आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए'', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेशकुमार, लेखा सटस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member& Shri Son joy Sarma, Judicial Member]

I.T.A. No. 932/Kol/2024
Assessment Year: 2014-15

Maa Biddeswari Agro Products Pvt. Ltd. (PAN: AAFCM 5635 H)	Vs.	ITO, Ward-3(4), Balurghat
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	13.03.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.03.2024
For the Appellant/ निर्धारिती की ओर से	Shri D Chatterjee, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 13.07.2023 for the AY 2014-15.

2. The assessee has challenged the order of Ld. CIT(A) on single issue that the Ld. CIT(A) has earned in fact and law in upholding the assessment order wherein the AO has made the addition of Rs. 46,52,400/- on account of share premium to the income of the assessee.

3. Facts in brief are that the assessee filed return of income on 4.10.2014 declaring total income of Rs. 1,07,680/- which was selected for scrutiny under CASS. The statutory notice u/s 143(2) of the Act was issued to the assessee. In response thereto the counsel of the assessee appeared and submitted the tax audit report, audited accounts, list of share holders and other documentary evidences including bills, vouchers as called for by the AO. The AO observed on the basis of balance sheet the assessee has received large share premium during the year. A show cause notice was issued to the assessee regarding the said share premium which the assessee has replied on 14.12.2016 wherein the assessee has tried to substantiate the valuation of the shares as per clause (b) of Section 56(2)(viib) of the Act. The AO observed on the basis of said reply that fair market value of unquoted shares has not been determined by a merchant banker or by accountant as per the discounted free cash flow method and noted that the valuation of fair market value of the shares was done by the Govt. registered valuer which is contradictory to the provisions of the Act. Finally the AO determined the value of shares at Rs. 23.20 in terms of Section 56(2)(viib) of the Act as given in para 5 of the assessment order. The AO after reducing the face value of the equity share of Rs. 10/- each, came to the conclusion that the share premium should have been Rs. 13.20 per share as against Rs. 400/- calculated by the assessee and accordingly made the addition of Rs. 386.80 paisa per share which comes to Rs. 46,52,400/- on the toal number of shares issued and added the same to the income of the assessee.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO by giving the same reason.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has issued shares 12000 equity shares at a premium of Rs. 400/- with face value of 10 each. In order to calculate fair market value of equity shares, the assessee obtained valuation report from Sanjib Kr. Roy, Charted Engineer empanelled with the department under registration no. CCIT/Jal/Cat-1/01/2006. We note that the said registered valuer considered the movable as well as immovable properties of the

assessee on the date of valuation and valued the properties based on the recognized method of valuation. We note that the assessee's balance sheet is comprised of both movable and immovable properties. We note that immovable property comprised of land and building which houses the rice mill. As is apparent from the AO as well as Ld. CIT(A) orders that both the authorities have failed to point out any defect in the valuation report furnished by the assessee. We note that the AO has valued the fair market value of the equity shares based on the book value which is totally incorrect and erroneous method of calculating the fair market value as the assessee owns movable as well as immovable properties valuing the equity share at Rs. 23.20 per share whereas the fair market value of the equity share was much higher. We also note that the AO has not referred the issue to valuation expert and therefore the said act of AO is not acceptable as the assessee has furnished valuation before the AO which was done by registered valuer. The valuer is also registered with the Department as valuer. While contrary to this even the immovable properties were valued at book value by the AO which is blatantly anomalous. Under the circumstances we are not in an agreement with the conclusion drawn by the authorities below for the reasons that valuation obtained by the assessee from a registered valuer cannot be brushed aside by simply citing technical reasons without pointing out any discrepancy or defect in the said valuation. Considering the facts of the case, we are of the view that the assessees case deserves to be treated with leniency and accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

6. In the result appeal of the assessee is allowed.

Order is pronounced in the open court on 5th April, 2024

Sd/-	Sd/-
(Sonjoy Sarma /संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 5th April, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Maa Biddeswari Agro Products Pvt. Ltd., Vill-Par Patiram, P.O. Atrai, Balurghat, D-Dinajpur-733158
2. Respondent – ITO, Ward-3(4), Balurghat
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata