

Section 56(2)(viib) applicable at the time of share allotment, even if application made before insertion of that section

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In brief

The Delhi bench of the Income-tax Appellate Tribunal (Tribunal) held that the provisions of section 56(2)(viib) of the Income-tax Act, 1961 (Act) are applicable to shares allotted at premium at the time of allotment (after the insertion of the aforesaid section in the Act), even if the share application money was received prior to its introduction.

In detail

Facts

- The taxpayer,¹ a private limited company, received share application money during assessment years (AY) 2012-13, 2013-14 and 2015-16.
- Against all the above applications, shares of face value INR 10 were allotted at a premium of INR 790 per share, only in AY 2015-16.
- The taxpayer had relied on the valuation report of a registered valuer, dated 5 April 2011, to justify the fair value of the shares.
- The Tax Officer (TO) ignored the valuation report and added the entire amount under the provisions of section 56(2)(viib) of the Act.

- As per the TO, the shares were allotted only in AY 2015-16, when the provisions of section 56(2)(viib) of the Act were applicable. The TO noted that the taxpayer is duty bound to submit the basis of calculation of share premium, as per Rule 11U and Rule 11UA of the Income-tax Rules, 1962 (Rules), and justify the allotment of shares at a premium.
- On further appeal before the Commissioner of Income-tax (Appeal) the matter was held in favour of the Revenue.

Issue before the Tribunal

Whether the provisions of section 56(2)(viib) of the Act are applicable to shares allotted at premium at the times of allotment (after the insertion of the aforesaid

section in the Act), even if the share application money was received prior to its introduction ?

Revenue's contentions

- The taxpayer had only received share application money in AYs 2012-13 and 2013-14, and no shares were allotted. Hence, the applicability of section 56(2)(viib) of the Act did not arise in those AYs.
- The shares were allotted only in AY 2015-16, based on the share application money received, and hence, section 56(2)(viib) of the Act will be applicable.

Taxpayer's contentions

- The share application money received in earlier years cannot be considered during AY 2015-16, as the provisions of section

¹ ITA No.5933/DEL/2018

56(2)(viib) of the Act were inserted with effect from 1 April, 2013

- Only a portion was received as share application money in AY 2015-16.
- The provisions of section 56(2)(vii) of the Act are not applicable, as the taxpayer had submitted the valuation report, which was not accepted by the TO.

Tribunal's ruling

- Two portions of the share application money was received in AYs 2012-13 and 2013-14, respectively.
- The entire share allotment was

done during AY 2015-16; therefore, it cannot be said that the taxpayer was not liable to justify the share premium and furnish a valuation report, as mentioned under Rule 11U and 11UA of the Rules.

- Further, the Tribunal categorically noted that although the share application money was received in earlier years, since shares were not allotted, the share premium could not have been examined.
- The entire transaction crystallised in AY 2015-16, which also includes the share premium and it needs to be

examined only in AY 2015-16.

- The Tribunal restored the matter to the TO and directed the taxpayer to justify the share premium as per the provisions of Rule 11U and 11UA of the Rules.

The takeaways

With this decision, the Tribunal has reaffirmed that section 56(2)(viib) of the Act needs to be tested in the year of allotment of shares.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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