, we do not find any error or illegality into the order of the Ld. CIT (A) qua this issue.

**6.** Now, we take Assessee's Cross Objection i.e. C.O. No. 36/JP/2017 wherein the assessee has raised the following grounds of Cross objection.

- "1. That the Ld. AO grossly erred in making addition of Rs. 1,35,313/- by disallowing the provision of entry tax and the Appellate Authority erred in sustaining the same.
2. That Respondent-cross objector craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing."

**6.1** Only issue raised by the assessee is regarding disallowance of entry tax.

**6.2** We have heard the Ld. AR as well as Ld. D/R and considered the relevant material on record. The Assessing Officer disallowed the claim of entry tax of Rs. 1,35,313/- on the ground that the assessee has not furnished any proof of payment. The Ld. CIT (A) has confirmed the disallowance made by the AO in para 6.3 of the impugned order as under:—

"6.3 I have considered the order passed by the AO and submissions filed by the appellant. I have considered the copy of Challan submitted during the appellate proceedings. However, the challan does not mention the name of the assessee company. Therefore, it is not possible to verify whether the entry tax belongs to the appellate company. Accordingly, the addition of Rs. 1,35,313/- is sustained for want of credible proof. Appellant's ground of appeal on the issue is dismissed."

**6.3** Thus, it is clear that Ld. CIT (A) observed that it is not possible to verify whether entry tax belongs

to assessee company, as the e-Challan produced by the assessee does not mention the name of the assessee's company. Ld. A/R of the assessee has drawn our attention to page No. 17 of the Paper Book and submitted that as per E-challan dated 26/04/2014 the name of the assessee has been mentioned. We find that the E-challan dated 26/4/14 for sum of Rs. 1,37,635/-contains the details of assessee i.e. its name as well as address. The assessee has clarified that this amount of Rs. 1,37,635/- includes Rs. 1,35,313/- as entry tax and balance as interest. The AO has disallowed this amount for want of proof of payment whereas the assessee had produced this e-Challan dated 26/04/2014 having all the details. Accordingly, in view of the fact that, the e-Challan dated 26/4/2014 contains all relevant details including name of the assessee the AO is directed to verify details of the e-Challan and then allow the claims made on this account.

**7.** In the combined result, the appeal of the Revenue i.e. ITA No. 716/JP/2017 is dismissed whereas the Cross Objection of the Assessee i.e. CO No. 36/JP/2017 is allowed for statistical purpose.

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\*In favour of assessee/Matter remanded.